



## Government Affairs Alert

June 10, 2010

### **CMS Issues Multiple Alerts Regarding MMSEA Section 111 Reporting Guidelines**

On May 26 and 27, 2010, the Centers for Medicare and Medicaid Services (CMS) issued four alerts pertaining to liability (including self insurance), no-fault and workers' compensation plans, defined as Non-Group Health Plans (NGHP). Following is a summary of the alerts issued.

#### **Alert 1 – Information Regarding Required Reporting for Risk Management Write-Offs for NGHP RREs**

On May 26, 2010, CMS issued an alert providing information regarding risk management write-offs by providers, physicians, other suppliers and non-provider/supplier entities who are NGHP Responsible Reporting Entities (RREs).

CMS confirmed that risk management write-offs—including reduction in amount due as a risk management tool—constitute liability self-insurance for the purposes of Medicare Secondary Payer (MSP) provisions. If an entity utilizes write-offs as a risk management tool, it may or may not be reportable under MMSEA Section 111.

#### ***CMS offered the following guidelines for providers, physicians, or other suppliers:***

- In instances where a provider, physician or other supplier has reduced its charges (by writing off some portion of charge) to a Medicare beneficiary as a risk management tool, the provider, physician or other supplier is expected to submit a claim to Medicare reflecting the unreduced permissible (limiting) charges which shows the amount of reduction provided (write-off) as a payment from liability insurance (including self-insurance), if applicable. Medicare's interest with respect to this particular Total Payment Obligation to Claimant (TPOC) amount is considered protected through this billing procedure. Therefore, the provider, physician or other supplier shall not report write-off or value of property provided as a TPOC.
- In instances where a provider, physician, or other supplier has provided property of value to a Medicare beneficiary as a risk management tool when there is evidence, or a reasonable expectation, that the individual has sought or may seek medical treatment as a consequence of the underlying incident, the entity shall report the write-off or value of property provided as a TPOC from liability insurance (including self-insurance), if applicable. If value of property provided is less than TPOC reporting threshold, it need not be reported under Section 111.

#### ***CMS offered the following guidelines for entities other than a provider, physician or supplier:***

- In instances where other entities have reduced charges or provided property of value to a Medicare beneficiary as a risk management tool when there is evidence, or a reasonable expectation, that the individual has sought or may seek medical treatment as a consequence of the underlying incident, the entity shall report the write-off or value of property provided as a TPOC from liability insurance (including self-insurance), where applicable. If the amount of the write-off or value of property provided is less than TPOC reporting threshold, it does not need to be reported under Section 111.

To view a copy of this CMS Alert click [here](#).

### **Alert 2 – Who Must Report: Liability (Including Self Insurance), No-Fault and Workers' Compensation**

On May 26, 2010, CMS issued an alert providing information regarding who/what entities are classified as NGHP RREs. This document is a revision of the February 24, 2010 alert on the same subject matter, and replaces Section 7.1 of current NHGP User Guide.

The only change provided in this alert as compared to the previous alert on this subject can be found in Appendix G, where the second paragraph under “Liability Self-Insurance” Section has been removed and replaced with the following language:

*“Where an entity engages in a business, trade, or profession; deductible amounts are self-insurance for MSP purposes. However, where the self-insurance in question is a deductible, and insurer is responsible for Section III reporting with respect to the policy, it is responsible for reporting both the deductible and any amount in excess of the deductible.”*

This updated language in Appendix G clarifies and confirms the position of CMS within the alert which states that generally the insurer is an RRE for reporting claims under a deductible policy.

To view a copy of this CMS Alert, click [here](#).

### **Alert 3 – Clinical Trials & Liability Insurance (Including Self Insurance), No-Fault Insurance and Workers' Compensation**

On May 26, 2010, CMS issued an alert providing information regarding clinical trials and entities who are NGHP RREs.

CMS indicated when payments are made by sponsors of clinical trials for complications or injuries arising out of the trials, payments are considered to be under liability insurance (including self-insurance) and must be reported. The appropriate RRE should report the date that the injury/complication first arose as the Date of Incident (DOI) and the situation should be reported as involving ORM.

To view a copy of this CMS Alert click [here](#).

### **Alert 4 – Information Regarding Periodic Workers' Compensation and No-Fault Payments**

On May 27, 2010, CMS issued an alert providing information regarding periodic workers' compensation and no-fault payments. Language contained in this alert updates this subject-specific information found in the current NHGP User Guide.

CMS confirmed that when a workers' compensation/no-fault law or plan requires RREs to make regularly scheduled periodic payments, pursuant to statute, for an obligation other than medical expenses (i.e., weekly indemnity payments for lost wages), to or on behalf of the claimant, the RRE does not report these payments as long as ongoing responsibility for medicals (ORM) is/has been assumed and is properly reported. Therefore,

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according to CMS, as long as the RRE appropriately reports ORM, scheduled periodic payments are considered part of ORM and shall not be reported separately as a total payment obligation(s) to the claimant (TPOCs).

To view a copy of this CMS Alert, click [here](#).

### **PMSI Client Recommendations**

PMSI recommends that any entity which may be considered an RRE review the recent CMS alerts and documents to determine organizational impact and the RRE's reporting responsibilities under MMSEA Section 111. The MMSEA Section 111 reporting process is still evolving as CMS continues to implement requirements, provide further instructions and address industry questions. RREs should access Section 111 information at: [www.cms.gov/MandatoryInsRep/](http://www.cms.gov/MandatoryInsRep/) and check frequently for additional updated information. PMSI will continue to provide guidance as new information is issued by CMS, but RREs may also obtain additional information by attending CMS bi-monthly teleconferences. To view the updated list of CMS teleconferences scheduled for 2010 click here: [www.cms.gov/MandatoryInsRep/Downloads/Rev2010NGHPNoticeand%20Agenda040110.pdf](http://www.cms.gov/MandatoryInsRep/Downloads/Rev2010NGHPNoticeand%20Agenda040110.pdf)

### **PMSI Client Support**

PMSI is committed to bringing our clients the most current information on MMSEA reporting requirements and offers a complete preparation and compliance program. As further information becomes available, PMSI's Government Affairs team will provide additional insight and analysis.

For more information on MSP compliance and related PMSI Government Affairs Alerts, please contact your PMSI Representative, call us at 888.MSA.PMSI or visit the [Industry Insights](#) section of our website at [www.pmsisettlement.com](http://www.pmsisettlement.com).

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