



Surplus Lines Associates, LLC

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Reporting obligations under the Medicare, Medicaid and SCHIP Extension Act of 2007 ("MMSEA")

Dear Agent/Broker:

This whitepaper is intended to help clarify how Agents may help clients to address reporting obligations under the Medicare, Medicaid and SCHIP Extension Act of 2007 ("MMSEA"). MMSEA imposes new reporting requirements for any payment, settlement, judgment or award involving a Medicare beneficiary as the injured party on and after January 1, 2010. In addition, reporting is required for claims involving a Medicare beneficiary as the injured party for which ongoing responsibility for medical payments exists as of July 1, 2009. MMSEA imposes significant monetary penalties for failure to properly report.

The following guide, although not all-inclusive, is intended to answer many of the more common questions about MMSEA reporting obligations and to facilitate discussions between brokers and their clients regarding the new reporting requirements. Also, MMSEA reporting obligations are a recent change and the guidance, requirements and details provided by CMS in this area continues to develop. The information contained in this document is based upon our current understanding of the guidance that has been made available and is subject to change at a future date. We will do our best to keep you informed of significant changes as we are made aware of them. We encourage you to contact Surplus Lines Associates directly with questions as to how we may assist in understanding and meeting the needs of specific insureds.

Does MMSEA apply to my insured?

MMSEA applies to "Responsible Reporting Entities" ("RREs"), which include:

- Liability insurers
- No-fault insurers
- Workers' compensation insurers
- Entities that are completely or partially self-insured
- Insureds having a deductible or SIR obligation under any type of liability policy

If your insured falls into any of the above categories, it may be an RRE subject to the MMSEA reporting requirements.

When does a payment trigger an MMSEA reporting requirement?

•RREs must report to the Centers for Medicare and Medicaid Services ("CMS") any claim involving a Medicare beneficiary as the injured party with a full or partial payment, settlement, judgment or award date on or after January 1, 2010. There is

no reporting obligation for dates before January 1, 2010, except for claims involving a Medicare beneficiary as the injured party for which ongoing responsibility for medical payments exists as of July 1, 2009, regardless of the date of initial acceptance of payment responsibility.

- Payment of deductibles and coinsurance by insureds requires reporting; however, it is important to note that MMSEA does not require reporting by insureds if insureds do not make *direct payments* of deductibles or copayments to Medicare beneficiaries.

- **The key distinction:** If the carrier issues payment on behalf of an insured, the carrier should report the payment to CMS instead of the insured.

How should Carriers assist insureds with the process of reporting settlements, judgments and other payments to Medicare beneficiaries?

- Wherever possible, carriers should assume the responsibility for issuing checks directly to Medicare beneficiaries (provided that insureds have remitted their deductibles or coinsurance directly to the carrier). This way, carriers can report the deductible and coinsurance amount in the settlement, judgment, award or other payment amount, and relieve the insured of the responsibility for reporting.

- Most carriers have already registered as an RRE and are contracting with an outside vendor to handle the technical aspects of the reporting process. A requirements document exists, and RRE's, or their assigned agents, can develop a reporting process of their own, but a vendor option may be most attractive.

- Requirements are separated between two distinct categories; Group Health Plan (GHP) and Liability Insurance, Self-Insurance, No-Fault Insurance and Workers Compensation or Non Group Health Plan (NGHP).

[MMSE / CMS Non Group Health Plan User Guide](#)
[For e-mail updates and notifications](#)

When will Carriers be unable to act as an RRE for insureds?

• Insureds using a TPA

Insureds that use a TPA to pay claims should seek legal advice about the need to register as an RRE and designate the TPA as the insured's agent for reporting purposes.

• Payments made by prior carriers

Insureds that reasonably expect to make payment to claimants under policies issued by prior carriers should contact those carriers directly to inquire how those carriers intend to handle the reporting requirements. Carriers generally cannot assist in reporting claims being handled other than under their policy.

• Payments made directly by insureds

Carriers cannot report payments on behalf of insureds that are paid during a time when the insureds were previously self-insured or without insurance, and these insureds should seek legal advice about the need to register as an RRE.

• Payments made by insured under an SIR

Carriers do not pay SIR obligations on behalf of insureds, so these insureds should seek legal advice about MMSEA reporting obligations.

What if my insured carries a deductible?

- As long as the insured issues payment to the carrier, and the carrier disburses the payment directly to the Medicare beneficiary, the carrier should report to CMS on the insured's behalf.

Remember the determining factor as to who is the RRE is who made the payment.

What if my insured was previously self-insured, without insurance, or was insured with another carrier?

- Carriers cannot report on behalf of insureds under these circumstances, and Surplus Lines Associates, LLC recommends that all insureds that were previously self-insured or without insurance, and that reasonably expect to pay claims arising during those periods, seek legal advice about the need to register as an RRE.

If my insured is required to register as an RRE, what is the deadline and where does my insured register?

- The registration deadline is September 30, 2009.
- The online registration site can be accessed at:
<https://www.section111.cms.hhs.gov/MRA/Login.action>

What are the consequences of failing to properly report?

- Penalties of \$1,000 per day may be imposed for each claimant who is not reported. As such, it is imperative that insureds clarify who will be responsible for reporting.

Are there contacts at Surplus Lines Associates who can provide more information?

- Insureds and brokers can contact the following directly for additional information:

Dave Thomas, AIDM
Surplus Lines Associates, LLC
[email: DThomas@SurplusLinesAssociates.com](mailto:DThomas@SurplusLinesAssociates.com)

- Instructions and additional information can be found on the site maintained by CMS at:

www.cms.hhs.gov/ManadatoryInsRep

We hope this notice helps to clarify your clients' potential reporting obligations under the MMSEA. If you have any questions, please feel free to contact the Surplus Lines Associates, LLC contact listed above.

Notice:

This paper is provided solely for educational and informational purposes. It is not intended to constitute legal advice or to create an attorney-client relationship. Readers should obtain legal advice specific to their enterprise and circumstances in connection with each of the topics addressed.

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