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## Medicare Part D plans likely to follow the trail blazed by Part C plans

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Our office recently received a letter from Express Scripts Medicare Part D Coordination of Benefits Unit seeking reimbursement for payments made by the Part D plan from the “primary plan.” The Express Scripts letter explained it received information from CMS identifying our client as a potential payer. Under Section 50.12 of the Medicare Prescription Drug Benefit Manual, Chapter 14, Part D plans are responsible for recovering any MSP related mistaken payment. In order to understand the significance and possible breadth of this Express Scripts Medicare Part D letter, it is helpful to take a look at the path taken by Medicare Part C plans in similar situations.

Over the years, parties have become accustomed to Medicare Part C plans actively asserting their rights to recover payments made on behalf of their enrollees from workers’ compensation plans, liability settlements, law firms and even medical providers. The recovery actions are generally pursued under the Private Cause of Action provisions found in the Medicare Secondary Payer Act 42 U.S.C. 1395 y(b)(3)(A). The underlying support for the Medicare Advantage Organization plans’ right of secondary payer reimbursement is found in 42 U.S.C. Section 1395 w-22 (a)(4) as well as in the Code of Federal Regulation. The CMS Regulation states that a Medicare Advantage Organization (MAO) “will exercise

the same rights to recover from a primary plan, entity, or individual that the Secretary exercises under the MSP regulations in subparts B through D of part 411 of this chapter.” 42 C.F.R. Section 422.108(f). The Part C plans reimbursement attempts are fueled by the various data exchanges which include Section 111 Mandatory Insurer Reporting under the Medicare, Medicaid, and SCHIP Extension Act of 2007. Reports of Ongoing Responsibility for Medical (ORM) as well as Total Payment Obligation to Claimant (TPOC) streamline the identification of “primary plans” or other viable collection sources.

Since Medicare Part D plans providing prescription drug coverage are also Medicare Advantage Organization plans, it was only a matter of time before these plans began following the trail blazed by the Part C plans. As with any reimbursement claim from Medicare or a Medicare Advantage Plan, it is imperative that the parties carefully scrutinize the payments made by traditional Medicare and Parts C and D plans to determine if they should be reimbursed. Timely responses to the letters should be part of every company’s internal protocol. Since the communication between CMS and Part C and D plans is clearly improving, this means these letters will become more commonplace. Updates on future developments will be posted to our blog.