

The Western Trust has received the a Civil Investigative Demand (“CID”) from the Department of Justice (“DOJ”) seeking information including the amount paid by the Trust to each of the Trust Beneficiaries since January 1, 2009, but which actually focuses on whether claimants have complied with any obligations they have to reimburse Medicare . The current deadline for the Trust to object or otherwise respond to the CID is November 7, 2018. The discussion below explains the background and our strategy in dealing with the CID. The bottom line is that in order to assist the Trust in responding to the CID, we are seeking information from all firms that have filed claims asserting post December 5, 1980 exposure as to whether they participate in CMS master settlement agreements for non-malignant claims, master settlement agreements for malignant claims, or if not participating in any master settlement agreements, whether they have Medicare releases on the individual claims that are listed by the Trust as having the post-1980 exposures. We need this information if at all possible by next Monday, November 5, 2018.

Background

The Trust has met with the Department of Justice in conjunction with other trusts that have received similar CIDs to understand the scope of the information requested, to try and limit that scope, and to discuss the ability of the Trust to respond. For example, the CID states that the purpose for which the information is needed is to investigate Medicare payment reimbursements under the Medicare Secondary Payer Act. The Trust understands that the effective date of the Medicare Secondary Payer Act is for exposures to Western products or operations after December 5, 1980. Relatively few trust claimants claim such exposures and many of these claimants have likely already resolved any Medicare reimbursement obligations. The trusts have requested that the Department of Justice limit the CID accordingly, which the DOJ is considering. We do not know whether the Department of Justice will adopt any of these suggestions or when they will decide. It is possible that Trust will be required to respond to the CID by November 7, 2018.

Under the terms of the CID and the statute governing its issuance, the Trust may be required in its response to provide all of the information requested to the extent it has such information.

Other trusts faced with this situation are planning on seeking a protective order if the DOJ does not grant an extension while details of which Trust Beneficiaries will

be subject to this reporting are worked out with the DOJ. TAC counsel and I have encouraged the Western Trust to plan on doing the same if an extension is not granted. This would obviate the need of the Trust to turn over information on November 7, and the need to first give formal notice to all firms that they might be turning over information on November 7. A decision by the Trust to not seek a protective order would put individual firms in the position of having to decide whether to seek a protective order on their own to prevent the Trust from turning over their clients' personal information.

The Trust is sending this request to the firms that have post 12/5/80 claims according to the Trust's database, and is providing each firm with a list of their post 12/5/80 claims. We encourage the firms to disclose whether they participate in CMS master settlement agreements, and for post-12/5/80 claims not covered by an agreement, to provide their Medicare clearance documentation. Ultimately, if there is a post 12/5/80 claim and Medicare clearance documentation has not been provided, it is likely that the trusts will turn over the information requested.

The goal in providing this information is to provide the Trust with information they can use in seeking a protective order, and to encourage them to do so. The prospect of individual firms having to initiate actions against the Trust to prevent disclosure of information on beneficiaries that should not be subject to the CID, and then the Trust having to respond and join the DOJ, seems unnecessarily cumbersome and expensive. If anyone wants a call to discuss this, please let Steve Sacks know.