



Service: MSPA (Medicare Secondary Payer Accreditation)
Module: LEARNING MODULE 8
Medicare Mandatory Insurer Reporting (Section 111 Reporting), Part 2
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Summary

In Module 8 of the MSPA certification program, Heather Traxler of Sanderson Firm and Brian MacAllister of Liberty Mutual discuss civil monetary penalties (CMPs) associated with noncompliance in Medicare Mandatory Insurer Reporting under Section 111 of the Medicare, Medicaid, and SCHIP Extension Act. The module covers the legislative background, key provisions of the final rule, safe harbors, statute of limitations, and appeals processes. This session emphasizes compliance strategies and practical measures to avoid penalties.

Background and Legislative Evolution: Section 111 reporting, introduced in 2007, mandates that Non-Group Health Plans (NGHPs) report settlements, judgments, and other payments involving Medicare beneficiaries to the Centers for Medicare and Medicaid Services (CMS). The SMART Act of 2013 added provisions for CMPs, enforcing timely and accurate reporting. In October 2023, CMS finalized rules to define noncompliance and establish a tiered penalty structure, effective October 2024.

Key Provisions of the Final Rule: The final rule identifies two primary noncompliance events:

1. Untimely reporting of Total Payment Obligation to Claimant (TPOC).
2. Untimely reporting of Ongoing Responsibility for Medical (ORM).

Penalties range from \$250 to \$1,000 per day of noncompliance, capped at \$365,000 per record, adjusted for inflation. The rule also defines safe harbors to shield NGHPs from penalties under specific circumstances, such as technical errors outside the NGHP's control or lack of cooperation from Medicare beneficiaries.

Safe Harbors and Reporting Compliance: Safe harbors require NGHPs to document efforts to obtain accurate data, including at least three attempts to secure the "Big Five" data points (first and last name, date of birth, gender, Social Security Number, and Medicare Beneficiary Identifier). CMS allows exceptions for unforeseen system changes and inadequate notification about reporting requirements.

Statute of Limitations and Appeals: CMS imposes a five-year statute of limitations for CMPs, starting from the date of noncompliance. The process begins with an informal



notice, giving Responsible Reporting Entities (RREs) 30 days to respond. If the issue is unresolved, CMS issues a notice of proposed determination with details about the penalty. RREs can appeal to an Administrative Law Judge (ALJ) within 60 days and subsequently to the Medicare Appeals Council if necessary.

Practical Compliance Measures: The module highlights best practices for avoiding CMPs, including:

- Ensuring timely and accurate reporting of TPOC and ORM.
- Using the Medicare Secondary Payer Recovery Portal (MSRP) to track and audit reporting data.
- Maintaining robust workflows for claims reporting and documenting all safe harbor conditions.

Future Implications: With CMS's limited capacity to audit records—approximately 1,000 annually—the module underscores the importance of proactive compliance to reduce the risk of penalties. Stakeholders are encouraged to partner with experts and continually refine their reporting processes.

This module emphasizes the criticality of compliance with Section 111 reporting to avoid financial and reputational risks. By understanding the regulatory framework and implementing best practices, stakeholders can minimize their exposure to penalties and ensure adherence to Medicare's requirements.

Learning Objectives

1. Understand the legislative and regulatory background of Section 111 reporting and its evolution under the Medicare Secondary Payer (MSP) Act.
2. Analyze the implications of civil monetary penalties (CMPs) for noncompliance with Section 111 reporting requirements.
3. Explore the provisions of the final rule published in 2023, including the definition of noncompliance, safe harbors, and statute of limitations.
4. Recognize the process for addressing CMPs, including pre-notice procedures, appeals, and penalties.
5. Develop compliance strategies to avoid penalties, focusing on timeliness, accuracy, and proactive reporting practices.

Primary Takeaways

1. CMPs under Section 111 reporting range from \$250 to \$1,000 per day per violation, capped at \$365,000 per record, adjusted for inflation.
2. The final rule defines noncompliance as untimely reporting of settlements (TPOC) or ongoing responsibility for medical (ORM).



3. Safe harbors protect against penalties in scenarios such as beneficiary noncooperation or system issues outside of the responsible reporting entity's (RRE) control.
4. CMS enforces a five-year statute of limitations for imposing CMPs, starting from the date of noncompliance.
5. RREs must implement workflows to ensure timely and accurate Section 111 reporting to minimize the risk of penalties.

Course Outline

- 1) Legislative Background and Evolution
 - a) History of Section 111 Reporting
 - i) Added to the Social Security Act in 2007 through the Medicare, Medicaid, and SCHIP Extension Act.
 - ii) Enhanced enforcement provisions under the SMART Act of 2013.
 - b) Final Rule Overview
 - i) Published October 2023, applicable October 2024.
 - ii) Focus on enforcing timeliness and defining noncompliance.
- 2) Key Provisions of the Final Rule
 - a) Definition of Noncompliance
 - i) Failure to report TPOC or ORM within 365 days.
 - ii) Excludes accuracy-related issues from CMP applicability.
 - b) CMP Tiers and Caps
 - i) \$250/day for delays <2 years, \$500/day for 2-3 years, \$1,000/day for >3 years.
 - ii) Maximum penalty: \$365,000 per record (adjusted for inflation).
 - c) Safe Harbors
 - i) Technical/system errors outside the RRE's control.
 - ii) CMS/contractor errors.
 - iii) Beneficiary noncooperation after documented attempts.
- 3) CMP Enforcement and Appeals Process
 - a) Notification and Initial Response
 - i) Informal pre-notice from CMS allows 30 days to respond.
 - ii) Opportunity to dispute CMS findings before penalties are assessed.
 - b) Appeal Levels
 - i) Administrative Law Judge (ALJ) review.
 - ii) Appeals Board for final disputes.
 - c) Statute of Limitations
 - i) CMPs must be imposed within five years of noncompliance.



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- ii) Examples illustrating timelines for penalties and reporting delays.
- 4) Best Practices for Compliance
- a) Timeliness in Reporting
 - i) Implement workflows for TPOC and ORM reporting.
 - ii) Utilize the Medicare Secondary Payer Recovery Portal (MSPRP).
 - b) Accuracy and Documentation
 - i) Ensure accurate ICD coding and policy details.
 - ii) Maintain clear records of safe harbor conditions.
 - c) Proactive Measures
 - i) Conduct periodic audits of Section 111 reporting data.
 - ii) Train teams on compliance updates and legislative changes.
- 5) Conclusion
- a) Emphasizing the Importance of Compliance
 - b) Preparing for Upcoming Regulatory Challenges

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