



## Government Affairs Alert

March 24, 2009

### **Medicare, Medicaid and SCHIP Extension Act (MMSEA) Mandatory Insurer Reporting Requirement Update**

#### *CMS Releases Two New Documents for Liability, No-Fault and Workers' Compensation*

On March 16, 2009, the Centers for Medicare and Medicaid Services (CMS) released version 1.0 of the MMSEA Section 111 Medicare Secondary Payer Mandatory Reporting Liability Insurance, No-Fault Insurance and Workers' Compensation User Guide. The release of the User Guide was followed on March 20, 2009, by an alert from CMS, which includes a correction to an error in the previously issued User Guide.

PMSI Settlement Solutions<sup>SM</sup> recommends that any entity considered a Responsible Reporting Entity (RRE) under Section 111 of the MMSEA review both documents in their entirety.

#### **Document 1: MMSEA Section 111 Medicare Secondary Payer Mandatory Reporting Liability Insurance, No-Fault Insurance and Workers' Compensation User Guide version 1.0**

The 180- page User Guide applies to liability, no-fault and workers' compensation entities and can be accessed at the Mandatory Insurer Reporting section of the CMS website at <https://www.cms.hhs.gov/MandatoryInsRep/Downloads/NGHPUserGuide031609.pdf>. Following is a brief summary of important items addressed in the User Guide.

- The issue of Mass Torts is still under discussion.
- CMS notes two reporting exceptions in the User Guide, one regarding closed/inactive claims and the other in reference to minor resolved injuries where future medical is not irrevocably closed:
  1. Assumption of ongoing medical typically occurs with respect to no-fault insurance or workers' compensation. Because claims involve many levels of injury, there may be the continuation of open records once a case is initially reported when there is no possibility of associated future treatment. For example, a minor fully healed cut finger in a state where workers' compensation requires life-time medicals. To address this situation, CMS has indicated that RREs may submit a termination date for ongoing responsibility for medical (ORM) if they have a **signed statement from the injured individual's treating physician that they will require no further medical items or services associated with the claim/claimed injuries**, regardless of the fact that the claim may be subject to reopening or a claim for further payment.

2. CMS indicated that for ORM assumed prior to July 1, 2009, if the claim was actively closed or removed from current claims records prior to January 1, 2009, the RRE is not required to identify and report that case. If such a claim is later subject to reopening with further ORM, it must be reported with full information, including the original DOI (as defined by CMS).

Below is a brief (not exhaustive) list of other topics addressed in the User Guide, with corresponding page numbers:

- Definitions for who is an RRE: pages 18 – 21
- ORM – When and what to report: 49 – 52
- What claims are reportable and when such claims are reportable: 55 – 59
- The query process: 67 – 69
- Customer service and reporting assistance information: 80 – 81
- Training and education: 81 – 82
- The file layout, query layout and response file layout; 83 – 154
- Disposition, error and compliance flag codes: 15 – 174

## **Document 2: Alert for Liability Insurance (Including Self-Insurance), No-Fault Insurance, and Workers' Compensation**

The Alert for liability insurance, no-fault insurance and workers' compensation addresses several issues surrounding implementation of Mandatory Insurer Reporting. The complete document can be accessed at the Mandatory Insurer Reporting section of the CMS website at [https://www.cms.hhs.gov/MandatoryInsRep/Downloads/Alert\\_UserGuideSupp\\_NGHP.pdf](https://www.cms.hhs.gov/MandatoryInsRep/Downloads/Alert_UserGuideSupp_NGHP.pdf). Following is a brief overview of the items addressed in the Alert.

### **Extended Permissible Testing Period**

CMS has indicated that RREs must still register (May – June 2009) and start testing (July – September 2009) as scheduled; however, the permissible testing period will be extended through **December 31, 2009**. RREs will be required to submit live files no later than their assigned submission window in the January – March quarter of 2010. If testing is completed before January 2010, RREs can begin submitting live in the last quarter of 2009 (October – December).

## Interim Reporting Thresholds

1. For **no-fault insurance**, there is **no de minimus dollar threshold** for reporting the assumption/establishment of ongoing responsibility for medicals (ORM) or for reporting the total payment obligation to the claimant (TPOC) (i.e., a lump-sum settlement amount).
2. For **liability insurance**, there is **no de minimus dollar threshold** for reporting the **assumption/establishment of ORM**.
3. For **workers' compensation ORM**, claims meeting **all** of the following criteria are **excluded from reporting for file submissions due through December 31, 2010**:
  - a. "Medicals only"
  - b. "Lost time" of no more than 7 calendar days
  - c. All payment(s) has/have been made directly to the medical provider
  - d. Total payment does not exceed \$600.00
4. For **liability insurance** and **workers' compensation TPOCs**, the following dollar thresholds apply:
  - a. For TPOCs, dates of July 1, 2009 through December 31, 2010, amounts of \$0.00 – \$5,000.00 are exempt from reporting except as specified in "d" below.
  - b. For TPOCs, dates of January 1, 2011, through December 31, 2011, amounts of \$0.00 – \$2,000.00 are exempt from reporting except as specified in "d" below.
  - c. For TPOCs, dates of January 1, 2012 through December 31, 2012, amounts of \$0.00 – \$600.00 are exempt from reporting except as specified in "d" below.
  - d. Where there are multiple TPOCs reported by the same RRE on the same record, the combined amounts must be considered in determining whether or not the reporting exception threshold is met. For TPOCs involving a deductible, where the RRE is responsible for reporting both any deductible and any amount above the deductible, the threshold applies to the total of these two figures.

The above thresholds are solely for purposes of the MMSEA Section 111 reporting requirements for liability, no-fault and workers' compensation. They are not exceptions/do not act as a "safe harbor" with



respect to any other obligation or responsibility of any individual/entity under the Medicare Secondary Payer provisions.

The above are **interim** thresholds put in place while CMS is implementing the Section 111 reporting process. CMS has reserved the right to change these thresholds and noted that they will provide appropriate advance notification of any future changes. CMS is still actively soliciting data relevant to determining a more liberal threshold for workers' compensation ORM.

### **PMSI Settlement Solutions Client Support**

PMSI is committed to bringing our clients the most current information on MMSEA reporting requirements. PMSI is prepared to provide our clients with a complete preparation and compliance program. For further information on MSP compliance and related Government Affairs Alerts, visit the Industry Insights section of our website at [www.pmsisettlement.com](http://www.pmsisettlement.com).

For further information, please contact your PMSI Representative, call us at 888.MSA.PMSI or visit us online at [www.pmsisettlement.com](http://www.pmsisettlement.com).

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