



2014 CLM Annual Conference

April 9, 2014 – April 11, 2014

**Boca Raton Resort
501 E. Camino Real
Boca Raton, FL 33432**

Roundtable 1: Thursday, April 10, 2014 (10:10 am – 11:10 am)

Dealing with TPA's in 2014 – Reporting, Medicare and Beyond

I. Understanding TPA Expectations

Purpose of Guidelines

Insurance companies are among the most sophisticated purchasers of legal services in the world. They demand effective, cost-efficient handling of each and every file. TPA guidelines are designed to achieve the best result for both the Insured and the Insurer in an efficient and cost-conscious manner. They ensure that the activities necessary to defend a given claim and bring it to appropriate resolution are addressed both early and often. Compliance with the guidelines allows the TPA and defense counsel to work collaboratively to provide an effective and strategically sound legal defense.

Meeting Expectations: Key Reporting Requirements

Strict adherence to the reporting requirements facilitates a successful, managed outcome. Upon receipt of a new case, counsel should send an acknowledgment letter regarding receipt of the file designating the attorney assigned to the case. This assures the lawyer received the assignment, his insured is now represented by counsel, and court deadlines are protected. Further, within 30 days after receipt of the assignment, counsel should send an initial report containing a summary of the allegations in the complaint, the factual basis for the litigation, a summary of the information developed during the preliminary investigation, and a preliminary evaluation of liability and damages. As the efficient disposition of the case is imperative, this initial evaluation should also discuss the potential for early disposition of the case by dispositive motion or settlement. Finally, defense counsel should communicate and apprise the TPA of significant developments as soon as practical, which includes sending the TPA copies of all pleadings.

II. Furthering the End Client's Needs

Centralized and Consistent Standards and Servicing

National and multi-national corporations are exposed to risk across a wide geographic area. TPAs allow for a streamlined claims process where critical information is gathered and all parties are

fully engaged in the process. This provides centralized claims oversight, setting consistent standards claims managers can apply to each claim, no matter the location.

Budgeting the Actual Costs of the Claims Program

Without a TPA, it is often necessary for a national or multinational corporation to employ local providers in many states or countries. These claims managers often charge for the actual time and expense in settling the claim, rather than a flat claim fee. A TPA saves money in the aggregate and enables businesses to budget the actual costs of the claims program. Further, the defense counsel's evaluations, reporting, and budgets allow the TPA to ascertain the insurer's likely exposure, if any.

Complying with the Regulatory Environment

Claims must be settled according to local laws. The use of TPAs allows companies to focus on their growth and leave the compliance work to the experts. The centralized management offered by a TPA provides a range of services for clients that could be too expensive to provide in-house.

III. Conforming with the Guidelines as Defense Counsel

Familiarity with the Guidelines

Because each TPA has its own unique guidelines, it is important for defense counsel to know and understand the differences between policies. Therefore, upon working with a TPA for the first time, reviewing the guidelines with a representative from the TPA is important to understand what exactly is expected of defense counsel. Further, best practices dictate that defense counsel should regularly review the guidelines to ensure continued compliance.

Ensuring Timely and Accurate Reporting

Defense counsel is responsible for a multitude of cases. Therefore, a reliable calendaring system is necessary to meet each deadline in a timely fashion. After acknowledging receipt of a new file, defense counsel should immediately place reporting dates on his or her calendar. Not only does this ensure timely reporting, but it also facilitates accurate reporting as defense counsel's recollection of events often fades as time passes.

Making Clear and Concise Recommendations

Defense counsel should provide the TPA with clear and concise recommendations on the future handling of each case. This provides the TPA and the insured valuable input in the decision-making process. As TPA guidelines are designed to create a collaborative relationship between all parties, this step is essential to effectively meeting the TPA's expectations.

IV. The Complexities of Medicare Reporting

The Medicare, Medicaid and SCHIP Extension Act (MMSEA)

The MMSEA amends the Medicare Secondary Payer Act, imposing significant new reporting obligations upon insurers and others subject to it. Under the Act, all liability insurers including no-fault insurers are required to determine whether any individual who files a claim against the insurer or any entity insured or covered by the insurer is, or could be, entitled to Medicare benefits. If so, the insurer must provide Medicare with that individual's identity along with any other information that may be

required. This not only protects Medicare from making unnecessary payments but, by identifying primary payers, allows Medicare to pursue its statutory right of recovery when it has made conditional payments that were a third party's responsibility.

The Importance of Compliance

Under the MMSEA, if an insurer fails to notify Medicare in accordance with the new reporting guidelines, a civil penalty of \$1,000 per day may be assessed per claimant. Medicare can also recover from insurers where unreported payments have been made to settle personal injury claims.

Strategies for Adhering to the Law

Given the steep penalties for failing to properly notify Medicare, it is critical for defense counsel to obtain the required reporting information at each of four separate intervals. After receiving a claim, defense counsel should send an initial letter to the claimant and/or the claimant's counsel requesting whether the insured is, or could be, entitled to Medicare benefits. This information must again be collected before any bodily injury or medical payment is issued to the claimant as no claim should be settled without full consideration given to Medicare liens and potential liens. Defense counsel should also propound written interrogatories to the plaintiff requesting this information under oath. Finally, the TPA and defense counsel may even want to consider utilizing a Medicare Pre-Negotiation Agreement wherein the claimant agrees that should a settlement be reached, the parties agree to permit the defendant first to satisfy Medicare's liens directly.