

June 3, 2010

If you have questions regarding the information in this alert or would like to receive further information regarding our Employee Benefits Department, please contact:

Michael J. Friedman
313.465.7388
mfriedman@honigman.com

Gregory R. Schermerhorn
313.465.7638
gschermerhorn@honigman.com

Erika L. Tobias
313.465.7656
etobias@honigman.com

Medicare, Medicaid and SCHIP Extension Act of 2007 (MMSEA)

Under the Medicare, Medicaid and SCHIP Extension Act of 2007 (**MMSEA**), Congress imposed new mandatory Medicare reporting requirements for group health plans as well as liability, no-fault and workers' compensation arrangements, whether insured or self-funded. These new reporting requirements help Medicare gather information necessary to enforce the Medicare Secondary Payer (**MSP**) requirements designed to help alleviate Medicare's funding shortfall. The MSP rules impose a primary payment obligation on group health plans, health insurers, liability insurers and self-funded entities who incur obligations to pay for medical expenses, including tort defendants who pay judgments and settlements out of their own assets for medical expenses that are also covered by Medicare.

The MMSEA imposes an affirmative obligation on entities with a primary payment obligation to report any claims involving Medicare beneficiaries. For liability insurers and tort defendants, this obligation arises even if liability has not yet been determined or there is a release or waiver stating that payments were not made to cover medical expenses. For group health plans, these MMSEA requirements replace the Datamatch program through which this information was to be provided voluntarily. The MMSEA provides Medicare access to information that will allow the Centers for Medicare & Medicaid Services (**CMS**), the federal agency responsible for administering Medicare, to better pursue its reimbursement rights.

Who Must Report?

These reporting requirements are imposed on "Responsible Reporting Entities" (**RREs**). RREs are those entities that are or may become liable to CMS as a "primary payer" and include the following:

- For insured GHPs, the RRE is the health insurer
- For self-funded GHPs, the RRE is the third party administrator
- For self-funded and self-administered GHPs, the RRE is the Plan Administrator

*This Alert provides general information only and does not constitute legal advice for any particular situation.
© Honigman Miller Schwartz and Cohn LLP 2010. All rights reserved.*

The RRE may require information about Medicare eligible individuals enrolled in the GHP in order to fulfill its reporting obligations, so the Plan Administrator has a duty to provide the information required by the RRE.

NOTE: If the employer has fewer than 20 employees and contributes to a single employer plan, there is no requirement to report.

Timing and Filing Procedures

RREs were to have registered by September 30, 2009 with the Coordinator for Benefits Contractors (COBCS) under CMS. If your RRE has not registered yet, it should do so immediately, as there is a testing period that must be undergone to assure that the registration is complete and functional. As of January 1, 2010, GHPs should be identifying and submitting information to Medicare about all individuals where the GHP is or has been the primary payer through Medicare. GHPs must report all Medicare-eligible individuals, including covered dependants. Thereafter, quarterly reports must be submitted even if there are no claims to report for that quarter. Complying with these laws is especially important because Medicare will impose a penalty of \$1,000 per file per day for failure to report claims under the MMSEA.

All reporting under MMSEA must be done electronically. The new reporting requirements include specific requests for information and timing restrictions. Medicare has issued an MMSEA Section 111 MSP Mandatory Reporting User Guide that can be obtained from the CMS website: www.cms.hhs.gov/MandatoryInsRep.

For more information regarding MMSEA Section 111's requirements or how your organization should address Medicare's new reporting requirements, please feel free to contact any of the attorneys listed on this Employee Benefits Alert.