

ALERT

Section 111 Bulletin: Newly Issued Section 111 User Guide Leaves NGHP Insurers Demanding More From CMS

September 7, 2011

The Centers for Medicare & Medicaid Services (CMS) has released version 3.2 of the "MMSEA Section 111 Mandatory Reporting Liability Insurance (Including Self-Insurance), No-Fault Insurance, and Workers' Compensation User Guide" (User Guide). The revised User Guide, dated August 17, 2011, was available on the CMS website as of September 1, 2011.

The revised User Guide offers no surprises. Consistent with the previous version of the NGHP User Guide and statements of CMS representatives during Section 111 Town Hall teleconferences as well, the new User Guide revisions primarily consist of incorporation of CMS Alerts and other Section 111 guidance issued over the past year. Many predictable and administrative changes were made, for example, to reflect the reporting implementation date extensions announced in a November 9, 2010 Alert addressed to liability insurers. Some additional guidance and clarification have been added, and the revised document, overall, provides a more comprehensive resource for Responsible Reporting Entities (RREs) when making registration and reporting decisions.

The release of the revised User Guide highlights the lack of progress made by CMS over the past 14 months on some key issues that have been raised by the insurance industry and acknowledged, but not resolved, by CMS. As a result of those unresolved issues, the American Insurance Association (AIA) recently requested that Department of Health and Human Services Secretary Kathleen Sebelius again delay the implementation date of some Section 111 reporting. AIA specifically cited the agency's failure to issue guidance

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on a number of critical open issues, such as the reporting of mass tort settlements involving pre-December 5, 1980 exposure to an environmental hazard, as a basis for such a request. Accordingly, AIA requested that the Secretary delay both the October 1, 2011 date for property-casualty insurers' (including self-insureds) collection of information about settlements, judgments and awards, as well as the commencement of mandatory insurer reporting otherwise scheduled to begin in the first quarter of 2012.

A summary of the 39 revisions made to the User Guide is available, in order of appearance, at page six of the User Guide. In our opinion, some of the more notable changes include:

- CMS updated Section 7.1 to incorporate the February 7, 2011 "Alert for Foreign Insurers." Wiley Rein has previously analyzed the implications of this additional guidance for Foreign Insurers. Our analysis is available [here](#).
- Section 11.2.5 now contains additional information concerning the selection and reporting of ICD-9 diagnosis codes (now posted on the Coordination of Benefits Secure Website (COBSW)), and CMS added the November 12, 2010 Alert titled "Special Default ICD-9 Code for RREs" to that section. Wiley Rein's analysis of the guidance regarding this "NOINJ" default code is available [here](#).
- CMS updated Section 11.7.4 to remove references to the "Description of Illness/Injury" text field, which became obsolete in January 2011. This section was also updated to provide new examples of reporting scenarios, including one where ORM is assumed for one injury and TPOC established for a second injury on the same claim. Another new example scenario provides reporting guidance for situations where ORM ends for one injury but continues for other injuries on the same claim.
- New Section 11.7.5 lists several Claim Input File reporting "Dos and Don'ts" that address technical reporting issues and contain general but important reminders about reporting.
- CMS revised Section 11.8 to provide information on a new electronic process whereby RREs can immediately report an ORM termination via the COBC Call Center. RREs that make this initial report must still update their next quarterly Claim Input File.
- Section 11.10.2 now reflects the information regarding the "timeliness of reporting" NGHP TPOCs in the October 14, 2010 Alert and adds additional guidance on use of the "Funding Delayed Beyond TPOC Start Date" field.
- New Section 13.5 provides instruction on "Querying Using the Beneficiary Lookup on the COBSW."
- The description for "State of Venue" (Field 17) on the Claim Input File clarifies that if the applicable law controlling the resolution of the claim is federal law, the State of Venue is "US."
- New Appendix D incorporates the new TIN Reference Response File layout effective October 1, 2011.
- CMS updated Appendix I to remove ten ICD-9 "E-Codes" previously unavailable for reporting the diagnosis of "External Causes of Injury" (E9670 through E9679). These codes refer to injuries caused by "child and adult abuse" and are now valid for use in the Alleged Cause of Injury, Incident, or Illness (Field 15) on the Claim Input File Detail Record.

The cancellation of the August 24 town hall teleconference and much delayed issuance of the revised User Guide has again frustrated insurers' hopes for resolution of important Section 111 policy issues that are causing a serious backlog of insurer settlements. AIA thus was forced to make a third request for a delay of reporting for insurers still uncertain of what to report come the first quarter of 2012.

The next teleconference will be held on September 21, 2011, and is scheduled to address technical reporting questions. With the cancellation of the last policy call and the recent release of the revised User Guide, we expect to hear many policy-related questions during the upcoming teleconference, despite its billing as a forum for technical issues.

Our Section 111 Team routinely covers the Section 111 NGHP teleconferences held most months by CMS, and we send periodic Alerts to our clients addressing notable town hall discussions and other Section 111 developments. We also maintain a searchable electronic database of town hall transcripts back to October 2008. Please let us know if you would like more information about any of the Section 111 topics discussed in this Alert. You also may access our Section 111 webpage and other Section 111 Bulletins and articles we have published at www.wileyrein.com/section111.