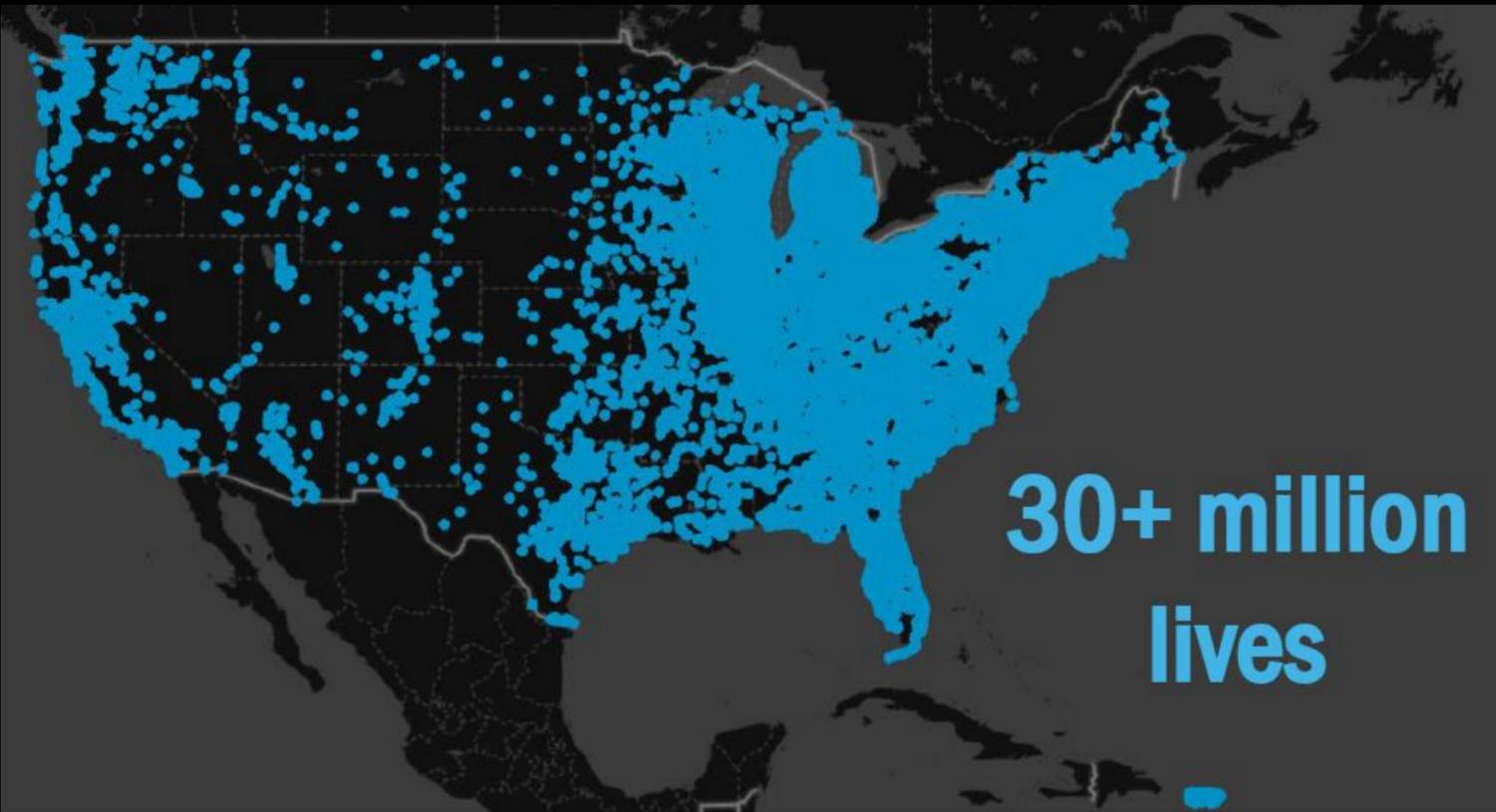




MEDICARE'S HIDDEN WASTE

Fixing the Medicare Secondary Payer system is urgent, requiring better data sharing and payment integrity audits to identify and address billions in improper payments





About MSP Recovery, LLC

Est. 2014

Data aggregator/ analytics company

160+ Medicare Advantage Health Insurance Plans and Healthcare Providers

Data in all 50 states

Primarily work with Medicare Advantage Part C Plans

The Problem

CMS lacks the ability to review the large volume of claims. According to Seema Verna (former CMS Administrator speaking at AHIP Conference on October 16, 2018)



“We review less than 2 tenths of a percent of the over 1 billion claims that Medicare processes every year And we also lack adequate legal authority to do the types of prior authorization reviews that have become routine in the private sector, leading to a high frequency of improper payments and more fraud and abuse.”

As a result, companies are getting away with not paying the medical bills that they are legally obligated to pay. Instead, **Medicare and U.S. Taxpayers** are left to pay the bill. Causes are:

- Insufficient data sharing
- Lack of accountability
- Missed opportunities
- And non-compliance

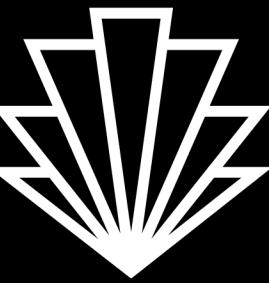
We have created and implemented the Solution



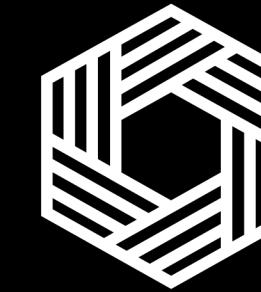
Implement real-time, centralized data sharing with modern technology.



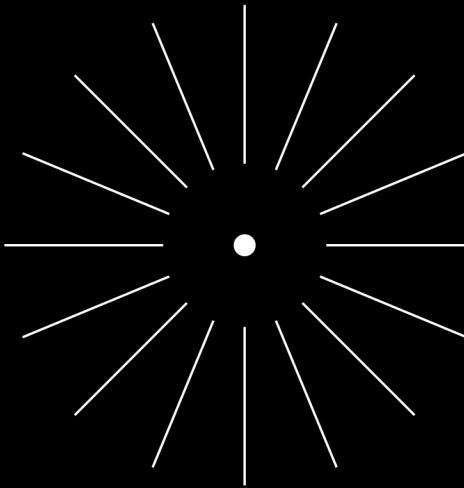
Conduct payment audits using enhanced data matching.



Enforcing legislation for complete auto insurer data sharing.



Leveraging insights from Part C industry players with audit experience.



MSP Recovery developed a proprietary enhanced data matching system to close Section 111 loopholes, matching Part C data with insurers participating in voluntary data-sharing agreements

Lessons Learned from Part C Audits

MSP Recovery has audited the auto insurance industry since 2014.

Approximately 30% of Medicare Advantage plans (Part C) have provided historical enrollment and claims data to audit and recover improper payments from auto insurers.

Audits identified over **\$1 billion** in unrecovered improper payments from a single auto insurer with a 12% market share, covering 2014 to 2020.

Audit Methodology

Parties enter into a voluntary data sharing agreement so that the auto insurer can send data to apply optimized matching techniques

1. Defendant will produce identifying claims data (limited to first name, last name, date of birth, gender address, SSN/HICN, and date of loss), all to the extent available on their systems, on all claimants for whom data is to be provided pursuant to the terms and processes below, for the calendar year 2018 only, from its databases within sixty (60) days after execution of the Agreement by all Parties.
2. Defendants will provide one year of claims data for the year 2018 for no-fault claims for the RREs [REDACTED] without regard for whether a Medicare-eligible person submitted the claim. Defendants will provide the above data on no-fault claims where a payment on the claim was made in 2018.

Auto Insurer 1

12% market share

No Fault Claims

- 8,352 matches
- Random sample of 433
- 85% of the claims were never properly reported under Section 111
- 70% of the claims involved zero coordination with Part C plans

Bodily Injury Claims

- 23,349 matches
- Pulled random sample of 193
- 76% of claims were unreported
- 90% of claims involved the insurer settling claims without protecting the lien, and attorneys failed to do so as well.

Auto Insurer 2

**~1% market share
No Fault and Bodily
Injury Claims**

- 6,669 matches
- Random sample of 362
- 96% of the claims were never properly reported under Section 111
- 90% of the first-party claims involved zero coordination with Part C plans
- 57% of third-party claims involved the insurer settling claims without protecting the lien, and attorneys failed to do so as well.

Outcome: This insurer settled, provided a full claims dataset (2014–present), and integrated with the MSP clearinghouse for proactive coordination.



Auto Insurer 3

**<1% market share
No Fault and Bodily
Injury Claims**

- 1,506 matches
- Random sample of 285
- 78% of the claims were never properly reported under Section 111
- 93% of the first-party claims involved zero coordination with Part C plans
- 64% of third-party claims involved the insurer settling claims without protecting the lien, and attorneys failed to do so as well.

Outcome: This insurer settled, provided a full claims dataset (2014–present), and agreed to proactive coordination

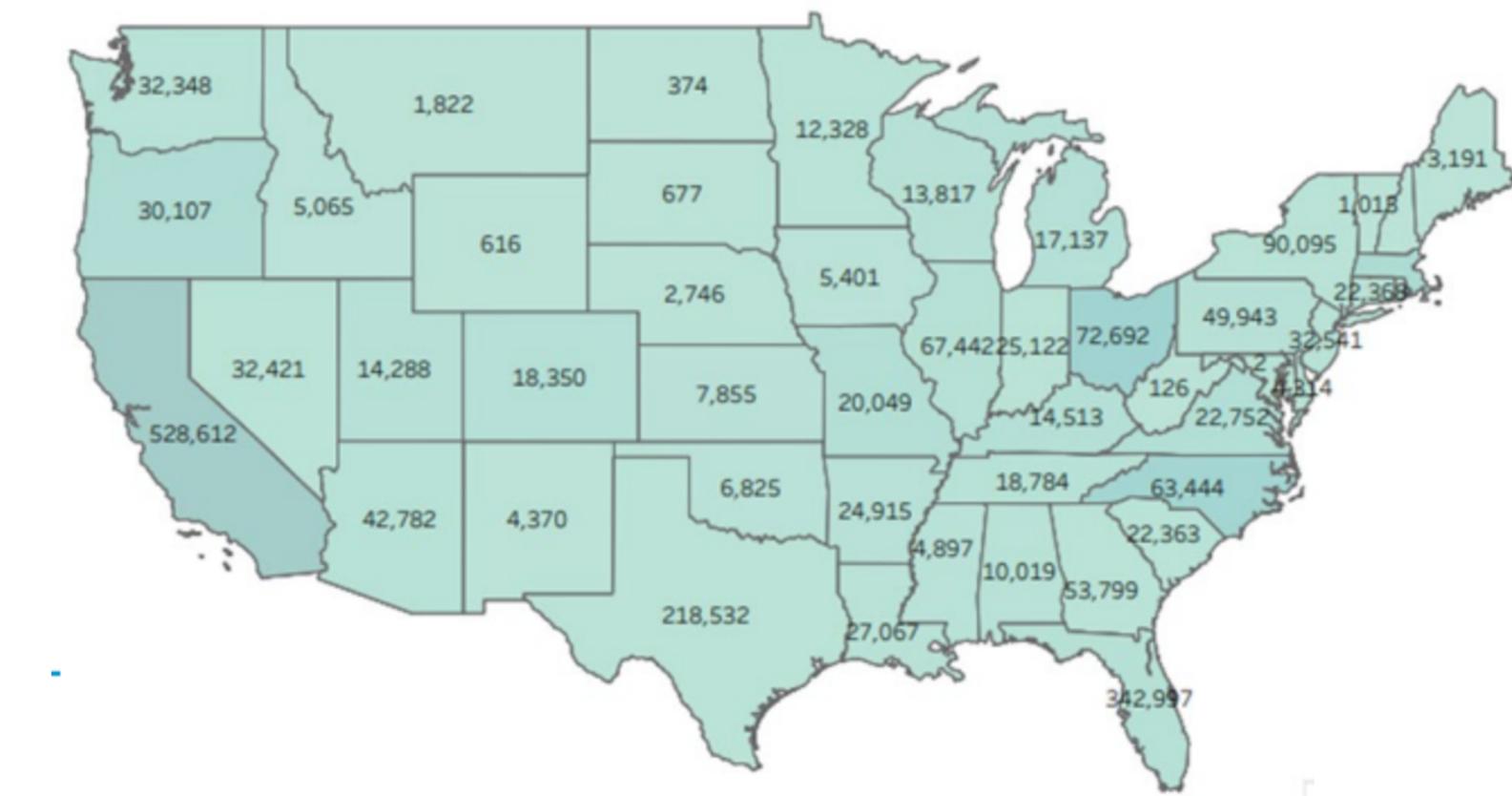


Audit Results

- Comprehensive data agreements and transformative settlements with five major auto insurers.
 - Ongoing negotiations with six more major insurers.
 - These case studies reveal a longstanding, unaddressed issue.
 - These settlements grant real-time data access, enabling proactive coordination and recovery of improper payments for our Part C clients.
 - The image on the right displays our current data.

Impact to Original Medicare

- We access approximately 10% of total Medicare enrollment data, with our largest client covering 30% of the Medicare Advantage market.
 - Analysis of a single insurer with a 12% market share revealed over \$1 billion in improper payment waste.
 - Extrapolated across Medicare, this waste multiplies tenfold, amounting to tens of billions of dollars.





How Existing Federal Law – Section 111 – Causes Billions in Waste

Improving data sharing is a quick fix to payment integrity



The Data Corroborates Our Audit

- Industry experts estimate that accident-related claims make up 9-10% of health plans' claim volume
- For two decades, MSP savings from recoveries have stagnated, averaging less than 1% of Medicare spending.

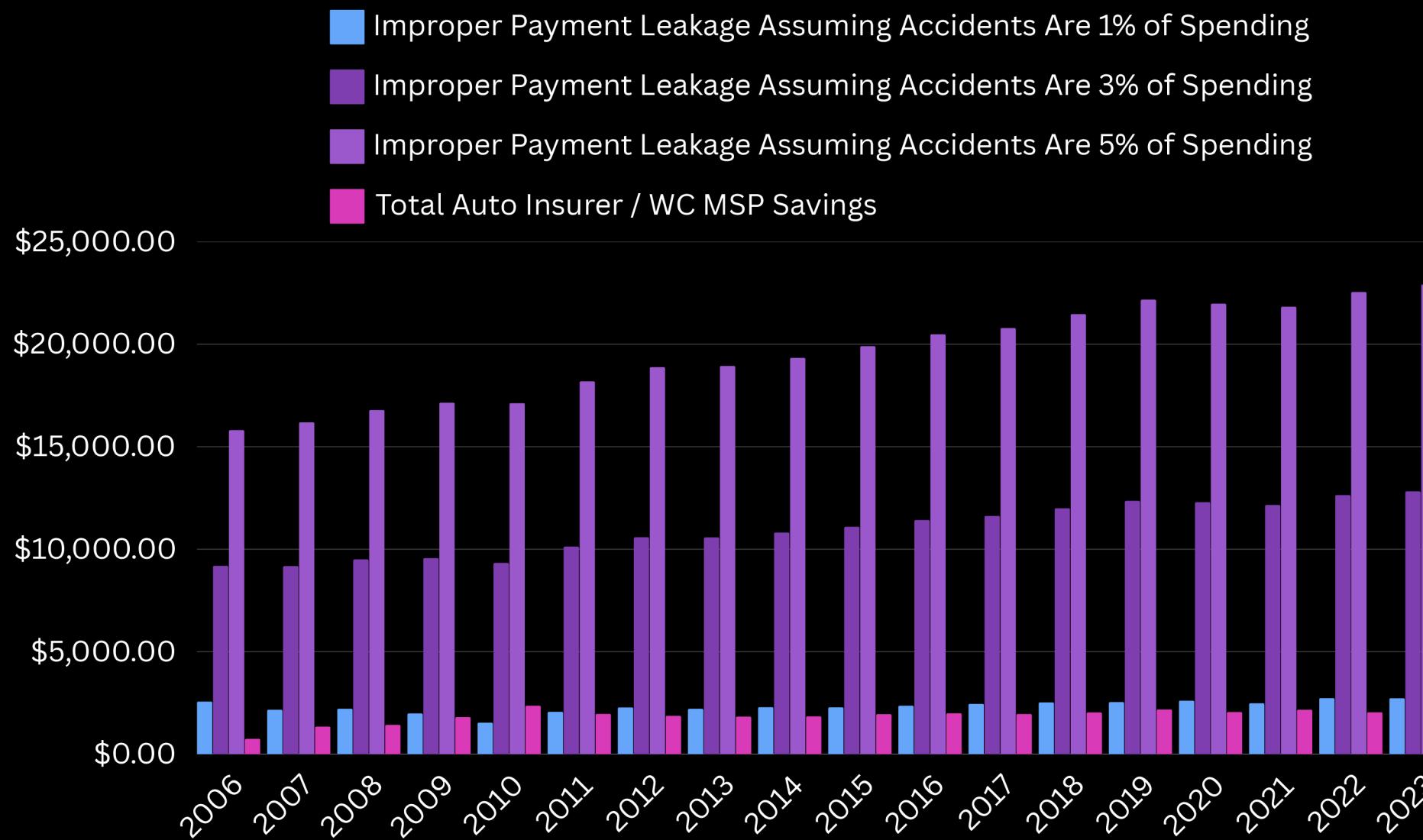
Chart Legend:
Teal = auto insurer savings
Purple = workers' comp savings
Dark blue = Medicare spending [2]
Red Line = Total auto / workers'
Comb. MSP Savings (teal + purple)



July 1, 2009
Section 111 implementation begins, **almost no change in recoveries** [3]

2012-2013 - Section 111 implementation delayed for certain liability claims [4]

Medicare Is Saving Only a Fraction of What Industry Experts Estimate It Should



**With complete data sharing,
recoveries should increase by
10x**

The chart on the right illustrates improper payment leakage based on a 1-5% share of auto accident injuries within total Original Medicare spending.

COURTS RECOGNIZE THE CURRENT SYSTEM IS FLAWED



Honorable John M. Walker, Jr. of the U.S. Court of Appeals in *MSP Recovery Claims Series LLC v. Ace*, Case No: 18-12139, 18-12139 2020 WL 5365978, transcript at pp.10-1:14-21 (11th Cir., September 10, 2020).

14 THE COURT: The primaries are not paying
15 primary. They're waiting and they -- and they
16 -- and the secondaries pay -- make the payment
17 and then the primaries are not stepping up
18 after those payments are made to reimburse.
19 They are waiting and there's -- it's obviously,
20 from an economics perspective, to their
21 advantage to do that, put it off as long as
22 possible and have the lawsuits come in and as
23 limited way as possible, and that's why what
24 your client is doing is problematic from their
25 perspective because it's aggregates these

1 claims and goes after the -- after the primary
2 reimbursements on mass, if you will.
3 MR. ZINCONE: That's correct, Your Honor.
4 It makes it feasible and economic -- it makes
5 economic sense to be able to pursue them in
6 this manner.
7 THE COURT: So without the primaries
8 paying, just so I'm -- I'm trying to understand
9 this from a economics perspective, without the
10 primaries paying, the cost then are shifted to
11 the tax payers and through -- through the
12 Medicare system, MAO system and so forth. If
13 the primaries come in and pay, then the tax
14 payers are relieved of this risk to the extent
15 of the primaries obligations.



Judge Antonio Arzola on September 2016 Class Certification Hearing in *MSPA Claims 1, LLC vs. IDS Property Casualty Insurance*, Case No. 2015-027940-CA-01.

17 important --
18 THE COURT: I'm just going to come out and say
19 this, that just from what I've seen so far it seems
20 that this is a -- this is a system that is -- the way
21 it's set up, it's bound for failure.
22 MR. RUIZ: You're correct.
23 THE COURT: I mean, it's like there doesn't seem
24 to be any communication or coordination at all.
25 It's -- I don't know. I mean, it sounds like a

disaster, and I'm trying to comprehend how one company is paying, the other one doesn't know. If they know they're primary, why aren't they taking the lead, I mean?

The Flawed Section 111 System

Data gathering

Section 111 is a rigid system that requires auto insurers to collect five mandatory data points to query Medicare's eligibility database.

Query

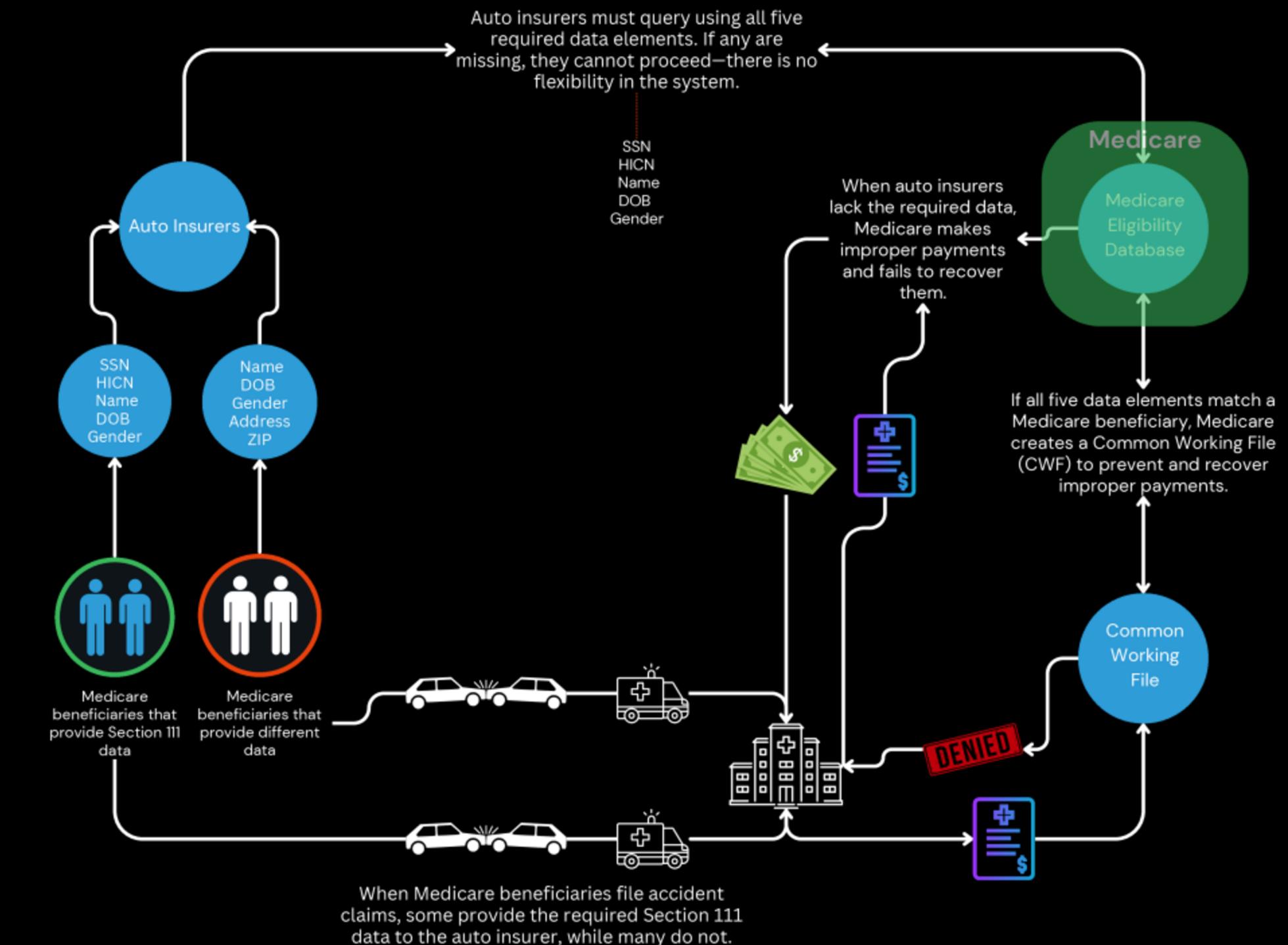
There is **no flexibility to query the database with alternative data points**. If an auto insurer fails to collect all five, Medicare remains unaware that another insurer should be responsible for payment.

Creation of Common Working File (CWF)

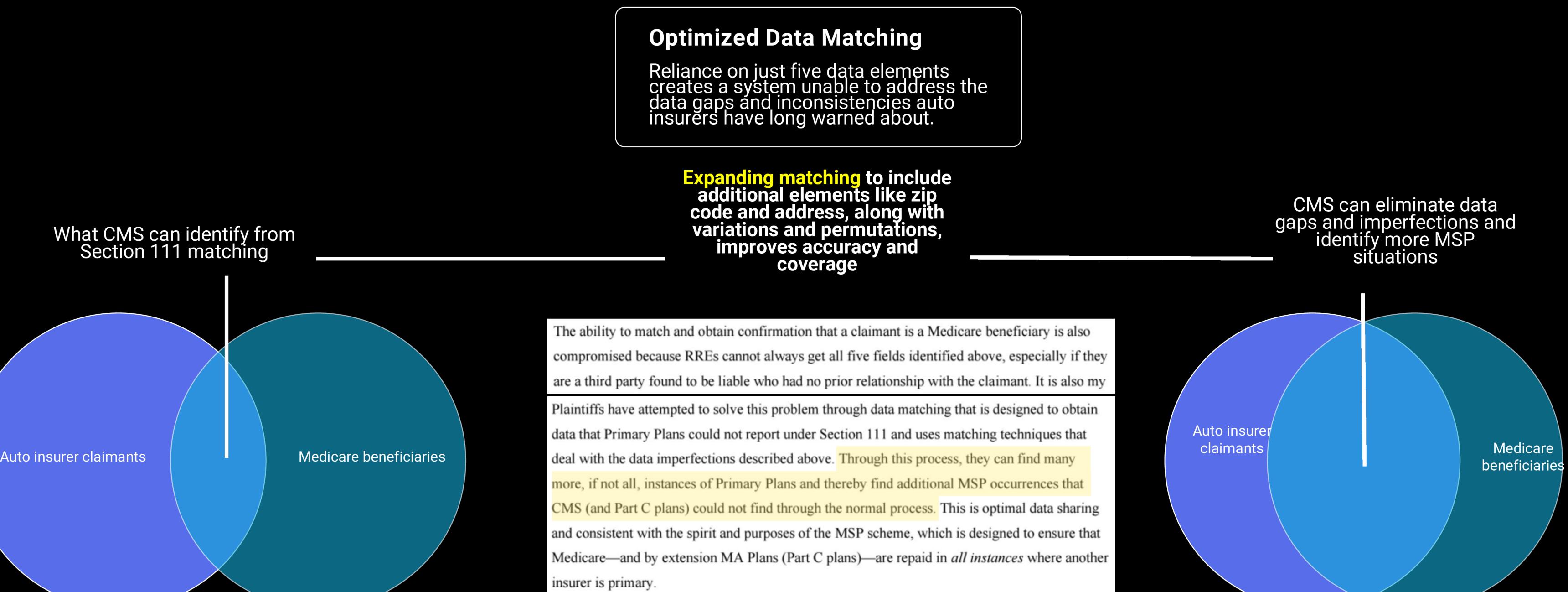
If all five data points match a Medicare beneficiary, Medicare creates a CWF to prevent improper payments. **Without this data, Medicare continues making improper payments.**

MSP Savings

MSP savings occur **only** when all five data points are collected; otherwise, no savings are realized.



What's Needed to Fix the Section 111 Flaws



-- Former CMS employee

A History of Non-Compliance with Section 111

Section 111 requirements:

- Mandates five data points for querying Medicare eligibility.
- Reports information quarterly, not in real-time.
- Lacks flexibility to accommodate data gaps.

An auto insurer warns that the rigid system “will undoubtedly result in Section 111 reporting deficiencies.” [2]

Auto insurer trade group in 2013 again admits that insurers “struggle with obtaining” the 5 data points. [5]

Data Elements - Initial Claim Handling			
	Participants with all Data Elements	Total # of Participants	% of Participants with all data elements
SA	413	695	59%
ALLSTATE COMMERCIAL	413	695	59%
AUTO COMMERCIAL CASUALTY	103	206	65%
AUTO EXPRESS	103	206	67%
DIAMOND BAR EXPRESS	5405	8163	67%
CALIFORNIA	488	727	67%
CAL DESERT CASUALTY	2	3	67%
CALIFORNIA PROPERTY	2	3	74%
CALIFORNIA SPECIALIZED AUTO MCO	575	859	71%
CAMELBACK CASUALTY	328	446	58%
CENTRAL VALLEY	619	874	72%
DIAMOND BACK CASUALTY	7	12	67%
GOLDEN GATE	657	913	56%
INLAND EMPIRE CASUALTY	253	380	67%
RED ROCK CASUALTY	592	1062	65%
SACRAMENTO CASUALTY	545	808	60%
SALT RIVER CASUALTY	579	893	60%
SAN DIEGO	93	154	68%
SAN FERNANDO VALLEY MCO	238	397	65%
TORRANCE	427	632	100%
CAPITAL	4100	6290	N/A

Major auto insurers reveal in depositions and discovery that they do not collect the 5 data points
34%.¹⁵ In other words, based on GEICO’s own analysis of the sample, with a minor tweak the data matching exercise achieves an accuracy rate of 100%-7.8% = 92.2%.

A former CMS employee testifies that MSP Recovery’s data matching techniques surpass those of Section 111.

2007-2008

Major auto insurer trade group warns that Section 111 will result in data gaps [1]

Another auto insurer trade group warns that Section 111 creates a “legal impossibility” for full claim reporting and requests a compliance safe harbor. [3]

Public comment warns:

- That only a centralized database with contemporaneous data sharing can achieve complete MSP Savings
- That incomplete data sharing is costing Medicare billions each year

State Farm acknowledges it cannot fully share data because it cannot “[q]uery the BCRC” without “a social security number or HICN.” [6]

Nearly a decade after Section 111’s implementation, an auto insurer admits in a letter that it remains non-compliant.

A court determined that an auto insurer reported only about 2% of its required

Approximately 20% of the auto insurance industry agrees to share sample data for auditing and recovering payments owed to Medicare Advantage

The rest of the auto insurance industry refuses to share data, necessitating audits and

We recently had a change in management and adjusting staff for our AMIC claims. After a review of existing processes it was determined that Section 111 Mandatory Reporting requirements were not being met. Upon learning this we created processes for both the

[1] CMS-2008-0087-0018 - Property Casualty Insurers Association Comment

[2] CMS-2008-0087-0018 - OneBeacon Comment

[3] CMS-2008-0087-0018 - MARC Coalition Comment

[4] CMS-2008-0087-0018 - Digital Healthcare Comment

[5] CMS-2013-0266-0020 - Property Casualty Insurers Association Comment

[6] CMS-2013-0266-0020 - State Farm Comment

[7] MSPA Claims 1, LLC v. IDS Prop. Cas. Ins. Co., Case No. 15-27940 CA 01 (Fla. 11th Cir. Ct. Aug. 6, 2021)

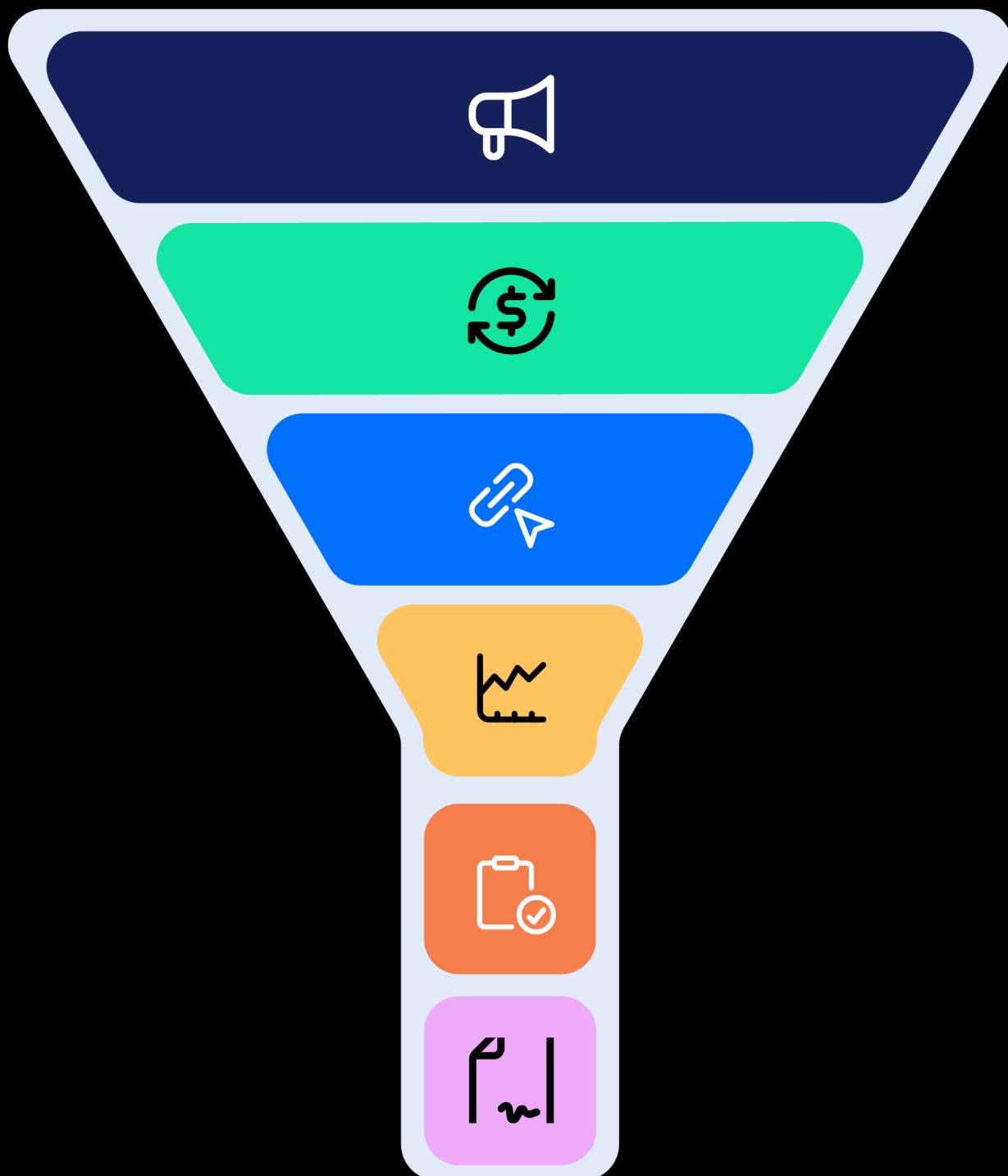
What A Payment Integrity Audit Looks Like

Authorize Data Collection

Existing legislation, such as PIIA or Section 111, or a simple executive order, could authorize Medicare to collect data from auto insurers and partner with an auditor.

Data Collection

To address the issues and loopholes in Section 111 data collection, Medicare will gather the following fields for all first- and third-party claimants from 2010 onward: date of loss (DOL), policy limits, name (first and last), date of birth (DOB), gender, address, zip code, SSN,



Enhanced Data Matching

Medicare, with an audit partner, will use enhanced data matching that extends beyond traditional Section 111 elements by incorporating additional data to address current gaps and loopholes.

Claim Linkage

The enhanced data matching output will link to two years of paid claims, allowing the audit partner to use funnels and machine learning to identify accident-

Improper Payment Analysis

Medicare's audit partner will produce a comprehensive report detailing the frequency and amount of improper payments by auto insurers, diagnose the issue, and develop a corrective action plan ...

Report to Appropriate Bodies

Medicare and its audit partner will report the results of the audit to the appropriate bodies to take corrective

Data & Security

- HIPAA compliant IT platform
- Systems Organization Controls (SOC) 2 compliant
- HITRUST CSF certified
- Secure data transfer via 
- Validated by KPMG, FTI Consulting, and the State of Florida



Data & Security

**Security and Systems Vetted
by the Largest Healthcare
Entities**

From: Daniel J Mcneish >

To: Gino Moreno > Victor Perez >

Hide

Shaye Petersen >

Cc: Steven I Adler > Deborah A Doffing >

Kimberly A Phillip > Devon Washington >

DM

MSP Recovery remediation complete

Today at 3:38 PM

Hi everyone,

I would just like to let you all know that MSP's risk assessment & remediation items have now officially been completed!

I'd like to thank the MSP team for their fantastic efforts throughout this process. Your responses to the remediation items in the portal were some of the fastest & most thorough I've ever seen, so I greatly appreciate your cooperation.

Have a great holiday!

Dan

Daniel McNeish | Optum
Sr IT Security Analyst - IRM



A Payment Integrity Audit is Long Overdue

An audit would serve decades of calls to understand why Medicare is losing billions of dollars each year in improper payments



2012 GAO Report

Notes that Medicare Savings have increased after implementation of Section 111 but total impact is unclear. [2]



2012-2019

No improvement on MSP Savings with respect to auto insurers and workers comp, with recoveries stagnating at less than 1% of Original Medicare spending.



1993 OIG Report

OIG concludes that Medicare is losing money "due to unidentified primary payers" and recommends:

- To "aggressively enforce the secondary payer statute" and
- Enact legislation to set up a voluntary disclosure program to identify improper payments and any insurer not participating would be subject to treble

[1]

2019 -PIIA

Payment Integrity Information Act (PIIA)

- Defines improper payments as payments that should not have been made.
- Requires agencies to manage improper payments by identifying risks, taking corrective actions, and estimating and reporting on improper



2024 GAO Report

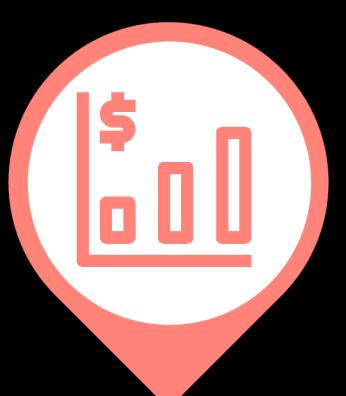
Notes again that Medicare has is "High Risk" for waste and abuse due to mismanagement and more work is required to maintain payment integrity.[3]



2025 GAO Report

Again reiterates that under the PIIA, Medicare is required to:

- assess risk for imrpoper payments and
- take corrective action plans. [4]



2025 Executive Order

Establishing the United States Department DOGE Service (USDS) for, among other things, ensuring responsible data collection and sychonization, as well as maximizing governmental



- [1] <https://oig.hhs.gov/oei/reports/oei-12-93-00010.pdf>
- [2] <https://www.gao.gov/assets/gao-12-333.pdf>
- [3] <https://www.gao.gov/assets/gao-24-107660.pdf>
- [4] <https://www.gao.gov/assets/gao-25-107552.pdf>



THANK YOU

