

# Medicare Secondary Payer and Certain Civil Money Penalties

*Group Health Plan (GHP) Webinar*

*January 17, 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.

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

- A tiered penalty approach will be applied to NGHP submitters.

Federal Register / Vol. 88, No. 195 / Wednesday, October 11, 2023 / Rules and Regulations 70363

### 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

Term	Definition
<b>Audit:</b>	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.
<b>Record:</b>	Any medical coverage under a group health plan arrangement (including primary prescription drug coverage) for any individual employee or dependent, where that individual has been identified as entitled to Medicare, that must be submitted via the Section 111 reporting process.
<b>Instance:</b>	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.
<b>MSP Effective Date:</b>	The start date where the GHP coverage overlaps the Medicare coverage.

# Defining Timeliness: Compliant vs. Noncompliant Record

- Determined by comparing the date a 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 <b>within</b> 1 year (365 days) of:
MSP effective date of coverage

NONCOMPLIANT- Reporting <b>after</b> 1 year (366 days) from:
The date the RRE should have reported the MSP effective date of coverage, <b>OR</b>
The applicability date of the final rule (10/11/2024)

# Important Dates



Date	Description
<b>OCTOBER 11, 2023</b>	CMP Final Rule was posted to the Federal Register.
<b>DECEMBER 11, 2023</b>	CMP Final Rule effective date.
<b>OCTOBER 11, 2024</b>	CMP Final Rule applicable date.  The date after which the 365-day clock begins to run for when records must be timely submitted.
<b>OCTOBER 11, 2025</b>	Compliance review period begins for RREs.
<b>APRIL 1, 2026</b>	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, 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 new, accepted GHP and NGHP records
  - Both Section 111 and self-reported submissions will be sampled, potentially resulting in the discovery of the failure to report.
- Timeliness of reporting will be reviewed
  - Reminder: Errors in reporting can result in a delay of timely reporting.

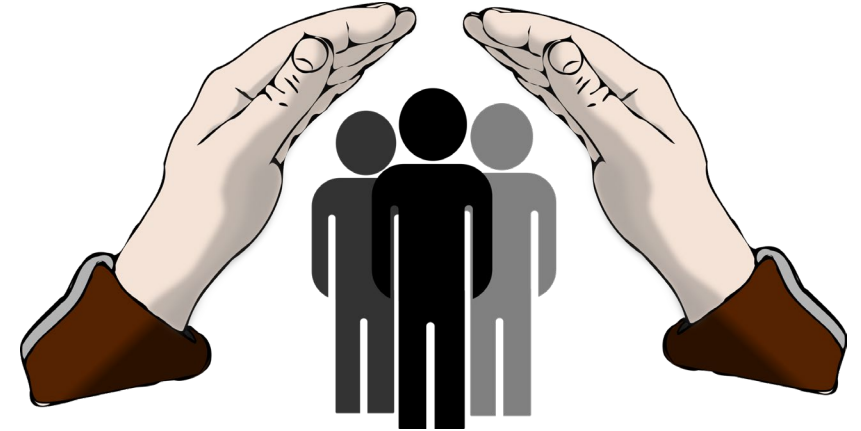
# Audit Process: Continued



- **CMS will make all substantive decisions on CMPs.**
  - COB&R contractors may assist with data gathering and administrative tasks.
- While statistically unlikely, there is always some chance an RRE may have more than 1 record selected quarterly/annually for CMS review.

# 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.



## A CMP will NOT be imposed when:

Noncompliance is beyond the RRE's control.

CMS imposes any changes to 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

- \$1,000 (as adjusted), per instance of noncompliance, for each calendar day that a record is late.
  - Days Late = Difference between the date actually reported and the date it should have been reported

## 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 \$64,260 (\$45,000 adjusted for inflation).



**2024 Inflation-Adjusted Rates:**

**\$1,000 = \$1,428**



# Applying the CMP Methodology: Examples of Compliant Reporting



- A Medicare beneficiary enrolls in a new employer health plan, with coverage effective 1/1/2025. The RRE reports the coverage on 5/15/2025.
  - The RRE is compliant and not eligible for a penalty related to this coverage.
- A non-Medicare beneficiary enrolls in a new employer plan, with coverage effective 1/1/2025. The individual becomes a Medicare beneficiary on 4/1/2025. The RRE reports the coverage on 1/31/2026.
  - The RRE reported before the required 4/1/2026 date. The RRE is compliant and not eligible for a penalty related to this coverage.
- A Medicare beneficiary enrolls in a new employer health plan, with coverage effective 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 enrolls in a new employer plan, with coverage effective 1/1/2025. The RRE reports the coverage on 4/1/2026.
  - The RRE is not compliant and is subject to a CMP for the period between 1/2/2026 – 4/1/2026 for this record.
- A Medicare beneficiary continues enrollment in their employer plan, which was reported prior to 2023. The beneficiary is enrolled in a new prescription drug plan with coverage effective 11/1/2024. The prescription drug coverage is reported on 12/1/2025.
  - The RRE responsible for reporting the primary prescription drug coverage is not compliant and is subject to a CMP for the period between 11/1/2025 – 12/1/2025.

# 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 GHP 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](mailto: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](mailto:sec111cmp@cms.hhs.gov)