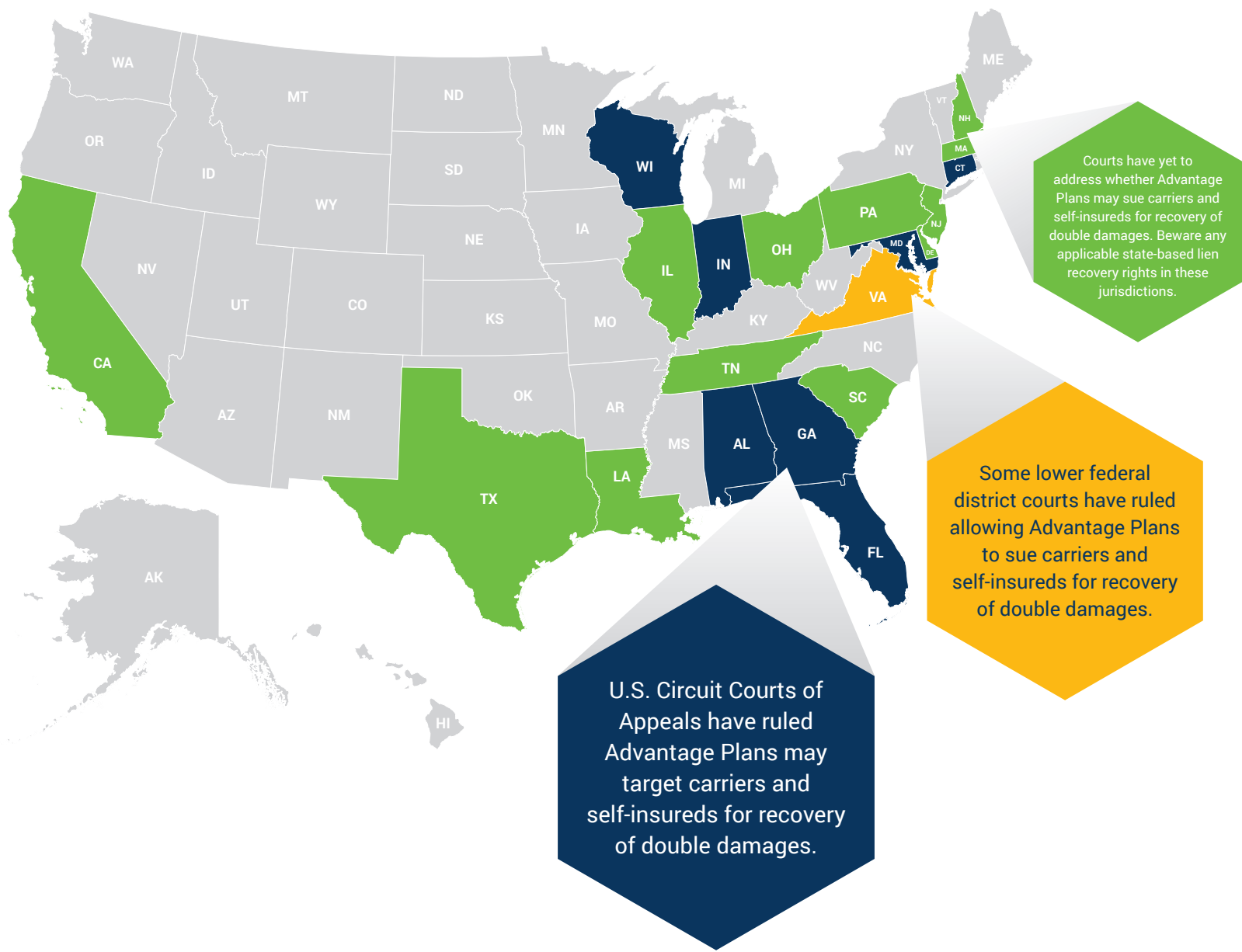


Medicare Advantage Plan Recovery Rulings

The last decade has seen a state-by-state march of Medicare Advantage plans (MAPs) seeking to apply Medicare’s dollar-for-dollar recovery scheme in Federal Courts. Once in Federal Court, MAPs can recover double damages, creating substantial liability for claims payers.

- Only primary payer is target.
- Private Cause of Action exists, but no indication target is only primary payer.
- Primary payer and claimant attorney are proper defendants.
- No decision.



Courts have yet to address whether Advantage Plans may sue carriers and self-insureds for recovery of double damages. Beware any applicable state-based lien recovery rights in these jurisdictions.

Some lower federal district courts have ruled allowing Advantage Plans to sue carriers and self-insureds for recovery of double damages.

U.S. Circuit Courts of Appeals have ruled Advantage Plans may target carriers and self-insureds for recovery of double damages.

While there are nuances from state-to-state, generally the emerging consensus is that Medicare Advantage Plans enjoy a private cause of action in Federal Court to recover “conditional payments” they may have made. To that end, ECS strongly recommends carriers and self-insureds proactively research and resolve conditional payments from Medicare Advantage and Part D plans when settling workers’ compensation, liability, and no-fault claims.