

Medicare Secondary Payer and Certain Civil Money Penalties



***Non-Group Health Plan (NGHP)
Webinar***

January 18, 2024

Presentation Overview



Background and Revisions to the Final Rule



Important Dates



Overview of the Audit Process



Questions & Answers

Background:

Section 111 and the Medicare, Medicaid, and SCHIP Extension Act of 2007

- Section 111 of the Medicare, Medicaid, and SCHIP Extension Act of 2007 (MMSEA) added mandatory insurer reporting requirements to the Social Security Act.
- .
 - Reporting requirements were added with respect to Medicare beneficiaries who have coverage under Group Health Plan (GHP) arrangements and those who receive settlements, judgments, awards, or other payment from liability insurance (including self-insurance), no-fault insurance, or workers' compensation (Non-Group Health Plan (NGHP) arrangements).
 - The information submitted is used to determine Medicare primary versus secondary payer responsibility for the claims received, allowing for the continued protection of the Medicare Trust Funds.
- Penalties for non-compliance were included as part of the original statutory provisions.

Introduction:

Certain Civil Money Penalties (CMP) Final Rule

- **Rule is prospective only**
 - There will be no instances of retroactive enforcement related to non-compliance prior to implementation of the final rule.
- **No change to reporting requirements**
 - The rule does not add, remove, or alter any reporting requirements.
 - RRE's assigned reporting period remains the same.

Technical reporting questions should continue to go to the assigned EDI Representative.

CMP Final Rule: High-Level Overview

Timeliness of reporting will be reviewed

- Accuracy of an RRE's reporting and previously associated compliance thresholds will no longer result in a CMP.

Not every record will be reviewed

- Random sample of 250 new records per quarter
 - 1,000 total records per calendar year, not per RRE
- Sample will be proportionate to the GHP and NGHP records added.

A tiered approach will be applied to NGHP submitters

- CMS does not have the statutory authority to adjust GHP penalty amounts



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DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Medicare & Medicaid
Services

42 CFR Part 402

45 CFR Part 102

[CMS-6061-F]

RIN 0938-AT86

Medicare Program; Medicare
Secondary Payer and Certain Civil
Money Penalties

AGENCY: Centers for Medicare &
Medicaid Services (CMS), HHS.

ACTION: Final rule.

Definitions

Audit: The process by which CMS will randomly select 250 records for review to determine if they were submitted timely and, if not, if they are ripe for a CMP.

Record: Any individual occurrence of a TPOC or ORM for a Medicare beneficiary that must be reported to CMS. If a particular case has both an ORM and a TPOC component, this will constitute two records.

Instance: When referring to instances of noncompliance, any situation, discovered through the audit process, that could result in a CMP as a result of untimely submission of a record.

ORM: Ongoing Responsibility for Medicals; RRE's responsibility to pay, on an ongoing basis, for a Medicare beneficiary's medical case associated with a claim.

Other Operative Dates: When referring to prospectivity of the rule, other operative dates would be things like "funding delayed beyond TPOC" date.

TPOC: Total Payment Obligation to Claimant; Dollar amount of a settlement, judgment, award, or other payment in addition to, or distinct from, ORM; generally, a one-time lump-sum amount to an injured party to resolve a payment obligation.

Defining Timeliness: Compliant vs. Noncompliant Record

- Determined by comparing the date a TPOC record is accepted against the date CMS should have received the record.
 - Applies to the reporting of new records or updating existing beneficiary records.

COMPLIANT- Reporting within 1 year (365 days) of:

Settlement Date
reported in "Field 80",
OR

Funding Delayed
Beyond TPOC Date,
reported in "Field 82"
(whichever is later).

MSP Effective Date and ORM selected as "Y".

NONCOMPLIANT- Reporting **after** 1 year (366 days) from:

The date the RRE should have reported or updated
the beneficiary's record related to the TPOC, **and** the
record would have been successfully applied to the
database.

MSP Effective Date and ORM selected as "Y".

Important Dates



OCTOBER 11, 2023	CMP Final Rule was posted to the Federal Register.
DECEMBER 11, 2023	CMP Final Rule effective date.
OCTOBER 11, 2024	CMP Final Rule applicable date. The date after which the 365-day clock begins to run for when records must be timely submitted.
OCTOBER 11, 2025	Compliance review period begins for RREs.
APRIL 1, 2026	CMS will begin quarterly compliance audits, reviewing a random sample of new RRE records added the prior calendar quarter.

Audit Process: The Basics



- ✓ Random selection of 250 new and accepted records per quarter
 - A total of 1,000 records per calendar year will be reviewed.
 - Review is not per RRE, rather, all accepted records during a specific period.
- ✓ Pro-rata selection from newly submitted and accepted GHP and NGHP records
 - Both Section 111 and self-reported submissions will be included on a quarterly CMS report.
 - Instances of a failure to report may be discovered through other reporting methods.
- ✓ Timeliness of reporting will be reviewed
 - Reminder: Errors in reporting can result in a delay of timely reporting.

Audit Process: Continued



- ✓ **CMS will make all substantive decisions on CMPs**
 - COB&R contractors may assist with data gathering and administrative tasks.

- ✓ **TPOC and ORM are considered separate reporting obligations**
 - Even if there's an update to an ORM record, the TPOC will be viewed separately.
 - It is possible, though very unlikely, that both records could be randomly selected for CMS review.
 - While statistically unlikely, there is also a chance an RRE may have more than 1 record selected quarterly/annually for CMS review.

Audit Process: Continued



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Safe Harbors and Mitigating Factors

- RREs are afforded the chance to provide mitigating evidence as to why a CMP should not be imposed.
 - This process will be outlined in CMS' correspondence with the RRE.
- All reasonable evidence will be reviewed by CMS.
- Documented evidence of a beneficiary's failure to provide information:
 - Once in writing
 - Once by mail
 - Once by phone or any other reasonable method
 - Note: If beneficiary unambiguously indicates a refusal to provide information, no further efforts are needed.



A CMP will NOT be imposed when:

Noncompliance is beyond the RRE's control.
(Ex.- Existing policy timeframes for a claimant to report an incident.)

ORM is in dispute (with evidence supporting a late report).

CMS changes the reporting requirements and/or process without adequate notice
(minimum 6- month advance notice).

CMS and CMP Correspondence:

Informal and Formal Notices

Please ensure Profile Report recertification has been completed. It is imperative that CMS has updated contact information.

Informal Notice to Impose a CMP

- Notice (letter) emailed to the RRE's Authorized Representative; Account Manager cc'd
- Identification of noncompliant record and associated information
 - Not yet receiving a CMP
- Time to submit mitigating factors
 - Within 30 days of receipt of Informal Notice

Formal Notice to Impose a CMP

- Sent via Certified Mail
- You are receiving a CMP
- Appeals process is available

Calculating the CMP: NGHP Tiered Approach

Timeframe	Penalty Amount per Day per NGHP Record
> 1 year but < 2 years	\$250
> 2 years but < 3 years	\$500
> 3 years	\$1,000
Total Penalty for any 1 instance of noncompliance = NTE \$365,000	

Example:

An RRE's record has been randomly selected for CMS' audit.

Record is identified as 45 days late (i.e.- Record reported 410 days after the date it should have been reported, instead of less than 365 days later).

RRE will receive an Informal Notice identifying the noncompliant (untimely) record with a potential CMP amount of \$16,065 (\$11,250 adjusted for inflation).



2024 Inflation-Adjusted Rates:

\$1,000 = \$1,428

\$500 = \$714

\$250 = \$357



Applying the CMP Methodology: Examples of Compliant Reporting



- A Medicare beneficiary settles their liability litigation on 2/1/2025. The RRE reports the TPOC on 5/15/2025.
 - ✓ The RRE is compliant and not subject to a penalty with respect to this TPOC.
- A beneficiary has an auto accident on 2/1/2025 and reports the claim to the carrier on 5/1/2025. The RRE assumes ORM from the date of the accident, 2/1/2025. The RRE reports the ORM on 10/15/2025.
 - ✓ The RRE is compliant and not subject to a penalty with respect to this ORM.
- A Medicare beneficiary's product liability claim is settled on 2/1/2025, but the settlement amount and funding are not finalized until 12/1/2025. The RRE reports the TPOC date as 2/1/2025 and Funding Delayed Beyond TPOC Date as 12/1/2025, and the record is successfully reported to CMS on 7/1/2026.
 - ✓ The RRE is compliant and not subject to a penalty with respect to this TPOC.



Applying the CMP Methodology: Examples of Compliant Reporting



- An individual has a serious accident at work on 2/1/2025, and the RRE assumed payment responsibility from the date of the accident, 2/1/2025. The individual becomes a Medicare beneficiary effective 5/1/2025. The RRE reports the ORM on 4/15/2026.
 - ✓ The RRE is compliant and not subject to a penalty with respect to this ORM.
- A Medicare beneficiary settles their liability litigation on 10/1/2023. The RRE reports the coverage on 12/1/2024.
 - ✓ Although the record exceeds 365 days from the date it should have been reported, the Final Rule does not consider retroactive reporting and is not subject to a penalty related to this coverage.
 - ✓ CMS will begin its review period on 10/11/2025; one (1) year after the Final Rule's effective date.



Applying the CMP Methodology: Examples of Noncompliant Reporting



- A Medicare beneficiary settles their liability litigation on 2/1/2025. The RRE reports the TPOC on 4/1/2026.
 - ✗ The RRE is subject to a CMP for the period between 2/2/2026 – 4/1/2026.
- A Medicare beneficiary has an accident on 2/1/2025 and reports the incident to their carrier on 5/1/2025. The RRE reports the ORM on 3/15/2026.
 - ✗ The RRE is subject to a CMP for the period between 2/2/2026 – 3/15/2026.
- A beneficiary has an auto accident on 2/1/2025 and reports the claim to the carrier on 5/1/2025. The RRE assumes ORM for the alleged injuries from the date of the accident (2/1/2025). A settlement is subsequently reached on 10/15/2025 and the ORM is terminated. The RRE reports ORM on 5/15/2026
 - ✗ The RRE is subject to a CMP for the period between 5/2/2026 – 5/15/2026.
- In some of these cases, an RRE may be able to provide mitigating evidence to prevent assessment of a penalty. For example, the RRE may demonstrate the policy allowed the beneficiary to report the claim a significant amount of time after the incident, and so ORM was assumed considerably later than the date of incident.

Other Considerations

- **Statute of Limitations**
 - 5 years, as codified in 28 USC § 2462.
 - Clock begins when **record is actually reported, or when CMS obtains information** that could reasonably lead to discovery of noncompliance (such as a corresponding self-report).
- CMP will only be contemplated for untimely reporting of “add” records.
 - Note: Though a CMP may only be issued for “add” records, accurate reporting is still important and statutorily required. There may be other consequences to inaccurate reporting such as incorrect demand amounts or False Claims Act allegations.

Updated Guidance



- Updated NGHP User Guide will be posted in the near future.
 - A new CMS.gov webpage will be developed in the future, specific to the CMP process.
- Questions and comments specific to CMPs should be directed to the CMS resource mailbox: sec111cmp@cms.hhs.gov

Question and Answer Session



Reminders

- Please complete the Poll Questions at the conclusion of the Webinar.
- Questions and comments specific to CMPs should be directed to the CMS resource mailbox: sec111cmp@cms.hhs.gov