The Reporting Requirement You May Not Know About that Could Cost Your Company $1,000 per Day

The Mechanics and Litigation Repercussions of MMSEA §111

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Background

• MMSEA Section 111 requires reporting of settlements and related data when payment is made to Medicare beneficiary.

• This is an “extension” of the Social Security Act of 1965 and what is known as the “Medicare Secondary Payer” Act of 1980.
History of Medicare Program/
Relevant Legislation

1965: Social Security Act

1980: Medicare Secondary Payer Act ("MSP")


2007: Medicare, Medicaid and SCHIP Extension Act of 2007 ("MMSEA")
Does MMSEA §111 Apply to a Claim?

• Will your company settle a case involving a Medicare beneficiary this year?

• Even if no medical damages are alleged or established in a case, will that Medicare beneficiary sign a release that releases or effectively releases medical damages?

• If you answered “yes” to the above, you may be required under federal law to report your settlements/payments to the government. Failure to do so triggers a fine of up to $1,000 per day.

• MMSEA Section 111 impacts many types of settlements, not just personal injury/wrongful death cases (e.g. employment cases, loss of consortium cases, and property damage cases).
• Section 111 of the Medicare, Medicaid and SCHIP Extension Act of 2007 (“MMSEA Section 111”) requires that settlements, judgments, awards or other payments to Medicare beneficiaries be reported to the U.S. Department of Health and Human Services’ Centers for Medicare & Medicaid Services (“CMS”).

• Plaintiffs’ counsel already required to notify/reimburse Medicare

• Responsibility now lies on the payer (“RRE”)

• The government can impose a fine of up to $1000/day per claim not reported.
MMSEA §111: Why Was it Implemented?

- MMSEA Section 111 is a “tattle tale” law
- MMSEA Section 111’s aim is to ensure that Medicare is reimbursed for any medical care provided to the recipient of a legal settlement or judgment.
- CMS can demand reimbursement from companies where a Medicare beneficiary is unable to reimburse Medicare.
What do You Need to Know if You Will Settle a Case in 2013?

• Does MMSEA Section 111 apply to your client?

• First determine whether your client/company is a “Responsible Reporting Entity” (“RRE”)
  • Key: who cuts the check to the plaintiff
  • RRE Defined: the payer or funder of a settlement, judgment or award to a Medicare beneficiary
RRE Registration

- RRE must determine how many “RRE IDs” to register
- RRE must designate reporting roles of Account Representative, Account Manager, and Account Designee
Reporting Agent

• An RRE can designate a reporting agent to report to CMS on its behalf

• RRE remains wholly liable for any noncompliance and/or monetary penalties
Step 1 Initial Query: Assessment of Medicare Status

- Each plaintiff must be assessed for Medicare status
  - 65 years old or more
  - On social security disability insurance (SSDI) for 24 months or more
  - End-stage kidney failure
  - Lou Gehrig's disease
- Ask during discovery for the following information for query
  - Last name
  - First name
  - Social Security Number/HICN
  - Date of Birth
  - Gender
Step 2 Information Needed Prior to Settlement

- Information gathering process should begin immediately upon learning that the claimant is a Medicare beneficiary.

- Examples of information required for reporting:
  - ICD 9 Codes (International Classification of Disease)
  - Cause Codes
  - Plaintiff’s attorney information
  - In death cases, information regarding representative of estate and other family member plaintiffs
  - Demographic information regarding injured party/Medicare beneficiary
Reportability of Cases: Examples
Scenario #1:

- Sally Smith, former employee of Acme Corp. sues Acme Corp. for wrongful termination.
- Smith is 66 years old and is a Medicare beneficiary.
- In her complaint, Smith alleged a claim for emotional distress including medical damages.
- There is no evidence put forth during the pendency of her claim regarding medical damages.
- Sally Smith signs a release that does not include a release of medical damages.
- Acme pays Smith $10,000 to settle her employment case out of a self-insured retention.

**Does Acme need to report this “TPOC” to CMS?**
Acme Must Report Sally Smith Settlement to CMS

WHY?

☑ Medicare beneficiary
☑ Allegations of medical damages in complaint

**RULE:**
Must report where medical damages are alleged, established, and/or released or effectively released
Scenario #2:

- John Jones, former employee of Acme Corp. sues Acme Corp for wrongful termination.
- Jones is 67 years old and is a Medicare beneficiary.
- Jones’ complaint does not allege any medical damages.
- During the pendency of the case, Jones never alleged any medical damages relating to his case against Acme.
- Acme pays Jones $7,000 to settle his employment case out of self-insured retention.
- Acme requires Jones to sign a release which includes a release of future medical claims.

Does Acme need to report this “TPOC” to CMS?
Acme Must Report John Jones Settlement to CMS

WHY?

☑ Medicare beneficiary
☑ Release includes release of future medicals

RULE:
Report where medical damages are alleged, established, and/or released or effectively released.
Scenario #3:

- Bill Jones, a Medicare beneficiary, sues Acme for an ERISA violation.
- Acme settles the case with Bill Jones for $100,000, and pays him directly.
- Bill Jones signs a release that effectively releases medical damages. Does Acme need to report the settlement to CMS?
Acme Must Report the Bill Jones Settlement to CMS

WHY?

☑ Medicare beneficiary
☑ Report where medical damages are alleged, established, released or effectively released

RULE:
Required to report all claims which claim and/or release medicals or have the effect of releasing medicals