



CENTERS FOR MEDICARE AND MEDICAID SERVICES (CMS)

SECTION 111 PENALTY PROPOSAL

The Centers for Medicare and Medicaid Services (CMS) has released its civil money penalty (CMPs) proposal for non-group and group health plans.

SCENARIOS WHEN CMPS WILL BE IMPOSED:

- Failure to report NGHP beneficiary record information within the required time frame (no more than one year from TPOC).
- RREs response to CMS recovery efforts contradicts the entity's Section 111 reporting. When RREs report data that is inconsistent with information that has already been communicated to CMS. Per the proposal, penalties will be both for non-reporting and failing to update reports.
- When certain error tolerance thresholds are exceeded in any four out of eight consecutive reporting periods.

HOW TO AVOID PENALTIES:

- Report within the required timeframe (not to exceed one year after the TPOC date). Comply with any TPOC reporting thresholds.
- Do not exceed error tolerance(s) in any of four out of eight consecutive reporting periods by maintaining clean data. When certain error tolerance thresholds are exceeded in any four out of eight consecutive reporting periods.
- When the RRE is unable to obtain necessary information to report, maintain records of its good faith effort to collect information. Documentation should be maintained for 5 years.

APPEALS AND STATUTE OF LIMITATIONS

- CMS will also allow RREs to submit mitigating circumstances as part of the CMP evaluation process. Parties will be able to appeal by using the appeals process outlined in 42 CFR 402.19 and 42 CFR part 1005, which includes appeal before an Administrative Law Judge and the Departmental Appeals Board.
- CMS also indicates that the five-year statute of limitations will apply 28 USCA 2462) from the date when the non-compliance was identified by CMS.

CMS COMMENT DEADLINE

Be sure to submit comments to CMS no later than 5 pm on April 20, 2020 to ensure consideration.

1. Follow the instructions for submitting comments via <http://www.regulations.gov> to submit electronically.
2. 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.
3. Express mail - Centers for Medicare & Medicaid Services, Department of Health and Human Services, Attention: CMS-6061-P, Mail Stop C4-26-05, 7500 Security Boulevard, Baltimore, MD 21244-1850.

Please provide one original and two copies for submissions via mail.

HELPFUL LINKS

Proposal in Full

<https://www.federalregister.gov/documents/2020/02/18/2020-03069/medicare-program-medicaresecondary-payer-and-certain-civilmoney-penalties>

CMS Newsroom

<https://www.cms.gov/newsroom/factsheets/cms-proposes-methodscalculate-civil-monetary-penaltiesgroup-non-group-plans>