



Office of Financial Management/Financial Services Group

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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 for Foreign Insurers –
Liability Insurance (Other than Self-Insurance),
No-Fault Insurance, and
Workers’ Compensation (Other than Self-Insured Workers’ Compensation)**

This ALERT does not include Liability Self-Insurance or Self-Insured Workers’ Compensation. Separate instructions will be issued regarding foreign individuals/entities that are self-insured as defined by 42 U.S.C. 1395y(b).

For purposes of the MMSEA NGHP User Guide, the term “foreign insurer” refers to an insurer which does not have a United States Tax Identification Number (TIN) and/or a United States address.

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))

“Deductibles” are technically self-insurance under the Medicare Secondary Payer provisions. However, for purposes of this discussion for foreign insurers, the terms “self-insurance” and “self-insured” mean “self-insured” or “self-insurance” other than through a deductible.

The term “United States” includes the 50 States, the District of Columbia, American Samoa, Guam, Puerto Rico, and the Virgin Islands.

Section 111 of the MMSEA requires the submission of certain information to the Secretary to facilitate the coordination of Medicare benefits when there is another individual/entity with primary payment responsibility. Insurers required to report are referred to as Responsible Reporting Entities (“RREs”). Foreign insurer/workers’ compensation RREs must report pursuant to Section 111:

- if they are “doing business in the United States”, or
- if a court of competent jurisdiction in the United States has taken jurisdiction over the insurer with respect to a specific liability insurance claim, no-fault insurance claim, or workers’ compensation claim.

For purposes of implementing Section 111, foreign insurers are “doing business in the United States” if:

- They are registered in one or more of the 50 States, the District of Columbia, American Samoa, Guam, Puerto Rico, or the Virgin Islands as conducting business functions related to insurance.
- They are not so registered in one or more of the 50 States, the District of Columbia, American Samoa, Guam, Puerto Rico, or the Virgin Islands but are otherwise engaged in doing business in the United States through a definite presence in the United States. This includes (whether by mail or otherwise):
 - Issuing or delivering insurance contracts to residents of or corporations licensed (or otherwise authorized if licensure is not required) to do business in one or more of the 50 States, the District of Columbia, American Samoa, Guam, Puerto Rico, or the Virgin Islands.
 - Soliciting applications for insurance contracts registered in one or more of the 50 States, the District of Columbia, American Samoa, Guam, Puerto Rico, or the Virgin Islands.
 - Collecting premiums, membership fees, assessments, or other considerations for insurance contracts one or more of the 50 States, the District of Columbia, American Samoa, Guam, Puerto Rico, or the Virgin Islands.
 - Transacting any other insurance business functions in one or more of the 50 States, the District of Columbia, American Samoa, Guam, Puerto Rico, or the Virgin Islands.

An insurer or workers' compensation entity which is defending against a liability insurance claim, no-fault insurance claim, or workers' compensation claim is not subject to Section 111 reporting solely on the basis of its actions in defending the insured. However, if a court of competent jurisdiction in the United States specifically takes jurisdiction over the insurer or workers' compensation entity, the insurer or workers' compensation entity is subject to Section 111 reporting for the matter at issue.

With respect to privacy issues, please note that by regulation Medicare beneficiaries have already consented to the release of information required for coordination of benefit purposes.

Release of information. The filing of a Medicare claim by or on behalf of the beneficiary constitute an express authorization for any entity, including State Medicaid and workers' compensation agencies, and data depositories, that possesses information pertinent to the Medicare claim to release that information to CMS. This information will be used only for Medicare claims processing and for coordination of benefits purposes. 42 C.F.R. 411.24(a)