

## CMS DELAYS SECTION 111 REPORTING FOR LIABILITY INSURERS

Judy Wang Mayer • 215.665.4737 • [jmayer@cozen.com](mailto:jmayer@cozen.com)

Katherine M. Layman • 215.665.2746 • [klayman@cozen.com](mailto:klayman@cozen.com)

In an Alert dated November 9, 2010 (and posted on November 12, 2010), the Centers for Medicare & Medicaid Services (CMS) announced a one-year delay in the implementation of certain reporting obligations under Section 111 of the Medicare, Medicaid, and SCHIP Extension Act of 2007 for claims involving liability insurers (including self-insured entities).<sup>1</sup> Claims involving workers' compensation and no-fault insurance, however, must be reported as scheduled in the first calendar quarter of 2011. The net result is a two-tiered implementation timeline.

Specifically, CMS has made the following changes to the implementation of the Section 111 reporting obligations:

- Liability insurers (including self-insured entities) may, but are not required, to delay their reporting of Total Payment Obligation to the Claimant (TPOC) settlements, judgments, awards, or other payments from the first calendar quarter of 2011 to the first calendar quarter of 2012, provided the insurer is not also accepting responsibility to pay a claimant's ongoing medical expenses (Ongoing Responsibility for Medicals or ORM).
- Liability insurers are only required to report TPOC settlements, judgments, awards, or other payments with a TPOC Date (*i.e.*, the date the payment obligation is established) of October 1, 2011 or later. Previously, this date was October 1, 2010.

In addition, for both liability (including self-insured entities) and workers' compensation insurers, CMS is extending the current interim dollar reporting thresholds for reporting TPOC settlements, judgments, awards, or other payments by one calendar year.

Accordingly:

- Claim reports where the TPOC Date is prior to January 1, 2013 with a TPOC totaling \$0 - \$5,000 are exempt from reporting.
- Claim reports where the TPOC Date is January 1, 2013 through December 31, 2013 with a TPOC totaling \$0 - \$2000 are exempt from reporting.

- Claim reports where the TPOC Date is January 1, 2014 through December 31, 2014 with a TPOC totaling \$0 - \$600 are exempt from reporting.
- No threshold applies to claims where the TPOC Date is January 1, 2015 or later.

For no-fault insurance, by contrast, there continues to be no *de minimus* dollar threshold for reporting TPOC settlements, judgments, awards, or other payments.

Notwithstanding these changes, CMS encourages liability insurers that are prepared to commence or may already have begun reporting to report "early," as doing so will work to their advantage in refining their production reporting processes.

No-fault and workers' compensation insurers will not receive any extensions of their TPOC reporting. In addition, the reporting obligations of any insurer accepting ORM liability have not changed — *i.e.*, claims with ORM dates of July 1, 2010 and later must be reported in the first calendar quarter of 2011.

The TPOC reporting delay for liability insurers (including self-insured entities) that CMS has announced is likely to provide some relief for the many organizations that have been preparing to comply with the reporting obligations for payments made since earlier this year. Many in the industry hope that this latest delay will give CMS time to re-evaluate and clarify current guidance so that all parties involved can better understand their obligations under Section 111.

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*Cozen O'Connor has significant experience in assisting clients with complying with Section 111 reporting requirements, including the information that must be reported, how information is to be reported, and the impact of the reporting and other MSP requirements on settlements. We look forward to assisting and providing efficient guidance to any clients who may be subject to these reporting rules.*

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<sup>1</sup> The Alert can be found online at <https://www.cms.gov/MandatoryInsRep/Downloads/RevTimelineTPOC110910.pdf>.