

February 19, 2010

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*Alert! MEDICARE SECTION 111 REPORTING UPDATES Alert!*  
*Alert! MEDICARE LIEN MANAGEMENT UPDATE Alert!*

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**In our effort to keep you current regarding developments in the Medicare Section 111 Mandatory Reporting process and implications on Medicare Secondary Payer requirements, we have prepared a brief overview summarizing some of the most recent comments and clarifications CMS has expressed.**

#### **Medicare Sues Regarding Settlement!**

An action was commenced in the US District Court in Alabama in December 2009, seeking to enforce Medicare's right of reimbursement under the Secondary Payer statute (US v Abernathy). The original actions involved 907 plaintiffs relating to PCBs from a manufacturing. Settlement of \$300M was reached with all defendants and insurers to pay the plaintiff attorney fees, relocation and education of the plaintiffs, and for future preventive care and testing.

Since Medicare was not mentioned in the settlement, the US is seeking application of the MSP Act against the plaintiffs, their attorneys, the insurers, and the actual defendants for recovery of any conditional payments and double damages.

Be aware that there may be some merit in this action, since the plaintiffs released the medical expenses. It does not matter how the parties allocate settlement funds if the release has the effect of releasing medical injury and expense.

#### **MMSEA Reporting Delayed Again for NGHPs!**

The reporting for Non-Group Health Plan (NGHP) Responsible Reporting Entities (RREs) under the MMSEA was to commence during the second quarter of 2010. Despite many indications from CMS that this commencement date was not going

to be changed, in an announcement on February 16, 2010, CMS has now extended the initial active reporting date for NGHPs until the first quarter of 2011. Each RRE must now report their initial claims data during their assigned reporting week between January 1, 2011 and March 31, 2011.

#### **New NGHP User Guide Week of Feb. 22!**

Just this week CMS has indicated they will have a new Non-Group Health Plan (NGHP) User Guide available on their website for the reporting of claims in association with the MMSEA Sec. 111 requirements. A new guide for the reporting of Group Health Plan (GHP) participants was out in January. Both can be accessed through the CMS dedicate website at:  
<http://www.cms.hhs.gov/mandatoryinsrep/>.

#### **NGHP RREs Still Need to Get Registered**

While those RREs with regular active claim handling involving Medicare beneficiaries should have been registered by December 31, 2009 and should be presently completing their testing phase for live production reporting systems, if they are not yet registered, it is important to do so as soon as possible. For those who are not sure if they presently need to be registered, seek advice to be certain you are not missing any potential reportable claims that may trigger the need to register and ultimately report.

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## **Still Must Report Claims From 2010**

The extension for actual live production reporting does not contain any extension for the date of claims (TPOC or ORM Dates) that need to be reported. As a result, even though the actual reporting will not be done until the first quarter of 2011, all claims meeting the reporting requirements during 2010, set out in the User Guide, must be reported with the initial report. Be sure to track the information on these claims this year so you are prepared to report timely next year.

## **Testing to be Done by December 31, 2010**

RREs must complete their testing by December 31, 2010 to be prepared to move to actual live production claim data reporting by the first quarter of 2011. Of course if it does not reasonably appear that a particular entity will have any claims to report, the registration and testing is not necessary. However, so far CMS has not changed the recommendation that once it appears that such reporting will be necessary the RRE must register at least one full quarter in advance of the need for actual reporting to be done.

## **Final Definition of RRE**

CMS continues to indicate refinement of the definition of who is an RRE will be forthcoming. It is anticipated that the definition will be clarified in the upcoming third version of the User Guide. It is not anticipated that the new definition will be

much different that the proposed revision posted on the CMS MMSEA website earlier last year. You may recall that subsidiaries cannot be RREs for the parent company or for siblings under the proposed revisions. We anxiously await the final details on this key subject.

## **Write-Offs Still Up In the Air!**

Another area significantly impacting reporting decisions is whether write-offs in any form will be reportable events. There is still no word from CMS on this subject but it is hoped this will be addressed in the new User Guide as well. At present it has been recommended that RREs keep any such adjustments below the dollar threshold for reporting to avoid any question of creating a reportable event. This may not help in the ongoing payment of medicals though which does occur in some claims handling decisions as a matter of internal risk management.

## **CMS Town Hall Teleconference Feb. 25**

For more discussions from CMS of the new guide and reporting there is an upcoming teleconference by CMS on the reporting updates that all can attend. The next conference is on February 25, 2010 at 1 PM. Details can be found at:

<http://www.cms.hhs.gov/MandatoryInsRep/Downloads/NGHPTeleconfDoc2010.pdf>

## **Closing Note**

While we are hopeful this information is of use, it does not substitute for legal advice. We remain positioned to work with you toward your ultimate compliance.

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