



Medicare Secondary Payer and Certain Civil Money Penalties (CMS-6061)

Stakeholder Presentation to OIRA – March 21,
2022



OMB Should Create an Exemption from Section 111 CMPS for FEHB RREs

- AFHO is a trade association of FEHB carriers / Group Health Plans.
- In our February 10, 2014, comments on the CMS advance notice of proposed rulemaking, AFHO requested a limited exemption from CMPS for FEHB carriers.
- In its proposed rule, CMS created a limited exemption for NGHPs based on the adversarial relationship that sometimes exists between NGHPs and reportable individuals.
- As AFHO explained in its April 20, 2020 comments on the proposed rule, FEHB carriers are dependent upon the Office of Personnel Management for the accuracy of Section 111 data.
- While a collegial relationship exists between OPM and FEHB carriers, that the information that OPM collects for its own purposes does not fully align with Section 111 requirements.



Coverage Termination Date

- Section 7.2.6.1 of the CMS Section 11 GHP User Guide (Dec. 2020) reads as follows :
 - The Coverage Termination Date is the last day that the Active Covered Individual is covered through a GHP due to current employment (with the exception of situations involving ESRD). Even though GHP coverage may continue past their last day of employment, (e.g., the covered individual stops working mid-month but retains coverage until the end of the month), the submitted coverage termination date should be the last day that the Active Covered Individual was employed). Medicare becomes primary payer once current employment ends.



Non-Compliance Issue

- A federal employee whose FEHB enrollment terminates other than by cancellation of enrollment or plan termination receives a 31 day extension of coverage. 5 C.F.R. § 890.401
- Even when an enrollment is cancelled, the FEHB coverage does not end until the last day of the pay period in which their employing office received their Health Benefits Election Form (SF 2809). 5 C.F.R § 890.304
- OPM supplies the carrier with the date on which coverage ends, not the date of the triggering event.

Prime Example of Non-Compliance Issue



- Under the FEHB Act, federal and postal employees who retire under one of the federal retirement programs, FERS or CSRS, with at least five years of coverage under the FEHBP preceding their retirement date have the right to continue their FEHB coverage into retirement with the full government contribution.
- On the SF 2810 form, OPM tells FEHB Plans the date on which the enrollee transfers from his active employment payroll office to OPM's retirement office for annuitant enrollment purposes.
- While there is a rough equivalence between this transfer date and the actual retirement date, the actual dates can vary.

Prime Example of Non-Compliance Issue



- OPM does not provide FEHB Plan carriers with actual retirement date because those dates often are not determined until months later due to the complicated federal retirement system and the retirement application processing backlog at OPM.
- While FEHB plan carriers could solicit this information from individual participants, the complex federal retirement system and the ability of federal employees to continue to receive workers compensation beyond age 65 makes this approach difficult to implement.
 - Moreover, the participant response rate to the plans' inquiries and the accuracy of the participant responses received are unknown.



Recommendation

- FEHB Plan RREs must be able to rely upon, and report under Section 111 the information provided by the various employing agencies and the administrator of the federal employees' retirement systems, OPM.
- Consequently, CMPs should not be imposed on a FEHB Plan RRE for relying on data that they receive from the federal employer, the federal employer's retirement system, or the federal workers compensation program.



Recommendation

- Specifically, we ask for inclusion of the following exemption to proposed 42 C.F.R. § 402.1(c)(21)(iv):
 - (c) A civil monetary penalty (CMP) is not imposed if –
* * *
 - (C) It is associated with data provided to a Federal Employees Health Benefits Plan entity from a participating employer, the federal retirement system administered by the U.S. Office of Personnel Management, or the federal workers compensation system administered by the U.S. Department of Labor's Office of Workers Compensation Programs.