Ten Things Defendants Should Know About Reimbursing Medicare and Reporting Payments to Medicare

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1. When resolving personal injury claims, the parties must protect Medicare's interests. If Medicare paid plaintiff's medical expenses, Medicare must be reimbursed.

2. While all persons qualify for Medicare at age 65, there are other qualifying factors. Plaintiffs who are under the age of 65 and have certain disabilities and all persons with end stage renal disease are eligible for Medicare. Thus, the parties should determine a plaintiff's eligibility regardless of his/her age.

3. Medicare has a direct right of action against a defendant who has paid a Medicare eligible plaintiff and failed to reimburse Medicare.

4. Failure to reimburse Medicare may result in double damages and interest.

5. Many times, plaintiffs who are Medicare eligible are insured through private insurers known as Medicare Advantage Plans ("MA Plans"). These plans may appear, to the parties, to be traditional private insurers; however, the Centers for Medicare & Medicaid Services ("CMS") and federal case law interpreting the CMS regulations hold that MA Plans have the same reimbursement rights as Medicare. For additional information, see "Hot Topics in Medicare Secondary Payer Compliance" – DRI Asbestos Medicine Seminar, Nov. 2016

6. Payments to Medicare beneficiaries must be reported to Medicare. Defendants must report pursuant to Section 111 of the Medicare, Medicaid, and SCHIP Extension Act of 2007 ("Section 111" or "MMSEA").

7. Section 111 reporting is required regardless of whether the defendant is liable.

8. The current monetary threshold for reporting a payment in liability, no fault and workers compensation cases is $750.00 Any payment over $750 to a person who is or was Medicare eligible, must be reported pursuant to the MMSEA. Monetary thresholds for reporting have changed over time and it is important to understand the history and remain abreast of reporting thresholds.

9. Plaintiffs and defendants have separate obligations to report. In multi-defendant cases, each defendant who settles a case must report. Failure to Section 111 report may result in significant fines.

10. The CMS adheres to the December 5, 1980 policy. Defendants involved in long term toxic tort cases involving alleged exposures on or before this date, should be familiar with this policy, which provides exceptions to reimbursing Medicare and reporting. For additional information, see "Hot Topics in Medicare Secondary Payer Compliance" – DRI Asbestos Medicine Seminar, Nov. 2016

For myths about the Medicare Secondary Payer Act and Section 111of the MMSEA, please read the article, "Common Myths about the Medicare Secondary Payer Act and Section 111 of the Medicare, Medicaid, and SCHIP Extension Act of 2007 ("Section 111")"

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