



MEDICAID SECONDARY PAYER

The Issue:

The Federal Medicaid statute requires each state participating in the Medicaid program to have a Medicaid Secondary Payer program, and each statutorily-required “State Plan” to include a CMS-approved secondary payer plan. Many states, however, have not rigorously enforced their secondary payer programs, and have not aggressively sought recoveries from settlements or judgments. The states, however, are beginning to shift their focus, and state Medicaid Directors, or contractors selling services to the states, are increasing secondary payer recovery activities. Most recently, Rhode Island, Vermont, West Virginia and other states have been exploring settlement reporting – as noted in Rhode Island through the state “Intercept” program, and in West Virginia through a mandatory reporting program on beneficiaries and their counsel. Importantly, each state currently operates a different and unique Medicaid program, with individual secondary payer requirements.

The Background:

The Federal Medicaid statute requires states to have a Secondary Payer program, analogous to the federal MSP laws. 42 U.S.C. 1396k(a)(1), 1396a(a)(25). As Medicaid coverage continues to expand under the Affordable Care Act, and States face budget pressure to tighten their Medicaid programs, several Medicaid programs have begun taking a new look at secondary payer recoveries. For example, Rhode Island has implemented the “Intercept” program requiring settling parties to report settlements to the state for secondary payer collection purposes through the existing “alimony recovery” program already in place. <https://ri-mais.com/> While enforcement may increase and spread, each state’s program is unique and distinct, and there is a risk that employers and insurers will have to navigate dozens of different programs, each with distinct reporting and repayment provisions..

The MARC Solution:

MARC will work to align the states in their programs, to make state programs more efficient and effective for all involved. MARC will also serve as a resource for states as they reform their secondary payer programs.