

ALERT

Section 111 Bulletin: CMS Announces Date of "Mass Torts" Working Group Call and Addresses RRE Questions During Policy and Technical Town Hall Teleconference

March 11, 2011

On March 9th, the Centers for Medicare & Medicaid Services (CMS) held a Town Hall teleconference focusing on both policy and technical questions from non-group health plan insurers (NGHPs) that must report claims payments to Medicare beneficiaries under Section 111 of the Medicare, Medicaid and SCHIP Extension Act of 2007. CMS made several important announcements and answered a few thorny technical reporting questions but did not break new ground on policy issues. Here are summaries of the more notable discussions:

"Mass Torts" Working Group: CMS announced that the long-awaited dial-in conference call with the "Mass Torts" working group will likely be held on April 14th from 1:00 p.m. to 3:00 p.m. Individuals and organizations that are already a part of this group should receive an invitation within the next week. Although previously known as the "Mass Torts" working group, CMS now prefers to refer to this working group by its broader mandate of grappling with the effect of the 12/5/80 MSP liability cut-off date and ingestion, implantation and other longtail exposure issues related to Section 111 reporting. CMS previously stated its intention to circulate revised draft guidance addressing these issues prior to the working group's call. The new draft will reflect CMS's work since circulating its first draft before the last working group call last fall. The Wiley Rein Section 111 Team will cover the call and report significant developments to clients.

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Upcoming Alerts: CMS stated that it is still working on Agency guidance related to lump-sum indemnity payments and qualified settlement funds. With regard to the latter, CMS emphasized that Responsible Reporting Entity (RRE) obligations cannot be transferred to other entities and indicated that the forthcoming guidance will not accept expansion of a qualified settlement fund's role into RRE reporting other than as an agent of the RRE. CMS also noted that it is still assessing a possible reporting exception for certain claims falling under Professional Liability policies and stated that CMS is "trying to accommodate the industry."

All Quiet on the Foreign RRE Front: CMS neither reported any Section 111 Resource Mailbox inquiries nor offered any further commentary regarding the guidance it issued last month for Foreign RRE registration and reporting.

CMS Rejects Self-Insured's No-Fault Designation: In response to a question about a self-insured entity that professes to handle large claims as liability insurance but smaller claims as no-fault insurance, CMS replied that it remains skeptical that an entity can self-insure against no-fault claims. CMS reminded listeners that the Medicare Secondary Payer (MSP) statute defines a self-insured entity only as a liability insurer and noted that CMS's experience has been that those entities that claim they self-insure for no-fault losses have misclassified the claims. Upon further investigation, the claims are discovered to be liability claims. Although the industry may view certain entities as handling no-fault claims on a self-insured basis, it is not unusual for MSP definitions to not align with the definitions used in the insurance industry. CMS's message appears to be that for Section 111 reporting purposes, self-insured entities handling no-fault claims will need to abide by CMS's categorization of their activities as liability self-insurance and report accordingly.

RRE Designations for Guaranty Association Reporting: One caller asked CMS for guidance on the proper RRE designation when a Guaranty Association fund pays medical bills for a claimant, but the employer (who is insured by the Guaranty Association) later settles and pays the claimant a lump sum without involving the Association. CMS responded that the Guaranty Association would report the medical bill payments as acceptance of ongoing responsibility for medicals (ORM), and the employer would later report the settlement amount as a total payment obligation to the claimant (TPOC). After settlement, the Guaranty Association would terminate its ORM status.

Medicare Advantage Coverage: Although CMS has addressed this question several times in the past, it reiterated that individuals who switch their health insurance during the course of a pending claim from the traditional fee-for-service Medicare program to a Medicare Advantage plan offered by a private entity remain "Medicare beneficiaries"; their election to receive benefits under one Medicare program or the other has no impact on an RRE's Section 111 reporting obligations.

Contacting EDI Representatives: In response to several callers' questions, CMS stated that if you do not know who your EDI Representative is or how to reach him/her, you may call (646) 458-6740 to obtain this information.

The next NGHP town hall teleconference call will be held on April 6th and will focus on Section 111 policy issues.

Our Section 111 Team routinely covers the Section 111 NGHP teleconferences held monthly by CMS, and we send periodic Alerts to our clients addressing notable town hall discussions and other Section 111 developments. We also maintain a searchable electronic database of town hall transcripts back to October 2008. Please let us know if you would like more information about any of the Section 111 topics discussed in this Alert. You also may access our Section 111 webpage and other Section 111 Bulletins and articles we have published at www.wileyrein.com/section111.