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# What's Changing in Medicare?

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# Training Topics



- Civil Money Penalties
- WCMSEA Reporting
  - What is it? Issues caused by it?
  - What has CMS said?
- TPOC Update
- ORM Update
- Medicare Advantage/Part D update



# I got my MSA report. Now what?



- **\*\*\*YOU DO NOT NEED TO USE THE FIRST MSA REPORT YOU GET\*\*\***

Questions you should ask yourself:

- Is the MSA allocation acceptable for my settlement?
- Do I need to submit to CMS?
- Can I reduce this MSA allocation more?



# Civil Monetary Penalties



- Failure to timely perform Section 111 reporting will put the claim at risk for penalties!
  - **Requirement:** Report claim info for Medicare beneficiary within the later of one year of last acceptable reporting date (ORM = Y or TPOC) or Medicare beneficiary's entitlement date.
  - **What are penalties for failure to timely report claims?** Penalties start at \$250 per calendar day up to \$1,000 per day. Maximum \$365,000 per individual. Subject to annual adjustments.
  - **When does this rule apply?** CMS will begin auditing claims in April of 2026. The lookback will be for claims that should have been reported by October 11, 2024 at the latest and are one year from the point they should have been reported to CMS.
    - WC claims won't be audited until July 2026, and lookback is to 8/1/2025

# Civil Monetary Penalties

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- **Safe Harbor:** What if RRE can't get information from individual to report to CMS?
- RRE to make three attempts to get information from the individual. First two attempts in writing (postal mail or email) and third attempt by phone or other reasonable means (can include email or postal mail).
- Keep attempts on record for at least five years.

# Civil Monetary Penalties



- Audits begin April 2026 (looking back to claim reported on/after 10/11/2025) for liability and no fault. WC audits begin July 2026
- 250 claims per quarter audited (pro rata basis for NGHP & GHP)
- Informal CMP: 30 days to respond to CMS with mitigating evidence. Will be sent to RRE + Account Manager/Authorized Rep
  - If received – HAVE A PLAN! Missing/late response to informal CMP will result in formal CMP and only recourse is judicial hearing.
- Formal CMP: Sent by certified mail to RRE only. Appeal is only via ALJ.



# New WCMSA Reporting Requirement

## Must Report:

MSA total amount

MSA period (number of years MSA expected to cover)

Lump sum or structured payout indicator

Initial deposit amount

Anniversary (annual) deposit amount

## May Report:

Case control number (WCRC case ID)

Professional administrator EIN (if applicable)

# New WCMSA Reporting Requirement – 4/4/2025

## What claims must report WCMSA information to CMS?

- All workers compensation settlements involving a Medicare beneficiary that involve a total payment obligation to the claimant (TPOC)
- This includes TPOC settlements
  - That do not meet the CMS threshold to submit for review in the WCMSA process
  - That includes MSAs that are considered evidence-based / “non-submit” MSAs
  - That includes situations where **no** money was set aside for future medicals



## CMS issues with WCMSA data impacting CMS submissions



- CMS is comparing mandatory MSA data with data submitted via the voluntary approval process
  - CMS *is* suspending review of WCMsAs and rescinding prior approvals
  - CMS *is rescinding* prior approvals when MSA figures do not match
  - CMS *is converting* approved professional administration MSAs into self-administration if professional admin not reported
- The majority of cases are not impacted, but those that are impacted are facing significant hurdles

# CMS Addressing in Town Hall

- WCMSA reported amount doesn't match CMS approved amount.
  - Townhall update: Tolerance threshold. At a minimum, will permit rounding (eliminating cents impacting). Unclear what exact threshold is.
- TPOC entry either before or during CMS submission process = CMS preventing/ending CMS review.
  - CMS appears to be continuing this!!! Files with TPOC entry may not be able to participate in CMS submission process.
- \*CMS did indicate S111 record should be updated. However, they didn't indicate which of these issues an updated record would fix.
- \*\*\*CMS ignores multiple TPOCs being a possibility.

# CMS Townhall

## Additional New / Different Information

- For Case Control Number (CCN): “Failure to provide this information can cause multiple cases to be established”
  - Also verified incorrect CCN **will cause a hard error!!!**
- For Prof'l Admin EIN: “Failure to provide a previously identified professional administrator risks removal of the professional administrator from CMS's records.”

## ECS recommendation

Wait for CMS to update User Guide – which still states these are non-mandatory fields.  
Especially with CCN – concern is hard error could = failure to timely report (i.e. at risk for CMP)



# TPOC Reporting Update from CMS

- **Single RRE with multiple dates of injury settling together**
  - CMS Guidance is to now only report TPOC/WCMSA on the claim with the earliest date of injury. All ICD codes should be entered onto this same claim at the time of TPOC.
  - Other claims = no TPOC/WCMSA, but should still report ORM termination
- **Multiple RREs with global settlement**
  - CMS guidance is for each party to report its own share of the settlement (unless it is joint & several liability, which is uncommon)
  - \*However, each party should report total WCMSA as opposed to their share if global WCMSA used.

# TPOC Reporting Update from CMS

- **Single RRE with multiple dates of injury settling together**

## **EXAMPLE:**

Safety National is settling out entirely with one injured worker, but 3 dates of injury (DOI).

Settlement = \$100,000. The \$100,000 includes a \$25,000 MSA.

DOI 1 = 1/1/2021 low back injury

DOI 2 = 2/2/2022 left knee injury

DOI 3 = 3/3/2023 neck injury

**TPOC to be reported = \$100,000 only on the 1/1/2021 claim.**

**WCMSA of \$25,000 to be reported on 1/1/2021 claim only.**

**Update 1/1/2021 claim's ICD codes with left knee and neck ICDs from the other DOIs**

**Enter ORM termination on all three claims.**

# TPOC Reporting Update from CMS

- **Multiple RREs with global settlement**

## **EXAMPLE:**

Safety National and Insurer X are settling out entirely with one injured worker for \$100,000. The \$100,000 includes a global \$25,000 MSA. This is not a joint and several liability settlement.

- Safety National is contributing \$90,000.
- Insurer X is contributing \$10,000

## **TPOC/WCMSA to be reported:**

- **Safety reports TPOC of \$90,000. WCMSA of \$25,000.**
- **Insurer X reports TPOC of \$10,000. WCMSA of \$25,000.\***

\*As you can see, WCMSA could potentially be higher than TPOC

# User Guide Update of ORM

- CMS Broadens ORM Term Language

- Where the insurer's responsibility for ORM has been terminated per the terms of the pertinent insurance contract, such as maximum coverage benefits, or any other reason that is not prohibited by the terms of the insurance contract or applicable state or federal law.

**Note:** An insurer's refusal to accept ORM, or to continue to accept ORM, is a valid ORM termination reason, provided that the refusal is permitted by applicable state or federal law and the terms of the insurance contract.

- Clearly allows for termination if “permitted” by law or contract but outside of other CMS guidelines
- Is this more in line with “good faith” terminations?

# Other Notable CMS Updates

- **CMS updates User Guide to include “commissions” in addition to “courts” when talking about judicial determinations.**
- **CMS clarifies wrongful death action.**
  - Should only be reported as TPOC if Wrongful Death action is only thing being settled out.
  - If wrongful death + past/future medical, then reportable TPOC and may have conditional payment issues.

# MAP/PDP Trends

- **Reminder: Medicare Advantage Plans (MAP) and Part D Plans (PDP) have conditional payment rights as well in the MSP Act. Primary recovery tool is private cause of action for double damages.**
- CMS providing WCMSA data via CMS submission process to Part D plans.
- Some MAPs are getting proactive on reaching out to RREs
- Still some bad actors:
  - MSP Recovery
  - Public Interest Company (AI based recovery entity)

# Thank You

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**Any questions or comments?**

# Connect With Us





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