



NEW RULING COULD MAKE PRIMARY PAYERS PAY DOUBLE DAMAGES TO MAOs

Last week, the United States District Court for the District of Massachusetts signaled the potential for allowing Medicare Advantage Organizations (MAO) to sue primary payers to recover double damages under Medicare Secondary Payer Act (MSPA) in the 1st Circuit.

In *MSP Recovery Claims v. Plymouth Rock Assurance Corp.*, MSP Recovery Claims (assignee of MAO Fallon Community Health Plan) brought action against Plymouth Rock Assurance Corp. (Plymouth) related to injuries sustained in an accident by an individual referred to in the claim as “A.C.” The claimant, who was enrolled in the Advantage plan administered by Fallon, sued the tortfeasor involved in the accident, who was insured by Plymouth. Plymouth subsequently settled A.C.’s claim, reported it to the Centers for Medicare and Medicaid Services (CMS) and, thereby, became the primary payer for A.C.’s accident-related medical expenses.

MSP Recovery Claims alleged that when Plymouth notified CMS of the settlement they were obligated to reimburse Fallon for \$1,782.02 in accident-related medical expenses paid on behalf of A.C. but failed to do so. MSP Recovery Claims asserted a claim to recover the expenses from Plymouth under MSPA’s private cause of action.

Congress established the MSPA private cause of action in 1986 to “encourage private parties to bring actions to enforce Medicare’s rights.” Under the private cause of action, damages shall be in an amount double to 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). (See 42 U.S.C. §1395y(b)(3)). The 3rd (PA, NJ, DE) and 11th (AL, FL, GA) Court Circuits have held that an MAO may bring suit under the MSPA where the primary payer fails to make payments (See *In re Avandia Marketing, Sales Practices & Products Liability Litigation*, 685 F.3d 353 (3d Cir. 2012)).

In this case, the Court concluded that an MAO may maintain an action under §1395y(b)(3). The Court found the 3rd Circuit’s reasoning in *Avandia* to be persuasive. The Court further determined that MSP Recovery Claims demonstrated it held a valid assignment of a claim originating from Fallon (the MAO) for which there was a valid cause of action. Since litigation continues in *MSP Recovery Claims v. Plymouth Rock Assurance Corp.*, the law has not changed for this jurisdiction at this time. However, this case demonstrates that the 1st Circuit (ME, MA, NH, PR and RI) could be one step closer to joining its sister circuits in permitting MAOs to sue primary payers for double damages under the MSPA.

To read the *MSP Recovery Claims v. Plymouth Rock Assurance Corp.* decision in its entirety, please [Click Here](#).