

CMS RELEASES “INTERIM RECORD LAYOUT” INFORMATION FOR REPORTING UNDER SECTION 111 OF THE MMSEA

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On October 27, 2008, the Centers for Medicare and Medicaid Services (CMS) released its *Interim Record Layout* document as part of the agency’s Mandatory Insurer Reporting (MIR) requirements under Section 111 of the Medicare, Medicaid and SCHIP Extension Act (MMSEA)¹. A copy of the *Interim Record Layout* document can be obtained at http://www.nuquestbridgepointe.com/news/uploads/interim_record_layout.pdf.

CMS’ *Interim Record Layout* provides information regarding (1) CMS’ proposed record layout pertaining to the data and other information that a Responsible Reporting Entity (RRE) will be required to report under Section 111; (2) important reporting requirements related to the submission of the required data; and (3) introduction of a “special reporting extension for on-going claims resolved (partially resolved) prior to July 1, 2009.”

This article provides an overview of CMS’ *Interim Record Layout* as it relates to each of the above referenced areas. However, before examining these new proposals it may be helpful to set our compass by first understanding how CMS’ *Interim Record Layout* fits into the bigger picture of Section 111 and CMS’ MIR guidelines.

Background

CMS’ *Interim Record Layout* represents the fourth set of proposed written directives issued by the agency since August in relation to its continuing implementation of Section 111. It is important to note that the *Interim Record Layout* relates specifically to liability insurance (including self-insurance), no-fault insurance and workers’

compensation which are commonly referred to collectively as non-Group Health Plans (non-GHP or NGHP) under the MIR.

In August, 2008, CMS announced its initial MIR guidelines in the Federal Register (73 Fed. Reg. 45013, August 1, 2008) and as contained in CMS’ *Supporting Statement* issued in conjunction therewith.² In mid September, 2008, CMS released its *Implementation Timeline* outlining its expected timetables for full implementation of the MIR requirements.³ In late September, CMS released its *Registration Process* instructions outlining the required registration process for RREs with regard to the MIR’s electronic reporting requirement. In addition to these written guidelines, CMS has held national Open Forum teleconference calls on October 1, 2008 and October 29, 2008 through which the agency discussed its proposed guidelines and entertained questions from the public regarding same.

In order to fully appreciate CMS’ *Interim Record Layout*, the author strongly encourages the reader to first review CMS’ *Supporting Statement*, *Implementation Timeline* and *Registration Process* in their entirety to obtain a complete understanding of the guidelines and approaches outlined therein. Each of these documents can be obtained at http://www.nuquestbridgepointe.com/rl_cms_memos.shtml. Likewise, the reader should review summaries of CMS’ recent Open Forum teleconference calls which can be obtained on the same website.

Under CMS’ MIR guidelines, RREs are responsible for placing Medicare on notice electronically via the submission of what CMS terms as “production files.” The first step is to determine if one is considered a RRE. In this

regard, it is imperative that all parties examine CMS' definition of what constitutes a RRE to determine potential RRE status. CMS' definition of what constitutes a RRE is contained in CMS' *Supporting Statement* at pages 13-15.⁴

CMS has outlined a specific registration process for RREs to register with the COBC via CMS' "COB Secure Website (COBSW)" which is currently under construction.⁵ It is important to note that the RRE itself must complete the registration process; Agents are not permitted to complete the registration for the RRE.⁶ The registration process for non-GHP RREs will be from May 1, 2009 through June 30, 2009.⁷

Once the registration process is completed, there will be a "testing period" commencing July 1, 2009 to September 30, 2009 for all non-GHP RREs in which the data submission process will be tested.⁸ Thereafter, non-GHP RREs are scheduled to "submit their first Section 111 production files upon a predetermined schedule with the COBC" during the period October 1, 2009 to December 30, 2009.⁹ All non-GHP RREs are scheduled to be submitting production files by January 1, 2010.¹⁰

The above outline of the registration, testing and submission processes and timelines is an *extremely* generalized snapshot of the overall process. It is imperative that the requirements and processes outlined in CMS' *Supporting Statement, Implementation Timeline and Registration Process*, as well as CMS' oral proclamations as announced at its October 1, 2008 and October 29, 2008 Open Forum teleconference calls, be examined closely for a complete understanding of the specific MIR requirements.

Against this backdrop, the question becomes "how does the newly released *Interim Record Layout* information fit into the bigger picture of the MIR guidelines and impact RRE obligations?"

CMS' Interim Record Layout

To begin, CMS' *Supporting Statement* announced various "mandatory," "optional," and "situational" data fields, with corresponding instructions regarding the type of information RREs will need to report under Section 111. These data fields are referenced at pages 18-20 of the *Supporting Statement*.

CMS' *Interim Record Layout* document now provides the proposed "record layout" that will be utilized with respect to the reporting requirements under Section 111.¹¹

The use of the word "interim" in the title of CMS' new release is noteworthy as same suggests possible future additions, modifications, or revisions to the proposed record layout. In the *Interim Record Layout* document itself CMS states that "Complete instructions and requirements will be published at a later date in the *MMSEA Section 111 Liability Insurance (Including Self-Insurance), No-Fault Insurance, and Workers' Compensation User Guide*, and this user guide will be available as a download on the dedicated Section 111 Web page at www.cms.hhs.gov/MandatoryInsRep when completed. RREs are encouraged to visit this site often for updates on Section 111 reporting requirements.¹²

The *Interim Record Layout* document contains a section entitled "General Requirements" which provides an important listing of key reporting requirements under the MIR. These requirements are outlined in pages 4-6 of said document and are listed by CMS in "bullet" format, single spaced. The author strongly encourages RREs to carefully examine each of these requirements to assure that same are incorporated into its Section 111/MIR compliance program.

A thorough examination of each requirement is outside the scope of this article. However, to provide some guidance in examining these requirements the author has prepared the following *general* categorical breakdown of the various topical areas addressed in pages 4-6 of the *Interim Record Layout*:

- Formatting requirements regarding input claims files.
- Timeline for initial Section 111 input claim files.
- Timeline for RREs to register on the dedicated COBSW website.
- Quarterly file submission timeline.
- Assignment of a Section 111 Reporter ID to be used on all submitted files.
- **The network system types to be used to submit data (CMS encourages all RREs to address this issue "as soon as possible since this set up can take a significant amount of time)."**
- **The need for RREs to "implement a procedure in their claims resolution process to determine whether an injured party is a Medicare beneficiary. RREs must submit either the Social Security Number (SSN) or Medicare Health Insurance Claim Number (HICN) for the injured party on all Input Claim File detail records."**

- Reporting requirements regarding “initial file submissions.”
- Reporting requirements regarding claims for which the RRE still has responsibility for medical services as of July 1, 2009, regardless of an initial resolution (partial resolution) date prior to July 1, 2009. (See the associated special reporting extension discussed in the next section).
- Reporting requirements regarding initial file submission on all claims where the injured party is/was a Medicare beneficiary, that are resolved (or partially resolved) through a settlement, judgment, award or other payment on or after July 1, 2009, regardless of the assigned date for a particular RREs first submission. This includes resolution (or partial resolution) through one payment obligation (regardless of whether the payment obligation is executed through a single payment, a structured settlement, or an annuity) as well as those situations where there is a responsibility for ongoing medical services.
- Reporting requirements in cases where the RRE has accepted “on going responsibility for medical payments (ORM)” (2 reporting events in this instance).
- Instructions regarding Federal Tax Identification (TIN) Reference file, Employer Identification Number (EIN) and Social Security Number (SSN).
- Instructions regarding “subsequent claims files.”
- Instructions regarding “subsequent quarterly update files” and “quarterly update files.”
- Instructions how to handle situations where a RRE has no new information to supply on a quarterly update file.
- E-Mail notification to the RRE after a file has been initially processed and when a response file has been transmitted or is available for download.
- Requirement that each “detail record” on the input claim file contain a unique Document Control number (DCN) generated by the RRE so that response records can be matched and issues with files more easily identified and resolved. The RRE may choose the format so long as it is not more than 10 alpha-numeric characters as defined in the record layout.
- COBC to return response files to the RRE within 45 days of the receipt date posted for the input file.

In addition, the *Interim Record Layout* contains an actual replica of the proposed file layout on pages 8-60. This provides a very detailed outline of the various data fields broken down into several different categories. All RREs should review the file layout carefully to become familiar with the type of information required to be reported, CMS’ specific instructions related thereto (see “Description” field), and the layout’s general format.

Special Reporting Extension for Ongoing Claims Resolved (Partially Resolved) Prior to July 1, 2009

As part of the *Interim Record Layout*, CMS outlined the following triggering events for reporting under Section 111:¹³

- RREs’ initial file submissions must report on all claims, where the injured party is/was a Medicare beneficiary, that are resolved (or partially resolved) through a settlement, judgment, award or other payment on or after July 1, 2009, regardless of the assigned date for a particular RREs first submission. This includes resolution (or partial resolution) through one payment obligation (regardless of whether the payment obligation is executed through a single payment, a structured settlement, or an annuity) as well as those situations where there is a responsibility for ongoing medical services.
- RREs must also report on claims for which the RRE still has responsibility for ongoing payments for medical services as of July 1, 2009, regardless of an initial resolution (partial resolution) date prior to July 1, 2009). (See the associated special reporting extension later in this document.)
- If an RRE has accepted Ongoing Responsibility for Medical payments (ORM) on a claim, then the RRE must report two events; an initial record to reflect the acceptance of ongoing payment responsibility and a second (final) record to reflect the end date of ongoing payment responsibility with the corresponding end date reflected in the ORM Termination Date (Field 78). Because reporting is done only on a quarterly basis, there may be some situations in which the RRE reports the assumption of ongoing responsibility in the same record as which a termination date for such responsibility. RREs are **not** to submit a report on the Input Claim File every time a payment is made for situations involving ongoing payment responsibility. (Emphasis by CMS).

Based on the above, CMS has basically established two triggering events for reporting under Section 111: (1) claim resolution (or partial resolution) and (2) situations where the RRE accepts “ongoing responsibility for medical payments.” In this second instance, the RRE must actually report twice — when the RRE “accepts ongoing payment responsibility” and upon the “end date of ongoing payment responsibility.”

As will be noted, the above proclamations do not specifically address situations where a RRE may have made payment in the context of a disputed/denied claim. In this regard, at the October 1, 2008 Open Forum teleconference call CMS indicated that in a disputed/denied claim where no responsibility for the claim had been assumed by the RRE and no payments had been made, reporting was not required until there is a single settlement, judgment, award other payment. In relation thereto, CMS indicated that the reporting requirements *would* be triggered in a disputed/denied claim when a payment was made. It is unclear if the absence of this particular situation from CMS’ written requirements as contained in the *Interim Layout Record* was simply an oversight. Thus, until clarification is issued on this point, proceeding conservatively by abiding with CMS’ oral proclamations in situations where payments are made in denied/disputed claims would appear to be the most prudent path. This is certainly an important point that will need to be clarified by CMS.

It is important to note that CMS announced a “special reporting extension” to these general requirements in relation to what the agency terms as “ongoing claims resolved (partially resolved) prior to July 1, 2009.” In this regard, CMS states the following:

The CMS recognizes that Section 111 RREs for liability insurance (including self-insurance), no-fault insurance, and workers’ compensation may not currently carry the Social Security Number (SSN) or Medicare Health Insurance Claim Number (HICN) for injured parties or track whether they are Medicare beneficiaries in their systems. The CMS is providing a limited extension through June 30, 2010 to these RREs until 06/30/10, to deal with situations where information required for Section 111 reporting on pre-existing situations is not available. The extension is intended to allow RREs time to go back and determine the Medicare status of individuals for whom there is pre-existing ongoing payment responsibility which continues as of July 1, 2009.

From October 1, 2009 through June 30, 2010, RREs must report on claims with resolution (partial reso-

lution) dates of July 1, 2009, and subsequent – for both ongoing responsibility cases and one-time payment cases. The extension does not apply to claims with resolution (partial resolution) dates of July 1, 2009, and subsequent. The extension applies only to claims where the RRE has accepted ongoing responsibility, with the claim potentially subject to further payment as of 7/1/09, but the original resolution (partial resolution) date is prior to 7/1/09. If an RRE has the information that such a claimant is a Medicare beneficiary and the RRE has the SSN or HICN, it is to send the record with its initial file in fourth calendar quarter 2009. If they do not have this information, they may delay reporting on these claims until their third calendar quarter 2010 file submission.¹⁴ (Emphasis added).

As will be noted, the bases of CMS’ general reporting triggers and the granted “special extension” are based on factors *other* than the “accident date” which often serves as the pivotal event in determining substantive rights and obligations in the claims context. Accordingly, it is important to note that certain claims predating July 1, 2009 are subject to Section 111 and RREs should undertake the necessary measures to determine Section 111 applicability in these cases. It is interesting to note that in granting the limited extension as outlined above CMS recognizes that RREs will likely need time to determine a claimant’s Medicare entitlement status and Section 111 applicability on these older claims.

Conclusion

CMS’ *Interim Record Layout* is an important component of CMS’ proposed MIR guidelines that should be scrutinized closely by all RREs. While the presented layout may be modified by CMS in the future, the document provides the RRE with a very good barometer regarding the specific information that CMS will require to be reported and the agency’s areas of interest in regard to Section 111. All RREs should incorporate the record layout information and the other outlined requirements as contained in the *Interim Record Layout* into their Section 111/MIR compliance programs.

In closing, this is an important reminder that all RREs should continue to regularly monitor CMS’ dedicated website www.cms.hhs.gov/MandatoryInsRep to determine if CMS issues new proposed guidelines or otherwise makes modifications to the proposed record layout or other aspects of the MIR. Likewise, close attention should be afforded to the information discussed and announced by CMS at future Open Forum teleconference calls.

About the Author

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Endnotes

- ¹ Section 111 of the MMSEA is codified at 42 U.S.C. 1395y(b)(7) and (b). Subsection (7) pertains to Group Health Plans which are not addressed as part of CMS' Interim Record Layout or by the author in this article. Subsection (8) concerns liability insurance (including self insurance), no-fault insurance and workers' compensation which are commonly referred to in the Section 111 context as non-Group Health Plans (non-GHP). CMS' *Interim Record Layout* document and this article relate to non-GHP requirements under Section 111.
- ² For an in depth overview of CMS' Proposed Guidelines and "Supporting Statement," please see the author's article entitled *CMS Publishes Summary of Proposed Guidelines to Implement Section 111 of the Medicare, Medicaid & SCHIP Act*, NuQuest/Bridge Pointe "Settlement News," August, 2008. This article can be obtained by logging onto www.NQBP.com (select "Resource Library" and then choose "Settlement News").
- ³ The author provided an overview of CMS' proposed timelines in his article entitled *CMS Releases Implementation Timeline Regarding Section 111 of the MMSEA*, NuQuest/Bridge Pointe "Settlement News," September, 2008. This article can be obtained by logging onto www.NQBP.com (select "Resource Library" and then choose "Settlement News").
- ⁴ This information is contained as part of Attachment A to the *Supporting Statement*. CMS' definition of RREs and related terms is contained on p. 13-15 of the CMS' *Supporting Statement*. For an in depth overview of CMS' Proposed Guidelines and "Supporting Statement," please see the author's article entitled *CMS Publishes Summary of Proposed Guidelines to Implement Section 111 of the Medicare, Medicaid & SCHIP Act*, NuQuest/Bridge Pointe "Settlement News," August, 2008. This article can be obtained by logging onto www.NQBP.com (select "Resource Library" and then choose "Settlement News").
- ⁵ For an in depth overview of CMS' *Registration Process* document, please see the author's article entitled *CMS Releases Registration Process Instructions for Electronic Reporting Under the Section 111 of the MMSEA*, NuQuest/Bridge Pointe "Settlement News," September 29, 2008 (Special Edition). This article can be obtained by logging onto www.NQBP.com (select "Resource Library" and then choose "Settlement News").
- ⁶ CMS' *Registration Process* document at p. 3. Furthermore, CMS reiterated this directive at the October 1, 2008 Open Forum teleconference call.
- ⁷ CMS' *Registration Process* instructions at p. 2 (Section entitled "Registration Timelines").
- ⁸ CMS' *Implementation Timeline* document at p. 2.
- ⁹ CMS' *Implementation Timeline* document at p. 2.
- ¹⁰ CMS' *Implementation Timeline* document at p. 2.
- ¹¹ CMS' *Interim Record Layout* document at p. 2.
- ¹² CMS' *Interim Record Layout* document at p. 2.
- ¹³ CMS' *Interim Record Layout* document at p. 5.
- ¹⁴ CMS' *Interim Record Layout* document at p. 7.