



**TUCKER ELLIS & WEST LLP**  
ATTORNEYS AT LAW

CLIENT ALERT

MAY 2009

**MEDICARE'S SECTION 111 SECONDARY PAYER PROGRAM  
SWEEPING IMPACT ACROSS INDUSTRIES AND INSURANCE LINES:  
*PRACTICAL GUIDANCE FOR COMPLIANCE*  
BY VICTORIA L. VANCE**

The term “Medicare” is most often associated with the healthcare field and payment of healthcare benefits to eligible, generally elderly,, patients. In the liability insurance world, when a reference to “Medicare” comes up in conversation, 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, Medicare’s impact will now be felt in a new and ominous way by a host of liability payers, as the law imposes new mandatory obligations to report to Medicare whenever a settlement, judgment, award or workers’ compensation benefit is paid to a Medicare beneficiary.

**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 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.

**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

CLEVELAND

COLUMBUS

DENVER

LOS ANGELES

SAN FRANCISCO

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.

**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:**

**Victoria L. Vance** 216.696.3360  
[victoria.vance@tuckerellis.com](mailto:victoria.vance@tuckerellis.com)

1150 Huntington Building, 925 Euclid Avenue  
Cleveland, OH 44115

[www.tuckerellis.com](http://www.tuckerellis.com)

---

© Tucker Ellis & West LLP 2009

This Client Alert has been prepared by Tucker Ellis & West LLP for the information of our clients and friends. Although prepared by professionals, this Client Alert should not be utilized as a substitute for legal counseling in specific situations. Readers should not act upon the information contained herein without professional guidance.