

CMS' MAY-ALERT ANNOUNCES MIR TIMELINE EXTENSIONS & AMENDS THE TPOC "REPORTING TRIGGER"

By: Mark Popolizio, J.D.

On May 14, 2009, the Centers for Medicare & Medicaid Services (CMS) issued a **Supplemental Alert** (dated May 11, 2009; hereinafter referred to as the **May-Alert**) to the recently released Section 111 NGHP User Guide (Version 1.0) regarding liability insurance (including self-insurance), no-fault insurance and workers' compensation which are collectively referred to as "Non-Group Health Plans" (non-GHP or NGHP). In addition, the agency held its latest round of "Town Hall" teleconferences on May 12, 2009 and May 14, 2009.¹

Through the **May-Alert** and these additional teleconferences, CMS announced important timeline extensions and other amendments to its Mandatory Insurer Reporting (MIR) directives as part of the agency's implementation of the "notice and reporting" requirements of Section 111 of the Medicare, Medicaid & SCHIP Extension Act (MMSEA).²

A copy of the **May-Alert** can be obtained at http://www.nuquestbridgepointe.com/news/uploads/alert_userguide_51109.pdf

In addition, CMS issued a **Quick Reference Guide for Section 111 Registration for All Responsible Reporting Entities**. A copy of this document can be obtained at <http://www.nuquestbridgepointe.com/news/uploads/registrationquickreferenceguide.pdf>

By way of background, on March 17, 2009, CMS released its 180 page Section 111 NGHP User Guide (Version 1.0) outlining its MIR directives regarding Section 111 compliance for NGHP reporting. Shortly

thereafter, CMS issued its March and April *Alerts* to supplement the User Guide. CMS has now made additional amendments to the User Guide via the **May-Alert**. At this time, all four documents collectively serve as CMS' blueprint for Section 111 reporting. CMS is expected to release a "revised" version of the User Guide at some point in the future to incorporate all amendments and revisions made thereto.

To fully appreciate how the **May-Alert** modifies CMS' MIR directives, an understanding of the current MIR guidelines is essential in order to understand how the new amendments relate to the bigger picture of Section 111 compliance. Thus, familiarity with CMS' User Guide and previously issued *Alerts* is necessary.

In this regard, the author has included links for the reader to access the User Guide, and the March and April *Alerts* as follows:

Non-GHP Section 111 MIR User Guide (Version 1.0)

http://www.nuquestbridgepointe.com/news/uploads/nghp_mir_user_guide.pdf

March Alert

http://www.nuquestbridgepointe.com/news/uploads/alert_nghpuserguide_v1_0.pdf

April Alert

<http://www.nuquestbridgepointe.com/news/uploads/nghpalertt poc.pdf>

In addition, the author provides the following link to access his prior article (*Settlement News – April, 2009*) which provides a topical overview of the major points contained in the User Guide and prior Alerts:
http://www.nuquestbridgepointe.com/news/uploads/settlement_news_april_2009.pdf

Against this backdrop, this article will outline the amendments and updates made to CMS' MIR directives by the *May-Alert*. References will also be made to the User Guide, the March and April Alerts and *Settlement News-April, 2009* to place the changes made by the *May-Alert* into proper perspective and to assist the reader in his/her overall analysis of CMS' MIR directives.³

PART I

MIR TIMELINE EXTENSIONS

Through the *May-Alert*, CMS issued important time extensions regarding implementation of its MIR reporting program as follows:

RRE Registration **(May 1, 2009 to September 30, 2009)**

The registration period for Responsible Reporting Entities (RREs) began on May 1, 2009 and was originally scheduled to close on June 30, 2009. **However, CMS has now extended RRE registration through September 30, 2009.**

For further information regarding the registration process, the reader may wish to review Section 8 of the User Guide, *Settlement News-April, 2009* at p. 15-18 and CMS' just released "*Quick Reference Guide for Section III Registration for All Responsible Reporting Entities*" (see the link to above to obtain this document). RREs may find CMS' "*Quick Reference Guide*" to be a helpful aid as they proceed through the MIR registration process.

For information regarding RRE determination and issues related thereto, the reader may wish to review Section 7 and Appendix G of the User Guide and *Settlement News-April, 2009* at p. 3-7. As will be noted therein, CMS remains in the process of formulating additional RRE directives and definitions for situations not addressed in the User Guide.

In addition, the reader should also consult the transcripts CMS has released in relation to the agency's recent Town Hall teleconferences to obtain additional information on these issues. (See endnote 1 for information regarding the transcripts CMS has released to date and how to obtain same).

Query Function Testing & Production **(Available July 1, 2009)**

The Query Function relates to the system CMS has established to assist RREs in determining a claimant's Medicare entitlement status.

CMS has announced that the Query Function will be available as of July 1, 2009, for those RREs who have completed registration and are in testing status. Under the MIR, a RRE will be placed into "testing status" upon the RRE's signed Profile Report being received by CMS' Coordination of Benefits Contractor (COBC).⁴

Per CMS, both *test* Query Input Files and *production* Query Input Files will be accepted and processed for an RRE ID in a testing status. It is important to remember that RREs cannot submit Query Input Files until they have completed registration and are in testing status for their applicable RRE ID(s).⁵

For more information regarding CMS' Query Function system, the reader may wish to review Section 13 of the User Guide and *Settlement News-April, 2009* at p. 7-9. The reader should also consult the transcripts CMS has released in relation to the agency's recent Town Hall teleconferences to obtain additional information on this issue. (See endnote 1 for information regarding the transcripts CMS has released to date and how to obtain same).

Claim Input File Testing **(January 1, 2010 to March 31, 2010)**

CMS has pushed back Claim Input File testing into the first quarter of 2010.

Per CMS, testing for the submission of the Claim Input File will now take place from January 1, 2010

through March 31, 2010.⁶ Once testing is completed for an RRE ID, the system will set the RRE ID to a “production status.” However, testing may continue up until the first production Claim Input File is due. Furthermore, CMS states that it will continue to accept and process test files after a production status has been attained.⁷

For more information regarding CMS’ directives and guidelines related to Claim Input files, see Section 11 of the User Guide and *Settlement News-April, 2009* at 9. In addition, the reader should consult the transcripts CMS has released in relation to the agency’s recent Town Hall teleconferences to obtain additional information on this issue. (See endnote 1 for information regarding the transcripts CMS has released to date and how to obtain same).

Start Date for Claim Input File “Live” Production Submissions
(April 1, 2010 to June 30, 2010)

CMS has issued another extension regarding the “production live” start period for Section 111 reporting. Initially, this period was scheduled to commence in the fourth quarter of 2009 and was then extended into the first quarter of 2010 via the *March-Alert*.

Through the *May-Alert*, CMS has pushed back the first “live” production period again stating now that “all RREs must submit their first live production file no later than their assigned submission window for the April – June calendar quarter of 2010.”⁸

However, CMS will allow a RRE to start to submitting “live” production files in the first quarter of 2010 in certain circumstances. In this regard, CMS states that RREs “that complete testing before their assigned submission window for the January – March calendar quarter of 2010 may submit their first live production file in that calendar quarter during the file submission timeframe assigned to the RRE ID.”⁹

It should be noted that the above timelines as announced in the *May-Alert* supersede and replace the timelines previously established in CMS’ *March-Alert* and other MIR documents. As such, the reader should note these date changes when reviewing the information outlined on p. 3 and p. 15-16 of *Settlement News-April, 2009*. In addi-

tion, the reader should consult transcripts CMS has released in relation to the agency’s recent Town Hall teleconferences to obtain additional information on this issue. (See endnote 1 for information regarding the transcripts CMS has released to date and how to obtain same).

PART II

CMS Extends TPOC Reporting Date & Issues Specific Guidelines for Reporting Multiple TPOC Amounts Where the Reporting Threshold is a Consideration

Through the *May-Alert*, CMS has made significant changes to its “TPOC” reporting trigger.

By way of background, CMS has established two “reporting triggers.” CMS refers to these two triggers as (1) “TPOC” - Total Payment Obligation to the Claimant and (2) “ORM” - On-Going Responsibility for Medicals. **The changes made by the *May-Alert* pertain *only* to the TPOC trigger; no changes were made to the ORM trigger.**

In general, if the “injured party is/was a Medicare beneficiary”¹⁰ upon meeting the criteria of the TPOC and/or ORM triggers then reporting is required via CMS’ electronic reporting process, accompanied by the production of specific information as required under the MIR. With respect to the ORM trigger, it should be noted that even if the claimant was *not* a Medicare beneficiary at the time ORM was assumed reporting could still be required at a later time.¹¹

A substantive examination of CMS’ “reporting triggers” and the various issues relating thereto is beyond the scope of this article. For a discussion of same, the reader may wish to review *Settlement News – April, 2009* at p. 9-14 and examine the specific sections of the User Guide as referenced in the corresponding endnotes. The reader should also consult the transcripts CMS has released in relation to the agency’s recent Town Hall teleconferences to obtain additional information on this issue. (See endnote 1 for information regarding the transcripts CMS has released to date and how to obtain same).

CMS Extends TPOC Reporting Trigger to January 1, 2010

Under CMS' original version of the TPOC reporting trigger, Section 111 reporting was required *upon claim resolution (or partial resolution) via a settlement, judgment, award or other payment on or after July 1, 2009.*

Through the *May-Alert*, CMS has now changed the TPOC date. Specifically, CMS has announced that “Section 111 reporting will not include the reporting of TPOC amounts with dates prior to January 1, 2010. Please disregard version 1.0 of the User Guide that reflects a requirement to report TPOC amounts dated on or after July 1, 2009.”¹²

Thus, RREs are not required to report TPOCs where the applicable TPOC date is *prior* to January 1, 2010. Notwithstanding, CMS states that it will not reject a record based upon a TPOC date which is prior to January 1, 2010.¹³

In addressing TPOC, it should be noted that CMS has established certain guidelines and definitions with respect to determining the TPOC “date,”¹⁴ calculating the TPOC “amount,”¹⁵ and has set certain monetary TPOC reporting threshold “exceptions” below which TPOC reporting is not required.¹⁶ These definitions and guidelines should be carefully reviewed by the reader.

Multiple TPOCs & TPOC Reporting Threshold Considerations

In addition to changing the TPOC date, the *May-Alert* contains specific guidelines regarding how to address situations where there are “multiple TPOCs” to be reported by the same RRE on the same record. In this regard, the prospect of multiple TPOCs raises certain issues regarding reporting under the MIR process. These issues include (a) how to calculate multiple TPOCs under the MIR directives and (b) how said calculation and other factors apply in relation to determining reporting obligations.

These considerations are addressed in the *May-Alert* on page 2 under the section entitled “*Exception Regarding TPOC Reporting Dates and Reporting for Multiple TPOC Amounts Where the Reporting Threshold is a Consideration.*” As will be noted from the title of this

section and CMS' discussion there under, CMS speaks in terms of reporting being required when the combined TPOC amounts “*meet the reporting threshold.*”¹⁷

Accordingly, the first step in addressing multiple TPOCs involves deciphering what CMS is specifically referring to when it speaks of a “*reporting threshold.*” In this sense, the term “*reporting threshold*” is essentially being used to denote those situations where the combined multiple TPOC amounts (as defined and calculated by CMS) exceed CMS' “*interim reporting threshold*” exceptions as established in the *March-Alert*. The “*interim reporting thresholds*” serve as monetary reporting threshold exceptions, below which reporting is *not* required under TPOC.

The terminology could easily become confusing as CMS is using the word “*threshold*” in defining *when* reporting is necessary in the context of multiple TPOCs *and* in relation to the exceptions to reporting per the TPOC “*interim reporting threshold*” exceptions.

From a practical standpoint, determining if multiple TPOCs “*meet the reporting threshold*” basically involves first ruling out the applicability of the TPOC “*interim reporting threshold*” exceptions. In this regard, the TPOC “*interim reporting thresholds*” exceptions are outlined in the *March-Alert* as follows:

- TPOC dates of 7/1/09-12/31/10:
TPOC \$0.00 - \$5,000.00, reporting not required
- TPOC dates of 1/1/11-12/31/11:
TPOC \$0.00 - \$2,000.00, reporting not required
- TPOC dates of 1/1/12-12/31/12:
TPOC \$0.00 - \$600.00, reporting not required

It is important to note that the above TPOC “*interim reporting threshold*” exceptions apply only to liability insurance (including self-insurance) and workers' compensation; they do not apply to no-fault.¹⁸

If the TPOC amount (as defined and calculated by CMS) falls *below* the above monetary threshold amounts for the specified time period, Section 111 reporting is *not* required.¹⁹ Conversely, if the TPOC amount exceeds the *interim reporting threshold* exception amount, reporting is required.

Thus, it must be determined if CMS' TPOC "*interim reporting threshold*" exceptions are applicable in multiple TPOC situations. The starting point in this analysis is Item 4.d. of CMS' *March-Alert* which states as follows:

Where there are multiple TPOCs reported by the same RRE on the same record, the combined TPOC amounts must be considered in determining whether or not the reporting exception threshold is met. For TPOCs involving a deductible, where the RRE is responsible for reporting both any deductible and any amount above the deductible, the threshold applies to the total of these two figures.

As part of this process, specific consideration must be given to CMS' guidelines regarding how to factor in (a) multiple TPOCs for dates *on or after January 1, 2010* when a specific TPOC amount falls *below* the threshold exception amount and (b) multiple TPOC amounts occurring *prior to January 1, 2010*. On these points, the *May-Alert* states as follows:

Where a TPOC amount dated on or after January 1, 2010, falls below the threshold amount, the RRE *must add all* associated TPOC amounts dated on or after January 1, 2010, in determining if the reporting threshold is met.

Any associated TPOC amount occurring prior to January 1, 2010 *should not* be considered when calculating the TPOC amount for purposes of the reporting threshold.

When the combined TPOC amounts meet the reporting threshold, the RRE shall report all TPOC amounts where the applicable TPOC date is on or after January 1, 2010. Timeliness will be determined based upon the applicable date for the TPOC which caused the threshold to be met. Each TPOC amount will be reported separately, the earliest as TPOC #1 in Fields 100 and 101 of the Claim Input File Detail Record, the next as TPOC #2 in Fields 90 and 91 of the Claim Input File Auxiliary Record, and so on.²⁰

As the preceding analysis demonstrates, determining if reporting is required with respect to multiple TPOCs

involves consideration of several variables and factors. In relation thereto, it is important to keep in mind that CMS could issue additional amendments to these guidelines at some later point as the MIR remains in a "work in progress." Thus, it is important that RREs and all interested parties continue to monitor CMS to determine if any further updates are released on this issue that could alter the directives set-forth in the *May-Alert* as outlined herein.

The reader should also review the *April-Alert* for CMS' actual *technical* reporting requirements regarding multiple TPOCs as same relate to the claim input file data layout. Again, the reader should also consult transcripts CMS has released in relation to the agency's recent Town Hall teleconferences to obtain additional information on this issue. (See endnote 1 for information regarding the transcripts CMS has released to date and how to obtain same).

Conclusion

CMS' timeline extensions and revisions to the TPOC reporting trigger as outlined in the *May-Alert* represent significant amendments to the MIR directives. The further extension of the "live" production submission date in particular is a welcomed development as it will allow RREs and other interested parties additional time to build and fine tune their Section 111 compliance programs as CMS continues to release and revise the MIR guidelines. In many respects, CMS' decision to extend the MIR timelines would appear prudent given that the MIR remains in a "work in progress" state.

In closing, this an important reminder that all RREs and other interested parties should continue to regularly monitor CMS' dedicated website www.cms.hhs.gov/MandatoryInsRep for the release of additional MIR documents and information.

Likewise, close attention should be afforded to CMS' upcoming Town Hall teleconferences. Attached to this article is a listing of the currently scheduled Town Hall conferences for easy reference.

UPCOMING SECTION 111 “TOWN HALL” TELECONFERENCES TO BE HELD BY CMS REGARDING SECTION 111 OF THE MMSEA

CMS will be holding one NGHP Technical Support and one NGHP Policy related teleconference event per month through the end of 2009.

NGHP Technical Support teleconferences will focus on answering technical questions regarding the Section 111 data exchange process, including how to use the COB website, error codes and other information technology related questions. NGHP Technical Support teleconferences are scheduled for the following dates:

June 2, 2009	October 6, 2009
July 1, 2009	November 17, 2009*
August 11, 2009	December 8, 2009
September 8, 2009	

NGHP Policy teleconferences will focus on CMS policy supporting the Section 111 reporting process and are set for the following dates:

June 9, 2009	October 22, 2009
July 14, 2009	November 17, 2009*
August 18, 2009	December 15, 2009
September 30, 2009	

**As will be noted, policy and technical calls are scheduled for the same time on this date.* It is recommended that you consult CMS' dedicated Section 111 website (see below) to determine if CMS subsequently modifies these scheduled teleconferences.

Participation is by telephone only. All calls are held from 1 pm - 3 pm EST and will utilize the same call in number and passcode as listed below.

Call in number: 800-779-4354

Passcode: Section 111

CMS requests that you dial in approximately 20-30 minutes prior to the call as connection is not immediate. Any questions that you may have can be submitted via the following link prior to the call. PL110-173SEC111-commentscomments@cms.hhs.gov.

Please note that CMS could add or delete dates and/or otherwise make other modifications to the current schedule. Thus, it is recommended that you consult CMS' dedicated Section 111 website for possible schedule updates at the below link.

http://www.cms.hhs.gov/MandatoryInsRep/03_Liability_Self_No_Fault_Insurance_and_Workers_Compensation.asp#TopOfPage

About the Author

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Prior to joining NuQuest, Mark practiced workers' compensation and liability legal defense for 10 years. During this time, he developed a national Medicare practice which included Medicare Set-Asides and Medicare Compliance. Mark is very active on the national MSA/Medicare educational and training circuit. He is a regularly featured speaker on MSA/Medicare issues before carriers/TPAs, state bar associations and industry specific organizations.

Mark has also published several articles on MSA/ Medicare issues. Mark can be reached at 786-457-4393 or via e-mail at mpopolizio@nqbp.com.

Endnotes

- ¹ CMS held prior "Town Hall" conferences on October 1, 2008, October 29, 2008, December 11, 2008, January 22, 2009, January 28, 2009, February 25, 2009, March 24, 2009 and April 9, 2009.

To date, CMS has released the following information regarding its prior teleconferences as follows:

As of this time, CMS has published transcriptions of its teleconferences held from October 1, 2009 through May 12, 2009. These can be obtained at http://www.cms.hhs.gov/MandatoryInsRep/03_Liability_Self_No_Fault_Insurance_and_Workers_Compensation.asp#TopOfPage.

Summaries of CMS' October 1, 2009 and October 29, 2008 teleconference calls can be obtained at http://www.cms.hhs.gov/MandatoryInsRep/03_Liability_Self_No_Fault_Insurance_and_Workers_Compensation.asp#TopOfPage.

CMS has released audio versions of all its prior Town Hall teleconferences with the exception of the December 11, 2008 teleconference. The available audio versions of CMS' Town Hall teleconferences can be obtained at http://www.cms.hhs.gov/MandatoryInsRep/03_Liability_Self_No_Fault_Insurance_and_Workers_Compensation.asp#TopOfPage and http://www.cms.hhs.gov/MandatoryInsRep/07_NGHP_Transcripts.asp#TopOfPage.

- ² Section 111 of the MMSEA is codified at 42 U.S.C. 1395y(b)(7) and (8). Subsection (8) concerns liability insurance (including self insurance), no-fault insurance and workers' compensation which are commonly referred to by CMS as non-Group Health Plans (non-GHP or NGHP). Subsection (7) pertains to Group Health Plans which is *not* addressed by this article.

- ³ The author has released several articles on Section 111 in relation to each of CMS' MIR documents as follows:

Supporting Statement (August, 2008):

CMS Publishes Summary of Proposed Guidelines to Implement Section 111 of the Medicare, Medicaid & SCHIP Act, NuQuest/Bridge Pointe "Settlement News," August, 2008.

Implementation Timeline (September, 2008):

CMS Releases Implementation Timeline Regarding Section 111 of the MMSEA, NuQuest/Bridge Pointe “Settlement News,” September, 2008.

Registration Process (September, 2008):

CMS Releases Registration Process Instructions for Electronic Reporting Under the Section 111 of the MMSEA, NuQuest/Bridge Pointe “Settlement News,” September 29, 2008 (Special Edition)

Interim Record Layout (Initial – October, 2008)

CMS Releases “Interim Record Layout” Information for Reporting Under Section 111 of the MMSEA, NuQuest/Bridge Pointe “Settlement News,” October, 2008.

Interim Record Layout (Updated – November, 2008)

CMS Releases “Updated” Interim Record Layout for Reporting Under Section 111 of the MMSEA, NuQuest/Bridge Pointe “Settlement News,” December, 2008.

Interim Record Layout (Revised – December 5, 2008 Version)

CMS Releases “Revised” Interim Record Layout (12/5/08 Version) for Reporting Under Section 111 of the MMSEA, NuQuest/Bridge Pointe “Settlement News,” December 18, 2008 Edition.

CMS’ “Query Access” System (January 22, 2009 Teleconference)

CMS Announces “Query Access” System to Determine Medicare Entitlement for NGHP Reporting Under Section 111 of the MMSEA,” NuQuest/Bridge Pointe “Settlement News,” January, 2009.

CMS’ “Updated” Town Hall Conference (February 25, 2009)

CMS Provides Additional Information Regarding Section 111 Compliance at Fifth National “Town Hall” Teleconference,” NuQuest/Bridge Pointe “Settlement News,” March, 2009.

Section 111 NGHP User Guide (Version 1.0) and CMS’ March & April Alerts

CMS Releases “NGHP User Guide” & Supplemental Alerts Regarding Section 111 Reporting, NuQuest/Bridge Pointe “Settlement News,” April, 2009

Each of the referenced articles can be obtained by logging onto www.NQBP.com (select “Resource Library” and then choose “Settlement News”). In addition, each of CMS’ documents can be obtained at http://www.nqbp.com/rl_cms_memos.shtml.

⁴ CMS’ *May-Alert* at p. 2

⁵ CMS’ *May-Alert* at p. 2

⁶ CMS’ *May-Alert* at p. 1.

⁷ CMS’ *May-Alert* at p. 1.

⁸ CMS’ *May-Alert* at p. 1.

- ⁹ CMS' *May-Alert* at p. 1.
- ¹⁰ See, CMS' NGHP User Guide (Version 1.0, March 16, 2009) at p. 50.
- ¹¹ In this regard, CMS' guidelines state that the "*the RRE must monitor the status of that individual and report when that individual becomes a Medicare beneficiary unless responsibility for [ORM] has terminated before the individual becomes a Medicare beneficiary*" or otherwise terminated per an ORM reporting exception. See, CMS' NGHP User Guide (Version 1.0, March 16, 2009) at p. 51.
- ¹² CMS' *May-Alert* at p. 2.
- ¹³ CMS' *May-Alert* at p. 3.
- ¹⁴ See, CMS' NGHP User Guide (Version 1.0, March 16, 2009) at p. 110 (Field 100).
- ¹⁵ See, CMS' NGHP User Guide (Version 1.0, March 16, 2009) at p. 111 (Field 101).
- ¹⁶ See, CMS' *March-Alert*, at p. 2.
- ¹⁷ CMS' *May-Alert* at p. 2. This phrase as quoted is taken directly from the last paragraph on page 2 of the *May-Alert*.
- ¹⁸ CMS' "Supplemental Alert" (March 23, 2009) at p. 2. It should be noted that CMS has established *separate* reporting exceptions regarding the ORM trigger. Discussion of the ORM exceptions is not addressed in this article since the revisions made to CMS' reporting triggers in the *May-Alert* relate *only* to the TPOC trigger. The *May-Alert* makes no changes to CMS' ORM trigger or related exceptions.
- ¹⁹ It is important to note that CMS in its *March-Alert* stated that its Section 111 reporting "exceptions" (regarding both the TPOC and ORM triggers) "*do not act as a 'safe harbor' with respect to any other obligation or responsibility of any individual or entity with respect to the Medicare Secondary Payer provisions.*"
- ²⁰ CMS' *May-Alert* at p. 2-3. (Emphasis added).