

## SECTION 111 CHANGES THE GAME FOR IN-HOUSE WORKERS' COMP CLAIMS

Some employers choose not to report minor Workers' Compensation claims to their insurance carrier or third-party claim administrator. Given the reporting requirements and penalties associated with MMSEA SCHIP Section 111, this practice should be examined thoroughly to ensure that employers are not exposing themselves to significant fines.

### NOTICE-ONLY CLAIMS

A notice-only or incident-only claim may be kept in-house without risk until the injured worker makes a formal claim for a benefit. The mere fact/allegation of an incident alone does not trigger the reporting requirement. However, if an employer elects to keep incident-only claims in-house, protocols must be established to ensure reporting requirements are met should the employee later file a formal claim. Any time an employee pursues benefits under Workers' Compensation, the employer will need to revisit the reporting requirements.

### MEDICAL-ONLY CLAIMS

The practice of maintaining and processing medical-only claims in-house presents a significant challenge for employers under CMS guidelines. The practice constitutes self-insuring these claims and thus, employer assumes the role of a Responsible Reporting Entity (RRE).

A conflict arises for those employers that have a guaranteed cost program, as by definition the carrier is the RRE. By administering medical-only claims in-house, the employer can expose the carrier to the reporting penalties. As a result, the carrier may pursue legal action against the employer to recover the fines they have to pay for violation of the reporting requirements.



### WORKERS' COMPENSATION ORM

The CMS User Guide clearly states that claims must be reported when certain Medicare eligibility criteria are met. The statute requires reporting when a settlement, judgment, award or other payment is made. It is well established that medical payments are usually made early in the life of a Workers' Compensation claim. According to the CMS User Guide, these payments confer on the employer an ORM (Ongoing Responsibility of Medicals), which triggers the reporting obligation under SCHIP Section 111. However, an exception is in place until December 31, 2011, as explained in the wording below from the CMS User Guide:

“For Workers' Compensation ORM, claims meeting **ALL** of the following criteria are excluded from reporting for file submissions due through December 31, 2011: The claim is for 'medicals only' and the associated 'lost

time' for the worker is no more than the number of days permitted by the applicable workers' compensation law for a 'medicals only' claim (or 7 calendar days if the applicable law has no such limit) and all payment(s) has/have been made directly to the medical provider and total payment for medicals does not exceed \$750.00."

These new requirements present a challenge for employers that administer Workers' Compensation claims in-house. Failure to comply with the reporting guidelines can result in fines and penalties of \$1,000 per day per claim. We strongly recommend that you examine your current procedures with compliance experts and your legal counsel for further advice and planning.

## CONTACT

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*The observations, comments and suggestions we have made in this report are advisory and are not intended nor should they be taken as legal advice. Please contact your own legal adviser for an analysis of your specific facts and circumstances.*

## WEBINAR

### SCHIP MANDATORY INSURER REPORTING UPDATE

### WILLIS AND GOULD & LAMB INVITE YOU TO JOIN US FOR A WEBINAR THAT COULD HELP YOU AVOID HEAVY SECTION 111 FINES

In December 2007, the Medicare, Medicaid and SCHIP Extension Act of 2007 was signed into law. Section 111 of SCHIP defines specific requirements for Liability, no-fault Auto and Workers' Compensation carriers and self-insurers designed to ensure compliance with the Medicare Secondary Payer statute (MSP). Failure to comply with Section 111 carries stiff monetary penalties. Failure to report carries a \$1,000 per day, per claim penalty. Gould & Lamb will be conducting a SCHIP update session especially for Willis clients. The session includes:

- An overview of the Mandatory Insurer Reporting (MIR) process
- A timeline of MIR Implementation with G&L and CMS
- Legal implications of MIR compliance
- Legal implications of MSP compliance
- A discussion of the upcoming testing period

The program will conclude with a question and answer session.

### REGISTRATION INFORMATION

**DATE:** Wednesday, September 30, 2009

**TIME:** 1:00 PM - 3:00 PM Eastern Time

The number of lines are limited, so please reserve your webinar space as soon as possible by clicking on this link:

<https://www2.gotomeeting.com/register/731831411>

After registering you will receive a confirmation email containing information about joining the webinar.

### SYSTEM REQUIREMENTS

PC: Windows® 2000, XP Home, XP Pro, 2003 Server, Vista  
Macintosh®: Mac OS® X 10.4 (Tiger®) or newer