

MEDICARE REPORTING REQUIREMENTS IN THE UNITED STATES – BEWARE OF MMSEA!



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It happens every day: a person is injured in an accident, whether on the job, on the highway, at home or as a passenger. By settlement, court decision or otherwise by law, the injured person eventually recovers damages, including medical expenses. What if the injured person is 'Medicare-eligible' and Medicare pays for some of the medical services pending the outcome of the lawsuit or claim? Or what if the injured person is not presently 'Medicare-eligible' but will receive payments from the settlement or verdict for the period after the person becomes 'Medicare-eligible'?

In fact, the answers to such questions have been, or should have been, of concern since 1980 under existing US statutes. However, the concern is now heightened as a result of the Medicare, Medicaid and SCHIP Extension Act (MMSEA), which is now in force in the United States. MMSEA is designed to make it easier for the US government to recover payments for accident-related injuries when the accident victim also receives payments for those injuries from other entities. It is estimated that MMSEA will save \$6bn a year in medical care payments made by Medicare to accident victims who recover damages from other entities.

Under MMSEA, any entity that handles and pays claims to 'Medicare-eligible' persons must register with the Center for Medicare and Medicaid Services (CMS) and become a Responsible Reporting Entity (RRE). RREs must then file quarterly reports listing the claims that are pending as well as the payments made. The claims database that is established as a result of this reporting and filing system will allow CMS to track and determine whether Medicare has made, or may have to make, payments that should be recouped from the person responsible for handling and paying the accident-related medical expenses.

There are stiff monetary penalties for persons who fail to report payments of claims that MMSEA requires to be reported: \$1,000 per day per claimant. These penalties are in addition to penalties already in place, which can be imposed for failure to provide prompt payment or reimbursement to Medicare and which include double damages.

As described below, the obligation to register as an RRE rests with the shipowner member of the club.

Accordingly, if a member has claims in the US by 'Medicare-eligible' persons, or is likely to have them, the member should register as an RRE. If you are such a member and you have not yet registered, you should seek legal advice immediately. The Standard Club and its New York office can assist you in locating appropriate counsel.

WHO IS 'MEDICARE-ELIGIBLE'?

Persons aged 65 years or older are 'Medicare-eligible'. Persons younger than 65 years old may also be 'Medicare-eligible' in certain circumstances defined in MMSEA and other relevant statutes. Therefore, those members who own and operate passenger vessels will undoubtedly face claims by 'Medicare-eligible' persons.

WHO MUST REGISTER AS A RRE?

The registration and reporting requirements of the MMSEA apply to the entity deemed to be the RRE, which by definition includes self-insurers, liability insurers (such as CGL carriers) and no-fault insurers (such as workers' compensation carriers). Most recently, CMS has reversed course and stated that if a liability insurer would be liable but for the deductible, the liability insurer is the RRE, not the insured.

In any event, pursuant to the rules of the Standard Club and other clubs in the International Group, shipowners and other entities covered under those rules are obliged to 'pay first' and then be indemnified by the club on risk. Hence, when members make payments to 'Medicare-eligible' persons, the members, not their clubs, are the RREs obliged to register with CMS and report the payments.

While the club's US members who are or may become obliged to register as RREs have taken steps to do so, it is possible that a non-US member may face a claim from a longshoreman or other claimant who is 'Medicare-eligible'. However, a person does not have to register unless and until there is a claim to report. The entity that handles and pays the claim is obliged to determine whether the claimant is 'Medicare-eligible'.

The obligation to register as a RRE may not be delegated; however, there are companies that will administer compliance with MMSEA on behalf of a RRE once the RRE is registered with the CMS.

WHAT IF A SETTLEMENT OR VERDICT REQUIRES PAYMENTS OF ACCIDENT-RELATED EXPENSES IN THE FUTURE?

If a person is not 'Medicare-eligible' at present, but the settlement or verdict requires payment of accident-related expenses in the future when the person will have become 'Medicare-eligible', the best practice is to create a 'Medicare Set Aside' (MSA), which may require government approval. The club and its legal correspondents can and will of course work with the member and the attorney for the claimant to set up a MSA when appropriate.

WILL MMSEA WORK?

MMSEA casts a very wide net. Self-insureds as well as liability insurers of every stripe (workers' compensation, automobile liability insurers, CGL insurers, insurers of household premises, to name a few) are paying claims to 'Medicare-eligible' persons every day. Information on hundreds of thousands of claims will have to be evaluated. Although all concerned, including CMS and the relevant Medicare offices, are attempting to implement and comply with MMSEA, it will take time for procedures to be worked out by the various affected parties. Indeed, given the practical difficulties caused by the sheer number of claims, one industry group has recently requested a further delay in implementation.

It would be, however, foolhardy not to respond to MMSEA with the utmost seriousness. The penalties for non-compliance are severe. Moreover, the present circumstances of record budget deficits and

the estimate of \$6bn that can be recouped from persons making payments to 'Medicare-eligible' accident victims provide ample incentive for the US government to find a way to make MMSEA work. Indeed, on 1 December 2009, the US filed suit in Alabama against all parties; plaintiffs and defendants, plaintiffs' attorneys, self-insureds and insurers to recover amounts Medicare contends it is entitled to recoup from a \$300m personal injury settlement made in 2003.

The club will continue to monitor developments in this area and will keep members advised.

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