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UPDATE CMS Mandatory Insurer Reporting Requirements

Under the new CMS Section 111 program, liability and other insurers will be required to report all qualifying payments, which include settlements, judgments, awards, or other payments to Medicare beneficiaries to CMS. This Client Advisory provides updated information to the previously published Client Advisory on these reporting requirements.

Threshold Reporting Requirements

When these reporting requirements were initially announced by CMS, dollar thresholds were not provided, but CMS indicated they would be forthcoming. CMS has since released the following dollar thresholds for ongoing responsibilities for medicals (ORMs) and total payment obligations to the claimant (TPOCs), which exempt some payments that would otherwise be reported from the requirements of Section 111:

<u>RRE</u>	<u>Payment</u>	<u>Threshold</u>
No-fault insurance	ORM	No de minimis dollar threshold.
No-fault insurance	TPOC	No de minimis dollar threshold.
Liability insurance (including self insurance)	ORM	No de minimis dollar threshold.
Liability insurance (including self insurance)	TPOC January 1, 2010 through December 31, 2010	Amounts of \$0.00 to \$5,000.00 are exempt from reporting.
Liability insurance (including self insurance)	TPOC January 1, 2011 through December 31, 2011	Amounts of \$0.00 to \$2,000.00 are exempt from reporting.
Liability insurance (including self insurance)	TPOC January 1, 2012 through December 31, 2012	Amounts of \$0.00 to \$600.00 are exempt from reporting.



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Workers' compensation	ORM	Claims meeting all of the following criteria are excluded from reporting for file submissions due through December 31, 2010: <ul style="list-style-type: none"> • Medicals only, • Lost time of no more than seven calendar days, • All payment(s) has/have been made directly to the medical provider, and • Total payment does not exceed \$600.00.
Workers' compensation	TPOC January 1, 2010 through December 31, 2010	Amounts of \$0.00 to \$5,000.00 are exempt from reporting.
Workers' compensation	TPOC January 1, 2011 through December 31, 2011	Amounts of \$0.00 to \$2,000.00 are exempt from reporting.
Workers' compensation	TPOC January 1, 2012 through December 31, 2012	Amounts of \$0.00 to \$600.00 are exempt from reporting.

For liability insurance (including self insurance) and workers' compensation TPOCs, where there are multiple TPOCs reported by the same responsible reporting entity (RRE) on the same record, the combined TPOC 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.

These dollar thresholds are limited in application to the Section 111 Medicare Secondary Payer (MSP) reporting requirements for liability insurance (including self-insurance), no-fault insurance, and workers' compensation. They do not act as a "safe harbor" with respect to any other obligation or responsibility of any individual or entity with respect to the Medicare Secondary Payer provisions.

Where a TOPC amount dated on or after January 1, 2010 falls below the threshold amount, the RRE must add all associated TPOC amounts dated on or after January 1, 2010 to determine whether the reporting threshold is met. Any associated TPOC amount occurring prior to January 1, 2010 should not be considered when calculating the TPOC amount for purposes of reporting threshold. If the combined TPOC amounts meet the reporting thresholds, all TPOCs on or after January 1, 2010 must be reported. Timeliness of reporting will be determined based upon the applicable date for the TPOC which caused the threshold to be met.

Updated Reporting Timeline

The initial CMS materials regarding Section 111 provided that any settlement, judgment, award, or other payment to a Medicare beneficiary occurring on or after July 1, 2009



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must be reported. That timeline has been revised. For a total payment obligation to the claimant (TPOC), the effective date is now January 1, 2010. Ongoing responsibilities for medicals (ORMs), which include structured settlements or other agreements to pay for future medical treatment, remain on the original timeline. An ORM that is paid on or after July 1, 2009 must be reported.

TPOCs will only be considered "paid prior to January 1, 2010," and, therefore, exempt from reporting, if all aspects of the settlement, judgment, or award, including court approval, if required, are completed prior to January 1, 2010. If partial payment is made prior to January 1, 2010, and the remaining payment is made after January 1, 2010, the RRE must report the remaining payment to CMS when it is made. If a TPOC judgment is being appealed and payment is withheld pending the appeal, the RRE should not report the TPOC until the appeal is concluded and payment is made. A record will not be rejected based upon a TPOC date before January 1, 2010.

Electronic registration via the Coordination of Benefits Secure Website (COBSW) for all liability insurance (including self insurance), no-fault insurance, and workers' compensation RREs will now take place from May 1, 2009 to September 30, 2009. Test and production Query Function will be available for those RREs who have completed registration and are in testing status on July 1, 2009. Query Input Files cannot be submitted until registration is complete and the RRE is in testing status. An RRE is in testing status if its signed Profile Report has been received by CMS' Coordination of Benefits Contractor (COBC).

Claim Input File testing will take place between January 1, 2010 and March 31, 2010 for all liability insurance (including self insurance), no-fault insurance, and workers' compensation

RREs. Based upon the predetermined schedule with the COBC, all liability insurance (including self insurance), no-fault insurance, and workers' compensation RREs must submit their first Section 111 production Claim Input Files in the time period of April 1, 2010 to June 30, 2010. By July 1, 2010, all liability insurance (including self insurance), no-fault insurance, and workers' compensation RREs will be submitting their Section 111 production Claim Input Files.

Preparedness Efforts

Although the timeline has been pushed back, all affected insurers should take steps now to prepare for the new program requirements, as CMS is authorized to impose hefty fines for non-compliance. To prepare for the implementation of these new reporting requirements, RREs must develop procedures in their claims review processes to determine whether an injured party is a Medicare beneficiary and to gather the information necessary for Section 111 reporting. As part of this preparation, RREs must also consider whether they want to handle reporting in-house or work with a Third Party Administrator (TPA). In either event, the appropriate person must be identified and involved in the development of the new processes to conform to these reporting requirements.

For more information on the new Section 111 CMS reporting requirements, or to request assistance in developing internal processes for compliance, please contact Mary C. Malone, N. Beth Dorsey, John Mumford, or Lauran G. Stimac at (804) 967-9604 or by email mmalone@hdjn.com, bdorsey@hdjn.com, jmumford@hdjn.com, or lstimac@hdjn.com. Additional information about Hancock, Daniel, Johnson & Nagle, P.C. is available on the firm's website at www.hdjn.com.



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