



Office of Financial Management/Financial Services Group

May 26, 2010

Implementation of Medicare Secondary Payer Mandatory Reporting Provisions in
Section 111 of the Medicare, Medicaid, and SCHIP Extension Act of 2007
(See 42 U.S.C. 1395y(b)(7) & (8))

**ALERT Regarding Risk Management Write-Offs for
Liability Insurance (Including Self-Insurance),
No-Fault Insurance, and Workers' Compensation**

NOTE:

- This ALERT addresses risk management write-offs by providers, physicians, and other suppliers as well as by non-provider/supplier entities.
- For purposes of the Medicare Secondary Payer provisions, “[a]n entity that engages in a business, trade, or profession shall be deemed to have a self-insured plan if it carries its own risk (whether by a failure to obtain insurance, or otherwise) in whole or in part.” (42 U.S.C. 1395y(b)(2)(A)). Risk management write-offs (including a reduction in the amount due as a risk management tool) constitute liability self-insurance for the purposes of the Medicare Secondary Payer provisions.

As a risk management tool to lessen the probability of a liability claim against it and/or to facilitate/enhance customer good-will, entities may reduce the amount due for items and services (write-off) or provide something of value (e.g., cash, gift card, etc). If an entity takes such actions, it may or may not constitute a reporting obligation (as a TPOC) as explained below.

- In instances where a provider, physician or other supplier has reduced its charges or written off some portion of a charge to a Medicare beneficiary as such a risk management tool, the provider, physician or other supplier is expected to submit a claim to Medicare reflecting the unreduced permissible (e.g., limiting charge) charges and showing the amount of the reduction provided or write-off as a payment from liability insurance (including self-insurance). Medicare’s interests with respect to this particular TPOC amount have been protected through this billing procedure; the provider, physician or other supplier shall not report the write-off or value of property provided as a TPOC.
- In instances where a provider, physician, or other supplier has provided property of value to a Medicare beneficiary as such a risk management tool when there is evidence, or a reasonable expectation, that the individual has sought or may seek medical treatment as a consequence of the underlying incident giving rise to the risk, the entity shall report the write-off or value of the property provided as a TPOC from liability insurance (including self-insurance). If the value of the property provided is less than the TPOC reporting threshold, it need not be reported under Section 111.

- In instances where any other entity has reduced its charges or provided property of value to a Medicare beneficiary as such a risk management tool when there is evidence, or a reasonable expectation, that the individual has sought or may seek medical treatment as a consequence of the underlying incident giving rise to the risk, the entity shall report the write-off or value of the property provided as a TPOC from liability insurance (including self-insurance). If the amount of the write-off or value of the property provided is less than TPOC reporting threshold, it need not be reported under Section 111.