

ALERT

Section 111 Bulletin: New Section 111 Guidance Amends Decades-Old CMS Practice of Identifying Medicare Beneficiaries by Full Social Security Numbers

September 18, 2014

On September 10, 2014, the Centers for Medicare & Medicaid Services (CMS) issued an Alert reflecting a potentially significant change in the reporting obligations of Responsible Reporting Entities (RREs) under Medicare's Section 111 mandatory insurer reporting rules for Non-Group Health Plans (NGHPs). Effective January 5, 2015, when reporting settlements, judgments, awards, or other payments with Medicare beneficiaries, RREs may report the last five digits of a beneficiary's Social Security Number (SSN) if they are unable to obtain the individual's full SSN or Medicare Health Insurance Claim Number (HICN). This change in Section 111 reporting protocol reflects CMS's purported compliance with Section 204 of the Strengthening Medicare and Repaying Tax Payers Act of 2012 (SMART Act), which states that an RRE "is permitted but not required to access or report to the Secretary beneficiary social security account numbers or health identification claim numbers."

Clearly, CMS has defined Congress's directive narrowly and believes the Agency may still require the reporting of *partial* SSNs if an RRE does not report a HICN. Not all RREs or beneficiaries may agree with this statutory interpretation and may hold firm to the argument that Congress required CMS to devise an alternative to the reporting of any portion of an SSN. Permitting an RRE to report a HICN does not provide an alternative because a HICN is a beneficiary's SSN plus an alpha identifier.

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Practice Areas

Health Care
Section 111 Insurer Reporting and MSP
Reimbursement

The Details

Since commencement of Section 111 NGHP reporting in the first quarter of 2011, RREs have been required to report either the beneficiary's *full* SSN or HICN *and* the individual's first name, surname, date of birth, and gender. Starting January 5, 2015, an NGHP RRE may report the last five digits of the SSN in lieu of the full SSN or HICN. That is the only change announced by the Alert to Section 111 reporting protocol, but its significance should not be underestimated. The loosening of SSN reporting may facilitate insurer settlements with claimants reluctant to provide their full SSNs because for years Medicare has told them to guard those numbers carefully.

Despite CMS's new stance on SSN reporting, CMS "highly recommends" that RREs continue to submit full SSNs because, as explained by the Agency, a complete SSN "significantly increases [CMS's] ability to accurately identify an individual as a Medicare beneficiary." In an apparent attempt to sell this recommendation, CMS will require RREs that report only the last five digits of a SSN to "document their attempts to obtain" a full SSN. CMS suggests that RREs do so by using the model form provided in the Downloads section of the CMS Mandatory Insurer Reporting website for NGHPs. At this time, it appears that RREs only need to retain this form in their claim files and not submit it to CMS. But stay tuned. CMS plans to issue another Alert before January 5 that will provide additional instructions for entry of partial SSNs.

Finally, in addition to easing SSN reporting requirements on RREs, the Alert may signal that CMS is addressing longstanding questions and will be issuing more guidance on the reporting and reimbursement obligations of property and casualty insurers under the Medicare Secondary Payer statute. We anticipate news on the Section 111 rulemaking front this fall.

Our Section 111 Team routinely covers CMS's Section 111 NGHP Town Hall Teleconferences, and we send periodic Section 111 Bulletins 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 Section 111 Bulletin. You also may access our Section 111 webpage and other Section 111 Bulletins and articles we have published at www.wileyrein.com/section111.