



# Product Liability Alert

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## Delayed Implementation of Medicare Extension Act Reporting Requirements for Liability Insurance

As you may be aware, insurers or attorneys involved in making medical payments to a Medicare beneficiary or even a potential Medicare beneficiary as a result of personal injury claims were scheduled to be subject to new stringent reporting requirements, which, if not followed, would subject any offending party to a civil penalty of \$1,000.00 per day per non-compliant claim pursuant to the Medicare, Medicaid and State Children's Health Insurance Program Extension Act of 2007 ("Act").

Prior to a November 6, 2010 "Alert" from the Center for Medicare and Medicaid Services ("CMS") (the federal agency overseeing the Medicare program), paying parties and/or their insurers and/or attorneys (designated by the Act as "responsible reporting entities" or "RREs"), that made payments for settlements, awards, judgments or other payments involving Medicare or potential Medicare beneficiaries to resolve personal injury claims were going to be required to start reporting said payments pursuant to the Act as of January 1, 2011- including claims that were established as early as October 1, 2010. The reports were required to be made on the date that the obligation to pay was established, also known as the total payment obligation to the claimant ("TPOC") date. For example, if an RRE settled a personal injury case and the TPOC date was October 10, 2010, it would have had to have been reported starting January 1, 2011.

However, as of November 6, 2010, CMS announced in a publication "Alert" that it is delaying some reporting requirements for some claims by one year, while other dates for other reporting requirements remain unchanged. Below is a list of what has and has not been delayed pursuant to the CMS November "Alert."

### What Provisions in the Act Have Been Delayed by CMS

#### For Liability Insurers Only:

- TPOC reporting deadline has been delayed from January 1, 2011 to January 1, 2012 – with the establishment of claims date not taking effect until October 1, 2011 (delayed from October 1, 2010).
- The CMS Staggered Phase-Out of Interim Threshold Dollar Amount Dates have all been delayed for TPOC reporting deadlines for one year from their original TPOC reporting deadline, meaning:
  - Payment obligations in which the TPOC date is prior to January 1, 2013 in the amount of \$0.00 – \$5,000.00 are exempt from reporting.
  - Payment obligations in which the TPOC date is January 1, 2013 – December 31, 2013 in the amount of \$0.00 – \$2,000.00 are exempt from reporting.

- Payment obligations in which the TPOC date is between January 1, 2014 – December 31, 2014 in the amount of \$0.00 – \$600.00 are exempt from reporting.
- No threshold applies to payment obligations after January 1, 2015.

**What Provisions in the Act Have Not Been Delayed by CMS**

- TPOC reporting deadline for Workers’ Compensation Claims.
- TPOC reporting deadline for No-Fault Insurance.
- TPOC reporting deadline for Group Health Plans.
- TPOC reporting deadline for liability claims with mandatory ongoing responsibility for medicals (“ORM”).

**Conclusion**

Based on CMS’s November “Alert,” certain RREs have been relieved of their responsibility to make TPOC reports starting on January 1, 2011, including previously established claims that they had been required to report as far back as October 1, 2010. Instead, those RREs have until next January 1, 2012 (including all claims with TPOC dates after October 1, 2011) to start reporting such payments to CMS, or be subject to civil penalty. Meanwhile, other RRE’s, like Workers’ Compensation Claim payors, must continue to report pursuant to the original obligations established by the Act. Ultimately then, the lesson for those that are considered to be RRE’s by CMS is to pay (close) attention to the CMS’s publications or possibly pay fines because CMS’s implementation of the Act is changing, sometimes with retroactivity, without rhyme, reason or much advance notice—if any. ■

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