SANDBERG PHOENIX

LONG TERM CARE & SENIOR LIVING BLOG

Mandatory Insurer Reporting under Section 111

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Section 111 of the Medicare, Medicaid and SCHIP Extension Act of 2007 (Section 111) created significant mandatory reporting requirements in the liability, workers' compensation and no-fault claims arena. Section 111 requires electronic reporting by insurers and self-insureds in circumstances where a settlement, judgment, award or other payment for injury or illness is paid by a liability insurance (including self-insurance), no-fault or worker's compensation plan to, or for the benefit of, a Medicare beneficiary. The electronic reports provide CMS extensive information which allows them to identify and recover conditional payments. The failure to report timely may result in a penalty of $1,000 per day, per claim.

On October 11, 2023, final rules were published in the Code of Federal Regulations at 42 CFR 402.1, et seq., specifying how and when CMS must calculate and impose civil money penalties when a non-group health plan (such as a liability insurance/self-insurance plan) fails to timely meet its obligations and associated requirements. These final rules became effective on December 11, 2023.

A facility who that makes a payment to, or for the benefit of, a Resident who is a Medicare beneficiary and claims to have suffered an injury as a result of the facility's negligence must report such claims to Medicare through Section 111 reporting within 45 days of settlement in order to avoid imposition of civil monetary penalties. The date of "settlement" under Section 111 is the date the release and settlement agreement is signed or, if court approval is required, within 45 days of the latter of the date the release is signed or the date of court approval. If there is no written settlement agreement, Section 111 reporting must be submitted within 45 days of the date the settlement payment is issued. Thus, it is imperative that signed settlement releases, and, when necessary, court approval, be forwarded to the insurer/client immediately upon receipt.

Thus, when a matter is settled, counsel for the claimant must be informed that settlement is contingent upon receipt of once of the following single documents:

- If the Resident (or Injured Party) has not been identified as a Medicare beneficiary, the claimant must complete and sign the CMS Model Medicare Information Request Form attesting to the Resident's (or the Injured Party's) Medicare status.
- If the Resident was/is a Medicare beneficiary, the claimant must complete the Section 111 Reporting Form (Resident).
- If the Non-Resident Injured party was/is a Medicare beneficiary, the claimant must complete the Section 111 Reporting Form (Non-Resident).

The above forms can be found on the CMS website cms.gov.

If you have any questions, or need assistance in compliance with Section 111, please reach out to one of our attorneys at Sandberg Phoenix.