



June 2009

Do the new Medicare reporting requirements affect you?

A guide to the Section 111 requirements – effective July 1, 2009

A new set of reporting requirements for insurance claims takes effect on July 1, 2009, mandating a complex reporting process with serious consequences for non-compliance.

The new regulations will for the first time require insurers and certain employers to report settlements, awards, and judgments on all liability, workers compensation, and no fault automobile claims involving a Medicare beneficiary. This reporting requirement clarifies Section 111 of the Medicare, Medicaid, and SCHIP Extension Act (MMSEA) of December 2007, and was first reported in our Claims Management Bulletin of April 2009.

Some background

The rationale for the new requirement is to help the federal government better enforce the provisions of the Medicare Secondary Payer Act of 1980. This act requires that where medical treatment of a claimant is covered by an insurance policy, and the claimant is also eligible for Medicare, the insurance carrier will be the primary payer for that treatment. Further, it requires the primary payer for any such liability, workers compensation, and no fault automobile claims to reimburse the government for any payments Medicare may have made which should have been the responsibility of the primary payer. Also, payers must set aside funds as a part of any settlement to pay for any future medical care to which Medicare might be exposed.

What is a reporting entity?

Medicare now requires that any organization paying direct settlement benefits to a claimant who is eligible for Medicare be registered as a "Responsible Reporting Entity" (RRE). In these situations it is extremely important for employers to determine who the Responsible Reporting Entity is, and to ensure that they are registered as an RRE, because the RRE must identify the claim and fulfill substantial reporting responsibilities.

The key consideration for determining the RRE in each case is to identify who Medicare considers to be the primary payer on that claim. The RRE is the entity issuing any direct

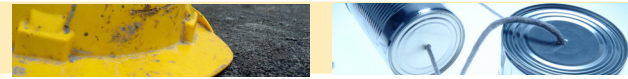
payment involving a medical claim to a person who is eligible for Medicare. When in doubt, look at the funding source:

- **Self insured plans.** If you are both the employer and the primary source of funding, you will be considered the RRE.
- **Fully insured plans.** If your plan is fully insured (such as a Guaranteed Cost Plan), your insurance carrier will be considered the primary payer, and therefore will be the RRE.
- **Risk retention programs.** If you have some form of risk retention program, such as a large deductible or self insured retention, you may be the RRE. If you fund an escrow account that must maintain a certain level of funds in order to pay claims, you would be considered the RRE. But if there is no escrow account, and the insurer holds a claims payment deposit and makes payment from this fund, the insurer would be considered the RRE.
- **Captives.** If the captive is the primary funding source for claim payments, the captive will be considered the primary funding source.
- **TPAs.** If your claims are administered by a Third Party Administrator (TPA), the TPA will never be considered to be the primary funding source—even though they may issue benefit payment checks.

What must a reporting entity do?

Section 111 of the MMSEA requires that the RRE must proactively review every liability, workers compensation, and no fault automobile claim to determine whether the claimant is eligible for Medicare. Eligible claimants typically include those who:

- Are age 65 or older
- Have end stage renal disease
- Have applied for Social Security Disability Insurance (SSDI) or who are considering applying for SSDI.
- Have more than 104 weeks of disability
- Are receiving Permanent and Total Disability (PTD) benefits or who have a PTD status.



If the claimant is Medicare-eligible, then the RRE must report the claim to the Center for Medicare and Medicaid Services (CMS). The specific reporting requirements of Section 111 are daunting. They involve extensive claimant and claim information, and a complex data transmission process and test period. The penalty for failure to report a claim is also severe: \$1,000 per claim, per day.

What should you do now?

The first thing your organization needs to do, and possibly the only thing, is to determine if you are an RRE. Do not delay: the deadline for registration has been extended from June 30 to September 30, but is still fast approaching.

If you are an RRE:

- Register with the CMS.
- Determine whether you will manage your own reporting, or if you will designate an outside reporting agency to report on your behalf. (For some recommended Reporting Agents, see sidebar.)
- Take an inventory of your open claims that involve potential payment for medical costs related to an occupational injury, personal or bodily injury claim, and determine if each claimant is eligible for Medicare.

If you are not an RRE:

- Consult with your Woodruff-Sawyer account executive to confirm that your insurer will complete their Mandatory Insurer Reporting.
- If your situation changes or payments arise after the September 30 deadline, it will be important to register as an RRE as soon as you become aware of a claim.

For more information, visit the CMS website for their NGHP User Guide: <http://www.cms.hhs.gov/MandatoryInsRep/Downloads/NGHPUserGuide031609.pdf>.

If you have any questions, or would like assistance in determining whether you are an RRE, please contact your Woodruff-Sawyer account executive or claims consultant.



The information provided in this newsletter should not be construed as legal advice or legal opinion on any specific facts or circumstances. The contents are intended for general information purposes only, and you are urged to consult an attorney concerning your own situation and any specific legal questions you may have.

Get help with reporting

Section 111 reporting duties can be challenging. If your organization is a Responsible Reporting Entity (RRE), we have identified the following Reporting Agents who can manage these responsibilities for you:

Gould & Lamb
Contact Kip Daniels
(941) 798 2098
kip.daniels@gouldandlamb.com
www.gouldandlamb.com

Corvel MSA
Dan Davis
(215) 497 0500
dan_davis@corvel.com
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Crowe Paradis
(866) 630 2722 ext2212
MSPnavigator@CPSmsa.com
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