

April 17, 2020

DELIVERED VIA ELECTRONIC SUBMISSION

Centers for Medicare & Medicaid Services
Department of Health & Human Services
Attention: CMS-6061-P
Mail Stop C4-26-05
7500 Security Boulevard
Baltimore, Maryland 21244-1850

File Code: CMS-6061-P: Medicare Program; Medicare Secondary Payer and Certain Civil Money Penalties (RIN 0938-AT86)

Citation: Federal Register, Vol. 85, No. 32 (February 18, 2020)

Dear Sir/Madam:

ISO Claims Partners hereby respectfully submits the following commentary in response to CMS's Notice of Proposed Rule Making (NPRM) (CMS-6061-P) as captioned above.

Background

ISO Claims Partners is a national leader in the provision of Medicare Secondary Payer (MSP) compliance services for the property casualty insurance industry, generally recognized by CMS as non-Group Health Plans (NGHP).

ISO Claims Partners has the pleasure of serving as a trusted advisor on MSP compliance matters to insurers, self-insureds, third party administrators and law firms across the country and around the world.

Our organization provides services in all major MSP compliance areas including: conditional payment investigation and disputes, MMSEA/Section 111 reporting, Medicare set-aside allocations, and a host of other MSP compliance aspects. Over the past decade, we have developed working and respectful relationships with CMS and its various MSP contractors.

Our client base includes many top Fortune 1000 companies, including all of the top 10 property and casualty insurers and 21 of the top 25 workers' compensation carriers as ranked by the National Association of Insurance Commissioners (NAIC). We serve as a Section 111 reporting agent for over 1,200 active RREs.

In addition to our close working relationship with the vast array of industry stakeholders, as well as CMS and its contractors, we have a unique perspective not only on policies and processes established by CMS but also on the very real impact those policies and procedures have on efficient claims resolution.

General Considerations

As we prepare to review and provide commentary responses to CMS's proposals, as a general matter we would like to note that the policies and procedures established by CMS with regard to its Section 111 Mandatory Insurer Reporting directives have dramatically altered the investigation, negotiation and settlement of many liability, workers' compensation and other non-group health claims. Accordingly, this reality should be considered by CMS as it develops its Section 111 civil money penalties and the required "good faith" safe harbor provisions.

As a starting point, we believe that the overall intent and objective of the Section 111 reporting law should be considered by CMS in developing its Section 111 CMPs. In this regard, we believe that the good faith efforts of the RRE to comply with CMS's reporting law should be a central tenet in building the penalty provisions and levying potential penalties. While we provide specific commentary and ideas below, in general these themes complement such factors as an RRE's overall compliance history; efforts made at compliance as evidenced by modification of claims handling procedures; training; technical investment; and circumstances outside of the RRE's control that limit the RRE's ability to comply.

Our Commentary Response

With this background in mind, on our own behalf as well as our many clients, we hereby respectfully present the following comments to CMS's NPRM (CMS-6061-P) for your careful review and consideration.

Our response is divided into the below sections with the highlighted hyperlink taking you to our commentary response per each section:

- [Part A – When CMPs would be Imposed](#)
- [Part B – When CMPs would NOT be imposed](#)
- [Part C – Notice and Appeal](#)
- [Part D – General Items](#)

We thank you for this opportunity to provide comments on this important compliance topic and appreciate your due consideration of our commentary responses.

Respectfully submitted,

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