



February 22, 2011

CMS Issues Alert Regarding What Entities are Foreign Insurers (Excluding Self-Insurance)

On February 7, 2011, the Centers for Medicare and Medicaid Services (CMS) issued an Alert providing information pertaining to foreign insurers classified as Responsible Reporting Entities (RREs) under Section 111 of the Medicare, Medicaid and SCHIP Extension Act (MMSEA) for Liability, No-Fault and Workers' Compensation plans. **Note: the CMS Alert issued does not address Liability Self-Insurance or Self-Insured Workers' Compensation (separate instructions will be issued by CMS at a later date regarding foreign entities which are self insured).** In the Alert, CMS provides specific information as it relates to these foreign entities/insurers as follows.

CMS provides the following definitions:

- For purposes of the MMSEA Section 111, the term "foreign insurer" refers to an insurer which does not have a United States (U.S.) Tax Identification Number (TIN) and/or a U.S. 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. In reference to this Alert, CMS stated that the terms "self-insurance" and "self-insured" refer to 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.

Foreign RREs must report pursuant to Section 111:

- If they are "doing business in the U.S."
- If a court of competent jurisdiction in the U.S. 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 Section 111 reporting, CMS has confirmed that foreign insurers are "doing business in the U.S." 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.
- The above does not apply, but they are otherwise engaged in doing business in the United States through a definite presence in the U.S., 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.

CMS stated that 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.

In the Alert, CMS also confirmed that by regulation Medicare beneficiaries have consented to the release of information required for coordination of benefit purposes by virtue of the following:

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)

To view a copy of this Alert [click here](#).

PMSI Client Support PMSI is committed to providing our clients the most current information on MMSEA reporting requirements and will continue to deliver updates as new information is issued by CMS. RRE's should attend CMS teleconferences and consult the MMSEA Section 111 dedicated web site at <http://www.cms.gov/MandatoryInsRep/> to obtain additional information about reporting requirements.

For more information on Medicare Secondary Payer related Government Affairs Alerts, please contact your PMSI Representative at 888.MSA.PMSI or visit the [Knowledge Center](#) section of our website at www.pmsionline.com.

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