

PRODUCT LIABILITY UPDATE
Changes to New Requirement for Reporting Personal Injury Settlements and Payments to Medicare Beneficiaries

Our Product Liability Update of March 2009 alerted businesses to new requirements under Section 111 of the Medicare, Medicaid, and SCHIP Extension Act of 2007 (MMSEA), potentially affecting every business or liability insurer that pays a settlement or judgment to a personal injury or wrongful death claimant. In brief, a paying entity will be required to determine whether the claimant is entitled to Medicare benefits and, if so, report information about the payment to Medicare. *Failure to comply with the mandatory reporting requirement can result in a civil penalty of \$1,000 for each day of noncompliance per claimant.* (For additional details and discussion, see our March 2009 bulletin at www.ThompsonHine.com/publications/pdf/2009/03/newrequirementto1747.pdf.)

EXTENSION OF KEY IMPLEMENTATION DATES

The Centers for Medicare and Medicaid Services (CMS) recently extended several key implementation dates for registration and reporting requirements for liability insurance (including self-insurance)¹:

- The period during which a Responsible Reporting Entity (RRE) must register has been extended through September 30, 2009.
- Section 111 reporting will not include the reporting of Total Payment Obligation to Claimant (TPOC) amounts with dates prior to **January 1, 2010** (extended from July 1, 2009). (The date for reporting acceptance of Ongoing Responsibility for Medicals (ORM)—an issue more often associated with no-fault insurance and workers' compensation than liability insurance—remains July 1, 2009.)
- The period for required testing, in advance of submitting the first live production file, has been extended to January 1, 2010 through March 31, 2010, at the option of the RRE. (RREs that complete testing before their assigned submission window for the first quarter of 2010 have the option of submitting their first live production file in that calendar quarter.)
- Submission of the first live production file now will occur during the assigned submission window for the April–June calendar quarter of 2010.



UPDATED USER GUIDE PUBLISHED; INTERIM REPORTING THRESHOLDS ESTABLISHED

On August 4, 2009, CMS posted on its web site² a 225-page updated version of its User Guide, Version 2.0, dated July 31, 2009, for liability insurance (including self-insurance), no-fault insurance and workers' compensation.³ The User Guide 2.0 incorporates a number of changes previously published by CMS in several "Alerts."

The User Guide 2.0 contains a series of important interim dollar thresholds for reporting TPOC amounts for liability insurance (including self-insurance). The User Guide stresses that the thresholds are solely for the purpose of the required reporting responsibilities under MMSEA Section 111 and do not act as an "exception" or "safe harbor" with respect to any other obligation or responsibility under the Medicare Secondary Payer provisions. In other words, a paying entity's responsibility to protect Medicare's interests or potentially reimburse Medicare for its medical payments on behalf of the claimant/beneficiary are not affected by the thresholds. CMS specifically reserved the right to change the thresholds in the future (with appropriate advance notification of any changes).

Significant aspects of the interim reporting thresholds include:

- When there are multiple TPOCs associated with the same claim record, the combined, cumulative TPOC amounts must be considered in determining whether or not the reporting threshold is met. (A "claim record" pertains to payments to an individual Medicare beneficiary/personal representative or estate of a deceased beneficiary.)
- Initial claims reports that do not meet the total TPOC threshold amount should not be reported; such a report will be rejected by CMS with an error code.
- Claim reports where the last (most recent) TPOC date is January 1, 2010 through December 31, 2011 with TPOC amounts totaling \$0 to \$5,000, are exempt from reporting.
- Claim reports where the last (most recent) TPOC date is January 1, 2012 through December 31, 2012 with TPOC amounts totaling \$0 to \$2,000, are exempt from reporting.
- Claim reports where the last (most recent) TPOC date is January 1, 2013 through December 31, 2013 with TPOC amounts totaling \$0 to \$600, are exempt from reporting.
- No threshold applies to claims where the last (most recent) TPOC date is January 1, 2014 and subsequent.



FOR MORE INFORMATION

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¹ CMS Alert dated May 11, 2009, available at <http://www.cms.hhs.gov/MandatoryInsRep/Downloads/NGHPV10UserGuide051109.pdf>.

² <http://www.cms.hhs.gov/MandatoryInsRep/>.

³ MMSEA Section 111 Medicare Secondary Payer Mandatory Reporting; Liability Insurance (Including Self-Insurance), No-Fault Insurance, and Workers’ Compensation – User Guide Version 2.0; July 31, 2009, available at <http://www.cms.hhs.gov/MandatoryInsRep/Downloads/NGHPUserGuideV2.0.pdf>.