

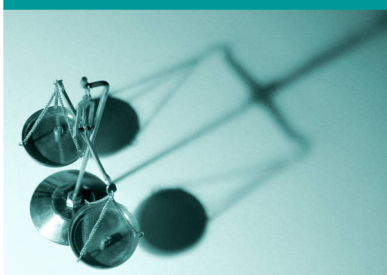


The Medicare Secondary Payer Program and Coordination of Benefits Update - Part D and More



**NOPLG Seminar
Portland, Oregon
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Robert L. Roth, Esquire
Crowell & Moring LLP
1001 Pennsylvania Ave., NW
Washington, DC 20004-2595
Tel: 202-624-2870
Fax: 202-628-5116
rroth@crowell.com

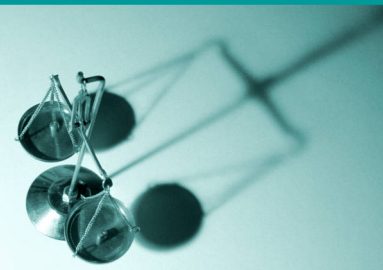


Overview of the MSP Program

Goal – Shift Primary Payment Responsibility from Medicare to Other Third Party Payers:

- Employer Group Health Plans
- Workers' Compensation
- Automobile, Liability, and No-Fault Insurance

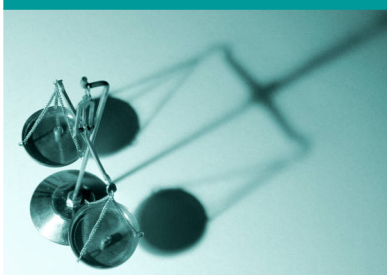
Congress sought to use the MSP provisions to reduce the growth of Medicare by shifting primary payment responsibility to EGHPs "to place the burden where it could best be absorbed." *See Provident Life & Accident Ins. Co. v. United States*, 740 F. Supp. 492, 498 (E.D. Tenn. 1990).



Overview of the MSP Program

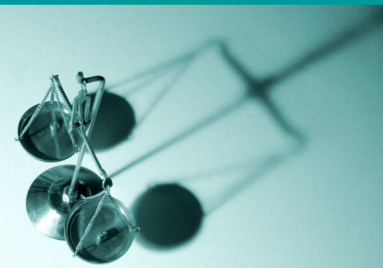
Three Interlocking Concepts:

- Make Medicare Secondary
- Prohibit Health Benefits “Discrimination” Against Medicare Beneficiaries
- Prohibit Incentives for Medicare Beneficiary to Reject Coverage that would be Primary to Medicare



Overview of the MSP Program

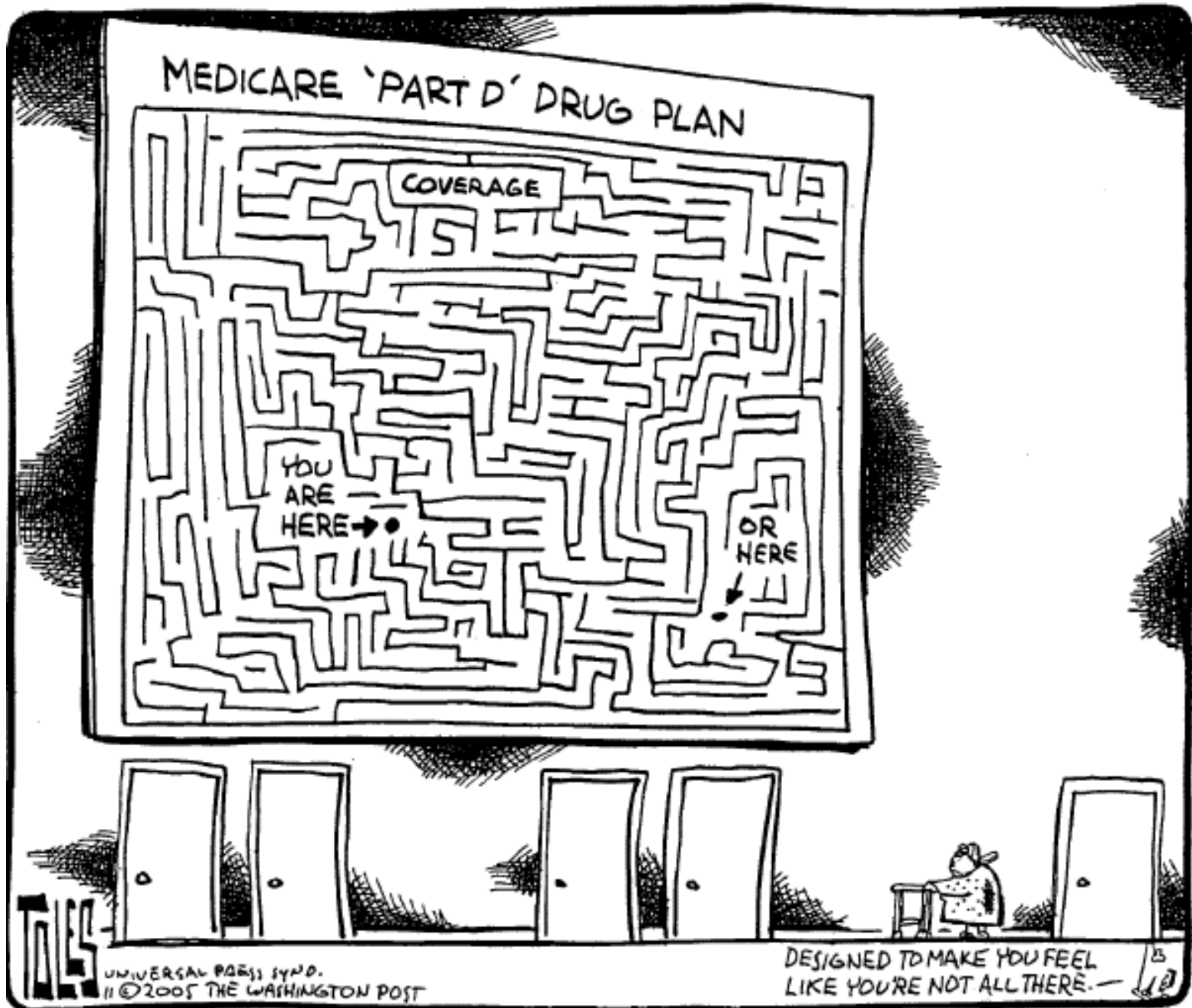
- Substance – Laws, Regulations, Sub-regulatory Documents, etc.
- Process – IEQ, Data Match, VDSA, COB Claims Processing, etc.
- Enforcement – CMPs, Tax Penalties, Collection Actions, etc.



Overview of the MSP Program

The MSP statute affects:

- Rules for coordination of benefits (“COB”) where Medicare is involved
- Rules for calculating Medicare’s secondary payment
- Claims filing
- Plan design
- Government enforcement authorities
- Government collection rights
- EGHP repayment obligations/limitation on EGHP defenses

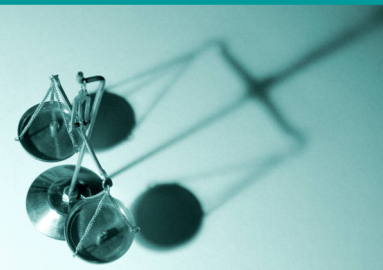


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DESIGNED TO MAKE YOU FEEL
LIKE YOU'RE NOT ALL THERE.

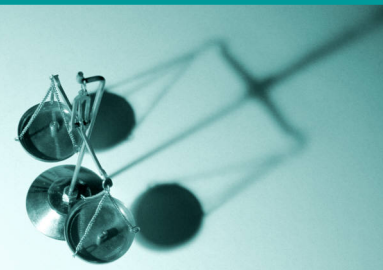
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Coordination of Benefit Issues Relating to the Implementation of the Medicare Part D Prescription Drug Benefit

- Rules for COB where Medicare is involved
 - **Working aged**
 - **Disability**
 - **End-Stage Renal Disease (“ESRD”)**
- Rules for calculating Medicare secondary payments

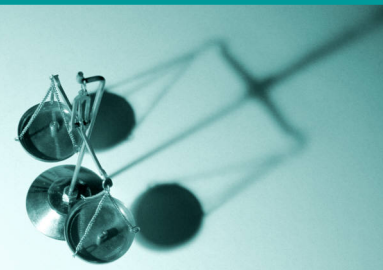
42 C.F.R. §411.33



Overview of the MSP Program

Claims Filing

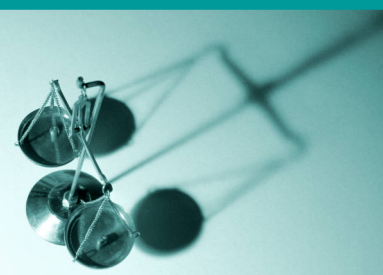
- Affects liability and no-fault insurance and Workers' Compensation
- Dictates When Medicare:
 - **Can't be billed**
 - **May be billed**
 - **Must be billed**



Overview of the MSP Program

Plan Design

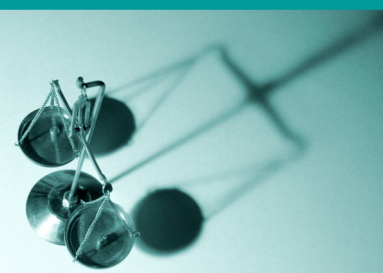
- Employer not required to offer health insurance
- Coverage and benefit requirements if health insurance is offered
- Discrimination/nondifferentiation/taking into account issues
- Bar on incentives to reject plan coverage



Overview of the MSP Program

Government Enforcement Authorities

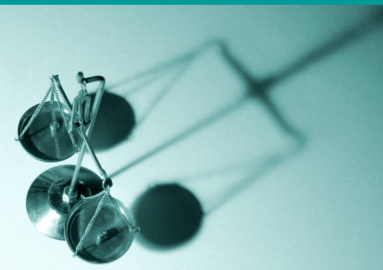
- Excise Tax on Finding EGHP Non-conforming
- Civil Monetary Penalties
- Imposition of Interest
- False Claims Act



Overview of the MSP Program

Government Collection Rights

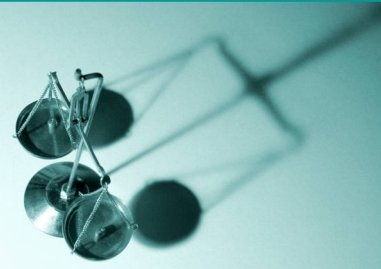
- Direct and Subrogated Causes of Action
- Federal Claims Collection Act
- Debt Collection Improvement Act of 1996
- Treasury Offset Program
- Noteworthy Recent Case – *Arkansas Dept. of Health and Human Services v. Ahlborn*, 126 S.Ct. 1752 (2005) (federal Medicaid law does not authorize government recovery beyond portion of settlement “that represents medical expenses.”)



Overview of the MSP Program

Other Repayment Issues

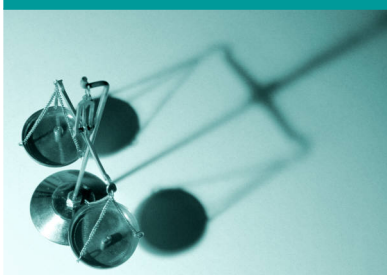
- Defend Private Cause of Action
- Private False Claims Act
- Cannot Use Prior Primary Payment as a Defense under Certain Circumstances



February 24, 2006 Interim Final Rule

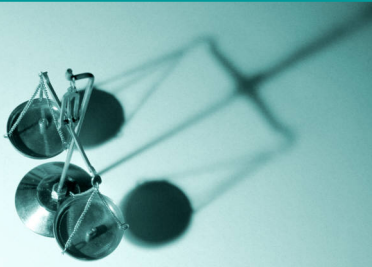
Implements MMA Section 301 MSP Amendments

- 71 Fed. Reg 9,466 *et seq.* (2/24/2006)
- “Congress intended that the MSP provisions be construed to make Medicare a secondary payer to the maximum extent possible.” 71 Fed. Reg at 9,467.
- A primary payer may not raise as a defense to a recovery action that it already made a primary payment to the provider “where it should have reimbursed Medicare.” 71 Fed. Reg. at 9,468.



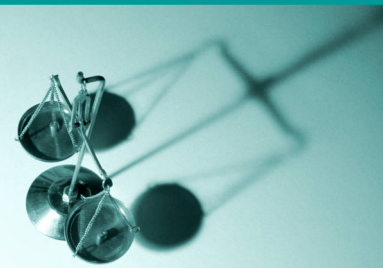
NAIC MODEL COB REGULATION

- National Association of Insurance Commissioners (“NAIC”) updated its COB Model Regulation effective February 2006.
- Addresses situation where a Medicare beneficiary is also entitled to health benefits under two employer health plans, one of which is primary to Medicare and one of which is secondary to Medicare.
- COB with “Phantom” Part B/Part D



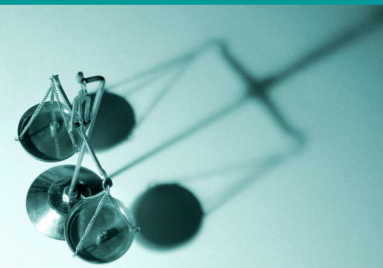
THE *HIGHMARK* SETTLEMENT

- *United States ex rel. Drescher v. Highmark Inc.*, Nos. 00-cv-3513 and 03-cv-4883 (E.D. Pa.) - Settled June 19, 2006
- Exhibit A to the Settlement Agreement is a “model MSP process” that was “created to address how data regarding employee counts can be captured and how information regarding the small employer exception will be disseminated and utilized.”



Coordination of Benefit Issues Relating to the Implementation of the Medicare Part D Prescription Drug Benefit

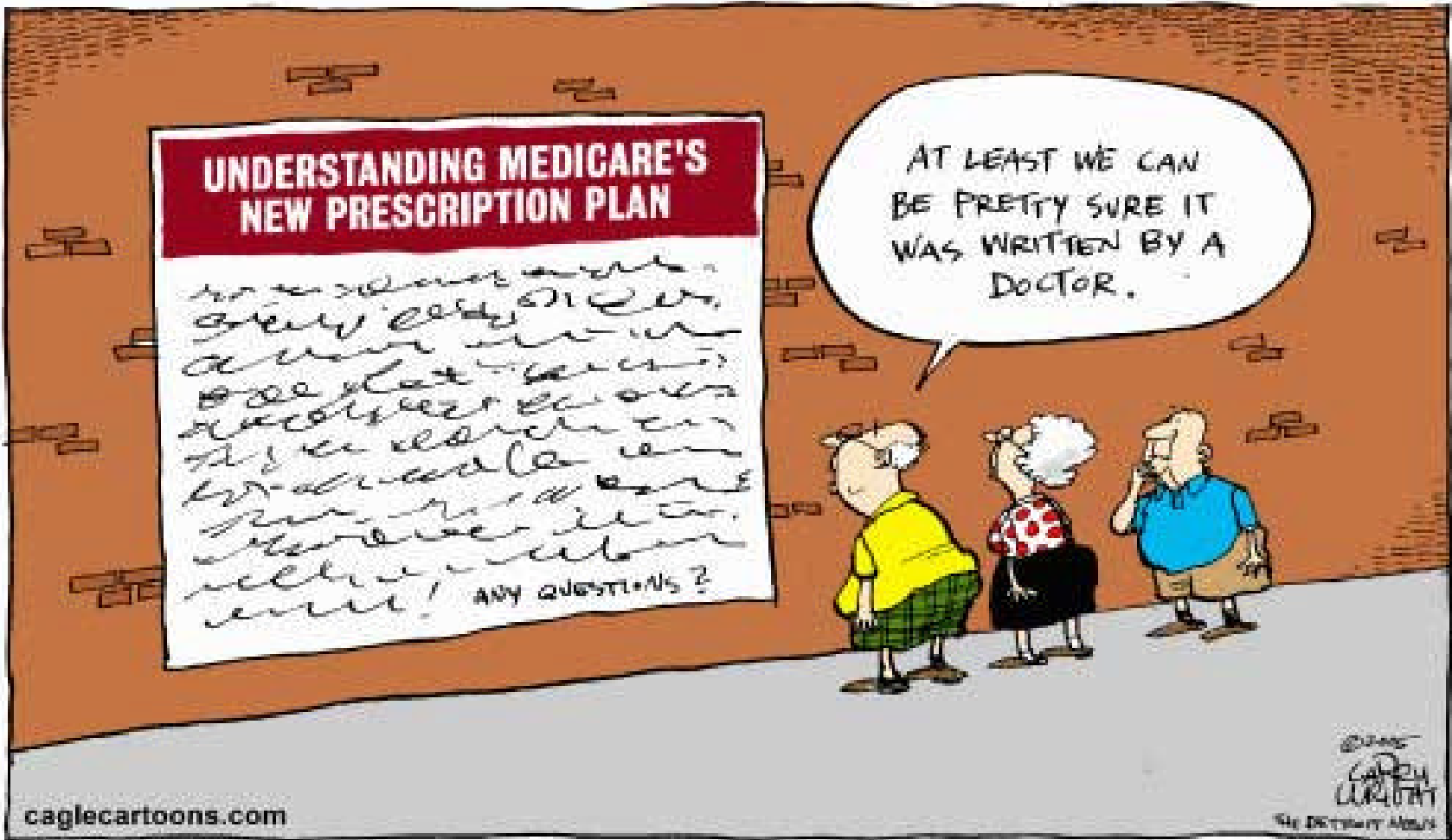
- The Part D Benefit
- “TrOOP” and How it is Determined
- The Three Contractors Involved in Calculating TrOOP
 - **PDPs**
 - **TrOOP Facilitation Contractor**
 - **COB Contractor**

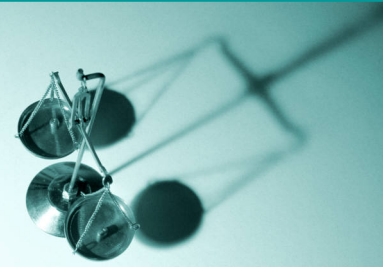


Medicare Part D & OPL

Coverage Under Part D

- Is it a “covered Part D drug”? Definition is broad and includes FDA-approved drugs and biologicals, insulin, and vaccines.
- If yes, is it on the formulary of the applicable Part D Plan?
- Subject to certain exclusions, including drugs covered under Medicare Parts A and B.





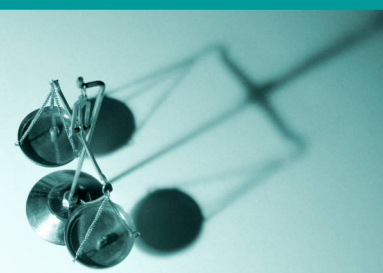
Medicare Part D & OPL

Coverage Under Part D

“A drug for which coverage is available under Part A and Part B, as it is being ‘prescribed and dispensed or administered’ with respect to the individual, is excluded from the definition of a Part D drug and, therefore, cannot be included in Part D basic coverage.”

See 42 U.S.C. § 1395w-102; 42 C.F.R. §423.100; see also Chapter 6 of the Medicare Prescription Drug Benefit Manual (MPDBM”)

http://www.cms.hhs.gov/PrescriptionDrugCovContra/12_PartDManuals.asp#TopOfPage

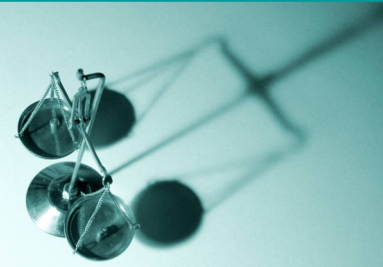


Medicare Part D & OPL

Coverage Under Part D

“While the potential crossover between Parts A and D is unlikely, *Medicare Parts B and D contain specific drugs covered under both programs.* As a consequence, there is a greater likelihood of crossover between Part B and D drugs; and *it will be incumbent on Sponsors to have mechanisms in place to ensure drugs are adjudicated correctly to either Part B or D.*”

CMS Prescription Drug Benefit Manual, Ch. 9 at 64-65.

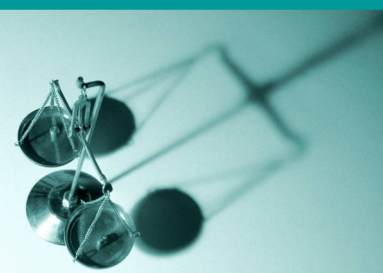


Medicare Part D & OPL

Coverage Under Parts B and D

- Part B covers drugs in a variety of settings. In most of these, “the question of whether coverage should be provided under Part D will not arise because the drugs are being provided in the context of a service or procedure and thus the drugs are covered under Part B.”
- “For a limited number of categories, however, pharmacists and infusion providers will have to determine whether to bill Part B or Part D; and Sponsors will need to confirm whether Part D is being billed correctly.”

CMS Prescription Drug Benefit Manual, Ch. 9 at 65.

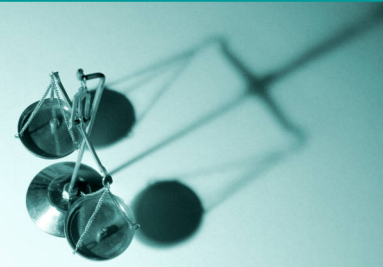


Medicare Part D & OPL

CMS has identified four “of the potential billing schemes that could be perpetrated due to crossover between Part B and D.”

- 1. Home Infusion** – “Home infusion pharmacies are often paid delivery and dispensing fees for certain self-injectable medications (*e.g.*, Epogen, Procrit) even if the beneficiary self-administers. As home infusion pharmacies will be part of both Part B and Part D networks, these pharmacies might inappropriately submit the claim for coverage under inappropriate benefit.”

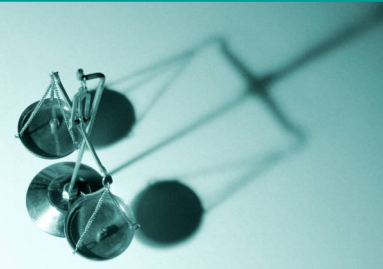
CMS Prescription Drug Benefit Manual, Ch. 9 at 65.



Medicare Part D & OPL

- 2. Duplicate Billing** – “Claims could be submitted by a provider under both medical for Part B and pharmacy for Part D.”
- 3. Crossover Drugs** – “Some of the medications that will be crossover drugs are traditionally purchased and administered by the physician’s office or clinic. revenue. If the drug is available under Part D plan, a physician may inappropriately bill for both the drug and the injection of the drug under Part B.”

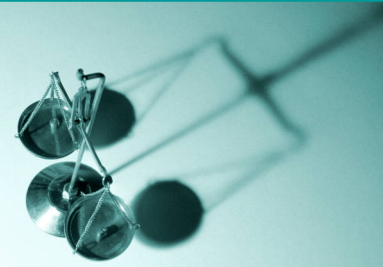
CMS Prescription Drug Benefit Manual, Ch. 9 at 65 - 66.



Medicare Part D & OPL

- 4. Differential Copays** – “Beneficiary may have different cost sharing obligations if a crossover drug is paid under Part B versus Part D, or vice versa. A beneficiary could ‘game the system’ to lower their cost sharing obligations by improperly submitting a claim to the inappropriate payer.”

CMS Prescription Drug Benefit Manual, Ch. 9 at 66.



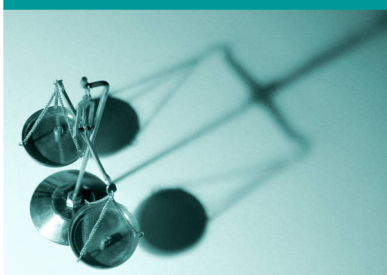
Medicare Part D & OPL

Correct Payment Under Part D

“It is incumbent upon the Sponsor to institute a control, such as a prior authorization to ensure that the pharmacy is billing the correct program.

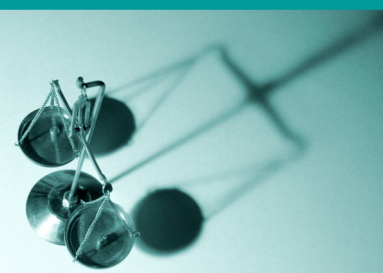
Sponsors should have procedures in place to reverse claims in case a pharmacy is paid in error under Part D for what should have been a Part B covered product.”

CMS Prescription Drug Benefit Manual, Ch. 9 at 66.



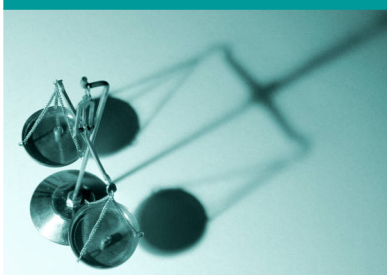
Coordination of Benefit Issues Relating to the Implementation of the Medicare Part D Prescription Drug Benefit

- FY 2007 OIG Work Plan - Third Party Liability Safeguards
- **The MMA requires coordination between CMS, State programs, insurers, employers, and all other payers of prescription drug coverage. We will review safeguards in place to ensure that Medicare Part D does not inappropriately pay for prescription drug claims for which a third party is liable. (OEI; 00-00-00000; expected issue date: FY 2007; new start)**



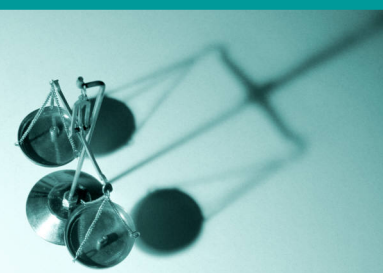
Coordination of Benefit Issues Relating to the Implementation of the Medicare Part D Prescription Drug Benefit

- FY 2007 OIG Work Plan - Coordination and Oversight of Medicare Parts B and D To Avoid Duplicate Payments
- **We will determine whether there is sufficient coordination and oversight of Medicare Parts B and D to prevent duplicate payments for drugs. Drugs for which payment is available under Medicare Part B will continue to be covered by Part B and should not also be reimbursed under Medicare Part D drug coverage. Proper coordination will be needed to prevent duplicate payments for the same prescription under Part D. (OEI; 00-00-00000; expected issue date: FY 2007; new start)**



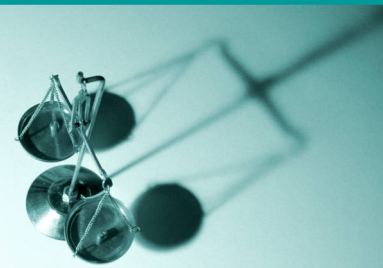
Coordination of Benefit Issues Relating to the Implementation of the Medicare Part D Prescription Drug Benefit

- FY 2007 OIG Work Plan - Tracking Beneficiaries True Out-of-Pocket Costs for Part D Prescription Drug Coverage
- **We will examine CMS's oversight of the calculation of beneficiaries' true out-of-pocket (TrOOP) expenses that qualify toward catastrophic coverage. The study will also analyze the accuracy of tracking beneficiaries' TrOOP expenses in the Coordination of Benefits system. (OEI; 03-06-00360; expected issue date: FY 2007; work in progress)**



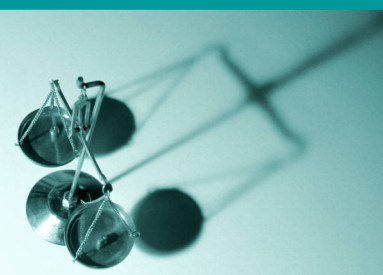
Coordination of Benefit Issues Relating to the Implementation of the Medicare Part D Prescription Drug Benefit

- FY 2007 OIG Work Plan -Contractor Development of Medicare Part D Systems—Eligibility Query Transaction (E1) and Systems for Tracking True Out-of-Pocket Beneficiary Costs
- **We will review the development by a CMS contractor of the E1 (eligibility query transaction) for Medicare Part D. We will also review development of other systems by that contractor to meet the MMA Title I requirement to accurately track true out-of-pocket (TrOOP) beneficiary costs. We want to determine whether these systems meet program needs and their possible shortcomings. We also want to examine what processes and procedures have been established for transferring information on TrOOP between plans and for beneficiaries who become Medicaid eligible during the course of the year. (OAS; W-00-07-41023; expected issue date: FY 2007; new start)**



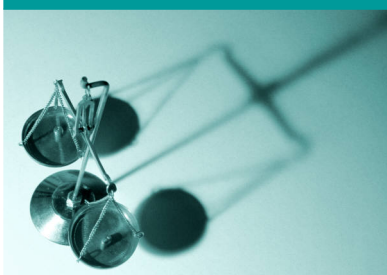
Coordination of Benefit Issues Relating to the Implementation of the Medicare Part D Prescription Drug Benefit

- FY 2007 OIG Work Plan - Selected Medicare Part D General and Application Controls for Systems That Track TrOOP.
- **We will review selected Medicare Part D general and application controls placed into operation since January 1, 2006, the effective date of Part D, at the CMS contractor responsible for collecting information on TrOOP from payers secondary to Medicare Part D. With respect to general controls, we will focus on continuity of service planning and software development change controls. [continued]**



Coordination of Benefit Issues Relating to the Implementation of the Medicare Part D Prescription Drug Benefit

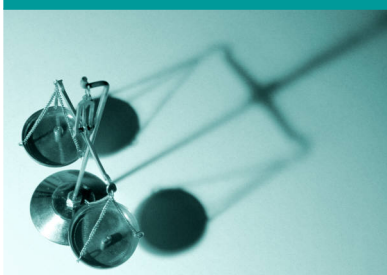
- FY 2007 OIG Work Plan -Selected Medicare Part D General and Application Controls for Systems That Track TrOOP.
- **We will also review the application controls, including the accuracy and completeness of standard transactions generated at the CMS contractor for covered prescriptions and documenting payers secondary to Medicare. These transactions are transmitted by the CMS contractor to the applicable plans and CMS, where they are used to compute beneficiary TrOOP for covered prescription drugs. TrOOP calculations are critical in the Medicare Part D payment process because they affect how much the beneficiary pays for drugs and the adjustments to plan payments. (OAS; W-00-07-41024; A-00-07-00000; expected issue date: FY 2007; new start**



Coordination of Benefit Issues Relating to the Implementation of the Medicare Part D Prescription Drug Benefit

Medicare Part B versus Part D Coverage Issues

- Chapter 6 of the Medicare Prescription Drug Benefit Manual
- 9/29/2006 CMS Memorandum - Regarding Part D Drug Definition



Coordination of Benefit Issues Relating to the Implementation of the Medicare Part D Prescription Drug Benefit

Sources of Guidance on COB and TrOOP

- Federal Legislation
- Legislative History
- Statutes
- Regulations
- Federal Register Documents
- CMS Guidance Documents
- Guidance from TFC's website
- Guidance from COBC's website



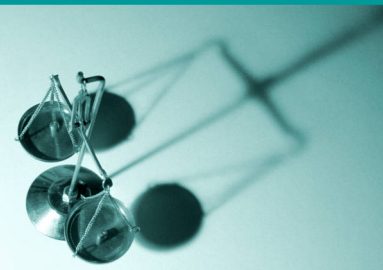
IT'S NOT THAT EXPENSIVE.
WE ONLY HAVE TO PAY THE ONES WHO GET THIS FAR.

BUSH DRUG PLAN

AND THE SYSTEM TENDS TO CULL THE WEAK —

TOLES

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Medicare Part D & OPL

Questions & Answers