

**Memorandum**

Date . DEC 8 1993

From June Gibbs Brown
Inspector General *June G Brown*

Subject Provident Life and Accident Insurance Company - Medicare
Secondary Payer (A-04-92-02049)

To Bruce C. Vladeck
Administrator
Health Care Financing Administration

Attached are two copies of our final report entitled, "Provident Life and Accident Insurance Company - Medicare Secondary Payer." This report provides the results of our review of Provident Life and Accident Insurance Company's (Provident) actions with respect to its processing of Medicare secondary payer (MSP) situations. The objective of our review was to provide various audit services as members of a task force consisting of the Department of Justice (DOJ), the Health Care Financing Administration (HCFA), and the Office of Inspector General, Office of Audit Services to determine the amount of Provident's MSP liability.

In April 1988, DOJ filed a lawsuit against Provident in Federal court seeking to recover overpayments due the Federal Government because of Provident's failure to comply with MSP requirements. Under MSP regulations, Provident is obligated to pay primary payments for certain claims of beneficiaries insured by both Provident and the Medicare program.

On May 27, 1993, DOJ settled its lawsuit against Provident for \$27 million. The settlement agreement covered the period January 1983 through December 1993. This settlement released Provident from MSP liability for all employer group health plans and third party administered health plans that Provident has with all employers for the stated period of time.

The settlement agreement also contained a provision which would allow the Government and Provident to exchange information to facilitate the identity and recovery of duplicate payments made to providers of health care services. In addition, the settlement agreement provides for the exchange of information between Provident and the Government to help identify MSP situations before they are paid in error. We were informed by HCFA staff that these provisions for data exchanges are being implemented as specified by the agreement.

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Although the negotiation of this settlement obviated the need for any further audit assistance as part of the task force, we plan to monitor HCFA's efforts in implementing the settlement agreement provisions. We congratulate HCFA and the other members of the Provident MSP task force and recommend that HCFA continue its ongoing MSP activities to resolve the other MSP cases.

We would appreciate your views and the status of any action taken or contemplated on our recommendation within the next 60 days. If you have any questions, please call me or have your staff contact George M. Reeb, Assistant Inspector General for Health Care Financing Audits, at (410) 966-7104. Copies of this report are being sent to other interested Department officials.

To facilitate identification, please refer to Common Identification Number A-04-92-02049 in all correspondence relating to this report.

Attachments

Department of Health and Human Services

**OFFICE OF
INSPECTOR GENERAL**

**PROVIDENT LIFE AND
ACCIDENT INSURANCE COMPANY -
MEDICARE SECONDARY PAYER**



DECEMBER 1993 A-04-92-02049

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This final report provides you with the results of our review of Provident Life and Accident Insurance Company's (Provident) actions with respect to its processing of Medicare secondary payer (MSP) situations. The objective of our review was to provide various audit services as members of a task force consisting of the Department of Justice (DOJ), the Health Care Financing Administration (HCFA), and the Office of Inspector General (OIG), Office of Audit Services. The primary purpose of the task force was to identify claims paid primary by Medicare that should have been paid by Provident. To accomplish our objective, we issued a subpoena to obtain computer files of Provident insureds and conducted a series of computer applications to identify potential MSP situations. We also reviewed Provident health insurance contract files, and helped with taking depositions from certain Provident employees. In addition, we examined a probe sample of 150 Medicare claims paid on behalf of Medicare beneficiaries that were also insured by Provident to determine the frequency of MSP situations.

The task force was formed after DOJ filed a civil lawsuit against Provident in April 1988, seeking to recover Medicare overpayments due the Federal Government because of Provident's failure to comply with the MSP requirements. Under MSP regulations, Provident is obligated to pay as primary payer for certain claims of beneficiaries insured by both Provident and Medicare. The lawsuit was filed because the Government contended that Provident failed to meet its obligation to pay as primary payer on certain claims of Medicare beneficiaries. Accordingly, a task force was organized to assist in the prosecution of the Government's claim against Provident. Based on the efforts of the task force, Provident agreed to repay \$27 million after protracted negotiations that covered more than 5 years.

INTRODUCTION

In April 1988, DOJ filed a civil lawsuit against Provident to recover overpayments incurred by the Medicare program because Provident did not comply with MSP requirements. The joint task force was formed for the purpose of providing audit and other technical assistance to DOJ to facilitate the determination of damages in its case against Provident. The Medicare regulations required Provident to pay as primary payer for services provided to certain beneficiaries insured by both Provident and Medicare.

The task force proposed that the Government use statistical sampling techniques to estimate Provident's liability under the MSP provisions. However, the Special Master appointed to hear the case developed a disposition plan that required the liability to be determined on a case-by-case basis. Provident is a large insurance company with many varying types of insurance programs. Accordingly, the company processes a high volume of claims for medical services. After a while, it was agreed to by all parties that evaluating the paid claims on a case-by-case basis was impractical and costly for both Provident and the Government.

On May 27, 1993, DOJ settled the lawsuit against Provident for \$27 million. The settlement was determined through negotiations using statistical sampling data and data selected from the case-by-case analysis supplied by the task force. The settlement agreement covered the period January 1983 through December 1993 and released Provident from MSP liability for all employer group health plans (EGHP) and third party administered (TPA) health plans that Provident has with all employers for the stated period of time. The task force efforts were instrumental in the determination of the final settlement amount.

BACKGROUND

Federal law at 42 U.S.C. 1395 provides for Medicare to be the secondary payer for hospital and other medical service claims involving Medicare beneficiaries who are either disabled, working aged (65 years or older), or have end-stage renal disease and who are insured under an EGHP based on either their own employment or that of their spouses. For health care related claims of such individuals, the private insurer is usually the primary payer. Medicare will pay any unpaid balance up to the allowed amount subject to deductibles and copayments.

In March 1988, DOJ received complaints that Provident was not paying primary on Medicare claims involving EGHPs. In April 1988, DOJ filed a civil lawsuit in Federal court seeking to compel Provident to identify and reimburse the Medicare program for those Medicare claims for which it should have paid as the primary insurer. Provident countersued to limit the Government's access to their records. The initial lawsuit and countersuit were followed by a protracted series of pleadings, motions, and additional lawsuits by both parties seeking to obtain information, to shift the burden of proof, and to delay or stop proceedings altogether.

We joined the task force with HCFA and DOJ to provide audit assistance needed by the task force and to estimate the extent of Medicare mistaken payments due from Provident. The estimates were used to support the Government's position in court hearings. The work of the task force was completed on May 27, 1993, when DOJ and Provident reached a settlement agreement under which terms Provident would repay the Medicare program \$27 million.

SCOPE

The audit services were provided in accordance with generally accepted government auditing standards. Field work was performed during the period June 1989 through May 1993 in Birmingham, Alabama; Atlanta, Georgia; and Baltimore, Maryland. We also participated in various hearings and legal proceedings on behalf of the Government in Chattanooga, Tennessee.

The primary objective of the task force and our audit assistance was to determine the amount of Provident's MSP liability. To accomplish our objective, we reviewed selected Provident contract files, deposed certain Provident employees, developed the computer applications designed to identify MSP situations using various MSP legislative criteria, and examined a probe sample of 150 Medicare claims for MSP ramifications. We also issued and served two OIG subpoenas to Provident to obtain documentation on their fully insured clients and TPA programs.

We assisted in the review of insurance contract files at Provident's offices in Chattanooga, Tennessee to determine dates of insurance coverage and to identify the types of services that are covered.

Our examination of the probe sample included 150 Medicare claims and Detailed Earnings Listings (information from a Social Security Administration (SSA) data base regarding earnings of SSA covered individuals). We also used a questionnaire to gather information from employers of

individuals in the sample to verify dates of employment. We used the information to determine if the claimants were covered by insurers who should have paid primary rather than Medicare.

FINDINGS AND RECOMMENDATIONS

Our participation with DOJ and HCFA on the task force to determine the MSP liability of Provident showed that working together to provide the information needed to negotiate a settlement in this type of case proved to be very successful. The proceedings involved DOJ, HCFA, OIG, attorneys for the Government, and Provident officials including in-house attorneys. Prior to our completing the audit, a \$27 million settlement was agreed to by all parties, after more than 5 years of litigation, negotiation, and consultation.

The settlement agreement also contained a provision which would allow the Government and Provident to exchange information to facilitate the identity and recovery of duplicate payments made to providers of health care services. In this situation, both Provident and the Government made a primary payment to the provider of service for the same claim. While these are duplicate payments, in the sense that the provider of service received two primary payments for the same claim, this situation is not a violation of the MSP provisions since the private insurer has, in fact, made a payment to the provider. In these situations the Government has the right to recover its payment from the provider of service.

In addition to the identification and subsequent recovery of past mistaken Medicare payments, the settlement agreement also provides for the exchange of information between Provident and the Government to help identify MSP situations before they are paid in error. We were informed by HCFA staff that these provisions for data exchanges are being implemented as specified by the agreement. Although the negotiation of this settlement obviated the need for any further audit assistance as part of the task force, we encourage HCFA to continue working with Provident to resolve the current cases for possible duplicate payments and to help identify future MSP situations before they are paid in error. As part of our ongoing MSP program oversight, we plan to monitor HCFA's efforts in implementing the settlement agreement provisions. We congratulate HCFA and the other members of the Provident MSP task force and recommend that HCFA continue its ongoing MSP activities to resolve the other MSP cases.

If you have any questions or wish to comment on the work performed as part of this audit, please call me or have your staff contact George M. Reeb, Assistant Inspector General for Health Care Financing Audits at (410) 966-7104.