

ALERT

# Section 111 Bulletin: November 17, 2009

## Section 111 Teleconference Summary

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November 19, 2009

The Centers for Medicare & Medicaid Services (CMS) held a Section 111 Non-Group Health Plan (NGHP) teleconference on November 17, focused primarily on policy issues. Although CMS covered a wide variety of registration and reporting issues on the teleconference, this bulletin highlights several topics raised, including the release date of the updated User Guide, registration of "foreign" insurers, and new rules for the reporting of "mass tort" claims.

### Release of the Updated NGHP User Guide

CMS announced that it expects to release the new User Guide in early December at the very latest. The User Guide will contain revised or further guidance relating to clinical trials, hospital write-offs, foreign insurer registration, the definition of Responsible Reporting Entities (RREs), and reporting of "mass tort" payments.

### Foreign Insurer Registration

The agency addressed overseas insurer issues only briefly but indicated that insurance companies that write policies in other countries *and* do not do business in the United States may not have to report payments they make to Medicare beneficiaries for bodily injuries. One example of this type of policy offered by CMS was an automobile policy written in Canada, with no connection to "sale or solicitation" in the United States. CMS said that it would provide further guidance in the future regarding the agency's definition of "doing business in the United States," but indicated that manufacturers intending to distribute their products in the U.S. market were likely to be covered by Section 111's regulatory scheme. Based on the limited commentary provided during this teleconference, it is possible that CMS is devising a type of "minimum contacts" test for application of Section 111 to overseas insurers. The forthcoming

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revised User Guide is expected to provide further guidance on this issue.

### **Reporting of "Mass Torts"**

CMS also discussed the updates due to be released in the new User Guide that relate to the category of claims called "mass torts." CMS stated that these claims will most likely be divided into two categories, "Group 1" and "Group 2," which will have different reporting requirements. Although the distinction was not entirely clear from the teleconference, "Group 1" appears to address more traditional mass torts, whereas "Group 2" appears to cover exposure cases where there is a time lag between the initial exposure and the appearance of the injury (such as exposure to asbestos, benzene, and lead paint). For "Group 1" claims, the RRE will answer "Yes" in Field 58 of the Claim Detail Record and then have to provide specific information to CMS in the fields immediately following, such as the brand name of the product, the generic name, and the manufacturer's name. For "Group 2" claims, the RRE will answer "No" in Field 58 and will not be required to fill out the more specific information requested of "Group 1" claims.

### **Other topics discussed during this teleconference include:**

- Collection of Social Security Numbers
- Captive insurance companies
- Reporting relationships within the corporate structure
- Self-insured payments to a third-party administrator (TPA) which is contractually related to the insurer, not the self-insured
- The Date of Incident (DOI) for cumulative injuries
- "Never events" (adverse events occurring during provision of medical services that are categorically excluded from Medicare coverage)

Our Section 111 Team routinely covers the Section 111 teleconferences typically held twice a month by CMS, and we send timely detailed summaries of teleconference highlights to our clients. We also maintain a searchable electronic database of the transcripts back to October 2008. Please let us know if you would like more information about any of the topics discussed in yesterday's call.