



MANDATORY REPORTING MEDICARE SECONDARY PAYER ACT

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Information in this newsletter does not establish a standard of care, nor is it a substitute for legal advice. The information and suggestions contained here are generalized and may not apply to all practice situations. First Professionals recommends you obtain legal advice from a qualified attorney for a more specific application to your practice. This information should be used as a reference guide only.

First Professionals Insurance Company is Florida's Physicians Insurance CompanySM and the endorsed carrier for professional liability insurance by 22 county medical societies, 15 specialty societies, and two statewide associations in Florida.



By: Cliff Rapp, LHRM,
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First Professionals Insurance Company
Anesthesiologists Professional Assurance Company

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 Insurance Company 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 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.

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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:

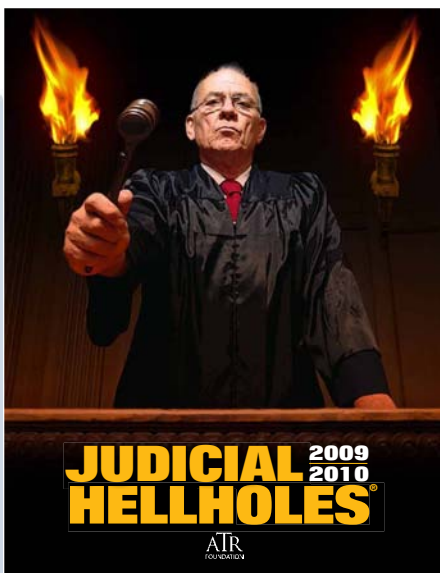
- Name of claimant (with middle initial);
- Social Security number (HICN when available);
- Complete address;
- Telephone number;
- Gender;
- Date of birth;
- Date of death, if applicable;
- Full contact information on any estates, siblings or other representative claimants, if applicable;
- Full contact 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 **fin**es (\$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 www.cms.hhs.gov/MandatoryInsRep or by phone at 800-999-1118. Additional information may 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. ■

FLORIDA NAMED #1 JUDICIAL HELLHOLE AGAIN



The American Tort Reform Foundation (ATRF) has released its annual report which documents litigation abuses in six areas of the country that have developed reputations for uneven justice. In its 2009 report, the ATRF has once again ranked *South Florida as the #1 Judicial Hellhole*.

Judicial Hellholes are places where judges systematically apply laws and court procedures in an unfair and unbalanced manner, generally against defendants in civil lawsuits. As a result of Florida being one of the most litigious states in the country, it has some of the highest medical malpractice rates in the country.

South Florida, the home of WhoCanISue.com, is known for generous verdicts for its medical malpractice claims, as well as other categories of lawsuits.

While Florida's court system can be challenging, our experience is unparalleled and uncompromising. Our policyholders in Florida benefit from our understanding of one of the most challenging legal jurisdictions in the country. ■

EMMI PROGRAM



Physicians have a legal duty to disclose the known risks and complications of proposed treatments or procedures. Malpractice claims based on misunderstandings and unrealistic expectations can be prevented. Establishing realistic patient expectations and obtaining informed consent that will stand up in court requires effective patient education.

Because of the importance of patient education in the informed consent process, First Professionals has partnered with Emmi Solutions, an innovative tool designed to educate patients and provide documented informed consent for physicians.

What is Emmi?

Emmi (Expectation Management and Medical Information) is a series of interactive web-based programs that will walk your patient through their upcoming surgical procedure or treatment. As the patient learns about the surgery, alternatives, risks and benefits, Emmi tracks the individual's responses. The patient's viewing experience is captured using the Emmi communication platform. The communication platform documents the patient's interaction with the program and stores this information in a secure, HIPAA-compliant database called EmmiManager. Emmi will:

- Eliminate any uncertainty regarding the issues surrounding informed consent
- Improve patient satisfaction and knowledge retention levels
- Enhance operational efficiencies
- Save time and money

Emmi covers a wide variety of surgical and medical procedures, including gastric bypass, LASIK, commonly performed obstetrics/ gynecology procedures, plastic surgery, cardiovascular surgery, orthopedics, and oral surgery. There is also a suite of modules that provides general educational instruction on issues such as hypertension, asthma, depression, diabetes and many others. These features are an excellent way for a practice to differentiate itself from other providers.

Many programs are available in Spanish. All of the web-based programs have been developed by board-certified physicians within their respective fields.

Policyholders of First Professionals will receive a substantial discount from the Emmi program annual subscription fee. The annual subscription allows each physician unlimited access to the complete library of Emmi modules.

For a complete product introduction and demonstration please visit www.emmidemo.com. To register for Emmi or specific product questions, contact our Risk Management Department at (800) 741-3742, ext. 3016 or send an e-mail to rm@fpic.com. ■

PAYMENT ADDRESS

At First Professionals, it is our goal to apply your premium payments as soon as possible upon receipt of the funds. In an effort to prevent any delay, and to ensure timely credit of your payment, please send your payment directly to the following address:

First Professionals Insurance Company
P.O. Box 917486
Orlando, FL 32891-7486
Attn: Policyholder Services

If you have any questions regarding this matter, please contact our Policyholder Services Department at (800) 741-3742, ext. 3217. ■

MEDICAL LIABILITY REFORMS ON THE HORIZON?

Today's liability climate for physicians is anything but certain. The skyrocketing costs associated with medical liability claims – and in some areas the growing frequency of claims – have forced doctors to retire early, stop performing high-risk procedures, or move their practices from states that have no limits (“caps”) on their potential liability. Consequently, in some areas of the country, certain medical specialists simply are not available. In addition, to steer clear of possible liability and avoid lawsuits, physicians are increasingly adopting the practice of “defensive medicine” – the ordering of medically unnecessary tests, invasive procedures, specialist referrals, and hospital admissions.

Reforming the current medical liability system (the judicial process that applies when a doctor is sued) is critical to containing healthcare costs for everyone and empowering physicians to practice the best possible medicine. The current healthcare reform negotiations taking place in Congress - and the ultimate outcome of these negotiations – may have a significant impact on practicing physicians.

The best outcome in terms of these negotiations is the federal enactment of effective medical liability reforms, including caps on noneconomic damages, and the preservation of reforms in states which have a track record of success. If effective reforms are not going to be part of the Congressional debate, there are a number of areas in the House and/or Senate versions of the healthcare reform bill in which positive improvements could be made, including the following:

- the use of incentive payments and expanded opportunities for states to experiment with specified alternative reforms;
- a guarantee that nothing in the bill will create new legal avenues for the filing of medical liability lawsuits; and,
- a clarification that nothing in the healthcare bill would overturn state-enacted medical liability reforms, or prevent states from enacting such reforms in the future.

While medical liability reform can be achieved on a state-by-state basis, congressional action certainly would be the most sweeping and effective vehicle for comprehensive reform. More than 40 states have adopted variations of reforms. In that regard, it is clear that reasonable limits on noneconomic damages reduce the medical professional liability insurance premiums for physicians and increase accessibility to healthcare.

The healthcare reform debate continues to evolve on a regular basis. The final outcome will impact healthcare providers and the professional liability insurers that protect them. In the meantime, First Professionals will continue advocating for effective tort reforms and supporting legislative provisions that may produce positive results for our policyholders. ■

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