

SPECIAL NEEDS TRUST NEWSLETTER

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MMSEA REPORTING – ARE YOU READY?

By: A. Kel Long, III

New reporting procedures affecting insurers start soon, under the Medicare, Medicaid and SCHIP Extension Act of 2007 (“MMSEA”). Under MMSEA, insurers must report to Medicare certain claimant information to be used by Medicare to protect its Medicare lien. While it is the insurer’s duty to report, much of the information required must come from the plaintiff attorney.

On April 1, 2010, insurers must begin quarterly submission of claimant information to Medicare. Many insurers have been voluntarily participating in the testing program since January 1, 2010. The information that the insurer must report includes:

- Injured party data, including Social Security Number;
- Plaintiff attorney data, including Taxpayer Identification Number;
- Nature of the incident; and
- Details of resolution.

This information must be reported by the insurer when a settlement is agreed to or a judgment awarded. The penalty to the insurer for failing to timely report is \$1,000 per day. To act preemptively in order to avoid the penalty, many insurers will begin gathering the required information prior to a settlement being reached.

Plaintiff attorneys should expect to receive requests for this information from defense counsel. It is advisable to promptly provide this information as the insurer will certainly halt the settlement check writing process until the information is compiled for submission to Medicare.

What the MMSEA requirements do not impact is the Medicare Set Aside Trust requirements. These requirements are separate from the MMSEA reporting requirements;

however, we are seeing misinformed defense counsel confuse the two. To be clear, the MMSEA rules deal with Medicare's past interest, whereas the Medicare Set Aside Trust obligation deals with Medicare's future interests. For an explanation of when the Medicare Set Aside Trust rules apply to a case, see my article published in the fall 2009 Verdict Magazine entitled "Medicare Set Aside Trusts (Am I Required To Do One?)."

Other background and terminology the plaintiff attorney may encounter:

- The term "insurer" also includes self-insurers;
- An insurer is referred to in the MMSEA world as a Responsible Reporting Entity ("RRE"); and
- The federal agency representing Medicare in the MMSEA environment is the Center for Medicare and Medicaid Services ("CMS" – and yes, there is only one "M").

Conclusion: Like with any new reporting or compliance requirements affecting settlements, there is an education period. Here, we will no doubt be dealing with educating insurers and their lawyers as to what the real MMSEA reporting requirements are so as not to delay the settlement process.

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