



October 11, 2011

CMS Issues Revised TIN Reference Response File and Address Validation Alert

On September 29, 2011, the Centers for Medicare and Medicaid Services (CMS) issued various alerts providing information pertaining to Non-Group Health Plans (NGHP), classified as Responsible Reporting Entities (RREs) under Section 111 of the Medicare, Medicaid and SCHIP Extension Act (MMSEA).

Alert 1: Revised Timeline for Certain Liability Insurance Total Payment Obligation to the Claimant (TPOC) Settlements, Judgments, Awards or Other Payments

This alert provides RREs with information regarding revisions being made to Section 111 reporting timeline for certain liability insurance (including self-insurance), TPOC settlements, judgments, awards, or other payments effective January 1, 2012. The implementation date for reporting will be based on the TPOC amount.

The new implementation dates are as follows:

- Reporting is required January 1, 2012 for TPOCs over \$100,000 with a TPOC date on or after October 1, 2011
- Reporting is required July 1, 2012 for TPOCs over \$50,000 with a TPOC date on or after April 1, 2012
- Reporting is required October 1, 2012 for TPOCs over \$25,000 with a TPOC date on or after July 1, 2012
- Reporting is required January 1, 2013 for all TPOCs over a minimum threshold with a TPOC date on or after October 1, 2012

CMS has not made any other changes to implementation dates and has confirmed that this delay is optional. RREs may submit earlier reports of liability TPOCs under the established thresholds at their own discretion.

To review a copy of this alert, click here.

<http://www.cms.gov/MandatoryInsRep/Additional%20NGHP%20Alerts.asp#TopOfPage>

Alert 2: Reporting exception where funds have been paid into a Qualified Settlement Fund (QSF)

CMS announced a limited MMSEA Section 111 reporting exception related to Qualified Settlement Funds (QSFs). For details defining a QSF click here <http://definitions.uslegal.com/q/qualified-settlement-fund/>

This exception is applicable for RREs for certain liability insurance (including self-insurance), no-fault insurance, and workers' compensation TPOC settlements, judgments, awards, or other payments, where funds have been paid into a QSF prior to **October 1, 2011**.



MMSEA Section 111 reporting will not be required when **ALL** of the following criteria are met:

- The settlement, judgment, award or other payment is a liability insurance (including self-insurance), TPOC amount where there is no Ongoing Responsibility for Medicals (ORM) is involved; and,
- The settlement, judgment, award, or other payment will be issued by a QSF under Section 468B of the IRC, in connection with a State or Federal bankruptcy proceeding; and,
- The funds at issue were paid into the trust prior to **October 1, 2011**.

To review a copy of the alert pertaining to funds paid into a QSF in its entirety, click here.

http://www.cms.gov/MandatoryInsRep/09_Alerts.asp#TopOfPage

Alert 3: Liability Insurance: Exposure, Ingestion, and Implantation Issues as it Relates to the Medicare Secondary Payer (MSP) Effective Date of December 5, 1980

CMS published guidance concerning exposure claims, specifically when Medicare will and will not assert a recovery claim against settlements, judgments, awards or other payments and when MMSEA Section 111 reporting is required. Several examples are provided as a reference but it is noted that the parties are responsible for making a determination regarding this policy. The alert confirms that the term “exposure” refers to the claimant’s actual physical exposure to the alleged environmental toxins, not the defendant’s legal exposure to liability.

In the following situations, Medicare will assert a recovery claim against settlements, judgments, awards, or other payments, and the MMSEA Section 111 reporting rules must be followed:

- Exposure, ingestion, or the alleged effects of an implant on or after December 5, 1980 is claimed, released, or effectively released.
- A specified length of exposure or ingestion is required in order for the claimant to obtain the settlement, judgment, award, or other payment, and the claimant’s date of first exposure plus the specified length of time in the settlement, judgment, award or other payment equals a date on or after December 5, 1980. This also applies to implanted medical devices.
- A requirement of the settlement, judgment, award, or other payment is that the claimant was exposed to, or ingested, a substance on or after December 5, 1980. This rule also applies if the settlement, judgment, award, or other payment depends on an implant that was never removed or was removed on or after December 5, 1980.

When **ALL** of the following criteria are met, Medicare will not assert a recovery claim against a liability insurance (including self-insurance) settlement, judgment, award, or other payment and MMSEA Section 111 MSP reporting is not required.

Note: Where multiple defendants are involved, the claimant must meet all of these criteria for each individual defendant in order for a settlement, judgment, award, or other payment from that defendant to be exempt from a potential MSP recovery claim and MMSEA Section 111 reporting:

- All exposure or ingestion ended, or the implant was removed before December 5, 1980; and,



- Exposure, ingestion, or an implant on or after December 5, 1980 has not been claimed and/or specifically released; and,
- There is either no release for the exposure, ingestion, or an implant on or after December 5, 1980; or where there is such a release, it is a broad general release (rather than a specific release), which effectively releases exposure or ingestion on or after December 5, 1980. The rule also applies if the broad general release involved an implant.

When a case involves continued exposure to an environmental hazard, or continued ingestion of a particular substance, Medicare focuses on the date of last exposure or ingestion for purposes of determining whether the exposure occurred on or after December 5 1980.

As an important reminder, when reporting a potential settlement, judgment, award, or other payment related to exposure, ingestion, or implantation, **the date of first exposure/date of first ingestion/date of implantation is the date that MUST be reported as the DOI.**

To view a copy of the above noted alert, click here

http://www.cms.gov/MandatoryInsRep/10_MMSEA_111_NGHP_%20Alerts.asp#TopOfPage

The content of these Alerts supersedes the content of the newly released NGHP User Guide and updates will be made to the next version of the User Guide. PMSI recommends that RREs and/or any other entities involved in the MMSEA Section 111 reporting process review the above noted alerts in their entirety.

PMSI will continue to monitor and keep you informed of any and all changes released by CMS in regard to MMSEA Section 111 reporting.

PMSI Client Support. PMSI is committed to providing our clients with the most current information on MMSEA reporting requirements and will continue to deliver updates as new information is issued by CMS. RREs should attend CMS teleconferences and consult the MMSEA Section 111 dedicated website at <http://www.cms.gov/MandatoryInsRep/> to obtain additional information about reporting requirements.

For more information on Medicare Secondary Payer-related Government Affairs Alerts, please contact your PMSI Representative at 888.MSA.PMSI, or visit the [Knowledge Center](#) section of our website at www.pmsionline.com.

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