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## Are You Prepared for the CMS Paid-Claims Reporting Requirements?

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Starting in 2010, the identity of a Medicare beneficiary whose illness, injury, incident, or accident was at issue in a paid liability, no-fault, or workers' compensation claim must be reported to the Centers for Medicare and Medicaid Services (CMS). Insurers and self-insured organizations that pay such claims should have registered with CMS as "required reporting entities" by September 30, 2009. After a testing period during the first quarter of 2010, quarterly reporting of claims paid to Medicare beneficiaries will begin during the second quarter of 2010 for all such claims settled or tried to a verdict on or after January 1, 2010. CMS can impose penalties for failing to report claims and for late reports of up to \$1,000 per day per claim.

### Who reports paid claims?

All liability, no-fault, and workers compensation insurers are required to report to CMS all claims paid to Medicare beneficiaries. The duty to report also applies to those who are self-insured, i.e., any organization or individual making such payments on their own behalf without insurance.

### CMS's rights

When a Medicare beneficiary settles a liability, no-fault, or workers' compensation claim or wins a judgment in court, the beneficiary has a duty to promptly reimburse Medicare for any medical expenses Medicare paid that were recovered by the beneficiary in such a case. Medicare is a secondary payer in such cases. The primary payer under Medicare law is the payer of the claim.

Even though the Medicare beneficiary has a duty to reimburse Medicare out of the proceeds of the settlement or judgment, CMS has, for many years, had the right to recover its reimbursable payments from the primary payer—the payer of the liability, no-fault, or workers' compensation claim—even though the primary payer has already settled with the beneficiary. While CMS's rights in this regard are not new, only the paid-claim reporting law is new, there is a new awareness of these rights, which is a subject beyond the scope of this article. Readers are encouraged to work with their legal advisors on how to protect themselves from a post-settlement CMS claim against them.

The new mandatory reporting law will improve CMS's ability to enforce its right to recover

medical expenses it paid when a Medicare beneficiary recovers those expenses in a liability, no-fault, or workers compensation claim. It may also enable CMS to deny payment for future medical expenses recovered by the beneficiary in a paid claim.

### Physicians Insurance as an example

As a medical professional liability insurer, Physicians Insurance is a "required reporting entity." In order to comply, we implemented extensive system changes to help us collect and report required data in the format CMS requires. Our staff has worked and will continue to work hard to understand the reporting requirements, program our computers, test the system, train staff, and implement the controls needed to assure accurate and complete reporting.

### Stay informed about CMS reporting requirements

For more information, you can explore the CMS web site dedicated to the new reporting requirement at <http://www.cms.hhs.gov/MandatoryInsRep/>. Key documents to obtain include the latest version of the User's Guide, various alerts, and a schedule of nationwide telephone conferences that will occur twice monthly at least through

the end of 2009. All of this information, and more, can be found in the section of the web site labeled "Liability Insurance, Self-Insurance, No-Fault Insurance, and Workers' Compensation."

The telephone conferences can be helpful because CMS officials provide the latest updates on the reporting requirements and answer questions from the callers. You can also use the mandatory reporting web site to sign up to be automatically informed by e-mail whenever anything changes on the web site. If we have learned anything about this project, it is that there will be more changes to the reporting system and the reporting requirements, so it is vital to stay abreast of the latest developments.

### **Is it too late to prepare for 2010 reporting mandates?**

If you are a "required reporting entity," you have probably registered with CMS, been assigned a particular week during the calendar quarter to submit your paid-claim reports, and have begun preparing to test the claim reporting system. If you're off to a late start, I encourage you to use the resources on the CMS mandatory reporting web site. You should obtain needed legal advice and consider whether to hire consultants to help you get ready. Your information technology staff should be involved immediately because all reporting will be done electronically. Do so now, because CMS's potential \$1,000

per-diem penalties could sting severely.

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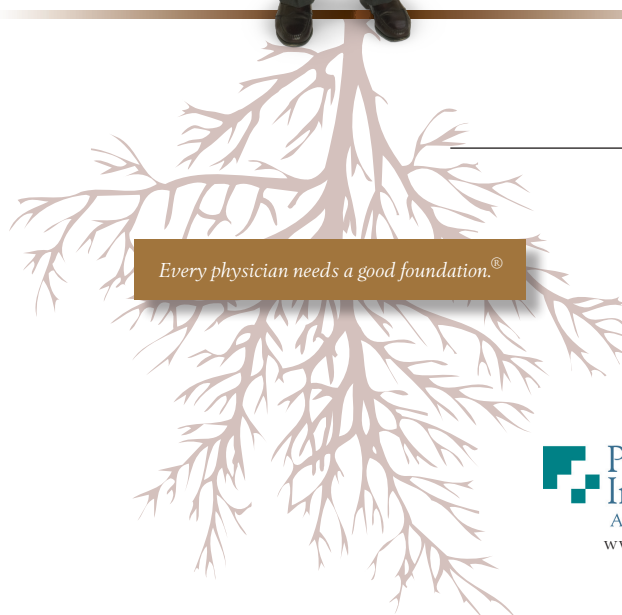
*substitute for legal advice. Legal inquiries about topics covered in this article should be directed to your attorney.*

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