

Department of Health and Human Services

**OFFICE OF  
INSPECTOR GENERAL**

**CMS MADE PAYMENTS  
ASSOCIATED WITH  
INDIVIDUAL PHYSICIANS  
AFTER REFERRING THEIR  
MEDICARE DEBTS  
TO THE DEPARTMENT OF THE  
TREASURY FOR COLLECTION**

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**Daniel R. Levinson  
Inspector General**

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# *Office of Inspector General*

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## EXECUTIVE SUMMARY

*CMS made Medicare and Medicaid payments totaling \$10.7 million associated with individual physicians who owed the Federal Government more than \$8.8 million. CMS made these payments after referring individual physicians' Medicare debts to the U.S. Department of the Treasury for collection.*

### WHY WE DID THIS REVIEW

During a prior Office of Inspector General (OIG) review of the Department of Health and Human Services' (the Department) compliance with Federal requirements for reporting improper payments, we observed that the Centers for Medicare & Medicaid Services (CMS) paid some individual physicians for Medicare services after having referred those physicians' delinquent Medicare debts to the U.S. Department of the Treasury (Treasury) for collection. CMS is required to seek recovery of all identified overpayments and can recoup or offset overpayments against a provider's future Medicare and/or Federal share of Medicaid payments irrespective of whether the delinquent debts were referred to Treasury for collection.

Our objective was to determine whether CMS made payments associated with individual physicians after referring their Medicare debts to Treasury for collection.

### BACKGROUND

The Department is required to submit to its OIG a quarterly report on high-dollar improper payments that it identifies. A high-dollar improper payment is any overpayment that is in excess of 50 percent of the correct amount of the intended payment where: (1) the total payment to an individual exceeds \$5,000 as a single payment or in cumulative payments for the quarter or (2) the payment to an entity exceeds \$25,000 as a single payment or in cumulative payments for the quarter. Once CMS determines that an overpayment has been made, the amount of the overpayment becomes a debt owed by the physician to the Federal Government, and CMS is required to seek recovery. CMS may collect overpayments by recouping or offsetting overpayments against future Medicare payments, the Federal share of future Medicaid payments, or both.

Federal agencies are required to refer eligible delinquent debt to Treasury for collection through the Treasury Offset Program. Treasury's collection tools may include administrative wage garnishment, a process that allows a Federal agency to order a non-Federal employer to withhold up to 15 percent of an employee's disposable income to pay a nontax delinquent debt owed to the agency.

CMS may deny a provider's or supplier's enrollment in the Medicare program if the current owner, physician, or nonphysician practitioner has an existing overpayment at the time of filing an enrollment application.

## **HOW WE CONDUCTED THIS REVIEW**

Our review covered the data that the Department used to compile its quarterly high-dollar improper payment reports to the OIG for the period January 1, 2010, through March 31, 2012. We identified 82 Medicare individual physicians with delinquent debts totaling \$29,406,588 that CMS had referred to Treasury for collection. We analyzed Medicare and available Medicaid claims to determine whether any of the 82 individual physicians (1) received Federal reimbursement under the same provider number and/or (2) provided services under a different Medicare and/or Medicaid provider number for which the associated provider received Federal reimbursement after CMS had referred these physicians' debts to Treasury for collection.

We also reviewed Medicare provider enrollment data to determine whether any of the 82 individual physicians with delinquent debts had ownership interest and/or managing control in an entity associated with a provider number different from the one that CMS had previously referred to Treasury and for which CMS had paid Medicare claims.

## **WHAT WE FOUND**

CMS made Medicare and Medicaid payments associated with 23 of 82 individual physicians with delinquent debts after CMS had referred their Medicare debts to Treasury for collection. Specifically, CMS directly paid 5 individual physicians after having referred their Medicare debts to Treasury, and 21 individual physicians provided services for an entity that received Federal reimbursement. We found that the 23 individual physicians, who collectively owed CMS a total of \$8,844,782 (\$8,802,701 owed by 21 individual physicians that performed services for entities and \$42,081 owed by 2 individual physicians that received only direct payments), were paid a total of \$10,734,926 (\$317,134 in direct payments to 5 individual physicians and \$10,417,792 in payments to entities for services performed by the 21 individual physicians).

In addition, 13 of the 23 individual physicians whose debts were referred to Treasury had ownership interest and/or managing control of 15 Medicare Part B entities that received Medicare reimbursement from CMS after CMS referred the individual physicians' debts to Treasury. Although these individual physicians are not precluded from indirectly receiving Medicare Part B payments through an entity, we noted that CMS published a proposed rule in April 2013 that, if finalized, may deny an entity's enrollment due to Medicare debt owed by an owner.

CMS made payments associated with individual physicians after referring their Medicare debts to Treasury because (1) individual physicians' debts were associated with their individual provider numbers, not the provider numbers associated with the entities under which they performed services, and (2) entities for which individual physicians with delinquent debts have an ownership interest and/or managing control are currently not always precluded from enrolling in Medicare.

## WHAT WE RECOMMEND

We recommend that CMS:

- ensure that it does not pay individual physicians with delinquent debts after referring their Medicare debts to Treasury for collection, which could have resulted in savings to the Federal Government of \$317,134;
- consider authorizing Treasury to use its administrative wage garnishment authority to collect delinquent debts, totaling \$8,802,701, associated with 21 individual physicians;
- consider the results of our review when developing and evaluating policies that prevent payments to entities claiming reimbursement for services provided by individual physicians who have delinquent debts, which could have resulted in savings to the Federal Government of \$10,417,792; and
- consider promulgating Federal regulations to prevent entities for which individual physicians with delinquent debts that have any ownership interest and/or managing control from enrolling in Medicare.

## CMS COMMENTS

In written comments on our draft report, CMS concurred with our recommendations and described the actions it has taken and plans to take to implement them. Specifically, CMS promulgated final regulations (79 Fed. Reg. 72499), effective February 2015, designed to (1) prevent former providers and suppliers with unpaid debts from re-enrolling in Medicare, (2) remove providers and suppliers with patterns of abusive billing from Medicare, and (3) implement other provisions to help save more than \$327 million annually. In addition, in February 2013, CMS began using Treasury's administrative wage garnishment authority to collect delinquent debts. Finally, CMS stated that it will consider developing policies to prevent payments to entities for services provided by individual physicians with delinquent Medicare debts.

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## INTRODUCTION

### WHY WE DID THIS REVIEW

During a prior Office of Inspector General (OIG) review of the Department of Health and Human Services' (the Department) compliance with Federal requirements for reporting improper payments,<sup>1</sup> we observed that the Centers for Medicare & Medicaid Services (CMS) paid some individual physicians for Medicare services after having referred those physicians' delinquent Medicare debts to the U.S. Department of the Treasury (Treasury) for collection. CMS is required to seek recovery of all identified overpayments and can recoup or offset overpayments against a provider's future Medicare and/or Federal share of Medicaid payments irrespective of whether the delinquent debts were referred to Treasury for collection.

### OBJECTIVE

Our objective was to determine whether CMS made payments associated with individual physicians after referring their Medicare debts to Treasury for collection.

### BACKGROUND

#### High-Dollar Improper Payments

The head of each Federal agency must submit to its OIG a quarterly report on high-dollar improper payments identified by the agency in its high-priority programs<sup>2</sup> (Executive Order 13520). An improper payment is any payment that should not have been made or that was made in an incorrect amount. Office of Management and Budget Circular A-123 sets the thresholds for reporting high-dollar improper payments. A high-dollar improper payment is any overpayment that is in excess of 50 percent of the correct amount of the intended payment where: (1) the total payment to an individual exceeds \$5,000 as a single payment or in cumulative payments for the quarter or (2) the payment to an entity exceeds \$25,000 as a single payment or in cumulative payments for the quarter.

In its quarterly reports for January 1, 2010, to March 31, 2012, the Department reported Medicare overpayments<sup>3</sup> totaling \$45,088,918 for 348 individual physicians.<sup>4</sup>

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<sup>1</sup> *U.S. Department of Health and Human Services Did Not Fully Comply With Executive Order 13520 When Reporting Fiscal Year 2010 High-Dollar Improper Payments (A-02-11-01007)*, issued July 23, 2012.

<sup>2</sup> The Department reports to the OIG programs susceptible to significant improper payments (e.g. Medicare fee-for-service, Medicare Prescription Drug Benefit, and Head Start).

<sup>3</sup> A Medicare overpayment is an improper payment that a provider has received in excess of amounts due and payable under Medicare requirements.

<sup>4</sup> The quarterly reports also contained overpayments made to entities; however, these overpayments were outside the scope of this review. We anticipate reviewing the entities, with reported overpayments totaling approximately \$2 billion, in a separate review.

## **CMS Overpayment Collection Activities**

Once CMS determines that an overpayment has been made, the amount of the overpayment becomes a debt owed by the physician to the Federal Government. Federal law requires CMS to seek recovery of all identified overpayments.<sup>5</sup> CMS's overpayment collection activities include recouping or offsetting overpayments against future Medicare and/or Medicaid payments and referring debts to Treasury for collection.

### *Recouping or Offsetting Overpayments Against Future Medicare and/or Medicaid Payments*

CMS may collect overpayments by recouping those overpayments against a provider's future Medicare payments.<sup>6</sup> In addition, CMS may recover Medicare overpayments by offsetting them against the Federal share of future Medicaid payments if the physician is a Medicaid provider.<sup>7</sup> CMS may also deny a provider's or supplier's enrollment in the Medicare program if the current owner,<sup>8</sup> physician, or nonphysician practitioner has an existing overpayment at the time of filing an enrollment application.<sup>9</sup>

### *Referring Debts to the U.S. Department of the Treasury*

Federal agencies are required to refer eligible delinquent debt (debt older than 180 days) to Treasury for cross-servicing or offset or both through the Treasury Offset Program.<sup>10, 11</sup> Treasury's collection tools may include administrative wage garnishment, a debt-collection process that allows a Federal agency to order a non-Federal employer to withhold up to 15 percent of an employee's disposable income to pay a nontax delinquent debt.<sup>12</sup>

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<sup>5</sup> 31 U.S.C. § 3711(a)(1).

<sup>6</sup> 42 CFR § 405.371(a)(2) (2009-2010). This provision was moved to 42 CFR § 405.371(a)(3) effective March 25, 2011. 76 Fed. Reg. 5861, 5961 (Feb. 2, 2011).

<sup>7</sup> 42 CFR § 447.30.

<sup>8</sup> The term "current owner" applies to all owners collectively (CMS Medicare Learning Network article related to a revised change request number 8039 (effective date October 1, 2013).

<sup>9</sup> 42 CFR § 424.530(a)(6).

<sup>10</sup> 31 U.S.C. § 3711(g). CMS has the option of referring overpayments to Treasury before the debt is 180 days delinquent (31 CFR § 285.12(h); CMS, *Medicare Financial Management Manual*, ch. 4, § 70.5).

<sup>11</sup> Debt ineligible for referral include those (1) in bankruptcy status, (2) in an appeal status (pending at any level), (3) at the Department of Justice, (4) where the debtor is deceased, (5) where the debtor is a Federal agency, (6) where the principal balance is less than \$25, or (7) under fraud and abuse investigation where the investigating unit has provided the contractor with specific instructions not to attempt collection.

<sup>12</sup> 31 CFR §§ 285.11 and 285.12.

## **HOW WE CONDUCTED THIS REVIEW**

Our review covered the data that the Department used to compile its quarterly high-dollar improper payment reports to the OIG for the period January 1, 2010, through March 31, 2012. We identified 82 Medicare individual physicians with delinquent debts totaling \$29,406,588 that CMS had referred to Treasury for collection. We analyzed Medicare and available Medicaid claims<sup>13</sup> to determine whether any of the 82 individual physicians (1) received Federal reimbursement under the same provider number and/or (2) provided services under a different Medicare and/or Medicaid provider number for which the associated provider received Federal reimbursement after CMS had referred these physicians' debts to Treasury for collection.

We also reviewed Medicare provider enrollment data to determine whether any of the 82 individual physicians with delinquent debts had ownership interest and/or managing control in an entity associated with a provider number different from the one that CMS had previously referred to Treasury and for which CMS had paid Medicare claims.

We conducted this performance audit in accordance with generally accepted government auditing standards. Those standards require that we plan and perform the audit to obtain sufficient, appropriate evidence to provide a reasonable basis for our findings and conclusions based on our audit objectives. We believe that the evidence obtained provides a reasonable basis for our findings and conclusions based on our audit objectives.

The Appendix contains the details of our audit scope and methodology.

## **FINDING**

### **CMS MADE PAYMENTS ASSOCIATED WITH INDIVIDUAL PHYSICIANS AFTER REFERRING THEIR MEDICARE DEBTS TO TREASURY**

CMS made Medicare and Medicaid payments associated with 23 of 82 individual physicians with delinquent debts after CMS had referred their Medicare debts to Treasury for collection. Specifically, CMS directly paid 5 individual physicians after having referred their Medicare debts to Treasury, and 21 individual physicians provided services for an entity that received Federal reimbursement.<sup>14</sup> We found that the 23 individual physicians, who collectively owed CMS a total of \$8,844,782 (\$8,802,701 owed by 21 individual physicians who performed services for entities and \$42,081 owed by 2 individual physicians who received only direct payments), were paid a total of \$10,734,926 (\$317,134 in direct payments to 5 individual physicians and \$10,417,792 in payments to entities for services performed by the 21 individual physicians).<sup>15</sup>

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<sup>13</sup> We analyzed New York and New Jersey Medicaid claims.

<sup>14</sup> The total adds up to more than 23 because 3 individual physicians directly received Medicare reimbursement and provided services for an entity that received Federal reimbursement.

<sup>15</sup> The total payments comprised \$10,692,386 in Medicare payments and \$42,540 in Medicaid payments.

In addition, 13 of the 23 individual physicians whose debts were referred to Treasury had ownership interest and/or managing control of 15 Medicare Part B entities that received Medicare reimbursement from CMS after CMS referred the individual physicians' debts to Treasury. Although these individual physicians are not precluded from indirectly receiving Medicare Part B payments through an entity, we noted that CMS published a proposed rule in April 2013 that, if finalized, may deny an entity's enrollment due to Medicare debt owed by an owner.<sup>16</sup>

CMS made payments associated with individual physicians after referring their Medicare debts to Treasury because (1) individual physicians' debts were associated with their individual provider numbers, not the provider numbers associated with the entities under which they performed services, and (2) entities for which individual physicians with delinquent debts have an ownership interest and/or managing control are currently not always precluded from enrolling in Medicare.

## RECOMMENDATIONS

We recommend that CMS:

- ensure that it does not pay individual physicians with delinquent debts after referring their Medicare debts to Treasury for collection, which could have resulted in savings to the Federal Government of \$317,134;
- consider authorizing Treasury to use its administrative wage garnishment authority to collect delinquent debts, totaling \$8,802,701, associated with 21 individual physicians;
- consider the results of our review when developing and evaluating policies that prevent payments to entities claiming reimbursement for services provided by individual physicians who have delinquent debts, which could have resulted in savings to the Federal Government of \$10,417,792; and
- consider promulgating Federal regulations to prevent entities for which individual physicians with delinquent debts that have any ownership interest and/or managing control from enrolling in Medicare.

## CMS COMMENTS

In written comments on our draft report, CMS concurred with our recommendations and described the actions it has taken and plans to take to implement them. Specifically, CMS promulgated final regulations (79 Fed. Reg. 72499), effective February 2015, designed to (1) prevent former providers and suppliers with unpaid debts from re-enrolling in Medicare, (2) remove providers and suppliers with patterns of abusive billing from Medicare, and (3) implement other provisions to help save more than \$327 million annually. In addition, in February 2013, CMS began using Treasury's administrative wage garnishment authority to

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<sup>16</sup> 78 Fed. Reg. 25013 (April 29, 2013).

collect delinquent debts. Finally, CMS stated that it will consider developing policies to prevent payments to entities for services provided by individual physicians with delinquent Medicare debts.

## **APPENDIX A: AUDIT SCOPE AND METHODOLOGY**

### **SCOPE**

Our review covered the data used by the Department to compile its quarterly high-dollar improper payment reports for the period January 1, 2010, through March 31, 2012. We analyzed Medicare and available Medicaid claims to determine whether individual physicians (1) received Federal reimbursement under the same provider number and/or (2) provided services under a different Medicare and/or Medicaid provider number for which the associated provider received Federal reimbursement after CMS had referred these physicians' debts to Treasury for collection.

We also reviewed Medicare provider enrollment data to determine whether individual physicians with delinquent debts had ownership interest and/or managing control in entities associated with provider numbers different from those that CMS had previously referred to Treasury and for which CMS had paid Medicare claims.

We did not review CMS's overall internal control structure. Rather, we limited our internal control review to those applicable to our objective. Specifically, we obtained an understanding of CMS's overpayment recovery activities and procedures for enrolling providers in Medicare.

We performed audit work from July 2012 through February 2014.

### **METHODOLOGY**

To accomplish our objective, we:

- reviewed applicable Federal requirements;
- met with CMS officials to gain an understanding of CMS's procedures for enrolling providers in Medicare and referring physicians' delinquent debts to Treasury for collection;
- obtained and reviewed the data that the Department used to compile its quarterly high-dollar improper payment reports for the period January 1, 2010, through March 31, 2012, and identified 348 individual physicians with Medicare overpayments;
- received from CMS officials the current status (via Treasury) of the Medicare overpayments and identified 127 of the 348 individual physicians who had delinquent debts referred by CMS to Treasury for further collection;
- identified 82 of the 127 individual physicians with delinquent debts and for whom the debts were actively being pursued for collection by Treasury;
- extracted all Medicare and available Medicaid claims that were paid to the 82 individual physicians after their Medicare delinquent debts were last referred to Treasury;

- analyzed all Medicare and available Medicaid claims to determine whether the 82 individual physicians with delinquent debts:
  - received Federal reimbursement under the same provider number for which CMS referred the physician's debt to Treasury and/or
  - provided services under a different Medicare and/or Medicaid provider number for which the associated provider received Federal reimbursement;
- reviewed Medicare provider enrollment data to determine whether the 82 individual physicians with delinquent debts had ownership interest and/or managing control in entities associated with provider numbers different from those that CMS had previously referred to Treasury and for which CMS had paid Medicare and/or Medicaid claims; and
- discussed the results of our review with CMS officials.

We conducted this performance audit in accordance with generally accepted government auditing standards. Those standards require that we plan and perform the audit to obtain sufficient, appropriate evidence to provide a reasonable basis for our findings and conclusions based on our audit objectives. We believe that the evidence obtained provides a reasonable basis for our findings and conclusions based on our audit objectives.

## APPENDIX B: CMS COMMENTS



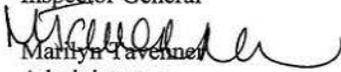
DEPARTMENT OF HEALTH & HUMAN SERVICES

Centers for Medicare & Medicaid Services

*Administrator*  
Washington, DC 20201

**DATE:** JAN -5 2015

**TO:** Daniel R. Levinson  
Inspector General

**FROM:**   
Marilyn Tavenner  
Administrator

**SUBJECT:** Office of Inspector General (OIG) Draft Report: "CMS Made Payments Associated With Individual Physicians After Referring Their Medicare Debts to the Department of the Treasury for Collection," (A-02-12-01008)

The Centers for Medicare & Medicaid Services (CMS) appreciates the opportunity to review and comment on the Office of Inspector General's (OIG) Draft Report concerning Medicare payments associated with individual physicians after referring their debt to the Department of the Treasury. CMS is committed to protecting the health of all Americans by preventing fraud, waste, and abuse in federal health care programs.

CMS has taken steps to prevent payments to individuals with outstanding Medicare debt. In February 2013, CMS began utilizing the Treasury's administrative wage garnishment authority to collect delinquent payments. Through this process, up to 15 percent of an individual's disposable income may be withheld to pay a nontax delinquent debt.

In December 2014, CMS promulgated final regulations (79 FR 72499) that will strengthen oversight of Medicare providers and suppliers and protect taxpayer dollars. These new safeguards are designed to prevent former providers and suppliers with unpaid debt from re-entering Medicare, remove providers and suppliers with patterns of abusive billing, and implement other provisions to help save more than \$327 million annually. One of the changes will allow CMS to deny enrollment to providers, suppliers, and owners affiliated with any entity that has unpaid Medicare debt; this will prevent people and entities that have incurred substantial Medicare debts from exiting the program and then attempting to re-enroll as a new business to avoid repayment of the outstanding Medicare debt. These regulations take effect in February 2015.

OIG's recommendations and CMS' responses to those recommendations are discussed below.

### **OIG Recommendation**

We recommend that CMS ensure that it does not pay individual physicians with delinquent debts after referring their Medicare debts to Treasury for collection, which could have resulted in savings to the Federal Government of \$317,134.

**CMS Response**

CMS concurs with this recommendation. CMS will continue to develop policies to prevent Medicare payments to enrolled physicians with delinquent Medicare debts.

CMS has taken steps to prevent physicians with delinquent Medicare debts from enrolling in the Medicare program and to collect delinquent debts. In December 2014, CMS finalized a regulation that will allow us to deny enrollment to providers, suppliers, and owners affiliated with any entity that has unpaid Medicare debt; this will prevent people and entities that have incurred substantial Medicare debts from exiting the program and then attempting to re-enroll as a new business to avoid repayment of the outstanding Medicare debt. These regulations take effect in February 2015.

In February 2013, CMS began utilizing the Treasury's administrative wage garnishment authority to collect delinquent payments.

**OIG Recommendation**

We recommend that CMS consider authorizing Treasury to use its administrative wage garnishment authority to collect delinquent debts, totaling \$8,802,701, associated with 21 individual physicians.

**CMS Response**

CMS concurs with this recommendation. In February 2013, CMS began utilizing the Treasury's administrative wage garnishment authority to collect delinquent payments.

**OIG Recommendation**

We recommend that CMS consider the results of our review when developing and evaluating policies that prevent payments to entities claiming reimbursement for services provided by individual physicians who have delinquent debt, which could have resulted in savings to the Federal Government of \$10,417,792.

**CMS Response**

CMS concurs with this recommendation. CMS will consider how to effectuate policies into its operations to prevent payments to entities for services provided by individual physicians with delinquent Medicare debt.

**OIG Recommendation**

We recommend that CMS consider promulgating Federal regulations to prevent entities for which individual physicians with delinquent debts that have any ownership interest and/or managing control from enrolling in Medicare.

**CMS Response**

CMS concurs with this recommendation. In December 2014, CMS finalized regulations that will allow us to deny enrollment to providers, suppliers, and owners affiliated with any entity that has unpaid Medicare debt (79 FR 72499). This final rule will prevent people and entities that have incurred substantial Medicare debts from exiting the program and then attempting to re-enroll as

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a new business to avoid repayment of the outstanding Medicare debt. These regulations take effect in February 2015.

CMS thanks OIG for their efforts on this issue and looks forward to working with OIG on this and other issues in the future.