

It's Time to Fix An Outdated Medicare Secondary Payment Provision

Plaintiffs, Defendants, Beneficiaries and Insurers Agree: Congress Should Repeal the MSP “Private Cause of Action”

The ISSUE:

The Medicare Secondary Payer (MSP) system is broken and too often leaves Medicare beneficiaries and other involved parties hanging in the balance. Congress must take action to ensure the MSP works effectively, efficiently and economically for everyone by **repealing the outdated MSP “Private Cause of Action.”**

The PROBLEM:

If a beneficiary is injured and another entity is required to cover their healthcare expenses – such as in a tort case, workers’ compensation claim or auto insurance payment – the affected individual’s medical care and coverage may be negatively impacted for years to come. For example, someone injured in an auto accident could have Medicare deny coverage for an unrelated surgery years later or could be subject to a lawsuit for double damages under the MSP “private cause of action” law.

The SOLUTION:

Congress must REPEAL the vague and outdated MSP “Private Cause of Action” Provision.

Whether the provision made sense when enacted in 1986, Congress changed the MSP statute in 2007 (in Section 111 of the MMSEA) and rendered the “Private Cause of Action” moot by specifically requiring that any entity paying a settlement, judgement or award report the payment to Medicare which then shares this information with Medicare Advantage and Part D plans. The 2007 law eliminates the purpose of the “Private Cause of Action.”

Common Problems American Seniors Face Due to Our Broken MSP System

- Trouble with future Medicare claims after being reimbursed from an accident
- Denied coverage by Medicare after being reimbursed from an automobile injury
- A private party lawsuit for double damages under the outdated “private cause of action”

What Kind of Claims Typically Involve the MSP?

- Auto Accidents Claims
- End Stage Renal Disease
- Workers’ Compensation Claims
- No Fault and Liability Insurance Claims

Who is Impacted?

- Medicare beneficiaries who may be denied the payment/ coverage they’re entitled to
- Future Medicare beneficiaries who may face a less tenable Medicare Trust Fund
- Businesses, employers, etc. who may face claims for double damages after they resolve claims with the government

KNOW THE FACTS ABOUT THE MSP LAWS

What is the Medicare Secondary Payer Program?

The Medicare Secondary Payer (MSP) laws ensure that Medicare does not pay when another entity is responsible for paying a beneficiary's claim. Under the law, first enacted in 1980 and updated many times since then, Medicare may not pay claims when another payment is available or reasonably expected to be available (within 120 days). But, if payment (from a later lawsuit, for example) is not available, Medicare may pay the beneficiary's claim and later recover from the settling parties once a case is resolved through a settlement or judgment. If the "primary plan" refuses to repay, the government can sue to collect.

What is wrong with the MSP Law today?

All those involved in the MSP system are at risk due to an antiquated "Private Cause of Action." In 1986, a problem arose – how would the government know when a group health insurer refused to make a payment, thus forcing the government to pay? To address this issue, Congress added a "private cause of action" allowing anyone who incurred damages to bring a double damage lawsuit against the insurer and allowing the person suing to keep the money (rather than return it to the Medicare Trust Fund). In recent years a proliferation of unwarranted, unfair and unnecessary double damage claims have been brought against Medicare beneficiaries, their lawyers, insurers, retailers, unions, and manufacturing companies, among others.

Why does the MSP system need to be fixed?

The purpose of the "Private Cause of Action" has been overtaken by changes in the law and is no longer relevant. In 2007, Congress changed the MSP statute to ensure that every settlement, judgment or award must be reported to Medicare (under "Section 111" of the MMSEA), which in turn shares the reports with Medicare Advantage and Part D plans. As a result, there are no longer cases where only private parties, and not the government, are aware of primary plan non-payment, and there is no purpose to empower private collection efforts.

What is the solution to the MSP problem?

Congress must REPEAL the vague and outdated MSP "Private Cause of Action" Provision.

ABOUT MARC

The Medicare Advocacy Recovery Coalition (MARC) is a national Coalition advocating for the improvement of the Medicare and Medicaid Secondary Payer (MSP) programs. The Coalition advocates for reforms that will improve the MSP system and the process for Medicare beneficiaries and affected companies. Our goal is to ensure that all stakeholders are provided timely resolution of disputes and the fair reimbursement of claims involving secondary payer issues.

Our Primary Objectives:

- Ensuring Medicare beneficiaries receive coordinated and appropriate coverage for claims involving the MSP;
- Protection of the Medicare Trust Fund by facilitating timely and appropriate reimbursement of funds owed under the law; and
- Ensure that the MSP works effectively, efficiently and economically for everyone.