

CLIENT ALERT

CMS Provides Additional Guidance Regarding The Delay Of The Reporting Requirement Under The Medicare Secondary Payer Statute

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As reported in our [February 19, 2010 Client Alert](#), the Centers for Medicare and Medicaid Services ("CMS") announced that it will delay, from April 1, 2010 to January 1, 2011, the start date for electronic filing of settlements, judgments, awards, or other payments made to Medicare beneficiaries, whether such payments are made by liability insurers, no-fault insurers, workers' compensation, or businesses that self insure their liability risks. At the time of the announcement, CMS indicated that further guidance would be issued the week of February 22, 2010. Late last week, CMS issued the additional guidance in the form of new CMS Alerts and an updated User Guide for reporting entities.

One of the important questions regarding CMS's announcement was whether the reporting delay would result in a corresponding delay in the date of the settlements that will have to be reported to CMS. The new guidance issued by CMS indicates that there will, in fact, be a corresponding 9-month delay, and that only settlements entered into on or after October 1, 2010, will need to be reported to CMS, provided the settlement does not include an ongoing obligation for medical payments (such as is often seen with workers' compensation settlements). See User Guide, at 6 & 56. CMS noted in its guidance that reporting entities, however, will be permitted to report settlements entered into prior to October 1, 2010, should they wish to do so. *Id.*

Of particular importance to many companies involved in mass and toxic tort litigation, CMS staff announced that additional guidance will be issued soon relating to the reporting of settlement payments in such cases, particularly where the exposure at issue pre-dates December 5, 1980, the effective date of the relevant provision of the Medicare Secondary Payer Statute.

If you have any questions regarding any of these developments, or would like more information regarding the Medicare reporting program, please contact Bob Roth of our Health Care Group or Robert Willmore of our Torts Group.

For more information, please contact the professional(s) listed below, or your regular Crowell & Moring contact.

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