

# Medicare Compliance Alert

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October 2023

## CMS releases Section 111/Mandatory Insurer Reporting Civil Monetary Penalties Final Rule

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This Medicare Compliance Alert is to provide notice that on October 11, 2023, The Centers for Medicare and Medicaid Services (CMS) published its Final Rule addressing when and how it would impose a Civil Monetary Penalty (CMP), of up to \$1,000/day per claim, upon a Responsible Reporting Entity (RRE) for non-compliance with Mandatory Insurer Reporting (MIR) requirements. Of note, the official Final Rule significantly simplified the prior CMS proposed rules by defining untimely reporting of TPOC and ORM as the only basis for non-compliance to incur CMP's.

### When is the Final Rule effective?

The Final Rule is considered effective on December 11, 2023. However, the provisions within the Final Rule are not applicable until October 11, 2024.

This means any data submitted after December 11, 2023, may be subject to a potential CMP, but CMS will not act pursuant to the Final Rule until after the October 11, 2024.

### How and when will CMS impose a CMP?

Every quarter CMS will randomly select 250 new beneficiary records to audit from the entire pool of records received from all Responsible Reporting Entities (RREs). If CMS determines that a Total Payment Obligation to Claimant (TPOC) or Ongoing Responsibility for Medicals (ORM) is reported to CMS more than 1 year after it should have been reported, it may levy a CMP.

The CMP daily fine will be determined by the length of time the reported record is out of compliance. The tiers are as follows:

- \$250 each day for records that are out of compliance for one year but no more than two years.
- \$500 each day for records that are out of compliance for two years but no more than three years.
- \$1,000 each day for records that are out of compliance for three years or more.

Notably, CMS has capped the total CMP at \$365,000.00 per individual record.

### Gallagher Bassett Takeaways

Gallagher Bassett has been on the leading edge of compliance with MMSEA Section 111 Reporting since reporting commenced in January of 2011. We remain ahead of the Proposed Rule on our existing reporting platform, specifically:

- **Registering an RRE:** GB requires all claims have an RRE ID assigned and coordinates with the client and carrier partners to obtain the RRE Profile Report. Additionally, GB works with

the client to ensure the annual RRE certification process with CMS is completed. When not in place, regular follow up occurs with the client through the GB Account Manager.

- **Reporting TPOC's and ORM:** When a settlement is entered, a TPOC amount is automatically populated in the system and this information is transmitted to CMS on a quarterly basis (well ahead of the 1-year allowance under the Final Rule). Additionally, all claims are immediately evaluated for critical ORM coding once the claimant is determined to be Medicare eligible. Missing TPOC or ORM coding is proactively flagged by system errors and escalated for correction.
- **Good Faith Efforts to Obtain Big 5:** On workers' compensation claims, GB obtains the "Big 5" to query Medicare status from the employer. On general liability claims, GB will attempt to secure the "Big 5" information consistent with the "Good Faith" efforts outlined by CMS.

We will keep you informed as CMS implements the provision in the Final Rule. Should you have any questions, please do not hesitate to contact at your Client Services Manager or Cliff Connor, Vice President of Medicare Compliance at: [cliff\\_connor@gbtpa.com](mailto:cliff_connor@gbtpa.com)