

CMS FAQs Address Imposition of Penalties for MSP Reporting Violations

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Medicare Secondary Payer and Certain Civil Money Penalties: Frequently Asked Questions (Nov. 2, 2023)

Available at <https://www.cms.gov/files/document/medicare-secondary-payer-and-certain-civil-money-penalties-frequently-asked-questions.pdf>

Less than a month after issuing final regulations specifying how and when it will calculate and impose civil money penalties for failure to comply with the Medicare Secondary Payer (MSP) reporting requirements, CMS has issued additional FAQ guidance for responsible reporting entities (RREs). As background for group health plans, RREs—typically insurers or third-party administrators—must report information to CMS about individuals who are both entitled to Medicare and covered under a group health plan. The Medicare statute and the regulations provide for penalties of \$1,000 per day for untimely reporting by group health plan RREs.

The FAQs confirm that the regulations do not alter the reporting requirements in any way. According to the FAQs, the regulations will apply beginning October 11, 2024, meaning that the earliest a penalty may be imposed is October 2025. Penalties will be imposed for untimely reporting of coverage under a group health plan, as determined by a random audit of 1,000 records per year (250 per quarter). Because of the random sampling process, it is possible that one RRE could have multiple records selected for review in any quarter, with no limit on how often an RRE's records may be selected over time.

EBIA Comment: The FAQs contain additional technical information. RREs should study both the FAQs and the final regulations carefully and keep an eye on the CMS [What's New](#) page for future guidance. For more information, see EBIA's Group Health Plan Mandates manual at Sections XXIV.J ("MSP Mandatory Reporting Requirement") and XXIV.K ("Enforcement"). See also EBIA's Self-Insured Health Plans manual at Section XXV.C ("Coordination of Benefits With Medicare, TRICARE, and Medicaid"), EBIA's Consumer-Driven Health Care manual at Section XXV.F ("HRAs and Medicare Secondary Payer (MSP) Requirements (Including Mandatory Reporting)"), and EBIA's COBRA manual at Section XXX.D ("Medicare Secondary Payer (MSP) Rules").

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