

Agenda

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1. Coordination of Benefits (COB) / Third Party Liability (TPL)

- Overview
- Legal Authority
- 2. Recent COB / TPL Changes
 - 2018 Bipartisan Budget Act
 - State Changes
- 3. Ensuring Compliance
- 4. Additional Opportunities to Improve COB / TPL

About HMS

The leading healthcare cost containment company in the nation

Headquarters: Irving, Texas

Customers:

325+ health plans

40+ state Medicaid programs

225+ employers

Federal agencies (including CMS and VA)

Employees: 2,500 healthcare professionals, including 350 clinicians and 1,100 IT and security staff

Financial: NASDAQ: HMSY HMS Confidential. Do not Distribute.



Coordination of Benefits Ensuring the correct party pays healthcare claims



Payment Integrity Fraud, waste and abuse identification and prevention



Total Population Management Risk Intelligence, Care Management and Consumer Engagement



Coordination of Benefits Third Party Liability

What is COB / TPL?

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- By law, Medicaid is "<u>the payer of last</u> <u>resort</u>," which means if a Medicaid recipient is covered by another healthcare plan or program, that plan must pay prior to Medicaid to the extent of its liability
- Ensuring that Medicaid is the payer of last resort is know as third party liability (TPL) or coordination of benefits (COB)



Legal Authority The Social Security Act (SSA)

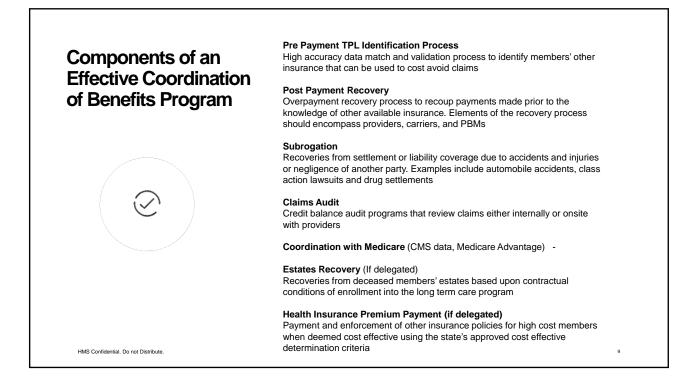
Third Parties Group health plans Self-insured plans Managed care organizations Pharmacy benefit managers Medicare Court-ordered health coverage Settlements from a liability insurer Workers' compensation Long-term care insurance Other state or Federal coverage programs (unless specifically excluded by law) §1902(a)(25) of the SSA requires states or local agencies to *"take all reasonable measures to identify legally liable third parties… to pay for care and services"* provided to Medicaid recipients.

Predicated on mandatory assignment of rights to payments for medical support and other medical care owed to recipients - §1902(a)(45).

Prohibits TPL discrimination.

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TPL in a Medicaid Managed Care Environment

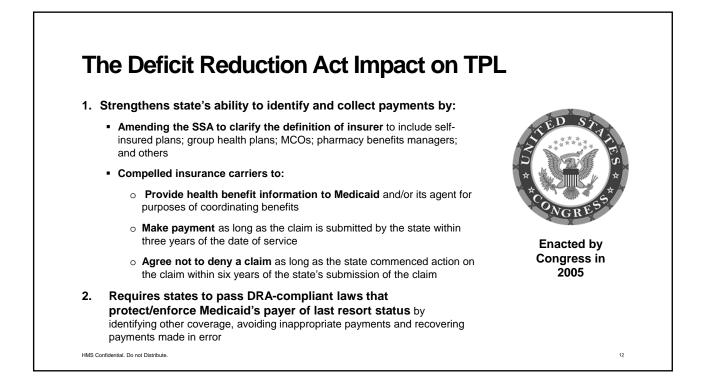
- 4 Basic TPL Models
 - · Exclude members with TPL from managed care
 - Include members with TPL
 - State retains TPL responsibilities
 - · State delegates some or all TPL responsibilities to MCOs
 - When TPL responsibilities are delegated to an MCO, third parties are required to treat the MCO as if it were the State
- MCO contracts with States detail TPL responsibilities
 - · Delegation model
 - Technical and operational specs
 - · Identification and recovery time frames and right
 - Reporting
 - State oversight

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State DRA-Compliant Laws, Rules, Policies, Waivers

State DRA-Compliant Laws / Regulations

· States must pass DRA-compliant laws and / or regulations

State Plan Requirements

 State Plans must include specific information and assurances related to COB/TPL

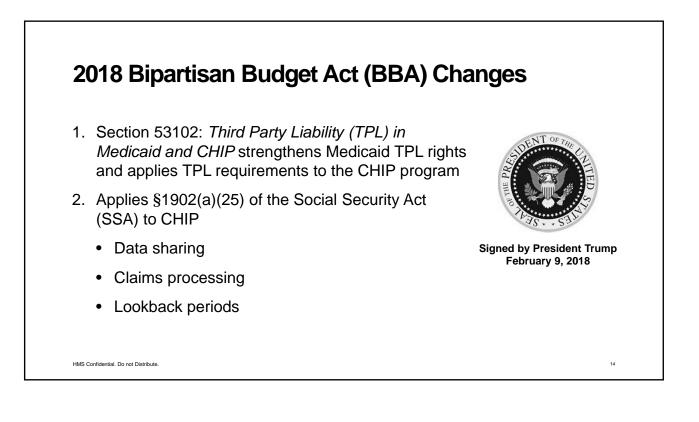
TPL Action Plans

• The State Medicaid Agency must develop and submit a TPL action plan to the CMS Regional Office

Waiver of Requirements

 State Medicaid Agencies may request waivers for TPL requirements if it is determined/ demonstrated that the activity is not cost-effective.

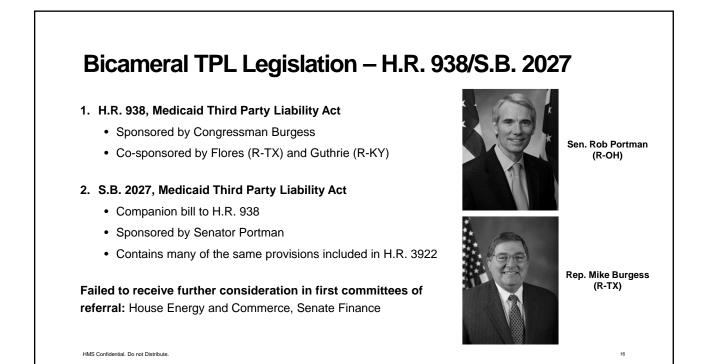
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Additional BBA Changes

- Prenatal Services Cost Avoidance requires a state to cost avoid for prenatal services and to collect information on third party liability before making payments
- 2. Claims Payment Effective October 1, 2019, SMAs will have 90 days (instead of 30 days under current law) to pay claims related to medical support enforcement, preventive pediatric services, labor and delivery, and postpartum care
- 3. Lien Rights Holds Medicaid lien rights to the medical portion of the settlement only Retrospective effective date, Oct. 1, 2017

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Key Tenets H.R. 938/S.B. 2027

1. Captures Additional Liable Parties: Adds TRICARE, fully insured plans, accountable care organizations and "any other health plan determined appropriate by the Secretary" to the list of liable parties

Closes the out of state insurer loophole

•Other Considerations: HSAs and HRAs, TPAs, AHPs, STLDI, workers compensation, automobile and other liability policies.

- 2. Prompt Payment: 60-day response
- **3. Prior Authorization:** Prohibits denials for a lack of prior authorization and requires acceptance of Medicaid's medical necessity determination
- 4. Codifies MCO TPL Authority: Transfers state data access and recovery rights when TPL is delegated

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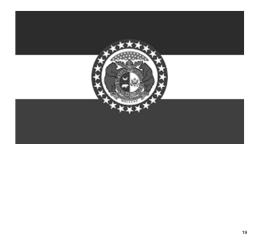
Additional Provisions in H.R. 938 / S.B. 2027

- 1. Grants TPL authorities to CHIP
- 2. Eliminates CAV exclusion for EPSDT and child support
- 3. Clarifies the treatment of FMAP
- 4. Standardizes state TPL reporting
- 5. Requires HHS to publish training, best practices and monitor challenges
- 6. Subjects states to FMAP withholds for noncompliance

Missouri Estate Recovery Improvements: SB 806

Effective August 28, 2018

New law **establishes debts for medical assistance** in the 6th position of the priority list for estate recovery purposes. Prior to the bill's passage, medical assistance debts were not included in the priority list at all.

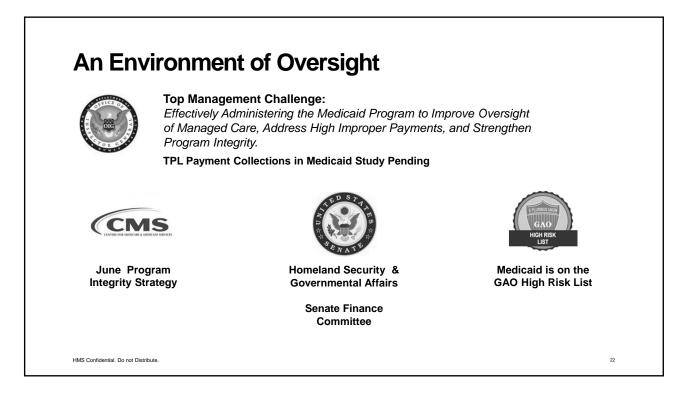


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Complying with COB / TPL Laws

- 1. Understand your Contractual agreements as it pertains to TPL
 - · Global contractual flow downs; compliance with Medicaid state and federal rules
 - Line item delegations
 - · Premium offsets
- 2. Develop a matrix of requirements based on membership category of aid (COA)
- 3. Establish benchmarks for performance and compliance
- 4. Determine if any audit rights exist -State and Federal
- 5. Understand potential penalties and audit processes
 - · Samples sizes and extrapolations
- 6. Engage business partners and ensure appropriate stakeholder communications
- 7. Monitor rule changes at both Federal and State levels
- 8. Conduct self-audit of performance in alignment with State TPL Action Plan

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Additional Opportunities to Improve COB / TPL

HHS Office of Inspector General 2013 Report

Key Challenges

- States encounter challenges getting third parties to pay when they are responsible; leading to hundreds of millions of dollars in losses per year
- · Challenges should be addressed at the state-level

Key Take-Aways

- \$4 billion at risk of not being recovered
- Increases in recoveries can be actualized by improving state DRAcompliant laws
- · Improvements to the TPL process facilitates increased savings
- Assistance from contractors facilitated improvements in their identification / recovery efforts
- Strengthen enforcement mechanisms to deal with uncooperative third parties



Study of state trends in Medicaid TPL savings over a decade

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U.S. Government Accountability Office Medicaid TPL 2015 Report

Key Challenges

- Obtaining out-of-state coverage data
- · Insurers conducting insurer-driven data matches
- Obtaining key data elements
- · Timeliness of data matches

Key Take-Aways

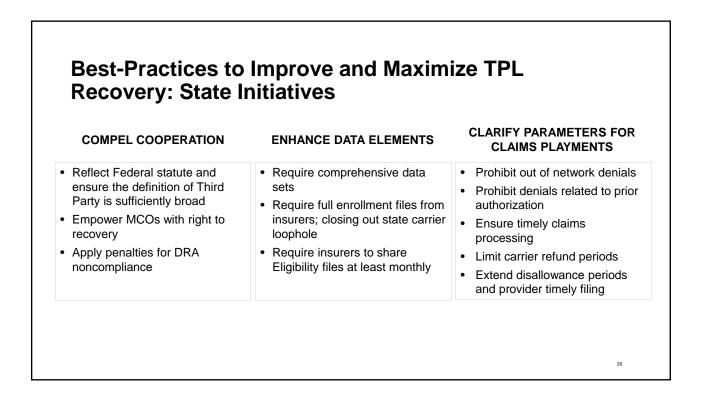
- State minimum standards ineffective
- Federal DRA addresses some of the problems reported by states, but doesn't go far enough
- States have experienced significant increases in recovery and savings from adopting TPL best-practices

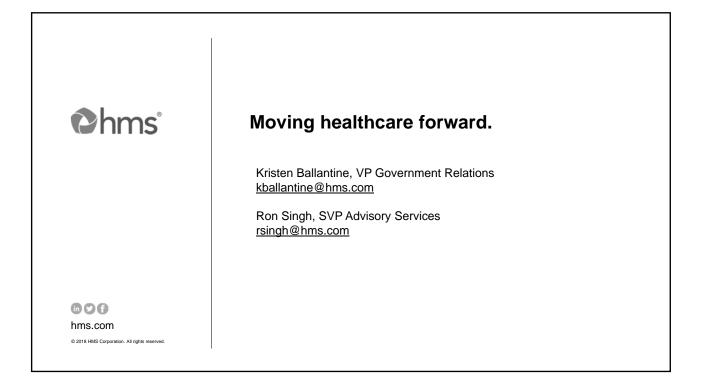


TPL performance from eight case study states between 2013 – 2015

Improving and Maximizing Medicaid COB / TPL Recovery For Your State or Plan

- Medicaid programs often pay claims for which a third party is liable because they lack information necessary to identify other coverage
- Federal law (DRA) requires states to have laws in place to strengthen the TPL identification and recovery process
- Respective state statute and regulations contain many of the elements required by the Federal DRA, but should be modernized to reflect evidence-based practices for maximizing recovery
- Absent stronger State DRA language, millions of dollars in savings remain at-risk





TPL References

Federal Statutes/Regulations/Guidance

- 2018 Bipartisan Budget Act
- CMCS BBA Informational Bulletin
- <u>Summary of Statutory Requirements</u>
- Summary of Regulatory Requirements
- Frequently Asked Question (2014)
- Guide to Effective State Agency Practices (2014)
- Guide to Effective State Agency Practices Update (2015)

Reports/Other Materials

- HHS Office of Inspector General (OIG) Report (2013)
- U.S. Government Accountability Office (GAO) Report (2015)
- COB/TPL Training/Handbook (2016)