Workers' Comp

CMS Announces Proposed Methods to Calculate Civil Monetary Penalties for Section 111 Reporting

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Keep current with new legislation and its potential effect on your organization. This regulatory update is for informational purposes only, and provides some key highlights on state initiatives that may impact the Medicare Set-Aside services Genex provides.

Over the past few months there have been many changes and new directives released by Centers for Medicare & Medicaid Services (CMS). Last year CMS announced 2020 plans to address the enforcement of Civil Monetary Penalties (CMPs) for both Group Health Plans (GHPs) and Non- Group Health Plans (NGHPs) that are noncompliant with Section 111 insurer reporting.

CMS has utilized the public comments solicited in response to the Advanced Notice of Proposed Rulemaking (ANPRM) for CMPs that was published way back in December 2013 in the development of the proposed rule. The proposed rule specifies how and when CMS will calculate and impose CMPs when responsible reporting entities (entity or entities) do not meet their Medicare reporting obligations. This is a proposed rule and not final. CMS will accept public comments on the proposed rule if received before Monday, April 20, 2020 no later than 5 p.m.

The proposed rule contains penalties for GHP and NGHP entities when they fail to perform Section 111 reporting, report inaccurate information or do not appropriately update the beneficiary record and report poor quality data. Here we will focus on proposed penalties for NGHP entities.

- An NGHP that fails to perform Section 111 reporting within a specified timeframe can be penalized $1000 for each day of non-compliance for each individual who's information should have been reported. The maximum penalty is $365K per individual per year.
- An NGHP that respond to CMS recovery efforts with information that contradicts Section 111 reporting data may be subject to a penalty based on the number of calendar days that the entity failed to report updates to the beneficiary record. The penalty would be up to $1000 per calendar day of noncompliance

for each individual. The maximum annual penalty would be $365,000 (adjusted annually under 45 CFR 102)

- For poor quality, reported data CMS has proposed a 20% error tolerance threshold. Reported information exceeding the error tolerance threshold for 4 out of 8 consecutive reporting periods would be subject to a CMP. CMS is proposing a tiered approach for the NGHP penalty with the initial penalty of $250 for each day of noncompliance for each individual. The penalty would increase each subsequent quarter by $250 per day to a maximum of $1000 per day.
- In the following instances, there is to be no CMP imposed:
    - Entity reports information within one year of the settlement date
    - Reporting entities submission complies with the reporting error thresholds
    - Entity is unable to obtain required reporting information from Medicare beneficiaries and documents their good faith efforts to obtain information

CMS anticipates that a formal appeals process to provide reporting entities with a way to appeal any notice of pending or imposed CMP will coincide with the final rule. Under this process entities would have the right to request a hearing with and Administrative Law Judge within 60 calendar days of receipt of the CMP.

To review the proposed rule in its entirety please click here.

Comments to the proposed rule may be submitted as indicated below. CMS cannot accept faxed comments. Please reference file code CMS-6061-P when commenting.

Electronically: http://www.regulations.gov Follow the “Submit a comment” instructions.

Regular Mail:
Centers for Medicare & Medicaid Services Department of Health and Human Services
Attention: CMS-6061-P
P.O. Box 8013
Baltimore, MD 21244-8013

For more information/questions about CMS Proposed Methods to Calculate CMPs or to make a referral please contact Genex MSA 1. 888.GO.GENEX or msadirect@genexservices.com.

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