

## Legislative Update: CMS Changes to Method of Calculating Section 111 Penalties

### **April 20 Deadline for Comments on New CMS Changes to Method of Calculating Section 111 Penalties**

The Centers for Medicaid and Medicare Services (CMS) has proposed a new method for calculating and imposing Medicare Secondary Payer civil monetary penalties for Section 111 reporting. Non group health plan (NGHP) entities (including liability insurers, self-insured entities, no-fault insurers, and workers' compensation arrangements) are required to report information to CMS about the coverage they are providing to individuals enrolled in Medicare so that the CMS can accurately identify situations where Medicare is not the primary payer for medical care. This change will affect entities who are considered to be the Responsible Reporting Entity (RRE) by CMS (i.e., the party that is responsible for funding a claim payment to an individual eligible for Medicare benefits under the provisions of the Medicare, Medicaid, and SCHIP Extension Act (MMSEA) of 2007).

Under the proposed change, failure to comply with these requirements may result in penalties of up to \$1,000 per claimant per day.

### **Comments on the proposed method are due by April 20, 2020**

The civil monetary penalties proposed rules were published in the Federal Register on 2/18/2020. The stakeholder community now has 60 days to comment, with comments due by 5 PM on April 20, 2020.

CMS will consider comments and is eventually planning to codify the final rules in the Code of Federal Regulations.

Information on how to submit a comment can be found below.

### **What ESIS is doing to protect our clients:**

ESIS has built a program with Optum, our PBM vendor, to ensure only clean and accurate claims are reported to CMS, and we have never had a file fail to be accepted by CMS.

- Claims that cannot be reported due to missing or inaccurate information are identified prior to the quarterly reporting period and are managed by ESIS in order to ensure timely accurate information is reported.
- Since the inception of Section 111 reporting, ESIS has deployed a process to manage ORM, TPOC, and ICD requirements. ESIS has a well-established, documented process that meets CMS's guidelines to demonstrate "good faith" for securing the key data elements to query and report a claim.
- ESIS also has well-established best practices for conditional payment disputes and appeals that is always preceded by a review of what has already been communicated to CMS whether by Medicare Set Aside (MSA) submission, Section 111 reporting, or Benefits Coordination and Recovery Center (BCRC) verifications via fax or phone to be sure the claim data is consistent with the RRE claim and legal files.

### **Have Questions?**

Click [here](#) for more information about this proposed rule or contact your Partnership Leader.

## **How to Submit a Comment**

CMS provides several ways to submit comments and asks that people choose only one means of submitting comments.

In commenting, please refer to file code CMS-6061-P.

### **Electronically**

To submit electronic comments on this regulation, go to [www.regulations.gov](http://www.regulations.gov). Follow the “Submit a comment” instructions.

### **By Regular Mail**

To submit written comments by mail, send one original and two copies to the following address ONLY:

Centers for Medicare & Medicaid Services  
Department of Health and Human Services  
Attention: CMS-6061-P  
P.O. Box 8013, Baltimore, MD 21244-8013

Mailed comments must be received before the close of the comment period.

### **By Express or Overnight Mail**

To send written comments by express or overnight mail, send one original and two copies to the following address ONLY:

Centers for Medicare & Medicaid Services,  
Department of Health and Human Services  
Attention: CMS-6061-P  
Mail Stop C4-26-05, 7500 Security Boulevard  
Baltimore, MD 21244-1850.

The material presented herein is not intended to provide legal or other expert advice as to any of the subjects mentioned, but rather is presented for general information only. You should consult knowledgeable legal counsel or other knowledgeable experts as to any legal or technical questions you may have.

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