

## Third Party Liability in the Medicaid Program

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The Deficit Reduction Act of 2005 (DRA) made a number of changes intended to strengthen States' ability to identify and collect mistaken Medicaid payments from liable third party payers. The Centers for Medicare & Medicaid Services (CMS) has issued guidance to States on these changes. (A link to this guidance can be found below.)

### ***Background***

By law, the Medicaid program is the payer of last resort. If another insurer or program has the responsibility to pay for medical costs incurred by a Medicaid-eligible individual, that entity is generally required to pay all or part of the cost of the claim prior to Medicaid making any payment. This is known as "third party liability" or TPL. Third parties that may be liable to pay for services include private health insurance, Medicare, employer-sponsored health insurance, settlements from a liability insurer, workers' compensation, long-term care insurance, and other State and Federal programs (unless specifically excluded by Federal statute). Third party payers are not responsible for reimbursing Medicaid for any services that are not covered under the Medicaid State plan.

In general, if a State has determined that a potentially liable third party exists, it must attempt to ensure that the provider bills the third party first before sending the claim to Medicaid. This is known as "cost avoidance." Whenever a State has paid claims and subsequently discovers the existence of a liable third party it must attempt to recover the money from the liable third party. This is known as "pay and chase." States are required to cost-avoid claims, with a few specific exceptions which are identified in regulation. (For more information on TPL, a link to the CMS webpage can be found below.)

### ***How the DRA Strengthens Third Party Liability***

The DRA made several changes to the TPL provisions of the Medicaid statute. These changes are designed to enhance States' ability to identify third party resources that are legally responsible to pay claims primary to Medicaid in order to cost avoid and seek recoveries. Specifically, section 6035 of the DRA:

1. Clarifies which specific entities are considered "third parties" and "health insurers" that may be liable for paying a claim prior to Medicaid and prohibits those entities from discriminating against individuals on the basis of Medicaid eligibility; and
2. Requires States to pass laws that require health insurers:
  - To provide the State with coverage and eligibility data needed by the State to identify potentially liable third parties;
  - To honor the assignment to the State of a Medicaid recipient's right to payment by such insurers for health care items or services;
  - To refrain from denying payment of claims submitted by Medicaid based on procedural reasons.

# Deficit Reduction Act Important Facts for State Policymakers

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## ***Clarification of “Third Parties”***

The DRA codifies the existing policy and clarifies that “third parties” include: self-insured plans; pharmacy benefits managers (PBMs); and “other parties that are, by statute, contract, or agreement, legally responsible for payment of a claim for a health care item or service.”

## ***Requiring Third Parties to Provide Data to States***

The DRA also directs States, as a condition of receiving Federal Financial Participation (FFP), to have laws in effect that require health insurers to provide the State with eligibility and coverage information in order:

- To identify potentially liable third parties;
- To properly avoid payments for services covered under the State plan when another party is liable for payment; and
- To recover payments from liable third parties.

## ***Third Parties’ Requirement to Reimburse States Appropriately***

Prior to the DRA, States were already required to have laws in effect that gave the State the rights of the Medicaid recipient to reimbursement by any other party that was liable for payment. However, payers sometimes denied Medicaid claims based on procedural requirements (e.g., rejecting a claim because it was not billed at the “point of sale,” was not in a particular claim format, or was not billed timely). The DRA strengthens the statute by requiring States to enact laws that require third parties:

- To accept the State’s right of recovery (in other words, the right to payment from such party for an item or service for which Medicaid has made payment); and
- To process and, if appropriate, reimburse Medicaid to the same extent that the third party would have been liable had it been properly billed at the point of sale.

It is important to note that third parties are not required to reimburse States for items or services which are not covered under the State plan. In addition, States still have a responsibility to provide proper documentation when submitting claims to third parties in order to confirm that the covered service for which the third party is liable was actually provided.

## ***Additional Information***

The provisions of section 6035 of the DRA were effective January 1, 2006, except where States are required to pass laws in order to comply with the new rules.

The State Medicaid Director Letter and Questions and Answers on the DRA provisions on TPL:  
<http://www.cms.hhs.gov/SMDL/SMD/itemdetail.asp?filterType=none&filterByDID=0&sortByDID=1&sortOrder=descending&itemID=CMS1190482&intNumPerPage=10>

The CMS TPL webpage:  
<http://www.cms.hhs.gov/ThirdPartyLiability/>