

Taking Advantage of the PAID Act



Insurance Automation *From Policy through Claim*

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The Provide Accurate Information Directly Act (PAID Act) went live on December 11, 2021. This new law provides insurers with a unique opportunity to proactively address and resolve Medicare Advantage and Part D recovery claims to reduce liability. Under the PAID Act, CMS will be providing insurers with key information and data points regarding a claimant's Medicare Advantage (Medicare Part C) and Medicare Part D (prescription drug plan) enrollment.

Armed with this information, insurers can then contact the identified plans to obtain and resolve any Medicare Advantage Plans (MAP) and Part D recovery claims. Given the increase in MAP recovery claims—including lawsuits for “double damages”—the information CMS will now provide insurers can put them in the driver's seat to proactively address MAP and Part D claims to minimize risk and avoid “double damages.”

MAP recovery claims, including possible “double damages,” are increasing
MAP recovery claims are on the rise, including lawsuits against insurers for “double damages.” Over the past several years, the United States Circuit Courts of Appeals for the 2nd, 3rd, and 11th Circuits,¹ as well as several United States District Courts² have ruled, in part, that Medicare Advantage Plans can sue insurers for “double damages” under the MSP in relation to their recovery claims – with the courts in two of these cases levying double damages against the insurers.³ While Part D plans (also referred to as “Part D sponsors”) have not been as active as MAPs have been in asserting recovery claims, certain federal statutes and regulations note, in part, that Part D plans have the same recovery rights as MAPs.⁴

The PAID Act helps insurers better identify claimants enrolled in MAP and Part D plans

Given the increase in MAP recovery claims and wave of recent lawsuits, the PAID Act was created to help insurer identify claimants who are enrolled in a MAP or Part D plan. Until the passage of the PAID Act, insurers have had to rely on obtaining this information from the claimant or his/her attorney – which has presented challenges on several fronts. However, through the PAID Act, insurers now get this information directly from CMS as part of the Section 111 Query Process.

What information is CMS providing per the PAID Act?

Per the PAID Act, CMS is providing insurers with the following information through the Section 111 Query Response File:

- Contract number, contract name, plan number, coordination of benefits (COB) address, and entitlements Dates for the last three years (up to 12 instances) of Part C and Part D coverage; and
- The most recent Part A and Part B entitlement dates.

This information now gives insurers access to the data points they have long been missing to help get ahead of the curve, reduce costs, and minimize liability regarding Medicare Advantage and Part D recovery claims.

Verisk helps you take this all to the next level by automating the process with CP Link®.

Put the PAID Act to work for you with a programmatic compliance approach

With all this data now made easily available, the last key to success for insurers is making that data actionable. With our new CP Link PAID Act add-on component, insurers now have a programmatic approach to MAP and Part D compliance. Built on our reliable approach to traditional Medicare recovery claims, the CP Link add-on leverages both Section 111 reporting data and the new PAID Act data to ensure that any recovery claims alleged by MAPs or Part D plans are addressed.

By linking the Section 111 and PAID Act data to our team of recovery claim experts, this new CP Link feature provides insurers with a proactive and holistic strategy to address MAP and Part D recovery claims. With CP Link, insurers can be assured of complete compliance while driving down costs. This optional add-on component to our CP Link program can help you take control of Medicare Advantage and Part D recovery claims.

Reference

1. See, *In re Avandia*, 685 F.3d 353 (3rd Cir. 2012), *Humana v. Western Heritage Insurance Co.*, 832 F.3d 1229 (11th Cir. 2016) and *Aetna Life Insurance Company v. Big Y Foods, Inc.*, 2022 WL 14701256 (2nd Cir. October 26, 2022). The 2nd Circuit has jurisdiction over federal cases originating in Connecticut, New York, and Vermont; the 3rd Circuit has jurisdiction over federal cases originating in Delaware, New Jersey, Pennsylvania, and the U.S. Virgin Islands; while the 11th Judicial Circuit has jurisdiction over federal cases originating in Alabama, Florida, and Georgia.
2. The following United States District courts have ruled (or strongly indicated) that MAPs can sue claims payers for double damages: *MAO-MSO Recovery II, LLC v. Mercury Insurance*, 2018 WL 3357493 (C.D. Calif. May 23, 2018); *MAO-MSO Recovery II, LLC v. Farmers Insurance Exchange*, 2018 WL 2106467 (C.D. Calif. May 7, 2018); *Aetna v. Guerrero*, 300 F.Supp.3d 367 (D. Conn. March 13, 2018); *MAO-MSO Recovery II, LLC v. State Farm*, 2018 WL 340021 (C.D. Ill. January 9, 2018); *Collins v. Wellcare Healthcare Plans, Inc.*, 73 F.Supp.3d 653 (E.D. La. 2014); *MSP Recovery Claims Series LLC v. Plymouth Rock Assurance Corporation*, 2019 WL 3239277 (D. Massachusetts, July 18, 2019); *MSP Recovery Claims, Series LLC v. Phoenix Insurance Company*, 2019 WL 6770981 (N.D. Ohio, December 12, 2019); *MSP Recovery Claims, Series LLC v. Grange Insurance Company*, 2019 WL 6770729 (N.D. Ohio, December 12, 2019); *MSP Recovery Claims, Series LLC v. Progressive Corporation*, 2019 WL 5448356 (N.D. Ohio, September 17, 2019); *Humana Ins. Co. v. Bi-Lo, LLC*, 2019 WL 4643582 (D. South Carolina, September 24, 2019); *Cariten Health Plan, Inc. v. Mid-Century Ins. Co.*, No.: 2015 WL 5449221 (E.D. Tenn. 2015); *Humana Ins. Co. v. Farmers Tex. Cnty. Mut. Ins. Co.*, 95 F.Supp.3d 983 (W.D. Tex. 2014); *Humana v. Shrader*, 584 B.R. 658 (S.D. Tex. March 16, 2018); *Humana Ins. Co. v. Paris Blank LLP*, 187 F. Supp.3d 676 (E.D. Va. 2016)
3. See, *Humana v. Western Heritage Insurance Co.*, 832 F.3d 1229 (11th Cir. 2016) and *Aetna v. Guerrero*, 2020 WL 4505570 (D. Conn. August 5, 2020)
4. For example, 42 U.S.C. § 1395w-102(4) states that the recovery rights afforded to Medicare Advantage Plans "apply in the same manner" to Part D. Likewise, 42 C.F.R. § 423.462 provides that the same "Medicare secondary payer procedures" that apply to Medicare Advantage Plans under § 422.108 also apply to Part D plans. Under § 422.108, Medicare Advantage Plans may seek reimbursement from insurers and other parties in workers' compensation, liability, and no-fault cases. This regulation further gives Medicare Advantage Plans the same recovery rights as traditional Medicare under the MSP. Similarly, in 2011, CMS released a policy memo taking the position that Part D plans "have the same MSP rights and responsibilities" as Medicare Advantage Plans. See, CMS memo, Medicare Secondary Payment Subrogation Rights, Medicare Advantage Organizations and Prescription Drug Plan Sponsors (December 5, 2011). For additional resource on Part D, see our article, CMS updates its Medicare prescription drug benefit manual – New changes encourage Part D collection and recovery



Get your complimentary consultation

To learn more about CP Link PAID Act add-on component, please click here or contact:

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