

# Medicare Secondary Payer and Certain Civil Money Penalties



*Non-Group Health Plan (NGHP)  
Webinar*

*October 17, 2024*

# Presentation Overview



Reminders



Clarifying the Audit Process



Maintaining Compliance



CMS.gov Updates



Questions & Answers

# Reminders: Important Dates



**Note-** There are no additional changes to:

- Reporting requirements
- Designated reporting periods
- EDI Representatives

October 11, 2024

CMP Final Rule became applicable

Start of the "Compliance Clock"

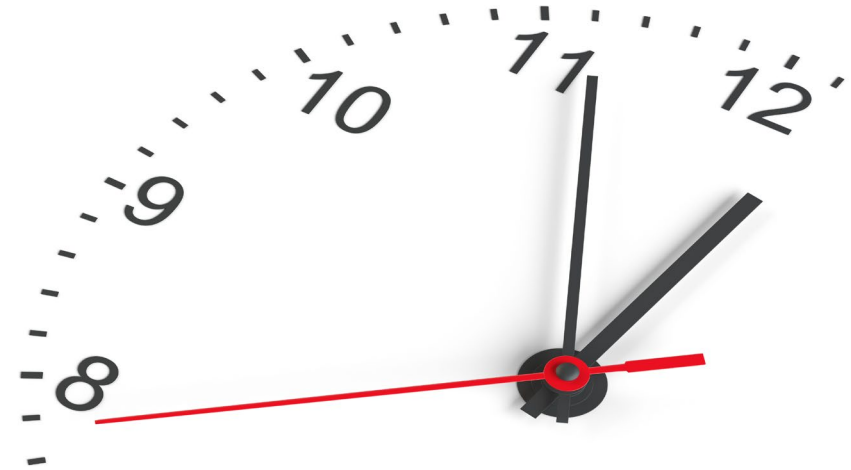
Reportable MSP occurrences **on or after** this date are eligible for CMS review

October 11, 2025

CMP enforcement date

MSP occurrences dated on or after 10/11/2024 must be reported within 365 days

# Reminders: The Timeliness Requirement



- Final Rule requires that records are submitted in a timely manner.
- An RRE is considered to have reported timely, or is compliant with the Section 111 reporting requirements, if their record is reported within 365 days of:
  - The date of the settlement, judgement, award or other payment (TPOC Date or Funding Beyond TPOC Date, whichever is later), *OR*
  - The effective date where ongoing payment responsibility for medical care has been assumed by the entity. (The date ORM was assumed (the date of incident (DOI) or the date the beneficiary became entitled to Medicare, whichever is later.)
- It is not the reporting agent's responsibility to ensure Section 111 records are submitted to CMS in a timely manner, if such a service is being used.



# Reminders: NGHP Tiered Penalty Approach

CMS has utilized its authority under 42 U.S.C. § 1395y(b) to adjust the penalty amounts imposed on NGHP RREs. The following penalty amounts will be assessed **per day** per non-compliant NGHP record:

**\$250**

> 1 year but < 2 years

**\$500**

> 2 years but < 3 years

**\$1,000**

> 3 years

## 2024 Inflation-Adjusted Rates:

\$1,000 = \$1,428

\$500 = \$714

\$250 = \$357

*Penalties for any 1 instance of non-compliance are NTE \$365,000.*

# Reminders: Updating RRE Information



CMP correspondence will be mailed to the RRE's Account Representative (AR) on record.

- Copies will be mailed to Account Manager (AM).
- Reporting Agents will not receive CMP correspondence.

It is the RRE's responsibility to ensure all contact information is up to date.

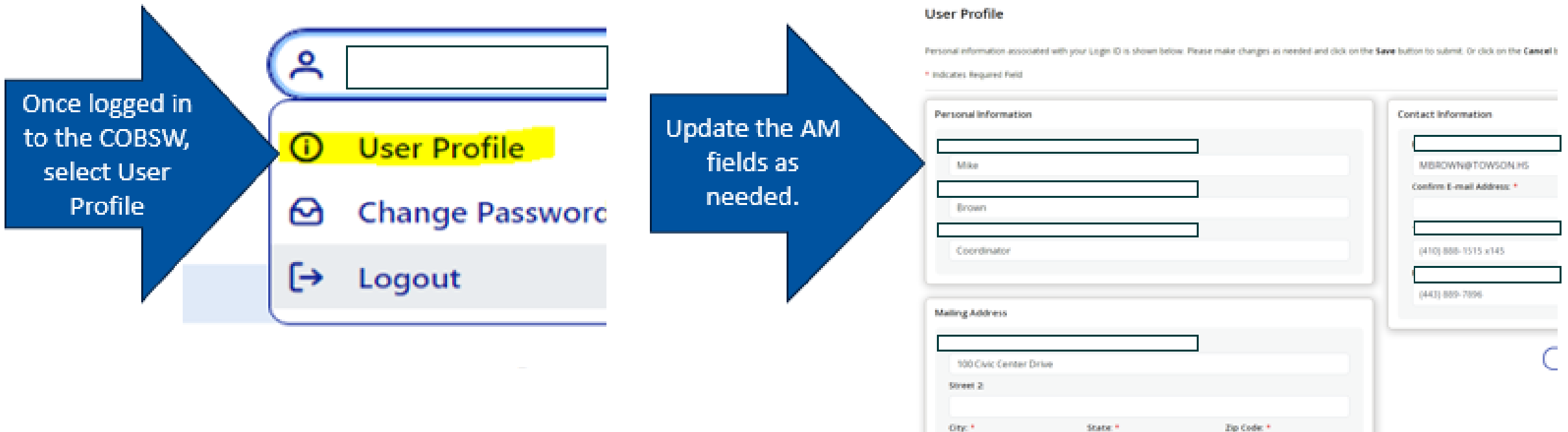
- RREs will still be held accountable should any CMP correspondence be missed due to inaccurate, outdated contact information.

Your assigned EDI Representative should be contacted if:

- The named AR requires replacement and/or associated contact information requires updating.

# Updating the AM Contact Information

- If the named AM requires replacement, please contact your assigned EDI Representative.
- If the AM contact information and the RRE's account information (e.g., address, phone, etc.) requires updating, the AM can complete this action via the COBSW.





# Clarifying the Audit Process

*Note: The statutory requirements are not waived due to another entity or individual reporting the information an RRE is required to report.*



- CMS' 1<sup>st</sup> audit will include records from the 4<sup>th</sup> Quarter of 2025.
  - The “compliance clock” began 10/11/2024 and eligible MSP occurrences must be reported within 365 days.
- Random sample of 250 new, accepted records per quarter which proportionately represent GHP and NGHP records.
  - Records received through both Section 111 (including records submitted through DDE) and non-Section 111 submissions will be sampled.
    - Non-Section 111 records will be matched to a Section 111 record, which will be evaluated for compliance.
    - If a non-Section 111 record cannot be matched to a Section 111 record, that suggests potential non-compliance.
  - Sample is across “entire universe” of a quarter’s records, not per RRE, and include DDE records.





# Maintaining Compliance

- Clarification of the Final Rule
- Reporting examples that are compliant and non-compliant with the Section 111 requirements

# Attempts to Acquire Beneficiary Information



**Reminder:** *The MBI/SSN Collection- NGHP Model Language* is available for download on CMS.gov.


- The RRE must make a total of 3 “good faith attempts” to obtain information for reportable beneficiaries.
  - A minimum of **2 attempts** must be **mailed or emailed** to the beneficiary and their attorney.
  - The **3<sup>rd</sup> attempt** can be made via **phone call, mail, or email**.
  - The **order of the communication attempts does not matter**, only that 2 attempts were made via mail or email.
- If the necessary methods of communication are attempted, the safe harbor has been reached.
  - Should the RRE receive a written response from the individual/representative clearly refusing to provide any portion of the requested information, no additional communication attempts are required by the RRE.
- RREs are required to maintain accurate records reflecting each communication attempt made with the beneficiary.


# Attempts to Acquire Beneficiary Information: Example #1

- A beneficiary settles a liability case with the RRE on 2/5/2025 and payment is made that same day.
  - The RRE e-mails the beneficiary and their attorney to request the beneficiary's SSN for reporting purposes.
  - After 2 weeks of no response, the RRE mails a letter to the beneficiary requesting their SSN and explaining why it is necessary for the RRE to have it.
  - After no response was received from either the email or mailed letter, the RRE attempts to call the beneficiary and their attorney, but the call is never returned.
  - As a result, the RRE is unable to report the 2/5/2025 TPOC.
- ✔ No CMP will be issued. The RRE exhausted all necessary avenues to acquire the information, pursuant to 42 CFR § 402.1(c)(22).
- ✔ If the beneficiary/attorney did respond to any of the RRE's email attempts and refused to provide the requested SSN, no additional communication attempts would be required by the RRE.
- The RRE should clearly and completely document their communication efforts and retain the documentation to be used as evidence of their attempts to obtain the necessary beneficiary information.

# Attempts to Acquire Beneficiary Information: Example #2

- A beneficiary settles a liability case on 2/5/2025, and the RRE mails a letter to the beneficiary's address, requesting the necessary identifying information from the beneficiary.
- A response was not received, and the RRE mails a 2<sup>nd</sup> letter to the beneficiary.
- After a few additional weeks pass, the RRE attempts to contact the beneficiary via the telephone number of record. The beneficiary did not answer, nor did they return the RRE's voice message.

 No CMP will be issued because the requirements of 42 CFR § 402.1(c)(22) were met. The 3<sup>rd</sup> attempt, which says “by phone or other means”, is intended to give the RRE more flexibility in how to reach the beneficiary, not restrict the RRE.


 Similarly, the order of communication attempts is not important. If the necessary methods of communication are attempted, the safe harbor has been reached. RREs are required to maintain accurate records reflecting each communication attempt made with the beneficiary.

# Prospective Reporting

- CMPs will only be issued prospectively.
  - i.e., A record **occurring on or after 10/11/2024** with a reportable event (TPOC, ORM acceptance, funding delayed beyond TPOC).
- Even though a CMP may not be levied in these situations, other legal avenues exist for CMS to attempt recovery of improperly made payments.



# Prospective Reporting: Example

- A beneficiary settles a liability case on 2/5/2024.
  - The RRE reports the TPOC on 3/5/2025.
-  The RRE was late with its reporting but is not eligible for a CMP related to this case. Only those reportable events occurring **after 10/11/2024** will be ripe for audit and a potential CMP.



## Rejected Records

### It is the RRE's Responsibility to:

- Contact the assigned EDI Representative,
- Determine the cause of the error, *and*
- Resubmit a corrected record within 365 days of the MSP occurrence.

### Reminders

- 9/12/2024- *NGHP Reporting Webinar* slides presentation
- NGHP User Guide




# Rejected Record: Examples

## Compliant Example

A beneficiary settles their car accident case on 2/5/2025.

The RRE attempts to report the TPOC on their quarterly file submission on 12/1/2025, but the record is rejected for a hard edit.

The RRE fixes the error and resubmits the record on their 1/1/2026 file submission.


 No CMP will be issued since the corrected record was received and accepted within 365 days.

## Non-Compliant Example

A beneficiary settles their car accident case on 2/5/2026.

The RRE attempts to report the TPOC on their quarterly file submission on 12/1/2026, but the record is rejected for a hard edit.

The RRE fixes the error but does not report the record again until their 3/15/2027 file submission.

 The RRE is non-compliant with Section 111 reporting because the record was not reported *and accepted* within 365 days of the reportable event.

- The period of non-compliance is 2/6/2026 - 3/15/2027.
- The potential CMP is calculated as:  
$$\$250 \times 402 \text{ (days of noncompliance)} = \$100,500$$

(as adjusted for inflation)

# Medicare Eligibility: Example



- An individual who is 64 years old and not yet Medicare-eligible, has a car accident on 2/1/2025.
- The individual reports the accident to their insurance company the same day, and the insurance company accepts the claims without issue.
- On 6/1/2025 the individual becomes entitled to Medicare.
- The RRE reports ORM on 3/1/2026, related to the 2/1/2025 car accident.

✅ The RRE is compliant, and no CMP will be issued. Even though the RRE reported more than 365 days after the date of incident (DOI), the RRE was only required to report within 365 days from the Medicare entitlement date (MSP effective date) or DOI, whichever is later.

# Failure to Submit via Section 111 after a Non-Section 111 Record was Reported: Example

- A beneficiary is involved in a car accident on 2/5/2025 and reports the accident to their carrier on the same day.
- The case settles on 6/5/2025, but the RRE never reports TPOC.
- The attorney self-reports the TPOC, on the beneficiary's behalf, on 7/5/2025.
- On 10/1/2026, the beneficiary's 7/5/2025 self-report record is randomly selected for CMS' audit, and a corresponding Section 111 record from the RRE cannot be found.



The RRE is non-compliant with Section 111 reporting because it failed to submit a corresponding Section 111 record for the 7/5/2025 non-Section 111 record.

- The period of non-compliance is 6/6/2026 - 10/1/2026 (the date of CMS' audit).
- The potential CMP is calculated as:  
$$\$250 \times 117 \text{ (days of noncompliance)} = \$29,250 \text{ (as adjusted for inflation)}$$

# Failure to Report ORM: Example



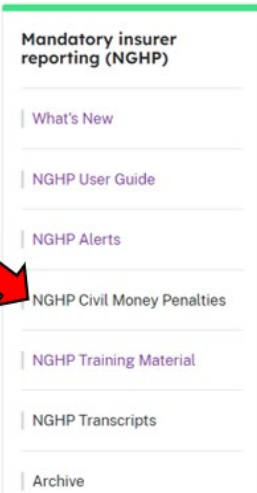
- A beneficiary is involved in an accident on 3/2/2025 and reports their claim to the carrier on 7/20/2025. The RRE assumes ORM from the DOI.
- The RRE reports ORM on its 11/15/2026 quarterly file submission.

**X** The RRE is non-compliant with Section 111 reporting because it failed to report assuming ORM within 365 days of the reportable event.

- The period of non-compliance is 7/21/2026 - 11/15/2026.
- The potential CMP is calculated as:  
$$\$250 \times 117 \text{ (days of noncompliance)} = \$29,500$$

(as adjusted for inflation)

# CMS.gov Updates



- Mandatory insurer reporting (NGHP)
- What's New
- NGHP User Guide
- NGHP Alerts
- NGHP Civil Money Penalties
- NGHP Training Material
- NGHP Transcripts
- Archive

## Mandatory Insurer Reporting (NGHP)

### Mandatory Insurer Reporting for Non-Group Health Plans (NGHP)

Section 111 of the Medicare, Medicaid, and SCHIP Extension Act of 2007 (MMSEA) added mandatory reporting requirements with respect to Medicare beneficiaries who have coverage under group health plan (GHP) arrangements as well as for Medicare beneficiaries who receive settlements, judgments, awards or other payment from liability insurance (including self-insurance), no-fault insurance, or workers' compensation, collectively referred to as Non-Group Health Plan (NGHP) or NGHP insurance. Note: Section 111 of the Medicare, Medicaid, and SCHIP Extension Act of 2007 is sometimes referred to as "Section 111". The term "Section 111" will be used on these pages for ease of reference.

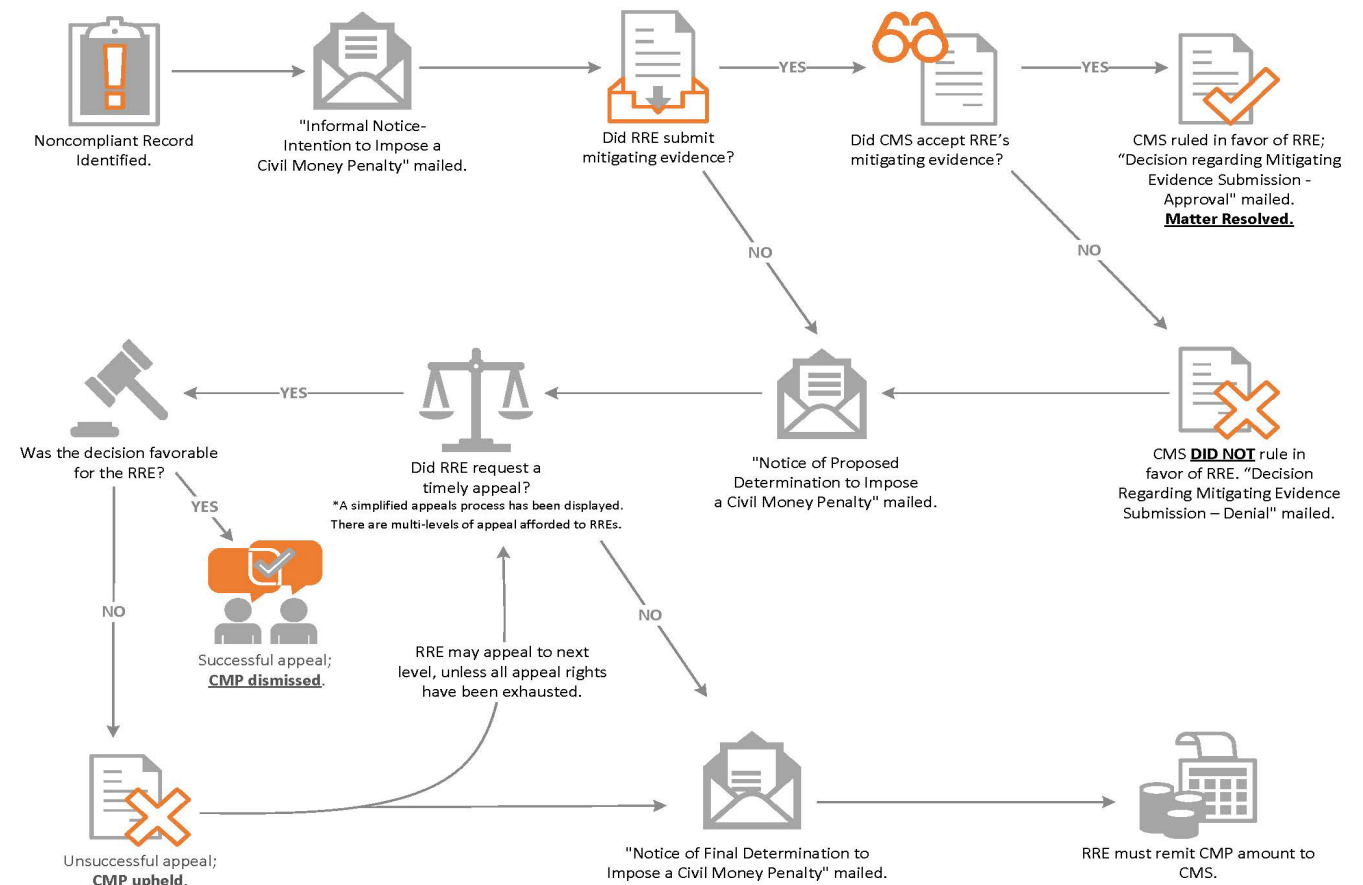
The provisions for Liability Insurance, No-Fault Insurance, and Workers' Compensation found at 42 U.S.C. 1395y(b)(8):

- Added reporting rules, but did not eliminate any previously existing Medicare Secondary Payer (MSP) statutory provisions or regulations
- Did not change existing processes for MSP recovery and self-reporting other insurance to CMS
- Include penalties for noncompliance

- The “NGHP Civil Money Penalties” page is now live and available under the existing Mandatory Insurer Reporting page of CMS.gov.
- The letters and appeals process described on the website will be discussed in more detail at a future webinar.
  - Additional downloads, such as the letter samples, will be published as they become available.

# CMS.gov Updates: Continued

- The “CMP Workflow” download is intended to visually represent the process an RRE can expect to follow if a non-compliant record is found during a quarterly audit.
  - Note- The process has been simplified, specifically related to the appeals process.
- If an RRE’s record is selected during the quarterly audit and it is determined to be **compliant**:
  - CMS will not contact the RRE (Workflow is not applicable).



Note: Any examples provided herein are intended to be illustrative only and should not be relied upon for policy guidance purposes. Where there appears to be a contradiction, the published User Guides take precedence over this information and should be referenced

# Question and Answer Session



- 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)
- Continue to monitor CMS.gov for updated outreach and education materials.