CMS
CENTERS FOR MEDICARE & MEDICAID SERVICES

COB&R
Coordination of Benefits and Recovery

Medicare Secondary Payer and Certain Civil Money Penalties

Non-Group Health Plan (NGHP) Webinar

October 17, 2024

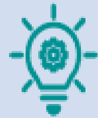
Updated December 17, 2024:

Responses from the Question-and-Answer Session are included at the end of the Slide Deck.

CMS CENTERS FOR MEDICARE & MEDICAID SERVICES

COB&R Coordination of Benefits and Recovery

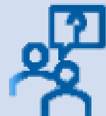
Presentation Overview


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 Section 111 reporting requirements, if their record is reported within 365 days of:
  - The date of 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.

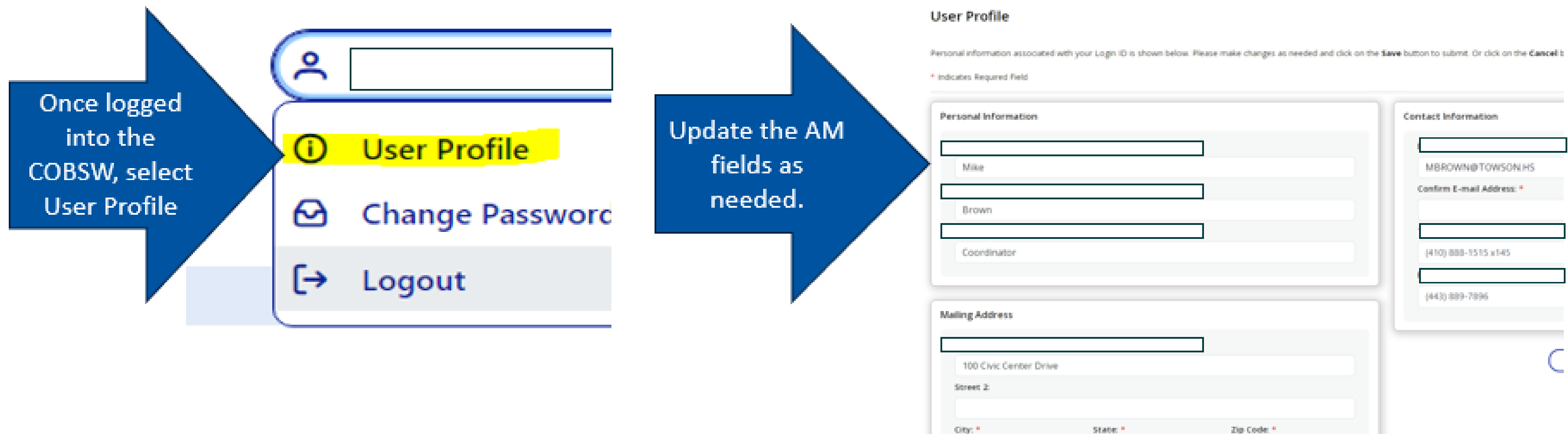
- RREs will still be held accountable should any CMP correspondence be missed due to inaccurate, outdated contact information.

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' 1st audit will include records from the 4th 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

- 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 **3rd 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.

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

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.

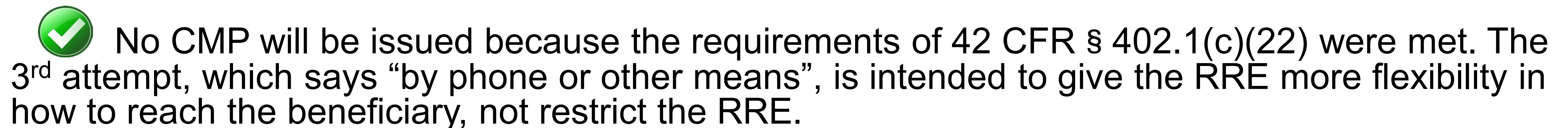
✅ No CMP will be issued. The RRE exhausted all necessary avenues to acquire the information, pursuant to 42 CFR § 402.1(c)(22).

✅ 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 2nd 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 3rd 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

- 09/12/2024- *NGHP Reporting Webinar* slides presentation
- NGHP User Guide

Rejected Record: Examples

Compliant Example	Non-Compliant Example
A beneficiary settles their car accident case on 2/5/2025.	A beneficiary settles their car accident case on 2/5/2026.
The RRE attempts to report the TPOC on their quarterly file submission on 12/1/2025, but the record is rejected for a hard edit.	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 and resubmits the record on their 1/1/2026 file submission.	The RRE fixes the error but does not report the record again until their 3/15/2027 file submission.
No CMP will be issued since the corrected record was received and accepted within 365 days.	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 X 402 (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 x 117 (days of noncompliance) = $29,250 (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.

☒ 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 X 117 (days of noncompliance) = $29,500

  (as adjusted for inflation)

CMS.gov Updates

Mandatory Insurer Reporting (NGHP)

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 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.

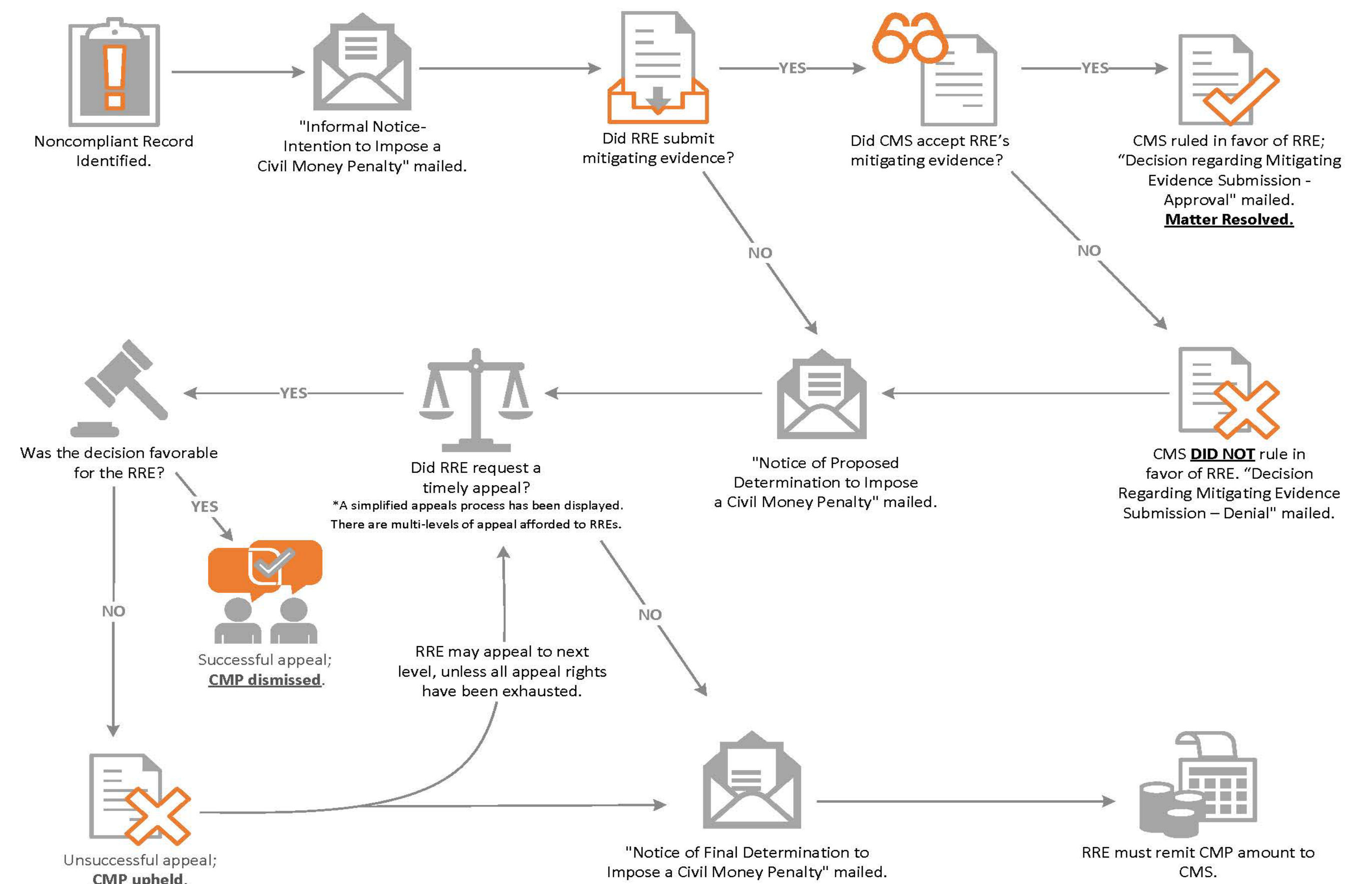
The provisions for Liability Insurance, No-Fault Insurance, and Workers' Compensation found at 42 U.S.C. 1395y(b)(8):

- 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).



Question and Answer Session

- The following slides contain consolidated questions and answers discussed during the 10/17/2024 NGHP webinar.
  - Questions and comments specific to CMPs should be directed to the CMS resource mailbox: sec111cmp@cms.hhs.gov
  - Continue to monitor CMS.gov for updated outreach and education materials.

Beneficiary Contact Attempts

Q: If a beneficiary or their representative is refusing to provide the RRE with the required information, does the RRE need to have the refusal in writing?

A: Yes. Pursuant to 42 CFR § 402.1(c)22, the refusal to provide the required information must be in writing in order to satisfy the safe harbor exemption. Any form of writing or other reasonable method of proving such a refusal is acceptable (mail, e-mail, text message, etc.).

If the attorney is unable or unwilling to provide the requested information, the rule does state that the RRE is required to contact the beneficiary directly to demonstrate good-faith efforts to obtain the requested information.

It is recommended that the RRE maintain records of their attempts to contact and obtain required information from the beneficiary. RREs may utilize the ***MBI/SSN Collection – NGHP Model Language*** available in the Downloads section of https://go.cms.gov/mirnghp.

Beneficiary Contact Attempts Continued

Q: If the attorney has filed their representation acknowledgement on the MSPRP, does that mitigate having to call the beneficiary directly for Safe Harbor requirements?

A: No. If the attorney is unable or unwilling to provide the requested information, the rule states the RRE is required to contact the beneficiary directly to demonstrate good-faith efforts to obtain the requested information.

State laws or ethics provisions regarding contacting individuals who are represented by attorneys are not applicable here. Those laws and rules are aimed at other attorneys or adversarial parties who are attempting to circumvent the attorney-client relationship and are thus not applicable to adhering to Federal law and regulations where the government is not an adverse party.

Beneficiary Contact Attempts Continued 2

Q: Do attempts to contact the beneficiary need to be a certain amount of time apart?

A: No. There are no requirements regarding an RRE's timing of attempts to contact a beneficiary for required information. RREs are asked to be reasonable in their attempts and not, for example, mail 3 letters to the beneficiary on the same day.

Q: If a mailed letter was sent to the address on file and it is returned to sender, does that count as one (1) attempt?

A: Yes. This failed mailed attempt does count as one (1) attempt. The RRE must demonstrate two (2) additional and separate good-faith efforts to contact to the beneficiary to obtain the required reporting information. Sending additional letters to an address that is known to be incorrect, without additional efforts to obtain a good address, would not count as two additional attempts. Examples may be reaching out to the attorney or representative or attempting another method of communication. To be clear, there is no need to show that another method was actually successful or received by the beneficiary; it is only necessary to show that, if the initial attempt was clearly erroneous, that an attempt is made to find a method that is received by the beneficiary or their representative.

Beneficiary Contact Attempts: SSN/MBI Collection

Q: Does CMS have a model request for the collection of the SSN, and other required information, that can be utilized as a safe harbor for RREs?

A: RREs may utilize the ***MBI/SSN Collection – NGHP Model Language*** available in the Downloads section of https://go.cms.gov/mirnghp.

Q: Does an attorney verbally informing the RRE that their client is undocumented or has no SSN satisfy the safe harbor provisions of the rule?

A: No. If an attorney is unable or unwilling to provide the requested information, the rule states the RRE is required to contact the beneficiary directly and demonstrate good-faith efforts to obtain the requested information.

Medicare Eligibility and Entitlement

Q: If a person begins receiving SSDI at the age of 64, when are they converted to regular Medicare: at age 65, or at their ordinary retirement age (which differs based on age cohort)? This could affect the trigger date for reporting.

A: An individual is typically eligible for Medicare after two (2) years of receiving coverage from SSDI. If an individual's age cohort would allow them to become entitled earlier, then that would naturally affect their reportability.

If an individual is potentially eligible or entitled to Medicare, RREs are encouraged to utilize the query function to identify whether an individual is entitled and enrolled in Medicare. More information of the Query functionality can be found in the NGHP User Guide. RREs may also contact their assigned EDI Representative for additional assistance.

Medicare Eligibility and Entitlement Continued

Q: NGHP beneficiaries often have multiple claims. If a query is completed on one (1) claim, does the RRE need to continue to make attempts on each subsequent claim or can the completed attempt on the prior claim be referenced?

A: It is ultimately the RRE's responsibility to verify if there has been any change in entitlement and as such, the RRE should continue to query the status of a beneficiary's entitlement in between claims and for reporting purposes.

Q: There have been situations where monthly query results yielded no matches, but later a match with Part A/B effective dates that are months or even a year earlier, are found. How will this example factor into the CMP audit process?

A: CMS recommends that the RRE maintain records that reflect an RRE's attempt to obtain required beneficiary information and report timely via Section 111. If a record was randomly selected for CMS' quarterly audit, the RRE would have the opportunity to submit mitigating evidence to CMS for review. The RRE could provide information as to the events that transpired with the queries record which prevented timely reporting.

Timely Reporting

Q: In a Workers Compensation case, if the claim for a claimant who is a beneficiary is initially denied pending determination of compensability, then later there is a ruling determining compensability when does the 1-year period begin? Is it the date of incident (DOI) or when compensability was determined?

A: For this example, CMS would presume that ORM was assumed on the DOI and the record should be reported via Section 111 within 365 days of that DOI.

If this record was randomly selected for CMS' audit, the RRE would receive an Informal Notice from CMS. The RRE would then provide CMS with evidence of the initially denied claim pending determination of compensability which resulted in the RRE's delay in submitting the record via Section 111.

Timely Reporting Continued

Q: Is there any additional guidance related to asbestos settlements?

A: In certain situations, such as bankruptcy settlements or global resolutions, CMS may direct the parties involved to follow different processes or provide exceptions for their Section 111 reporting obligations. The final rule does provide an allowance for these atypical situations, where CMS has issued an explicit exception to the regular reporting process. If, under these circumstances, there is duplicative reporting (such as a self-report) and CMS randomly selects the duplicative record for the quarterly audit, the RRE is requested to provide mitigating evidence as soon as possible to resolve the matter.

Timely Reporting Continued 2

Q: What should the RRE do if the EDI Representative is not/was not able to remedy an error and reporting is delayed past 365 days for that reason?

A: If there is an error on CMS' part, which includes the BCRC or any contractor acting on CMS' behalf, and that error causes a delay in the RRE's reporting, CMS would not impose a CMP. If the RRE did receive an Informal Notice in this case, an explanation and supporting evidence could be used to communicate the delays encountered.

Timely Reporting Continued 3

Q: Would manual reporting of TPOC, such as via portal and or phone, qualify as Section 111 reporting? There may be cases the TPOC date is between an RRE's Section 111 reporting period.

A: No. In this case, CMS recommends that the RRE utilize off-cycle reporting and avoid waiting until the end of the 365-day reporting window to ensure a delay is not encountered.

Q: Is there is any penalty for late reporting of the ORM termination date?

A: No. ORM termination dates are not being reviewed as part of the Section 111 timely reporting requirement, only assumption of ORM and TPOC

Timely Reporting Continued 4

Q: What is the proper TPOC date to use, that will be used to determine compliance? (Release execution date, the date the releasee receives the release, or the date the settlement is made (check cut date))?

A: The proper TPOC date to use for Section 111 reporting is the date of settlement. If funding for the settlement is expected to take place at a later date, the RRE should report this date in the “Funding Delayed Beyond TPOC” field so that recovery efforts are adjusted to the appropriate date when the beneficiary actually receives settlement funds.

Timely Reporting Continued 5

Q: If an RRE assumes ORM from the DOI, but the accident wasn't reported to the RRE until four (4) months later, when does the 365-day clock begin?

A: The RRE is obligated to report within 365 days of the DOI; however, it is not CMS' intention to impose a CMP in situations where the RRE was not reasonably informed nor had the required accident information to properly report via Section 111. Under these circumstances and in the event the RRE received an Informal Notice related to this accident, the RRE would provide CMS with mitigating evidence demonstrating that four (4) months passed prior to the RRE's notification the accident had occurred. RREs are required to utilize normal due diligence in discovering claims for which they are responsible. This rule does not add, change, or impose any additional requirements on RREs beyond their existing, standard business practices.

Timely Reporting: Statute of Limitations

Q: In the January 2024 webinar, the statute of limitations ("SOL") slide noted the 5-year SOL but also noted "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)". An RRE in the process of updating retention policies wants to ensure it has "proof" for CMP audit purposes, if needed. Please provide clarification regarding the quote above.

A: The SOL is indeed five years from when a Section 111 report is received, or from when CMS knew, or should reasonably be expected to know that such an event occurred. In other words, if CMS is provided with information, such as from a self-report, that would reasonably lead to the discovery of a TPOC or ORM, then CMS must take action within five years of that discovery if such a record was randomly selected in the audit process. While CMS is obligated to seek out and correct reporting errors, nothing in this answer should be construed as CMS potentially penalizing RREs for records that are not part of the quarterly random audit process.

CMS' Quarterly Audit

Q: Could CMS clarify the sampling of records? Is it 250 records per RRE, or only 250 records are being audited across all GHP and NGHP RREs?

A: CMS will audit 250 records, per quarter, across all submitted records for both GHP and NGHP RREs. The division of the 250 selected records between GHP and NGHP will be proportionate to on the total number of GHP and NGHP records submitted in that quarter. The proportion of GHP and NGHP records will likely vary each quarter, depending upon the total number of records received. Audited records will be manually reviewed by a CMS staff member.

CMS' Quarterly Audit Continued

Q: Will CMS' quarterly audit include records for events (e.g.- car accident) that occurred prior to October 10, 2024?

A: No. The final rule is prospective only, meaning only reportable events (TPOC, ORM acceptance, funding delayed beyond TPOC) occurring after October 11, 2024, are eligible for random selection in CMS' quarterly audit.

Q: Is CMS looking at records from sources to identify situations where a Section 111 report was never submitted?

A: Yes. As a part of the 250 randomly selected records, CMS will include non-Section 111 beneficiary self-reports or information collected from providers, for example, and search for a matching Section 111 record.

CMS’ Quarterly Audit Continued 2

Q: Would the quarterly submission timeline be taken into account when calculating the CMP? Are RREs able to report more regularly than once a quarter to ensure the records are received timely?

A: An RRE’s reporting period is not a factor in calculating a CMP, rather, it is 365 days from the reportable event or when the beneficiary’s Medicare coverage began, whichever is later. If there is a rational explanation as to why the RRE was unable to report the record within 365 days of the reportable event, the RRE may submit that explanation and supporting documentation as mitigating evidence to CMS.

RREs should continue reporting during their assigned reporting period, and not at a greater frequency.

CMS’ Quarterly Audit Continued 3

Q: If an audited record is found to be non-compliant does that trigger an expanded audit on that RRE?

A: No. Only the individual records that are randomly selected for the quarterly audit will be reviewed for compliance by CMS.

Q: Will the results to CMS’ audits be made public?

A: No. CMS’ audits will not be shared with the public. Only RREs found to have a noncompliant record, contained within a quarterly audit, will be notified of the noncompliance via an Informal Notice. If an audit of a record finds that the RRE is compliant, no notice will be sent to the RRE.

CMP Notices (Letters)

Q: Has CMS determined who they will be sending notifications/ letters related to CMPs?

A: CMS will mail all CMP-related correspondence to the RRE's Account Representative (AR) and copy the RRE's Account Manager (AM) of record.

Please ensure the AR and AM contacts, and associated addresses, are updated prior to January 2026.

CMP Notices (Letters) Continued

Q: Will there be a new authorization required for recovery agents who are responding to notices of non-compliance on behalf of RREs, or is the current Recovery Agent Authorization (Letter of Authority and Recovery Agent correspondence) sufficient?

A: Correspondence to CMPs will be mailed to the attention of the AR and AM contained within the RRE’s profile. RREs should keep in mind that where CMS uses the term “recovery agent” in current outreach materials, it is typically in reference to entities that act as representatives in resolving MSP recovery cases, an activity that CMS considers to be wholly separate from CMPs.

CMP Assessment

Q: Would the quarterly submission timeline, or any previous findings of noncompliance, be taken into account when calculating the CMP?

A: No. An RRE's reporting period is not a factor in calculating a CMP, nor are any past findings of noncompliance. The selection of 250 records for the quarterly audit is completely random, and no potential or actual CMP has any impact on any other potential or actual CMP.

CMP Assessment Continued

Q: Are the CMPs assessed against the RRE only, or is there any personal liability to shareholders, executives, partners, trustees, etc. (depending on the type of entity the RRE is)?

A: CMPs are assessed against the RRE. The business structure of the RRE, and any liability or allocation of risk presented by that structure is outside of CMS' purview and authority.

Q: Is the CMP cap $365K flat, or per year out of compliance? Is the cap adjusted for inflation?

A: An RRE is subject to a maximum annual penalty (i.e., a cap) of $365,000, as adjusted for inflation. As the daily penalty amounts are adjusted annually, the actual amount of this maximum annual penalty is also adjusted annually for inflation.