Fine Tuning Your Medicare Practices…

How CMS Updates Impact WC Claims

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Today's Objectives

- Identifying new CMS policies and updates
- Understanding how these change Medicare Secondary Payer (MSP) compliance obligations
- Assessing how these changes impact claims practice
- Navigating the changing MSP landscape
- Medicare Advantage Plans -- Update

Part I:
Medicare's Changing Landscape

Medicare Reforms

- **What Areas Are Impacted?**
  - Section 111
  - Conditional Payments
  - Medicare Set-Asides
- **Sources of reform:**
  - SMART Act directly (i.e. new statute of limitations)
  - CMS implementing certain SMART Act provisions
  - CMS taking its own initiative

Medicare Reforms

- **Reform Focus**:
  - Substantive obligations and rights (i.e. SOL, appeal rights)
  - Procedural processes (i.e. new CRC)
- **Key Questions to ask:**
  - What are these changes?
  - How do they revamp existing processes, rights, obligations, etc.?
  - What changes do we need to make to existing best practices and protocols?

Part II:

Medicare – Level Set

Medicare Level Set

- **Program Mechanics**
  - **Parts A & B** (1965) = Traditional or Original Medicare
  - **Part C** (1997) = Medicare Advantage
  - **Part D** (2006) = RX Drugs
- **Medicare Secondary Payer (MSP)**
  - Statutes/Regs to keep Medicare the “secondary” payer
  - Three Headed Monster:
    - Section 111 Reporting
    - Conditional Payments
    - Future Interests (MSA)

Part III:

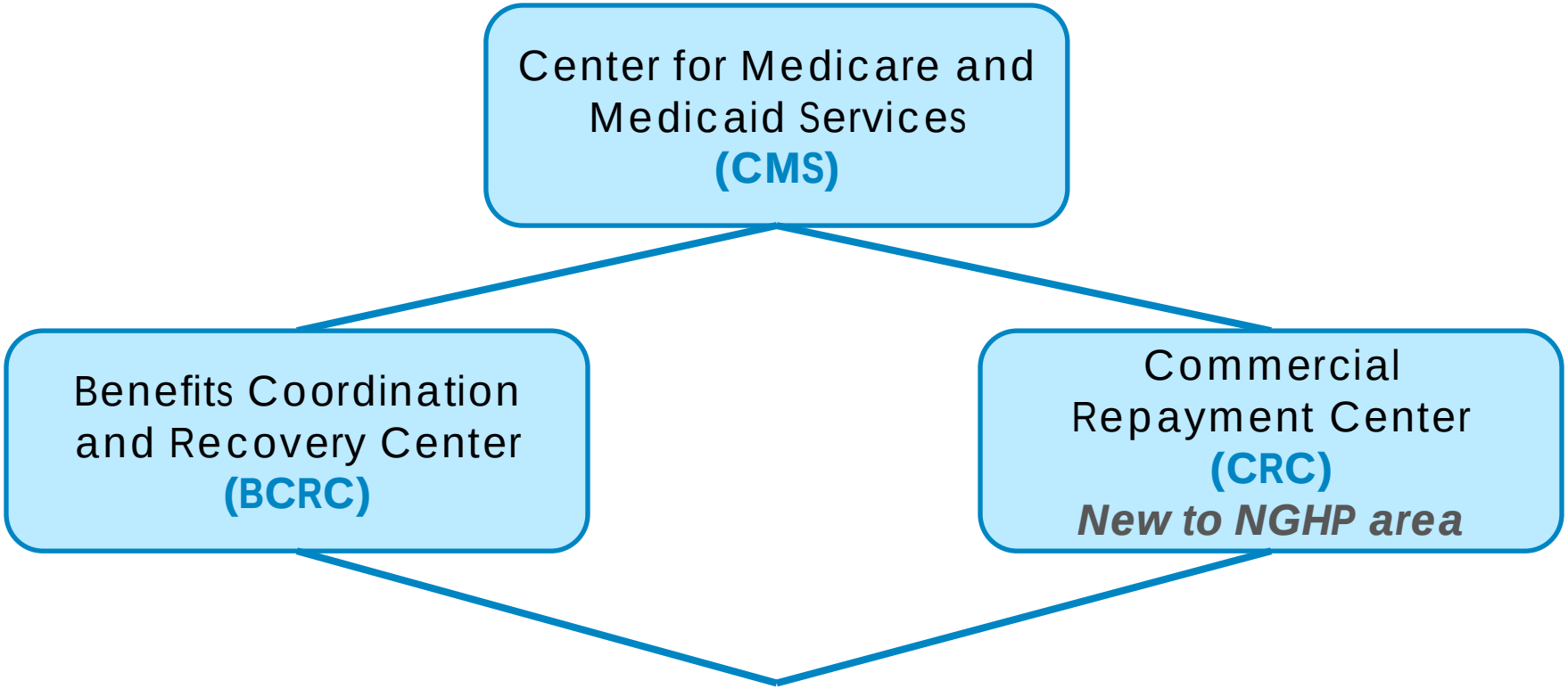
CMS' New CRC Policy

What Are We Talking About?

CMS' New CRC Process

This Relates To:	This Does Not Relate To:
• CMS' conditional payment recovery activities regarding Traditional Medicare. • The **"when," "who," and "how"** CMS pursues recovery of its conditional payment demands. ▪ When can CMS pursue recovery? ▪ Who will pursue this recovery? ▪ How will this be done?	• Medicare Advantage lien claims • WCMSA process

Who's Who?



These are the contractors that help CMS with its conditional payment recovery activities.

Pre 10/5/15 – How it Worked

The contractor CMS used to pursue claimant/plaintiff? → BCRC

The contractor CMS used to pursue primary payers? → BCRC

When did CMS typically seek actual reimbursement? → Claim Settlement

How Did this Now Change?

The new CRC process changes CMS' process in two fundamental ways:

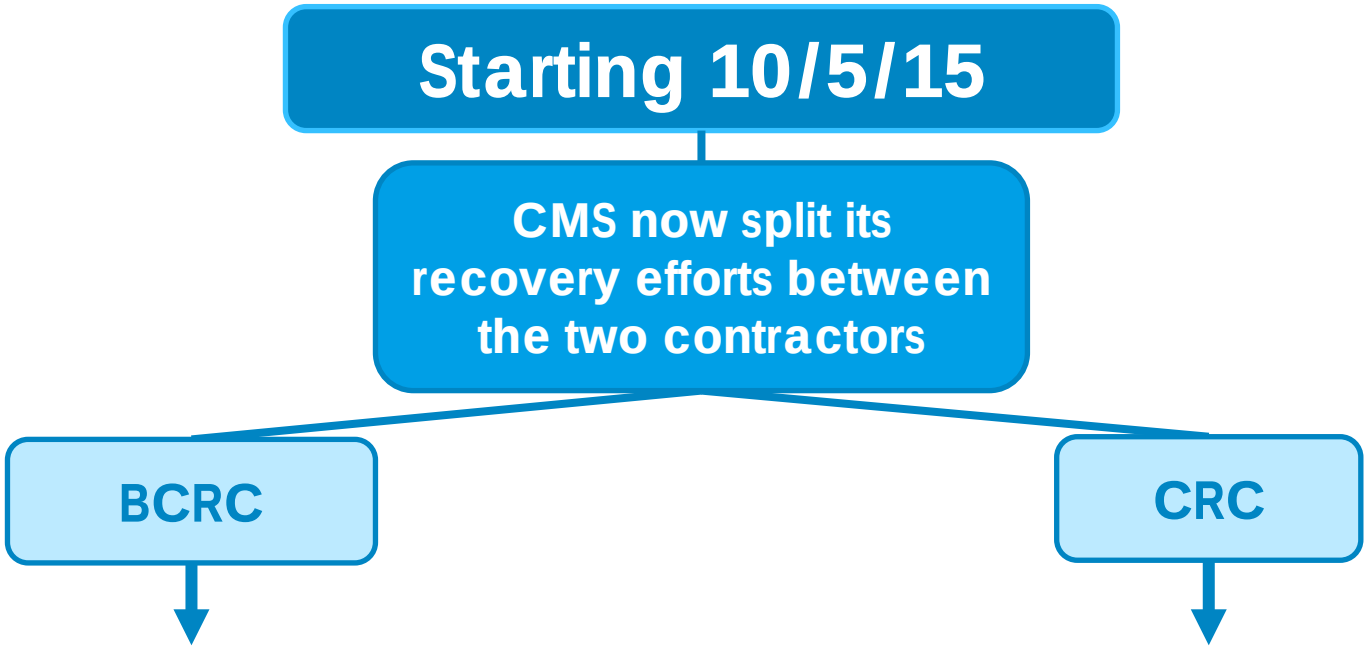
1. "Which" contractor CMS will use to pursue its recovery against primary payers.

   AND

2. "When" CMS will seek actual reimbursement against primary payers.

Let's take a look …

New CRC Change



- CMS will continue to use the BCRC when pursues recovery from the beneficiary.

- CMS will now use the CRC to handle recovery claims when it is pursuing recovery directly from the primary payer.
- Exception: BCRC will continue pursuing all cases initiated prior to 10/5/15.

When Will CMS Pursue Recovery?

- **New Changes:**
  - In ORM situations, CRC will now issue a Conditional Payment Notice (CPN) to the primary plan.
  - You must object / respond to a CPN within 30 days or it converts to a demand.
- **How is this different? Why is the significant?**
  - Until this new policy, CMS typically only pursued recovery when the case settled
  - Now, CMS may pursue recovery ***prior*** to settlement when there is ORM and Medicare has made payment.

CRC – Status & Impact

- CRC was slow to get rolling through late spring
- However, CMS has now started to really ramp up
- Primary payers are reporting an increase in CPN notices
- Claims Impact
- Be on the look out!

Practical Considerations

1. Note CMS' new contractor usage (BCRC vs. CRC).
2. Understand which contractor will handle what/when
3. Recognize that CMS may now seek recovery in ORM situations PRIOR to settlement.
4. Adjusters handling states where meds "stay open" may now have to deal with CMS recovery claims.
5. Extra attention must be paid to CMS correspondence going forward – is CMS demanding reimbursement?

Part IV:

New Applicable Plans Appeals Process

New Appeals Process

- **Features**:
  - **What is it?**
    - Applicable Plans can now file formal legal appeals to challenge Medicare conditional payment demands
  - **When can it be used?**
    - Applicable Plan is named the debtor in CMS' demand letter and the letter is dated 4/28/15 or later.
      - This is called an **"initial determination"** – which under the law opens the door for Applicable Plans to appeal
  - **How does it work?**
    - Five level administrative appeals process (includes federal court review)

Five Level Appeal Process

Initial Determination

Level 1	**Redetermination**	Must be filed **within 120 calendar days** from the date the notice of initial determination is received
Level 2	**Reconsideration (Qualified Independent Contractor)**	Must be filed **within 180 calendar days** from the date the notice of redetermination is received
Level 3	**Administrative Law Judge (ALJ)**	Must be filed **within 60 calendar days** after receipt of the notice of the QIC's reconsideration
Level 4	**Medicare Appeals Council (MAC)**	**Within 60 calendar days** of receipt of the ALJ's decision
Level 5	**Judicial Review (Federal Court)**	**Within 60 calendar days** after receipt of the MAC's decision

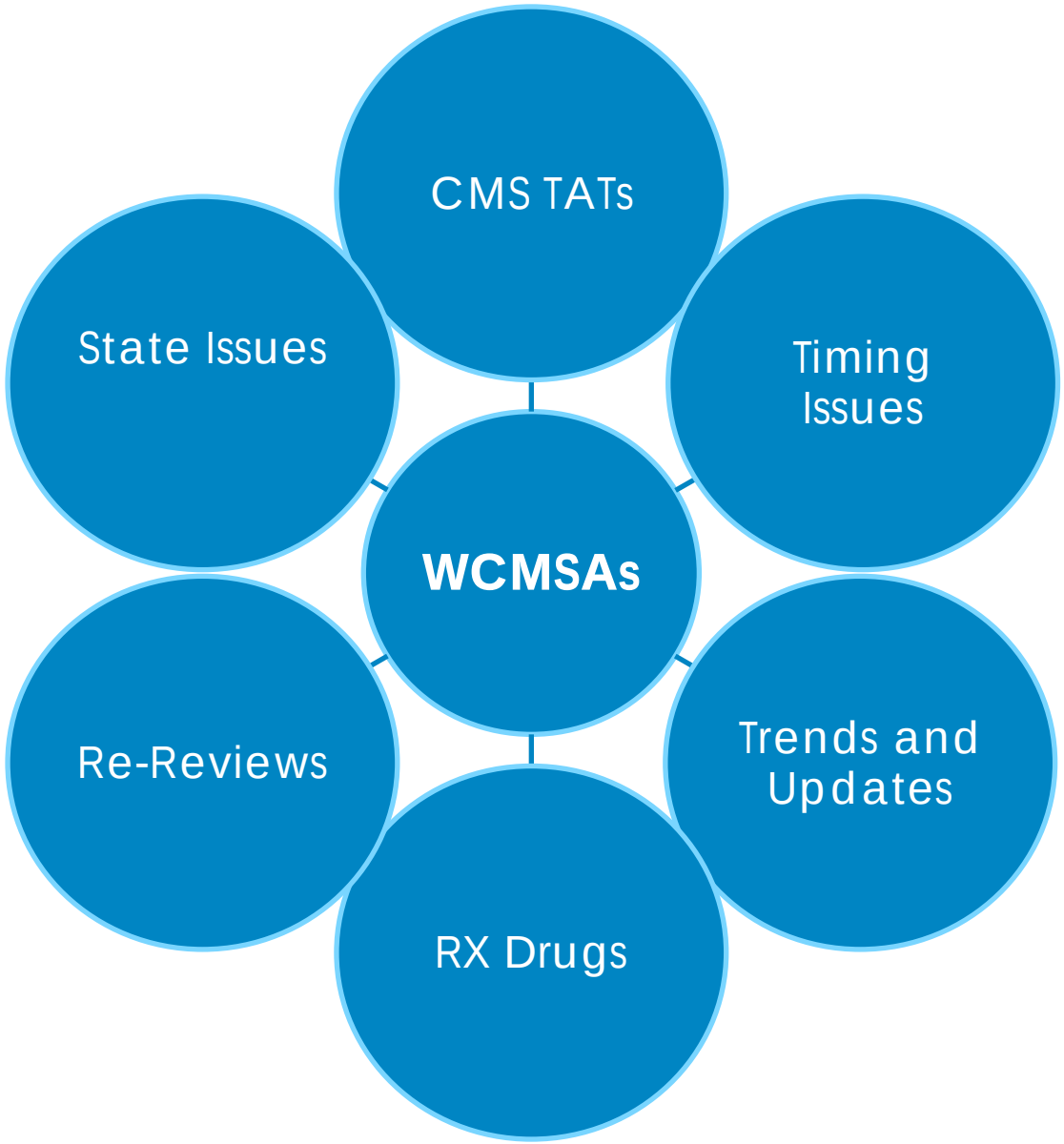
Practical Considerations

1. Know “when” you can appeal
2. Know “what” you can appeal
3. Pay attention to the filing timelines.
4. Determine which cases should (should not) be considered for this process --- remember it is a 5 level process

Part V:

WCMSA Update

WCMSA – CMS Updates



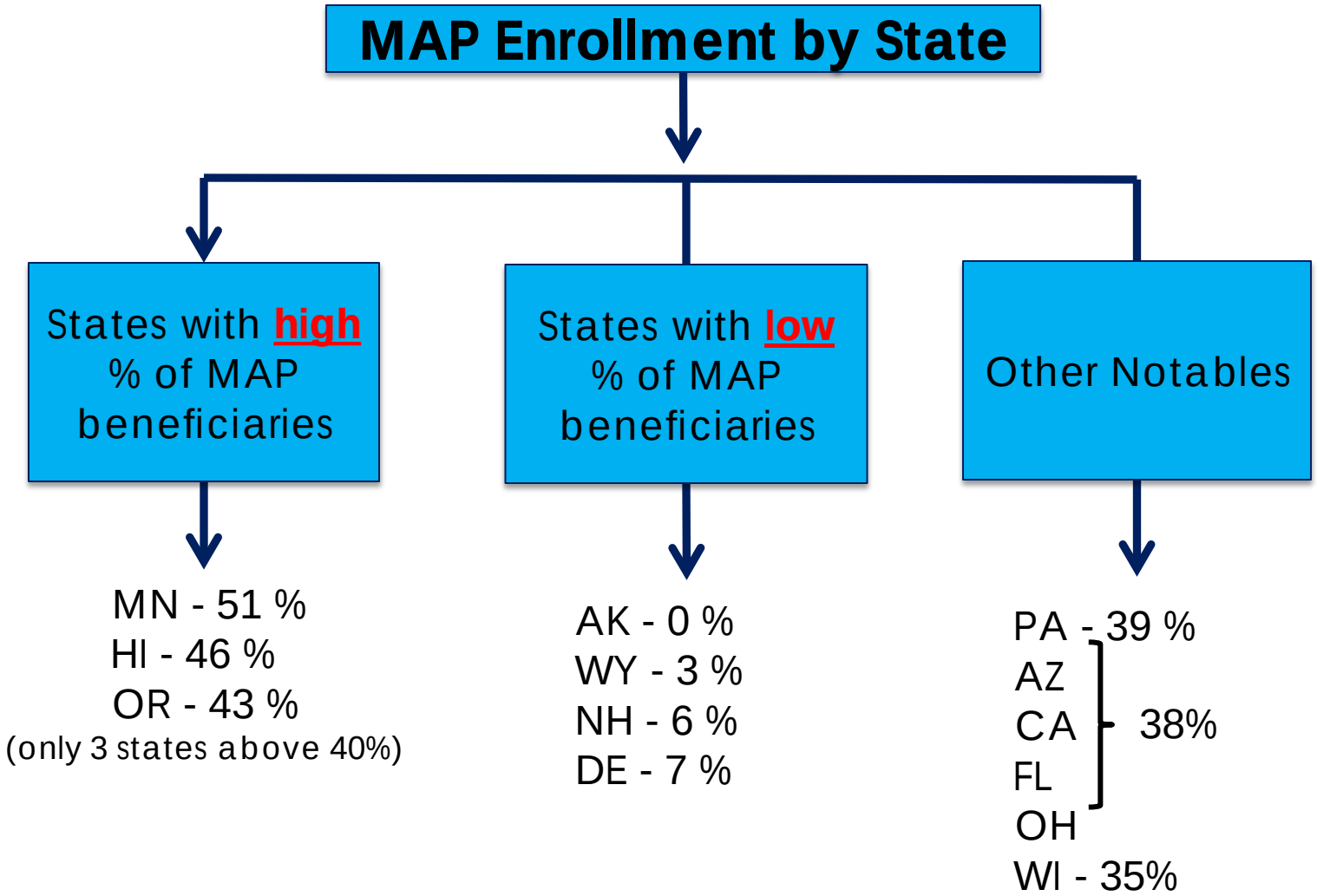
Part VI:

Medicare Advantage Plans (MAPs)

Medicare Program Mechanics

Traditional Medicare	Medicare Advantage Plans (MAPs)
• 1965 • Federal Government • Part A – inpatient hospitalization • Part B – outpatient services • 40M beneficiaries • Medicare Secondary Payer (MSP Act)	• 1997 • Private insurance carriers • Part C of Medicare Program • Objectives: More options, cost containment, innovation • Must cover at least what Traditional Medicare covers • 16M beneficiaries (30%) • 1,945 plans nationally (2015) • Medicare Advantage (MA Act)

MAPs --- By the Numbers



Source: Medicare Advantage Fact Sheet, The Henry J. Kaiser Family Foundation, May 1, 2014 (Exhibit 2).

MAPs – Issues & Questions

- What is the nature/extent of MAP recovery rights?
- MSP statutes vs. MAP statutes
- Current Issues:
  - Do MAPs have private cause of action (PCA) rights to sue to parties in federal court for "double damages?"
    - If so, which jurisdictions?
  - How should we address MAP lien issues?

Crux of the Debate ...

42 USC 1395y(b)(3)(A)

There is established a private cause of action for damages (which shall be in an amount double the amount otherwise provided) in the case of a primary plan which fails to provide for primary payment (or appropriate reimbursement) in accordance with paragraphs (1) and (2)(A).

Question:

1. Does this statute apply to MAPs?

The Game Changer …

In re Avandia, 685 F.3d 353 (3rd Cir. 2012)

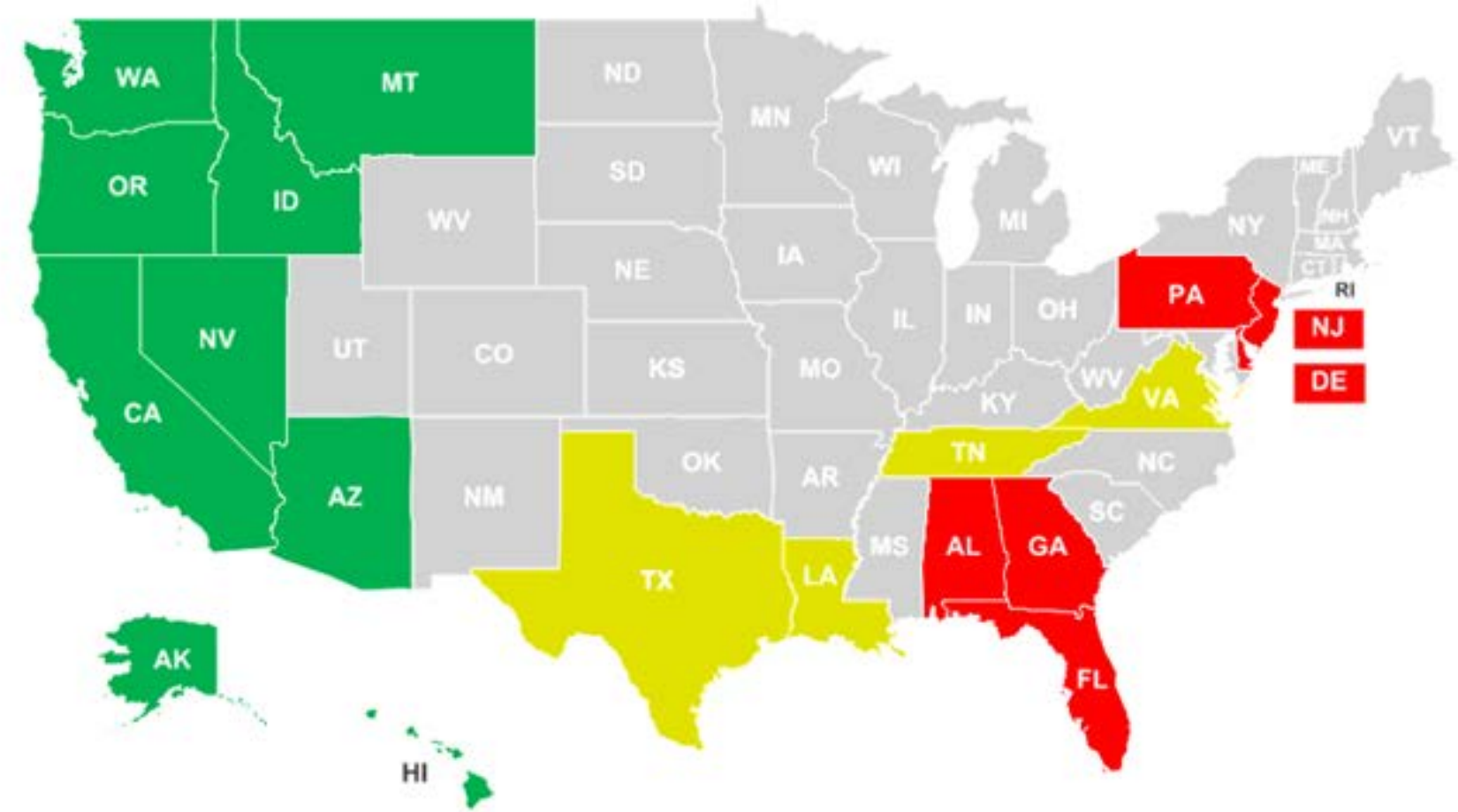
- Humana argued that the MSP's PCA statute applied to MAPs.
- Third Circuit agrees – rules that MAPs have PCA right under the MSP!!
- Court's rationale:
  1. "Plain text" of the MSP's PCA provision affords these rights.
  2. Chevron deference: 42 CFR 422.108 (f) and CMS memo.
  3. No Congressional intent to deny PCA rights to MAPs.
  4. Lower court missed the issue.
  5. Legislative History/ Policy considerations.

The Game Changer …

Post Avandia …

- We have seen federal courts in other jurisdictions basically follow the Avandia decision and rationale …
  - ***In re Avandia***, 685 F.3d 353 (3rd Cir. 2012)
  - ***Humana v. Farmers***, 2014 WL 7239426 (W.D. Tx Sept. 24, 2014)
  - ***Collins v. Wellcare,*** 2014 WL 7239426 (E.D. La Dec. 14, 2014)
  - ***Humana v. Paris Blank***, 2016 WL 2745297 (E.D. Va., May 10, 2016)
  - ***Humana v. Western Heritage***, 2016 WL 4169120 (11th Cir. August 8, 2016)

Where Does This Leave Us?



MAPs – Claims Challenges

1. Growing MAP enrollment.
2. MAP plans becoming more involved.
3. No centralized way to determine “what” Medicare plan type a claimant has.
4. Claimants can switch programs and plans.
5. Discovery considerations.
6. Current disputes and questions re: MAP’s lien rights.
7. Building Best Practice Protocols

Your ISO CP Contacts & Referral

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