

## Time To Be Compliant

By Jim Kennedy, Paul Masterson, and Glenn Simpson

Get ready for Jan. 1, 2010: That's when the Mandatory Insurer Reporting (MIR) requirements of Section 111 of the Medicare, Medicaid, and SCHIP Extension Act of 2007 (MMSEA) take full logistical form and effect. Responsible Reporting Entities (RREs), including in many instances individual physician practices, fully-insured programs for hospitals, etc., might consider this as an opportune moment to discuss compliance status with personal counsel or carriers, inasmuch as Jan. 1 may be the renewal date for placement of professional liability insurance.

Claims that are settled by an "Applicable Plan" on or after Jan. 1, 2010, with a Medicare beneficiary must be reported, at the assigned quarterly reporting date, commencing in April, 2010, in accordance with the detailed protocols contained in materials promulgated by CMS. The classification of these cases is "Total Payment Obligation to the Claimant" (TPOC), and is described in detail in CMS materials. In addition to keeping track of reportable matters, the RRE must test the reporting methodology with CMS during the first quarter.

If the practitioner/entity/insured is fully insured by a carrier, for example, that carrier is the RRE in most instances and thus has obligation to meet CMS requirements.

There are instances of deductibles or self-insured retentions, however, which could give rise to the concurrent obligation of the practitioner/entity/insured to report as an RRE in and of itself. Further, an examination of applicability of Section 111 to physician professional associations that might not have been included in coverage for various reasons is also indicated.

Section 111 mandates apply to "settlements, judgments, awards, and other payments..." It is this last classification that poses an important area for evaluation by the health-care provider in the current professional liability environment. There are likely instances in which a proactive and fair approach to patient complaints, untoward outcomes, and so on, might involve a decision to write-off a medical bill, to provide payment for follow-up evaluations, or other "goodwill" gestures, for example, in the appropriate circumstances.

### **Section 111 mandates apply to "settlements, judgments, awards, and other payments" – it's this that poses an important area for evaluation by the health-care provider in the current professional liability environment.**

If these scenarios involve a Medicare beneficiary, Section 111 reportable claims could be the end product. Inasmuch as a request for coverage to the carrier might not be made, the obligation to fulfill Section 111 mandates might remain, and likely does, with the provider, assuming certain thresholds are met. There is an implication as well as to whether or not an Ongoing Responsibility for Medicals (ORM) might have been established by these prudent and reasonable risk management responses, which presents a different set of logistical requirements to the

RRE, not the least of which is that ORMs are reportable if they existed, generally, or came into place on or after July 1, 2009. This is compared and contrasted with the tracking of "settlement" cases as they occur on or after Jan. 1, as noted supra.

We note that CMS is in the process of finalizing language squarely on point for these situations as they impact the health-care industry. CMS has recognized that Section 111 requirements might tend to diminish the inclination by health-care providers to utilize write-offs, etc., on a practical basis and thus was agreeable to

review the requirements, while still adhering to the mandates of the law and the overall goal of collecting information that will be utilized by the agency to ensure Medicare Secondary Payer (MSP). This will be the balance that CMS has indicated it will endeavor to accomplish.

CMS is expected to provide this guidance prior to the end of 2009. CMS will either make the guidelines the subject of a separate alert, or might incorporate the

language into the newest version of the User Guide (V. 3.0), which is also expected prior to Jan. 1. In either event, the information will be available on the CMS Website pertaining to Section 111: [www.cms.hhs.gov/mandatoryinsrep](http://www.cms.hhs.gov/mandatoryinsrep).

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