

# Preventive Action

Quarterly Risk Management Newsletter for Policyholders of FPIC

Fourth Quarter 2009

Vol. 22, No. 4

## Mandatory Reporting Medicare Secondary Payer Act



**Effective January 1, 2010**, the Medicare Secondary Payer Act [42 U.S.C. 1395y(b)(7) & (8)] requires that all liability carriers report payments made to any Medicare plaintiff/claimant to the Center for Medicare and Medicaid Services (“CMS”). This reporting requirement may also apply to payments made directly by a physician and by “self-insured” physicians.

**First Professionals will report payments made on behalf of its policyholders to CMS. For payments made by a physician directly to a claimant, the physician may be responsible for reporting to CMS. See reporting information below.**

Reports must be submitted to CMS in *electronic* format only, on the CMS website at <http://www.cms.hhs.gov/MandatoryInsRep>. However, the

*electronic* reporting may be waived when there is no method available for the submission of claims (a) in an electronic format; (b) for a provider of services with fewer than 25 full-time equivalent employees; or (c) for a physician, practitioner, facility, or supplier (other than provider of services) with fewer than 10 full-time equivalent employees.

**Reporting thresholds** by payment year and amount are:

2010	over \$5000.00
2011	over \$2000.00

CMS will assign each registered liability carrier a specific date for reporting every quarter. If a physician makes a payment directly to a plaintiff/claimant which meets the reportable threshold, CMS should be contacted as soon as possible regarding how and what to report. Generally, the report date is determined by the date of settlement, date of verdict, or date of appeal result, not the date that payment is made.

**Factors to consider in determining whether you must report a payment:**

1. Is the plaintiff/claimant a Medicare recipient?  
  
Look at the entitlement at the “time of incident”:

- Persons who have reached age 65 and are entitled to receive either Social Security, widows or Railroad Retirement Benefits
- Disabled persons (totally disabled) receiving SSDI;
- Persons of any age who have received Social Security, widows or Railroad Disability Benefits for 25 months (this may apply to disabled minors/adults);
- Persons with end-stage renal disease who require dialysis treatment or kidney transplant; and
- Working persons over age 65 that are not eligible for either Social Security or Railroad Retirement Benefits who purchase Medicare coverage by monthly payment or as active employees for an employer of 20 or more employees.

2. Is the payment over the dollar threshold for the year it was made?

**If you must report, how and what do you report?**

Generally, unless a waiver is received for *electronic* reporting, every report must contain the following information for each claimant:

- Name of claimant (with middle initial);
- Social Security number (HICN when available);

*continued on page 2*

### TABLE OF CONTENTS

Page 2	Medical Clearance for Dental Procedures
Page 3	Medical Clearance for Dental Procedures Form
Page 4	Legal FAQs



First Professionals Insurance Company publishes Preventive Action on a quarterly basis as a service to policyholders. Information in this publication does not establish a standard of care, nor is it a substitute for legal advice. The information and suggestions contained in this newsletter are generalized and may not apply to all practice situations. First Professionals Insurance Company recommends you obtain legal advice from a qualified attorney for a specific application to your practice. The information should be used as a reference guide only.

For comments, questions or to obtain additional copies contact the First Professionals Insurance Company Risk Management department at 800-741-3742, ext. 3016.

Cliff Rapp  
Vice President of Risk Management  
Editor-in-Chief

Linda Blythe  
Risk Management Consultant

Ruth Lopes  
Risk Management Consultant

Joseph Putz  
Risk Management Consultant

Sandra C. Strickland  
Risk Management Consultant

First Professionals Insurance Company  
1000 Riverside Avenue, Suite 800  
Jacksonville, FL 32204

800-741-3742  
Local 904-354-5910  
Fax 904-354-6132  
www.firstprofessionals.com

Copyright 2009 by First Professionals Insurance Company Inc. All rights reserved. No part of this publication may be reproduced or transmitted in any form.

First Professionals Insurance Company is Florida's Physicians Insurance Company and the endorsed carrier for professional liability insurance by 22 county medical societies, 15 specialty societies and two statewide associations in Florida, including the FMA and FDA. Premium discounts may be available to members in good standing.

continued from page 1

- Complete address;
- Telephone number;
- Gender;
- Date of birth;
- Date of death, if applicable;
- Full contact information on any estates, siblings or other representative claimants, if applicable;
- Full contact information for claimant's attorney including tax ID numbers, if applicable;
- Dates and the nature of any injuries, including whether the injury involved an allegedly defective product, if applicable;
- Information detailing any resolution or settlement of a claim, with a focus on explaining whether the claim was contested or not, and whether the primary payer has assumed ongoing responsibility for medical costs associated with the claim.

There are very **steep fines** (\$1000 per day, per claimant) for failure to report pursuant to these requirements.

The reporting requirement does **not apply to Medicaid** recipients.

Contact CMS at <http://www.cms.hhs.gov/MandatoryInsRep> or by phone at 800-999-1118. Additional information may be also be obtained by contacting the First Professionals Risk Management Department at 800-741-3742 ext. 3016 or via e-mail to [rm@fpic.com](mailto:rm@fpic.com). —

## Medical Clearance for Dental Procedure

Dental patients frequently have complex medical conditions and treatments. How will these impact the success of your dental treatments and how will your dental treatments impact the patient's overall health? Obtaining medical clearance when undertaking certain dental procedures for patients with complex medical and dental needs will help alleviate some of these concerns for you and your dental patient.

Patients who are immuno-compromised or suppressed, have bleeding tendencies, clotting deficiencies, cardiac conditions, prosthetics, or respiratory difficulties may be at a higher risk of complications from dental procedures. It is important to review your patient's medical history and current medical care when contemplating dental treatments that pose a bleeding or infection risk. If your patient has medical issues that pose a threat and the procedure has a high risk for bleeding or infection, such as dental extractions, periodontal procedures, dental implants, root canal procedures, initial placement of orthodontic bands, and local anesthetic injections, it is advisable to obtain the patient's attending physician's written medical clearance for the proposed dental procedures.

For your convenience a sample Medical Clearance form appears on page 3.

*For information regarding this form, please contact our Risk Management Department at (800) 741-3742, ext. 3016, via e-mail to [rm@fpic.com](mailto:rm@fpic.com). —*

## CHART FORM - MEDICAL CLEARANCE (DENTAL)

Patient: \_\_\_\_\_ Date: \_\_\_\_\_

Age: \_\_\_\_\_ VS: \_\_\_\_\_ Ht: \_\_\_\_\_ Wt: \_\_\_\_\_

Allergies: \_\_\_\_\_

Past Illnesses/  
Injuries: \_\_\_\_\_

Medical Conditions: \_\_\_\_\_

Medications: \_\_\_\_\_

Anticoagulation Therapy Recommendations:

Findings:

I certify that on this date I examined \_\_\_\_\_ at  
(Patient's Name)

his/her request and the request of \_\_\_\_\_.  
(Dentist's Name)

On the basis of my examination, together with the medical history furnished by the patient, I have found no indications of a physical or medical condition that would prevent this patient from undergoing the proposed dental procedure.

Proposed Dental  
Procedure(s): \_\_\_\_\_

\_\_\_\_\_  
(Physician's Signature)

\_\_\_\_\_  
(Date)

## Legal FAQs For information specific to your state of practice, contact First Professionals' Risk Management department



### **Who is affected by the “Red Flags Rule”?**

Individual dentists, dental groups, hospitals and other healthcare organizations that qualify as a “creditor”, defined as any person who regularly extends, renews, or continues credit or defers payment of a debt.

### **Can a dentist be sanctioned for failing to comply with the “Red Flags Rule”?**

Yes. Failing to comply with the Rule subjects a dentist to federal monetary penalties of up to \$2,500 per violation; state monetary penalties up to \$1,000 per violation; and civil litigation for damages sustained from a violation.

### **May a dentist condition providing a copy of the patient records upon the satisfaction of an outstanding bill?**

No. A dentist cannot withhold copies of the dental records from a patient with an outstanding balance. The dentist may, however, charge the patient for a copy of the records.

### **Do HIPAA privacy regulations set forth Privacy Notice requirements for electronic communications such as websites?**

Yes. If you maintain a website that provides information about your professional services, a Privacy Notice must be prominently displayed on the website and made available electronically through the website. The Privacy Notice may be made by e-mail if the patient agrees to electronic notice. However, the patient retains the right to obtain a paper copy as well.

### **What action should be taken when a summons and complaint is received?**

Immediately notify First Professionals by calling the Claims Department at (800) 741-3742, ext. 3047. If you are served, First Professionals only has a limited number of days to assign a defense

attorney and prepare a response to be filed on your behalf. It is important to not discuss the case with the patient, the patient’s attorney or other parties involved in the care and treatment of the patient. You should gather and secure the patient’s records immediately.

### **Is a specific timeframe set forth when withdrawing professional services to a patient?**

No. Although statutes do not specifically set forth the amount of time a patient must be given, managed care contracts and provider agreements may contain language that does. Generally, a 30-day notice period is sufficient, however, depending on the circumstances, a lesser time period may be appropriate. If the patient terminates you, there is no further obligation to treat the patient. Always review the language of applicable managed care plans before terminating the physician-patient relationship.

### **May records be furnished to an HMO/MCO without an authorization from the patient?**

No. However, most HMO/MCO providers require such authorization as a condition of coverage. Therefore, the HMO/MCO should be asked to furnish a copy, evidencing the patient’s authorization. —