



# Northwest Indian Law & Business Advisor

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## Tribal Self-Insureds Must Take Notice of New Medicare Reporting Rules

Under Medicare's newly effective reporting rules, self-insured entities—including tribal entities—must start tracking and reporting all judgments, settlements, awards or other payments to Medicare beneficiaries for personal injuries. Or else.

Tribal self-insured entities will likely need to track such payments made after July 1, 2009, or January 1, 2010. The July 1st date applies where the entity has assumed ongoing responsibility for the injured Medicare beneficiary's medical services, which commonly occurs with no-fault insurance and workers' compensation. The January 1st date applies to single-claim payments, which are most common with liability insurance. Tribal self-insureds will likely need to report this information to the federal government, starting in the Spring 2010.

These newly effective reporting obligations are designed to protect Medicare's right of reimbursement for medical expenses that the program paid on behalf of a Medicare beneficiary when someone else should be responsible for those expenses. Medicare beneficiaries include persons 65 years of age and older; some disabled people under 65 years of age; and people with end-stage renal disease (permanent kidney failure treated through dialysis or a transplant). It is conceivable that tribal self-insureds would make payments to, for example, casino patrons or tribal employees who are 65 years of age or older, disabled, and possibly even suffer from end-stage renal disease given the prevalence of kidney failure in Indian Country.

The federal government has had a Medicare right of reimbursement, including the option to pursue double damages in some cases, since 1980 but has rarely enforced it. The new reporting obligations are an indication that this is all about to change, as the U.S. scrambles to keep the fledgling federal Medicare program afloat.

Tribes with self-insured liability plans, no-fault plans, or workers' compensation plans need to quickly familiarize themselves with these new reporting requirements. In addition to potential liability for double damages, the penalty for failing to report is significant: \$1,000 for each day of noncompliance for each payment that was not reported, but should have been.

What's more, tribal self-insurance programs or corporate entities are not only likely subject to the new federal Medicare laws—and thus double damages and \$1,000-per-day penalties—under the *Tuscarora* and *Donovan* line of federal court cases, but they do not enjoy sovereign immunity from reimbursement or other

lawsuits by the federal government.

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Williams Kastner

**Seattle**

Two Union Square

601 Union Street

Suite 4100

Seattle, WA 98101

Phone: 201.628.6600

**Tacoma**

1301 A Street, 900

Tacoma, WA 98402

Phone: 253.593.5620

**Portland**

888 SW Fifth Avenue, Suite 600

Portland, OR 97204

Phone: 503.228.7967