

The Centers for Medicare and Medicaid Services (CMS) Confirms Civil Monetary Penalty (CMP) Rules Regarding Mandatory Insurer Reporting for Non-Group Health Plans (NGHP)

Practices

Medicare Set-Asides and
Medicare Compliance
Workers' Compensation

Related Attorneys

Shannon P. Metcalf

By Shannon P. Metcalf on January 18, 2024

CMS held a webinar on January 18, 2024, where it provided clarification of the rules regarding the issuance of CMPs for late Section 111 reporting of the ongoing responsibility for medicals (ORM) and total payment obligations to a claimant (TPOC). The PowerPoint presentation should be posted on CMS' website in two weeks.

In sum, the CMP rule is applicable as of October 11, 2024. From this date forward, Responsible Reporting Entities (RREs) will be held accountable for ensuring that all ORM and TPOC records are reported timely. To be considered timely, ORM must be reported within one year of the date of injury. TPOC should be reported within one year of the settlement date or funding delayed beyond TPOC date, whichever is later. If errors in the ORM or TPOC reports prevent the records from being accepted, then the reporting can be considered untimely. A CMP will only be contemplated for untimely reporting of "add" records. Delete and edit records are not subject to CMPs.

Given RRE's have one year to make reports of ORM and TPOCs from the date the rule is applicable, the compliance review period begins on October 11, 2025. On April 1, 2026, CMS will begin quarterly compliance audits, reviewing a random sample of new RRE records added the prior calendar quarter. CMS will randomly select 250 new and accepted ORM/TPOC records per quarter for a total of 1,000 records per calendar year for review. The selected records will be chosen from NGHP and Group Health Plan (GHP) reports and can include reports received from Section 111 and self-reported submissions.

If CMS discovers a late report, it will issue an informal notice of the intent to impose a CMP that will be emailed to the RRE's Authorized Representative and Account Manager. The notice will identify the noncompliant record. RREs will be afforded with the opportunity to provide mitigating evidence as to why a CMP should not be imposed. The process for mitigation will be outlined in CMS correspondence to the RRE. Mitigation factors must be provided within 30 days of receipt of the informal notice. A CMP will not be imposed when noncompliance is beyond the RRE's control, ORM is in dispute (with evidence supporting a late report), or if CMS changes the reporting requirements and/or process without adequate notice.

If CMS disagrees with the mitigation evidence provided by the RRE or there is a failure to respond to the informal notice, a formal notice to impose a CMP will be sent to the RRE via certified mail. A formal appeals process is available once a CMP is issued.

If an ORM or TPOC is reported late, meaning more than one year after it was due, but less than two

years after it was due the CMP Rule mandates a penalty per day of \$250.00 (adjusted to \$357.00 for 2024 inflation). If the ORM or TPOC is reported more than two, but less than three years late, the penalty is \$500.00 per day (adjusted to \$714.00 for 2024 inflation). If the ORM or TPOC was reported more than three years late the penalty is \$1,000.00 per day (adjusted to \$1,428.00 for 2024 inflation). The maximum penalty for one instance of noncompliance is \$365,000.00 (adjusted to \$521,220.00 for 2024 inflation).

Finally, the statute of limitations was confirmed as five years from the date the record is actually reported or when CMS obtains information that could reasonably lead to discovery of the noncompliance.

CMS confirmed an updated NGHP User Guide will be posted in the near future. Also, a new CMS.gov webpage will be developed in the future, specific to the CMP process.

Hedrick Gardner will continue to monitor any updates in this regard and will provide additional information when available.

Please contact [Shannon Metcalf](#) with questions regarding this notice or for any other Medicare inquiries. She is a Medicare Set-Aside Certified Consultant (MSCC), whose practice focuses heavily on Medicare Secondary Payer Act compliance.