

ALERT

# Section 111 Bulletin: Overview of CMS December 29, 2009 Alert for Foreign Insurers and January 5, 2010 "Town Hall" Teleconference

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January 6, 2010

On December 29, 2009, the Centers for Medicare & Medicaid Services (CMS) released an Alert stating that most overseas insurers that make payments to Medicare beneficiaries for medical expenses (therefore considered Responsible Reporting Entities (RREs) under Section 111 of the Medicare, Medicaid, and SCHIP Extension Act of 2007) will not have to register with CMS until a period yet to be defined beginning April 1, 2010. This announcement confirms verbal guidance discussed during prior Non-Group Health Plan (NGHP) "town hall" teleconferences held by the agency. During CMS's most recent NGHP teleconference, held January 5, 2010, agency representatives discussed this Alert and provided further information about registration and reporting for overseas insurers. In addition, this teleconference focused on technical questions regarding the Section 111 data exchange process, some of which are discussed below. CMS also announced that the updated NGHP User Guide, originally expected to be released in December 2009 or January 2010, will most likely be issued in February 2010.

## Overseas Insurer Alert

On December 29, 2009, the CMS released an Alert addressing the Section 111 registration delay for overseas insurers. The Alert advises that even if an insurer is located outside the United States and does business solely overseas, CMS will consider the insurer to be an RRE if it makes payments to Medicare beneficiaries that cover medical expenses. CMS therefore expects such overseas RREs to register

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under Section 111. There remains a glitch, however, in the registration system. If these overseas insurers do not have a U.S. address and/or a U.S. Tax Identification Number (TIN) and/or an Employer Identification Number (EIN), they are unable to register using the current electronic registration process. The December 29th Alert reaffirms verbal guidance from prior CMS teleconferences that overseas RREs do not need to register until April 1, 2010 at the earliest, when a modified registration process should become available.

Despite the delayed registration date, the Alert encourages overseas entities to apply for a U.S. EIN by completing the Internal Revenue Service Form SS-4. Each insurer will need to decide whether registering with the U.S. Internal Revenue Service is an appropriate business decision at this time. Since Section 111 is a U.S. law, it is unlikely to apply extraterritorially to all overseas insurers, and non-U.S. entities may want to evaluate their obligations under this regulatory regime before taking any action, including registration. For a more in-depth discussion of the extraterritorial application of Section 111, please see our Section 111 Bulletin focusing on this issue.

If a non-U.S. insurer decides to apply for an EIN, it may apply by phone, fax, or mail. Although entities with no principal place of business in the United States are unable to use the online application available to U.S. domiciled entities, they may receive an EIN immediately by calling the Business & Specialty Tax Line designated for international applicants at (215) 516-6999. Non-U.S. insurers may also receive an EIN within four business days by faxing Form SS-4 to (215) 516-1040, or within four weeks by mailing Form SS-4 to the IRS EIN International Operation office in Philadelphia, Pennsylvania.

CMS does not state in this Alert when overseas insurers will be required to begin reporting, but the agency confirmed during the January 5, 2010 "town hall" teleconference that it will not require non-U.S. insurers to report any sooner than the *third* quarter of 2010. The Alert does specify that overseas RREs will still be required to catch up later on any missed reporting, that is, report all settlements, judgments, awards, or other payments made to Medicare beneficiary claimants on or after January 1, 2010, and report all ongoing responsibility for medical payments that existed on or after July 1, 2009. These are the same dates that apply to domestic liability, no-fault, and workers' compensation insurers, which will begin reporting in the second quarter of 2010 when some non-U.S. entities will just be starting the registration and testing process. It is important for overseas insurers to maintain records of claims resolutions going back as far as July 2009, since these payments will eventually need to be reported to CMS.

### "Town Hall" Teleconference

The overseas insurer Alert was discussed during CMS's most recent "town hall" teleconference for NGHPs on January 5, 2010. In addition to providing information regarding the Alert, agency representatives answered technical questions regarding the Section 111 data exchange process. Some of the important topics addressed included:

- **Updated NGHP User Guide:** Despite prior predictions by CMS that the updated NGHP User Guide would be posted in December 2009 or January 2010, the agency has now stated that it will most likely release the new guidance in February 2010.

- **Software Update:** A new version of the HIPAA Eligibility Wrapper (HEW) software will be available on January 6, 2010, but RREs may continue to use the old version if they do not want to update immediately.
- **Manual Claims Submission:** CMS clarified that there is no alternative reporting process currently in place for RREs with very few claims to report. RREs are not able to manually enter claims information on the Coordination of Benefits Secure Website (COBSW) at this time, but there is a function on the website that allows RREs to report that they have zero claims to file in a quarter, thus avoiding the submission of an empty electronic file. CMS is working on an alternative, less time consuming process to accommodate RREs with a small number of claims to report.
- **Total Payment Obligation to the Claimant (TPOC) Threshold:** Despite some confusion created by the wording of the TPOC sections in the NGHP User Guide, CMS stated that TPOC payments of exactly \$5,000 are exempt from the reporting requirements.
- **Health Insurance Claim Number (HICN) and Social Security Number (SSN) Safe Harbor:** In response to a question about what constitutes due diligence in attempting to obtain a claimant's HICN or SSN, CMS provided little guidance about a possible safe harbor for insurers besides recommending that insurers maintain in-house documentation of any attempts to obtain this information. CMS offered that the agency is still steering away from a bright-line rule in this area.

The next NGHP town hall teleconference, scheduled for January 28, 2010, will focus on policy questions regarding the Section 111 reporting process.

Our Section 111 Team routinely covers the Section 111 teleconferences typically held twice a month by CMS, and we send timely detailed summaries of teleconference highlights to our clients. We also maintain a searchable electronic database of the transcripts back to October 2008. Please let us know if you would like more information about CMS's Alert for overseas insurers or about any of the topics discussed in yesterday's call. You may also access our Section 111 webpage and the Section 111 Bulletins and articles we have published by clicking here.