

The Effects of the Medicare, Medicaid, and SCHIP Extension Act of 2007

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On December 27, 2009, the Medicare, Medicaid, and SCHIP Extension Act of 2007 (“MMSEA”) was signed into law. The law was passed to enable Medicare to examine all claims and settlements of Medicare eligible claimants/plaintiffs in an effort to be reimbursed for payments made and to monitor claims made by Medicare beneficiaries.

As a result of the MMSEA, the way in which liability insurers and attorneys deal with claims involving Medicare eligible claimants has been altered drastically.

As of January 1, 2010, liability insurers, (including self insurers), no-fault insurers, and Workers Compensation insurers (collectively referred to as “insurers”) are required to determine if claimants/plaintiffs are entitled to Medicare. If it is determined that a claimant/plaintiff is Medicare eligible, insurers must report specific information regarding the claimants, and claims made, to the Center for Medicare Services (CMS). The procedure in which the information is to be provided can be found at <http://www.cms.gov/>.

The required information must be provided to CMS following the resolution of a claim through settlement, award, judgment, or other payment, regardless if any determination of liability exists.

Upon receipt of this information, CMS will determine benefits received by the claimant and potential recovery that it may seek.

It is of great important that insurers comply with the reporting requirements. Failure to comply with the reporting requirements will result in a \$1,000.00 fine for each day that the reporting is past due. Further, in the event that an insurer pays a settlement or award and does not pay the outstanding lien in a timely fashion, the insurer will be responsible for “double damages.”

The infancy of the Medicare MMSEA is sure to create minor changes in the procedures in which its requirements are fulfilled.

Insurers and lawyers alike will keep a close eye on the courts’ interpretation of the MMSEA in the months and years to come.

One thing is certain, the MMSEA will greatly affect the way that insurers and attorneys negotiate and structure the settlements of Medicare eligible claimants/plaintiffs, and their reporting practices regarding same.