

LEGAL TIMES

Making a List, Checking it Twice

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Parties to personal injury claims of Medicare beneficiaries who continue ignoring their duties to the federal government could get a wake up call next year. Like Santa, Uncle Sam is making a list and checking it twice; going to find out who's naughty and nice.

The Centers for Medicare and Medicaid Services (CMS) apparently believes that the parties to personal injury claims of government healthcare beneficiaries are neglecting to meet their duties under federal law. Such as the duty to report the claim. And the duty to reimburse Medicare for payments it made for medical treatment arising out of the injury underlying the claim.

Around Christmas 2007 Congress passed and President Bush signed into law Public Law 110-173, the Medicare, Medicaid and SCHIP Extension Act of 2007, now frequently referred to as the Mandatory Insurer Reporting law (or MIR) - 42 USC sec. 1395y(b)(7) and (8). Under the new law group health, workers' compensation, liability and no fault insurers and self-insurers will be required to provide information to CMS-beginning in 2009- on each claim of a Medicare, Medicaid or SCHIP beneficiary. Triggers for reporting include a decision to honor a claim and issuance of a check to pay a settlement, judgment or award.

Once that reporting is done, CMS will have a quick and easy list of which of its beneficiaries received a settlement for an injury claim, what type of injury was suffered and who the settling party was. That will be very helpful information, making it easy to determine:

- Whether CMS made any payments for treatment of that same injury, and
- Whether the parties to the settlement made arrangements to reimburse CMS for any payments it made for that treatment, and
- If no reimbursement was made, who CMS can go after to get reimbursement, and
- Who CMS can go after to collect the penalties (\$1,000 per claim per day's delay in reporting and double damages for failing to reimburse conditional payments.)

Even before the December 2007 amendment to the Medicare Secondary Payer law, Congress made clear it was not going to listen to any quibbling about lack of liability on the underlying personal injury claim. Under the existing law, if an insurer or self-insured enters into a settlement of the personal injury claim, that insurer/self-insured is primary to Medicare for medical expenses related to that injury.

Uncle Sam is looking for a little cash to help fund the Medicare trusts, and with the new reporting that will start in 2009, he is expected to have no trouble finding lots of new pockets to dip into to help keep those trusts going.

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