

October 5, 2011

IMPORTANT COMPLIANCE UPDATES ISSUED BY CMS

On September 30, 2011, CMS posted several updates and alerts on its website regarding Section 111 Mandatory Reporting and Liability Medicare Set-Aside Arrangements. Below is a summary of the same.

CMS ALERTS

Revised Implementation Timeline For Certain Insurance Settlements, Judgments, Awards, Or Other Payments

CMS has delayed the reporting of certain liability claims based upon the total payment amount of the settlement, judgment, award, or other payment. Specifically, this CMS alert provides as follows:

The Centers for Medicare & Medicaid Services (CMS) has delayed Section 111 reporting for certain liability insurance (including self-insurance) TPOC settlements, judgments, awards, or other payments. The implementation date for reporting will be based on the TPOC amount.

Below is a schedule of the new dates:

TPOC Amount	TPOC Date On or After	Section 111 Reporting Required in the Quarter Beginning
TPOCs over \$100,000	October 1, 2011	January 1, 2012
TPOCs over \$50,000	April 1, 2012	July 1, 2012
TPOCs over \$25,000	July 1, 2012	October 1, 2012
All TPOCs over min. threshold	October 1, 2012	January 1, 2013

This revised implementation timeline does not impact the reporting of workers' compensation claims or claims involving the payment of ongoing responsibility of medicals (ORM).

CMS Reporting And Recovery Rights For Liability Cases Involving Exposure, Ingestion, And Implantation

CMS has repeatedly stated that it will not seek a claim for recovery against settlements, judgments, awards, or other payments where the date of incident (DOI) occurred before 12/5/1980. In this alert, CMS attempts to clarify this issue in cases involving exposure, ingestion, and implantation. For further details, please see the following link:

<https://www.cms.gov/MandatoryInsRep/Downloads/ExposureIngImplant.pdf>

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**Reporting Exception Where Settlements, Judgments, Awards,
Or Other Payments Have Been Paid Into A Qualified Settlement Fund (QSF)
Under § 468B Of The Internal Revenue Code (IRC) Prior To 10/1/2011**

CMS does not require RREs to report settlements, judgments, awards, or other payments paid into a QSF when the funds at issue were paid into trust prior to 10/1/2011 under § 468B of the IRC in connection with state and federal bankruptcy proceedings. For further information, please see the actual alert at the following link:

<https://www.cms.gov/MandatoryInsRep/Downloads/NGHPReportingException.pdf>

CMS MEMORANDUM

**CMS Policy Memorandum Regarding Future Medicals/MSAs
In Liability Cases**

CMS issued this memorandum to address the protection of Medicare's interests with respect to future medicals in liability cases. Specifically, this memorandum provides that the Medicare beneficiary's treating physician certifies in writing that treatment for the alleged injury has been completed as of the date of settlement, and future medical items/services will not be required. If, however, the beneficiary receives additional settlements related to the same underlying injury or illness, the beneficiary must obtain a separate certification for those settlements. CMS encourages the parties to maintain this certification in their files to document that they have protected Medicare's interests.

This alert is important for two reasons. It is the first time CMS has addressed in a memorandum the need to protect Medicare's interests when it comes to future medicals in a liability case. Second, it is clear that only in those liability cases where a treating physician certifies that there is no need for future treatment/medical items and services that a proposed liability MSA will not be necessary.

For further information regarding this alert, or for any Medicare compliance assistance, please contact:

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