

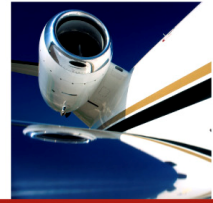
### Recent Changes Affecting Medicare Reporting

Our Product Liability Updates of March 2009 and August 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 is 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/publication1747.html](http://www.ThompsonHine.com/publications/publication1747.html) and our August 2009 bulletin at [www.ThompsonHine.com/publications/publication1899.html](http://www.ThompsonHine.com/publications/publication1899.html)). This bulletin provides an update to the previous bulletins.

During the week of February 22, 2010, the Centers for Medicare & Medicaid Services (CMS) posted on the agency's web site<sup>1</sup> three new Alerts and a new version of the User Guide (3.0)<sup>2</sup> regarding mandatory reporting by liability insurers, self-insured business entities, and workers' compensation programs. These documents implement significant changes affecting mandatory reporting, including:

- The period for initial live reporting has been delayed until the first calendar quarter of 2011 (**January – March 2011**). (Previously, initial submission of live reports was to begin in the calendar quarter of April – June 2010.) This will give Responsible Reporting Entities (RREs) an additional nine months to complete the testing process for data submission.
- RREs now must report settlements/other payments to Medicare beneficiaries (called Total Payment Obligation to Claimant, or TPOC) occurring on or after **October 1, 2010**. (Previously, settlements and other payments to Medicare beneficiaries had to be reported for TPOC dates occurring on and after January 1, 2010.)
- Now, RREs must report Ongoing Responsibility for Medicals (ORM) that exists as of **January 1, 2010** and thereafter. (Previously, reporting was required for ORM that existed as of July 1, 2009 or thereafter.)

Additionally, in an Alert titled *Who Must Report*, CMS provided clarification as to who is the RRE in a number of situations, such as deductibles and self-insured retention; use of third-party administrators for paying claims; re-insurance, stop-loss insurance, excess insurance and umbrella insurance; bankruptcy; fronting policies; multiple defendants; and self-insurance pools. Finally, in the *Who Must Report* Alert, CMS stated that it will soon issue guidance for registration by foreign entities that do not have U.S. federal tax identification numbers or U.S. addresses.



## FOR MORE INFORMATION

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<sup>1</sup> <http://www.cms.hhs.gov/MandatoryInsRep/>

<sup>2</sup> <http://www.cms.hhs.gov/MandatoryInsRep/Downloads/NGHPUserGuideV3022210.pdf>