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RISKONNECT CONFERENCE 2022

PARTNERSHIP

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Medicare Fines are Looming; Get Your House in order Now

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Agenda

- Section 111 Primer
- Status of Civil Money Penalties
- Recent CMS Changes
- Best Practices
- What CMS Does With Your Data
- How You Can Protect Yourself

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Section 111 Primer

- Signed into law in December 2008
- Requires reporting of Workers' Compensation, Liability and No-Fault claims to Medicare
- Serves four main purposes
  - Discover billions in unresolved Medicare liens (Conditional Payments)
  - Cease making ongoing Conditional Payments where a primary payer exists
  - Ensure that all settlements "adequately consider" (allocate) Medicare's interests as required by law
  - Potential of up to $1,000 per day per claim penalty (adjusted annually)
- Initially estimated at $1.1B in fines to fund SCHIP

Status of Civil Money Penalties

- Proposed Penalty Structure
  - Complete failure and disregard
  - Repeatedly hitting Error Threshold with quarterly files (ECS prevents this)
  - Report of TPOC > 365 days late
  - Contradictory data between Section 111 submissions and Conditional Payment negotiations

Status of Civil Money Penalties

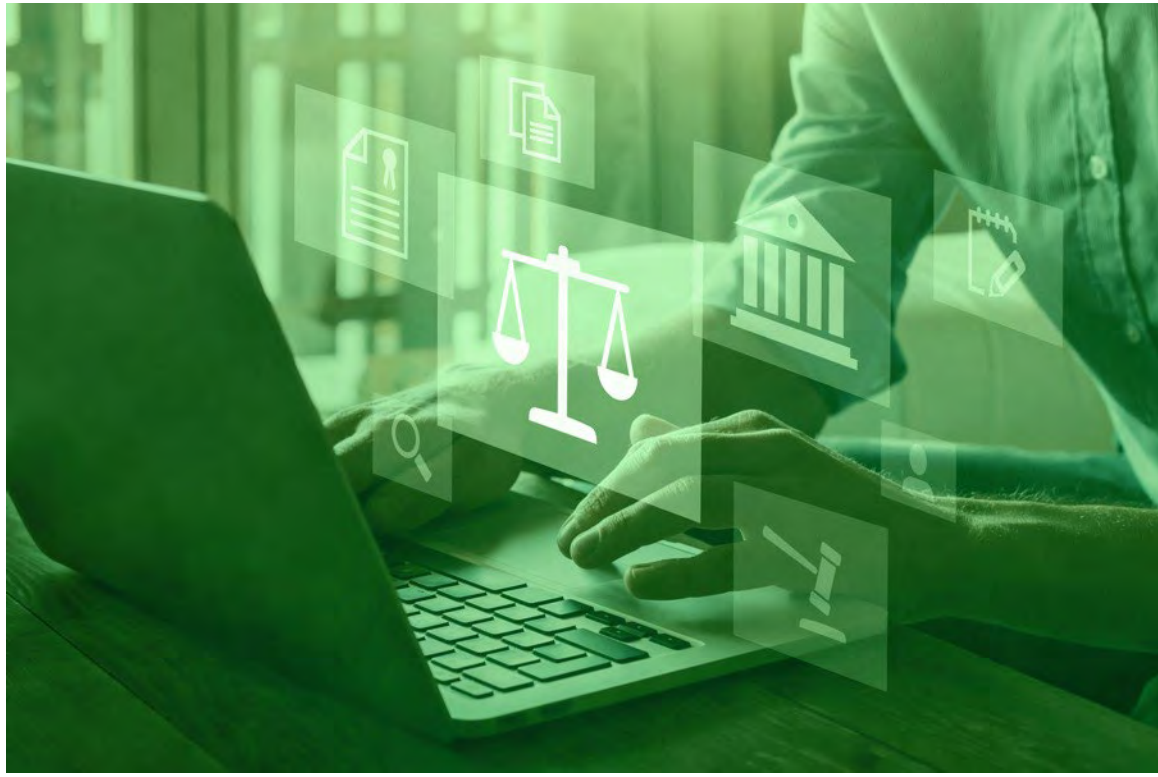
Examples

- *Late Report of TPOC*: Workers' Compensation claim reported as "Open ORM" on **July 1, 2023**. Claim settles for $26,750 on **September 7, 2023**, but no Update Record with TPOC has been submitted as of **September 7, 2024**. (CMP of $365,000+?)

- *Contradictory Data*: ORM Terminated on April 1, 2023 but ORM Termination Date not reported. Conditional Payment process in April 2024 uncovers lack of ORM Termination report. Pay the unrelated charges, or the CMP ($365,000+)?

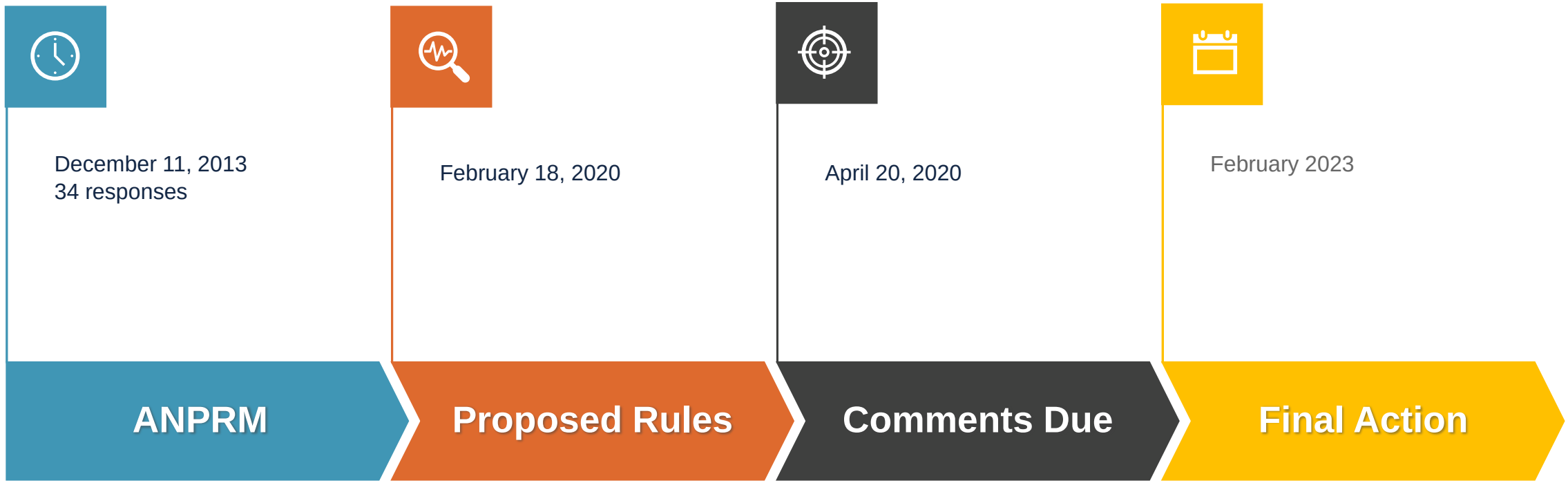
Status of Civil Money Penalties

- Enforcement per the Proposed Rules
  - Prospective from date of publication
  - 5 year Statue of Limitations from the date non-compliance was identified by CMS
  - Informal notice, followed by 30 day period to respond with mitigating information before formal notice is issued
  - Appeals Process with ALJ hearing



Status of Civil Money Penalties

Timeline



Recent CMS Changes

- SOFT EDITS: Inconsequential fields no longer trigger rejections (Phone Extension; Zip+4; Middle Initial)
- ORM TERM 75 YRS OUT: Advanced population of ORM Termination Date to ease claims handling procedures
- 5YR/$25K ORM TERM: If <$25,000 in medicals AND no treatment in the last 5 years AND not related to implant/exposure/inhalation, then you may submit ORM Termination Date.
- INDEMNITY VS. MEDICALS TPOC CLARIFICATION: If only Indemnity settles, then do NOT report as TPOC. If Medicals & Indemnity settle together, then you can combine into one TPOC, but not required.

Best Practices

Accurately

- Report compensable ICD Codes

Completely

- Report ORM Indicator; ORM Term Date; TPOC Amount; TPOC Date

Timely

- Report TPOC (within 1 year of Settlement Date)

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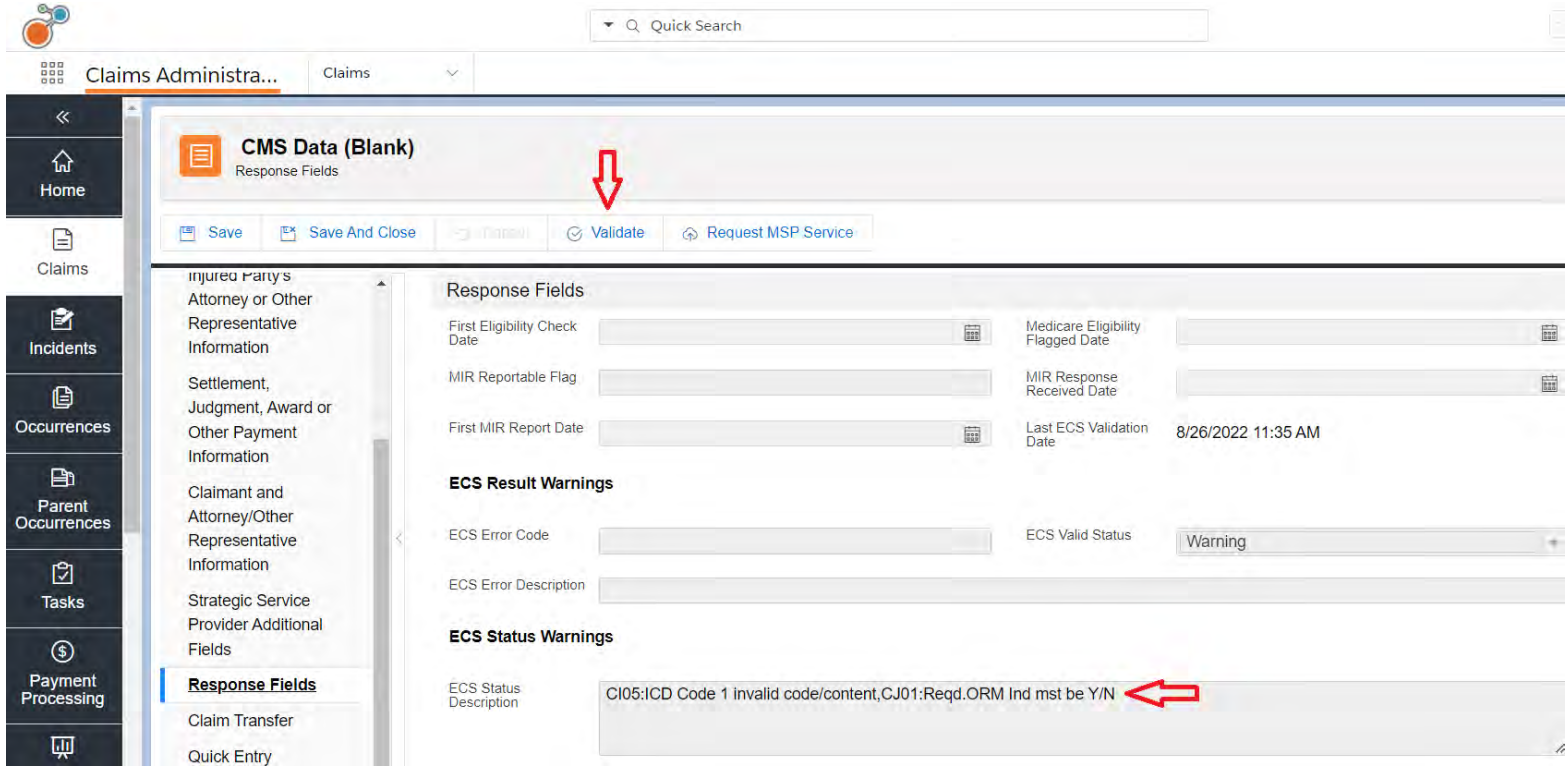
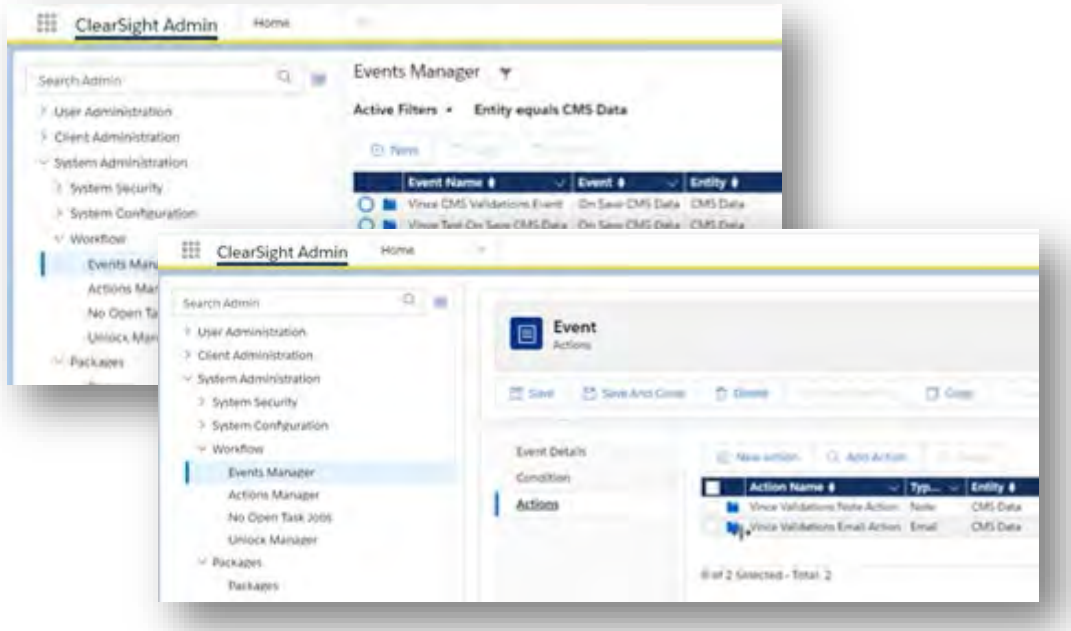
MIR VALIDATION API

- Use to update a claim to ECS immediately
- Receive real-time, on-demand validations for error correction



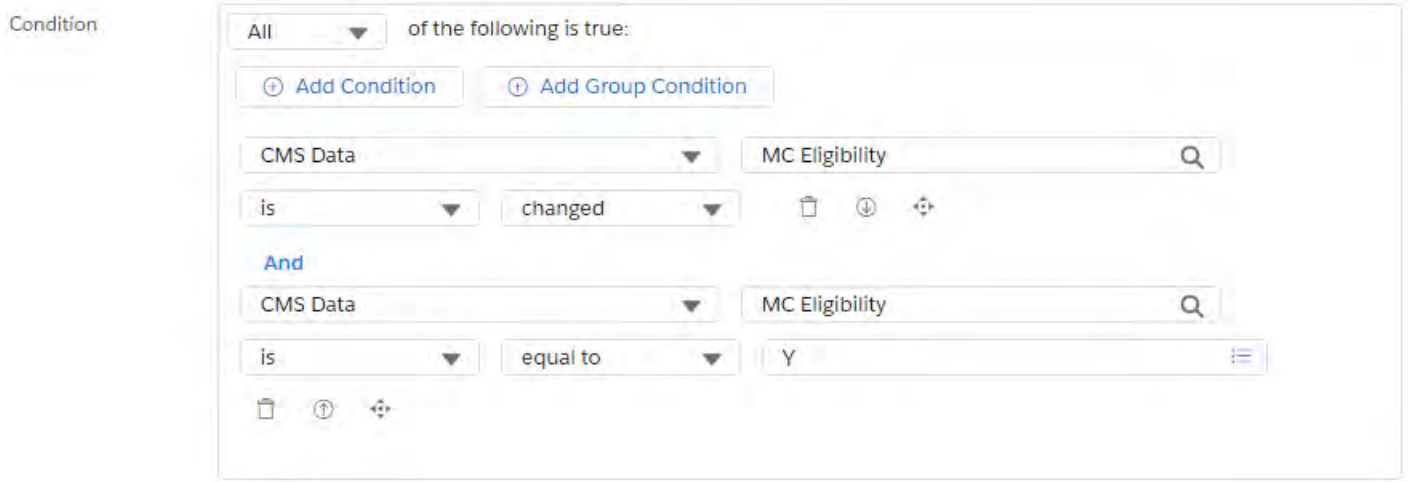
CMS Workflow Events & Actions

- **Workflow Event / Actions after:**
  - Saving the CMS Data in the Application
  - Imports are received from ECS
  - Real Time Validations with ECS
- **Business Value**
  - Workflow improvements
  - Better compliance and entry efficiencies
  - Notification of critical CMS events that need action

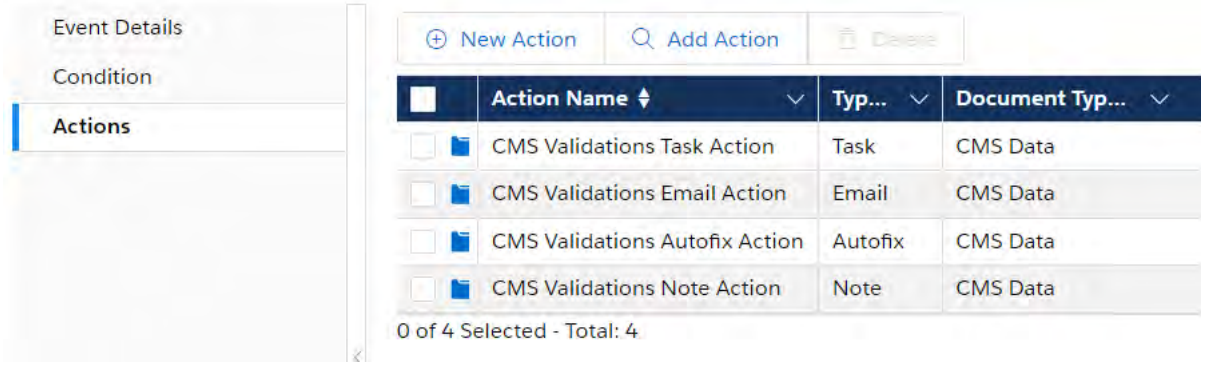


CMS Workflow Events & Actions

Set Event Conditions:



Select Actions:



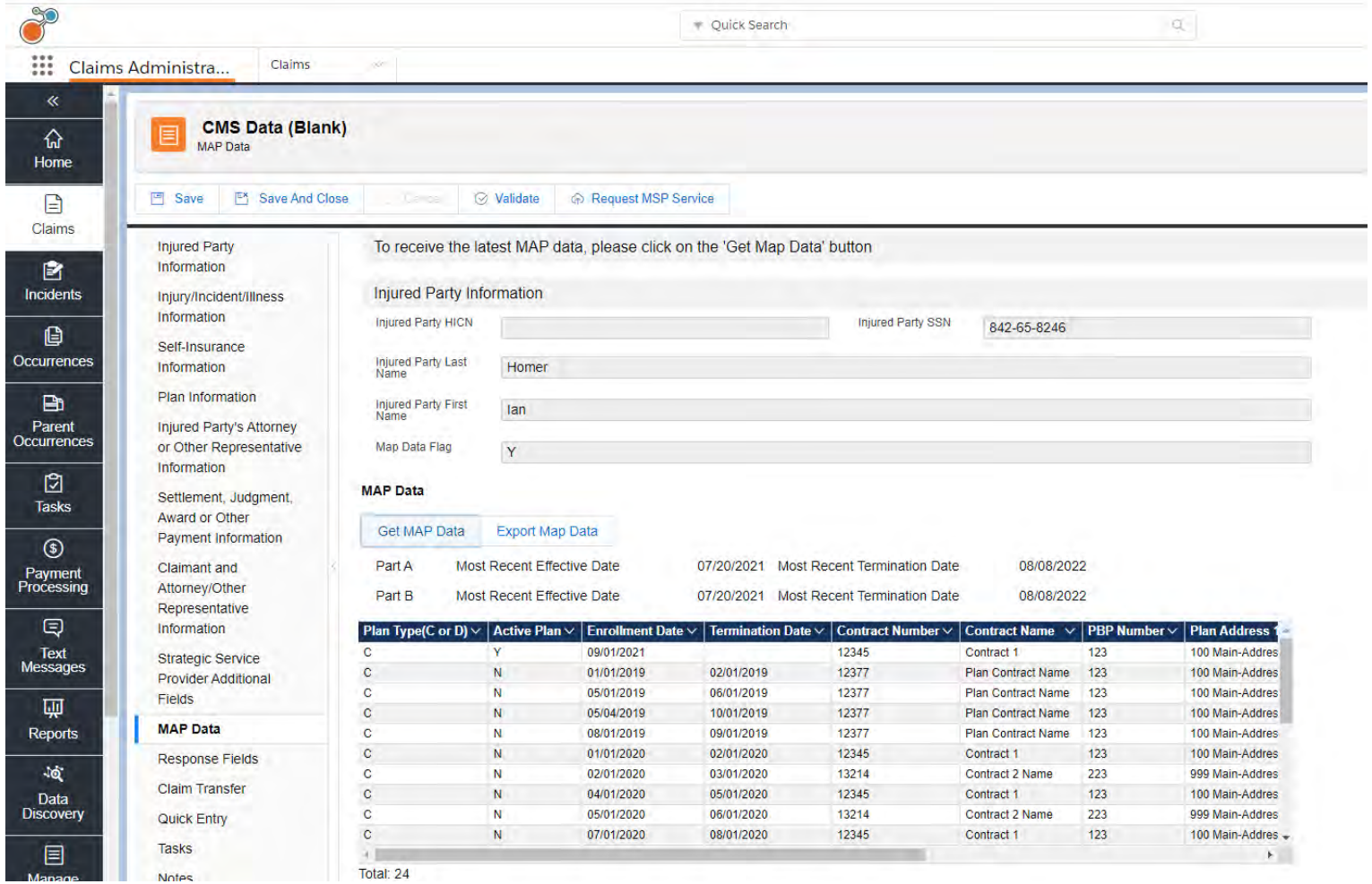
Tasks and notes can be attached to the CMS and/or the Claim record

CMS Workflow Events & Actions

- Key Events Accommodated
  - Injured Party Identified as Eligible for Medicare
  - Claim Identified as MIR Reportable
  - Client specified error code(s) are returned from ECS
  - Claim contains one or more validation errors from ECS
  - Claim cannot be loaded into ECS system
  - MIR Response File Received
  - Errors returned from CMS on Quarterly Response file
  - Unlimited additional CMS Events and Actions

Access to MAP Data

- New folder on CMS Page – MAP Data
- Select “Get MAP Data” and “Export MAP Data” Buttons
- Attach export to claim automatically



What CMS Does with Your Data

- Claims reported via Section 111 create the Common Working File (CWF) at CMS and…
  - Ceases payments for treatment relative to the ICD Codes submitted
  - Initiates Conditional Payment recovery process
- CMS knows about every open/accepted claim because of ORM
- CMS knows about every settlement because of TPOC

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What are Conditional Payments?

Medicare payments are always “conditioned upon later reimbursement to the Trust Fund”

- **“Required or responsible”** Medicare can recover “conditional payments” whenever another party is legally required or contractually responsible for making those medical payments.
- **“Responsible Primary Payer”** If conditional payments *are* made, Medicare can recover directly from the primary payer (e.g. WC insurer, employer, tortfeasor)
- **“Recipient of a primary payment”** Medicare can also recover from the recipient of a primary payment (e.g. plaintiff / claimant attorney, Medicare beneficiary)
- **Direct / Private cause of action.** Medicare or any wronged third party can sue in Federal Court and can recover double damages from any primary payer who failed to make primary payment.

How You Can Protect Yourself

- Metrics for audit / self-review
  - TPOCs reported late
  - TPOC reported but ORM still “Open”
  - Injured Party > 65 but Query returns “Undetermined”
- Make use of TPRA fields
  - Centralize Conditional Payment process
- Make use of “Go Paperless” option
  - Receive Conditional Payment Letters as PDF via the MSPRP
- Make use of G2G Option
  - Work with Department of Treasury on Open Cases

Conditional Payment Recovery

- FYI only
- Can file informal dispute
- Do not issue payment

- 30 days to file informal dispute
- Can issue payment if all charges are related

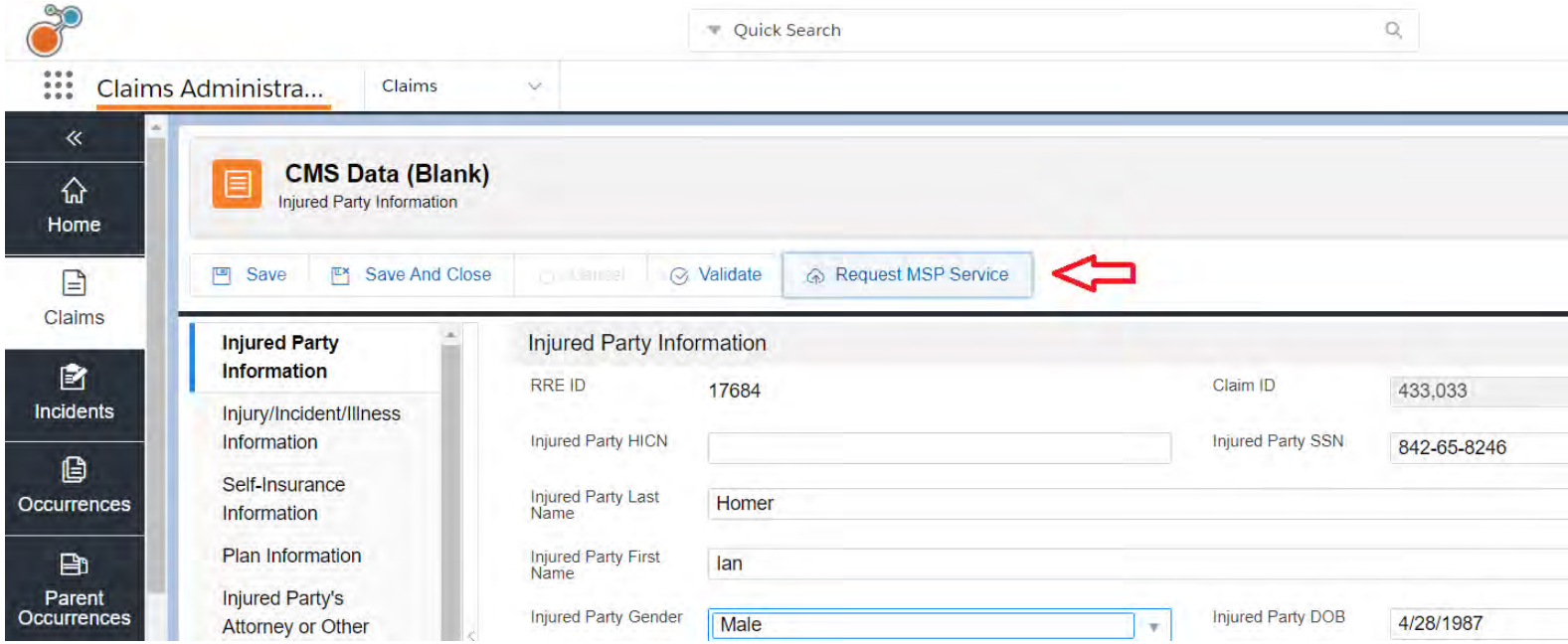
- 60 days before interest accrues
- 120 day process to appeal debt

- Issued 60 - 90 days after Demand
- Interest accrues 61 days post Demand

- Sent to Treasury 150 days post Demand
- Funds may be offset by Feds

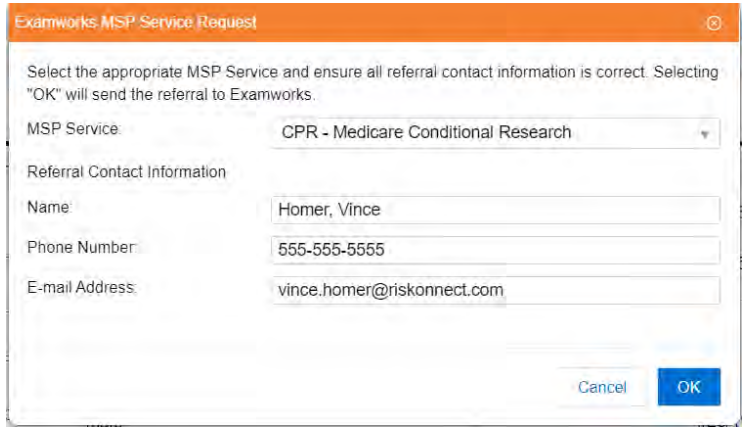
MSP Referral API

- ECS can provide the Medicare Secondary Payer services needed to ensure your claims handling processes and settlements “adequately consider” Medicare’s interests.
- Select “Request MSP Service” Button

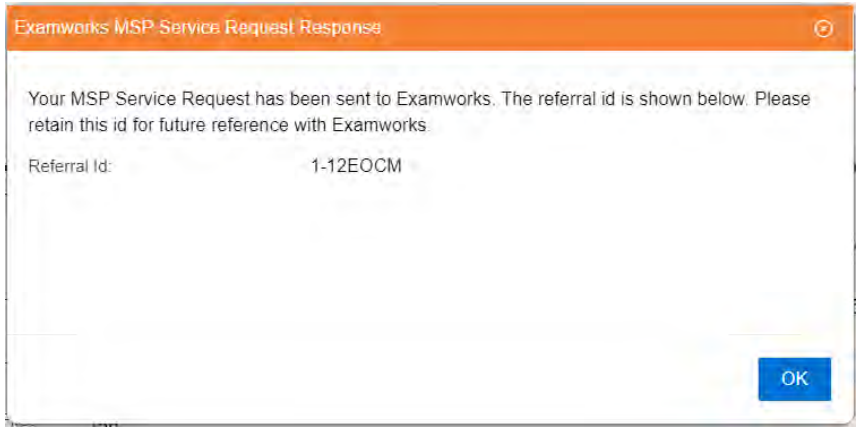


MSP Referral API

Select Service, Enter Name, Phone, and e-mail address



Receive Referral Id



- Referral received into ECS' system for intake and processing.
- ECS Intake Staff outreach for any additional information and/or documents.

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Questions?

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