



CLIENT ALERT

MAY 2009

**MEDICARE'S SECTION 111 SECONDARY PAYER PROGRAM  
NEW RULES FOR LIABILITY REPORTING:  
*PRACTICAL GUIDANCE FOR COMPLIANCE*  
BY VICTORIA L. VANCE**

Say the word “Medicare” in the healthcare world and it conjures up an array of rules, mandates and standards. Say the word “Medicare” in the liability insurance world and it is usually in the context of ascertaining whether a Medicare lien will complicate an opportunity to settle a particular claim by reducing the proceeds available for distribution to a plaintiff/claimant. This scenario has almost always been viewed as the plaintiff’s problem to grapple with – not the defendant’s. But not anymore.

Due to a recent amendment of the Medicare Secondary Payer Statute, the healthcare and liability insurance worlds now have one more thing in common. Medicare’s impact will now be felt in a new and ominous way by a host of liability payers, as the law imposes mandatory obligations to report to Medicare whenever a settlement, judgment, award, or workers’ compensation benefit is paid to a Medicare beneficiary.

This law has unsettling implications for healthcare providers as well. As currently interpreted, Medicare expects a report whenever a healthcare organization “writes off” insurance bills, accepts “insurance only” for payment, or offers a service recovery gesture such as a gift card to proactively resolve a patient complaint.

**Why Report?**

Medicare wants this information in order to sort out primary versus secondary payment responsibility for the healthcare bills of its beneficiaries. Medicare envisions that the reporting will help to assure an orderly and accurate coordination of benefits and to facilitate timely recovery/reimbursement, as appropriate, of benefits it may have paid.

**When? New Deadlines Just Announced.**

Compliance with the new reporting obligations, (commonly known as the “Section 111 Rules” in a reference to the statutory cite), is now underway, with Reporting entities required to Register with Medicare starting May 1, 2009, take training on data submission procedures and actively report to Medicare by April 1, 2010 at the latest. These reporting burdens will most assuredly impact all industries and all forms of liability insurance and self-insurance programs (everything from auto to property/casualty and from workers’ compensation to professional liability and no fault insurance) and will change the mechanics and processing of settlements, judgments, awards, and the payment of obligations for future medicals to Medicare Beneficiaries.

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## **Penalties**

This law carries stiff penalties for non-compliance and may also have the unintended effect of slowing the process for settlements, increasing demands to settle (to include a larger “buffer” amount for the new uncertainty about the Medicare recovery process), and some are even concerned that this may lead to a disenfranchisement of Medicare Beneficiary claimants if processing their claims is viewed as too difficult, time consuming, and ultimately cost prohibitive.

## **The Practical Information You Need To Know**

Over the past months, Medicare has mounted a large scale communications campaign to educate interested parties about the new law. This effort has included Medicare-hosted teleconferences, issuance of technical User Guides, and a dedicated “Section 111” website. Yet, as is true of many regulatory-intensive programs, this topic is inescapably technical and heavily loaded with acronyms and jargon—including statutory definitions that don’t square with insurance industry standards. Accordingly, to guide our clients, colleagues and friends, we have distilled the salient features of the program and are reporting them here. Drawn from the official and most up-to-date Medicare references, we are providing an [Overview of the Section 111 process](#), a section on Frequently Asked Questions, practical tips for implementing these reporting obligations, a Glossary of definitions and government acronyms, and a Resource Page.

As the Section 111 Reporting Program continues to be refined and clarified by Medicare, Tucker Ellis & West will share the important updates you need to know as they become available. We also invite your questions and comments as we strive to provide the guidance you need to be successful.

### **For more information please contact:**

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