

**ALERT**

# Section 111 Bulletin: December 15, 2009

## Section 111 Teleconference Summary

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December 16, 2009

Yesterday, the Centers for Medicare & Medicaid Services (CMS) held another "Town Hall" Teleconference in its series of semi-monthly calls with Non-Group Health Plans (NGHPs) regarding compliance with the reporting requirements of Section 111 of the Medicare, Medicaid, and SCHIP Extension Act of 2007 (MMSEA). This call focused on policy issues, and although several interesting topics were discussed, few decisive answers were provided. Some of the topics covered in detail were:

### Updating the User Guide

CMS plans to release a revised User Guide sometime in January 2010. CMS will either publish final guidance regarding mass tort settlements, overseas insurer reporting, clinical trial payment of medical expenses, goodwill write-offs of medical bills, and periodic indemnity payments in separate Alerts or announce all guidance at once in the revised User Guide.

### "Foreign Insurers"

Overseas insurers that anticipate needing to register as Responsible Reporting Entities (RREs) but lack either a U.S. address or a federal taxpayer identification number (TIN) should be able to do so beginning April 1, 2010 through June 30, 2010. CMS anticipates giving these insurers a full quarter for testing before they must begin reporting.

### Mass Tort and Product Liability Claims

Any claims payments falling into these categories must be reported starting in the second quarter of 2010. It is *only* Fields 58 through 62 on the Claim Input File Detail Record that insurers do not need to fill out until January 1, 2011.

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## Practice Areas

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Health Care  
Insurance  
Section 111 Insurer Reporting and MSP  
Reimbursement

### **Modification of the Safe Harbor Model Language Form**

Contrary to earlier guidance, CMS stated that the Model Language form provided by the agency in August 2009, which may be used to obtain claimants' Health Insurance Claim Numbers (HICNs) and Social Security Numbers (SSNs), *can* be modified to some extent by the insurer. For example, an insurer may include a return address on the bottom of the form. CMS did not address whether there could be any consequences for such alteration or whether certain more substantive revisions would be permitted if the insurer wanted to qualify for safe harbor treatment. This guidance is somewhat inconsistent with CMS's statements during the October 22, 2009 NGHP teleconference that if insurers modified the Model Language form and did not use the exact version found on the CMS website, there would be no implied safe harbor.

### **Attorney/Representative Information**

CMS reminded listeners that the agency requires the TIN or SSN of the Medicare beneficiary's attorney or other representative because the agency has the authority (under 42 C.F.R. § 411.24) to recoup Medicare overpayments from the representative if Medicare cannot recover from the beneficiary.

### **FOIA Requests**

CMS expressed its belief that the agency would not have to respond to Freedom of Information Act (FOIA) requests for information about individual claims settlements, so insurers should not be concerned about the protection and confidentiality of claims records once reported. The agency also stated that it would be unlikely to inform an RRE if there was a FOIA request regarding one of the RRE's reported claims. CMS implied that claims information would be beyond FOIA's reach due to available privacy protections under federal law.

### **Other topics discussed on the call included:**

- Reporting installment payments and contingency payments
- Accident-only coverage
- Legal malpractice insurance claims
- Penalty guidelines for Section 111 non-compliance
- Reporting for a corporate family jointly-owned by two individuals/entities
- General release language in connection with severance payments
- Medical evidence needed for termination of ongoing responsibility for medical expenses (ORM) payments
- Comparative or contributory fault giving rise to the claim

The next NGHP Town Hall Teleconference is scheduled for January 5, 2010.

Our Section 111 Team routinely covers the Section 111 teleconferences typically held twice a month by CMS, and we send timely detailed summaries of teleconference highlights to our clients. We also maintain a searchable electronic database of the transcripts back to October 2008. Please let us know if you would like more information about any of the topics discussed in yesterday's call. You may also access our Section 111 webpage and other Section 111 Bulletins and articles we have published by clicking [here](#).