

**Memorandum**

Date **JUN 29 1993**

From Bryan B. Mitchell *Bryan Mitchell*
Principal Deputy Inspector General

Subject Review of the Health Care Financing Administration's Oversight of Medicare
Secondary Payer Backlog Claims (A-04-92-02057)

To Bruce C. Vladeck
Administrator
Health Care Financing Administration

Attached are two copies of the U.S. Department of Health and Human Services, Office of Inspector General's management advisory report entitled "Review of the Health Care Financing Administration's Oversight of Medicare Secondary Payer Backlog Claims." The purpose of the review was to assess the adequacy of the Health Care Financing Administration's (HCFA) controls over Medicare Secondary Payer (MSP) backlog claims subject to the annual recovery notification deadline of December 31, 1992.

Our review showed that HCFA's internal controls related to MSP backlog claims do not provide adequate assurance that all improper MSP claim payments will be recovered. As a result, annually, the recovery of millions of dollars of MSP claims is jeopardized.

Medicare contractors submit quarterly backlog reports to HCFA which disclose the status of MSP claims where the contractor is more than one quarter behind in sending a demand letter to the primary insurer. These backlog reports were not filed timely and the information was not being adequately reviewed and verified by HCFA. As a result, we reported in our draft report that the Medicare program could lose approximately \$445 million if contractors did not notify the liable primary insurers by December 31, 1992.

The condition in 1992 was similar to a problem we previously reported on concerning 1991 recovery actions. In 1991, Medicare had the potential to lose more than \$135 million because demand letters were not sent by contractors before the December 31, 1991 regulatory deadline.

We recommended that HCFA establish adequate internal control policies and procedures to correct deficiencies in the review and verification of the backlog reports and take the necessary actions to avoid losses before the regulatory deadline.

Page 2 - Bruce C. Vladeck

of December 31, 1992. Since this was a recurring condition, we also recommended that HCFA report this lack of adequate internal controls as a material internal control weakness under the Federal Managers' Financial Integrity Act.

The HCFA agreed with our recommendations that the MSP backlog activities area be tracked as a material internal control weakness and that a corrective action plan (CAP) be developed to address the specific deficiencies included in this report. The HCFA stated that the CAP established for a prior MSP material internal control weakness was revised to address our concerns. The HCFA also stated that the at risk MSP backlog for 1992 was eliminated and that there will be a continued effort to recover claims that did not meet the 1991 notification deadline.

We would appreciate your views and the status of any further action taken or contemplated on our recommendations 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-04-92-02057 in all correspondence relating to this report.

Attachment

Department of Health and Human Services

**OFFICE OF
INSPECTOR GENERAL**

**REVIEW OF THE
HEALTH CARE FINANCING ADMINISTRATION'S
OVERSIGHT OF
MEDICARE SECONDARY PAYER BACKLOG CLAIMS**



JUNE 1993 A-04-92-02057

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From Bryan B. Mitchell *Bryan Mitchell*
Principal Deputy Inspector General

Subject Review of the Health Care Financing Administration's Oversight of Medicare
Secondary Payer Backlog Claims (A-04-92-02057)

To Bruce C. Vladeck
Administrator
Health Care Financing Administration

This management advisory report provides you with the results of the Office of Inspector General's (OIG) review of the Health Care Financing Administration's (HCFA) oversight pertaining to the reporting of Medicare secondary payer (MSP) backlog claims by Medicare contractors. The contractor backlog report discloses the status of MSP claims where the contractor is more than one quarter behind in sending a demand letter to the primary insurer. Our review showed that the backlog reports were not filed timely and the information was not being adequately reviewed and verified by HCFA. Because of the lack of internal controls, contractors may not meet the regulatory deadline imposed on the collection of MSP overpayments once the primary payer has been identified. As a result, we noted that the Medicare program could lose approximately \$445 million if contractors did not notify the liable primary insurers by December 31, 1992. In our draft report, we recommended that HCFA establish adequate internal control policies and procedures to correct deficiencies in the review and verification of the backlog reports and take the necessary actions to avoid losses before the next regulatory deadline of December 31, 1992. The current condition we found is similar to a problem we reported on concerning 1991 recovery actions. We, therefore, also recommend that HCFA report this lack of adequate internal controls as a material internal control weakness under the Federal Managers' Financial Integrity Act (FMFIA).

In a previous report¹, we cited the potential for a significant loss of Medicare funds in Calendar Year (CY) 1991 if HCFA did not take corrective action. We found that (based on our review of the backlog reports) Medicare had the potential to lose more than \$135 million because demand letters were not sent by contractors before

¹ The OIG final management advisory report entitled, *Corrective Action Review of the Health Care Financing Administration's Medicare Payment Safeguards Program* (A-04-92-02037, dated August 1992).

the December 31, 1991 regulatory deadline. Technically, HCFA has compromised the right to recover these funds but is still attempting to initiate recoveries. The actual amount that contractors did not act on could not be determined because accurate information was not available. The inability of HCFA to demonstrate that these Medicare funds were safeguarded strongly indicates that controls need to be improved.

We requested and received written comments from HCFA that addressed our findings and recommendations. The HCFA agreed with our recommendations that the MSP backlog activities be tracked as a material internal control weakness and that a corrective action plan (CAP) be developed to address the specific deficiencies included in this report. The HCFA stated that the CAP established for a prior MSP material internal control weakness was revised to address our concerns. Also, HCFA further stated that the at risk MSP backlog for CY 1992 was eliminated and that there will be a continued effort to recover claims that did not meet the CY 1991 notification deadline. The HCFA noted that they have continued to address the reported concerns regarding MSP activities. The complete text of HCFA's comments is included as an Appendix.

BACKGROUND

The Medicare program provides for a hospital insurance program (Part A) and a voluntary supplemental medical insurance program (Part B) for eligible beneficiaries. The Medicare program is administered by HCFA which contracts with intermediaries and carriers (contractors) to assist in the administration of the Part A and Part B services.

Medicare contractors process and pay claims for medical services in a geographic area. They also perform payment safeguard tasks to control against fraud, waste, and abuse in the Medicare program. The MSP safeguards activity is in place to recognize other insurers, when appropriate, as the primary payer of Medicare claims. Contractors review claims to ascertain whether the beneficiary has other health or liability insurance coverage. Sometimes contractors identify other primary insurers after a Medicare claim has already been paid. In these circumstances, contractors are expected to initiate recovery of the mistaken Medicare payment by providing written notification to the other insurer.

In May 1991, HCFA requested that all contractors establish a system to identify and report activity on backlog claims. A claim is considered backlogged when a contractor is more than one quarter behind in sending the initial demand letter to other insurers requesting recovery of a mistaken Medicare payment. In the request, HCFA stated that "...as a result of budget restrictions, contractors have not been able to initiate recovery action on identified claims. As a result, backlogs have developed."

The HCFA request also explained that the purpose of a backlog report was to disclose potential MSP claims that were not processed due to lack of funds. Since then, contractors have reported their backlogs on a quarterly basis. The reports are submitted through the HCFA regional offices and are to be forwarded to HCFA central office within 30 days after the end of the quarter.

Further, an MSP regulation, 42 CFR 411.24(f)(2), established time frames for initiating recovery of MSP claims representing overpayments. The regulation, effective for claims identified after November 13, 1989, states that contractors must initiate recovery action within 15 to 27 months after identifying another insurer as being the primary payer or the insurer will no longer be liable for the amount mistakenly paid by Medicare.

In our previous report that addressed the CY 1991 MSP backlog reported by contractors, we stated that contractors had reported that claims totaling \$393 million were subject to the December 31, 1991 recovery notification requirement and that contractors may not have the resources to meet the deadline. We recommended that HCFA take appropriate action to ensure that the at risk claims would not be lost to the notification deadline.

METHODOLOGY

The purpose of our review was to assess the adequacy of HCFA's controls over claims subject to the annual recovery notification deadline. To achieve our objectives, we reviewed HCFA central offices' internal control policies and procedures related to the MSP backlog report and analyzed the MSP claims subject to the December 31, 1992 recovery deadline. We also analyzed the MSP claims subject to the December 31, 1991 deadline to determine if contractors had been able to initiate recovery action on them in a timely manner.

Specifically, we performed an analysis of the individual contractor MSP backlog reports for the quarter ending June 30, 1992. The backlog reports are designed to provide claim and beneficiary data that correlates to the CYs 1991 and 1992 notification recovery deadlines. Some of the reports for the June quarter were not available at the time of our review. For the missing reports, we analyzed reports from the prior quarter.

We also reviewed MSP correspondence at HCFA central office and discussed our observations with HCFA officials. We contacted HCFA regional office officials and knowledgeable representatives from selected Medicare contractors. We did not perform on-site work at any contractors. Our field work was performed at HCFA central office during the period September through October 1992.

RESULTS OF REVIEW

Our review showed that HCFA internal controls related to backlogged MSP claims do not provide adequate assurance that all improper MSP claim payments will be recovered. Specifically, the recovery of a significant amount of improper MSP claims has been jeopardized because primary insurers were not notified by December 31, 1991. Furthermore, in September 1992, HCFA did not know the amount of improper MSP claims that would not be recoverable if the potential primary insurers were not notified by December 31, 1992. We believe that the lack of internal controls to adequately monitor the MSP backlogged claims represents a material internal control weakness under FMFIA that will jeopardize recovery of significant amounts of Medicare program funds. Accordingly, we recommend that HCFA improve contractor reporting and its monitoring of contractor activities to provide assurance that improper MSP payments are recovered.

The HCFA implemented reporting procedures to monitor backlogged MSP claims. However, as of September 1992, HCFA had not used the reports to identify the backlogged amount that was subject to the CY 1992 deadline. Furthermore, HCFA doubted the accuracy of the reported data. Our analysis of the reports showed that \$445 million of a \$625 million backlog would be subject to the December 31, 1992 deadline.

The HCFA officials were also aware that some contractors did not meet the CY 1991 notification deadline for some backlog claims. However, they did not know the total amount that lacked notification, and could offer no specific explanation why contractors were not able to initiate notifications. A review of contractor reports showed that about \$135 million was not acted upon in CY 1991. Contractor supporting documentation was inadequate to obtain an accurate total. However, as discussed in the following paragraphs, we believe the total could be much less.

MSP RECOVERIES JEOPARDIZED IN CY 1991

Our review of 20 contractor reports submitted to HCFA indicated that contractors did not send timely demand letters to primary insurers on \$135 million for CY 1991. We contacted eight contractors and found that the amounts reported on the backlog report subject to the December 31, 1991 deadline were in error. The eight contractors we contacted represented \$127 million of the \$135 million that contractor reports indicated no recovery notifications were made. Details of our contacts are as follows.

- o One contractor with claims representing \$84,028,138 in backlog subject to the deadline informed us that their system could not identify whether demand letters had been sent.

- o Two of the contractors with claims representing \$17,680,558 stated that they had made all the required notifications. One contractor stated that the information was incorrectly identified on the backlog report while the other contractor stated that their backlog report was misinterpreted by HCFA personnel who recorded a number from the wrong column of the report.
- o Two contractors with claims representing \$16,537,992 should have reported these claims as MSP leads instead of backlog according to HCFA regional officials. The officials stated that these were estimates rather than adequately developed overpayment cases.
- o Two contractors with claims representing \$5,532,216 stated that the amounts were misclassified. The claims represented dates of service prior to January 1, 1990. We were informed that HCFA instructions state that backlog claims prior to this date should have been reported under the Internal Revenue Service/Social Security Administration/HCFA data match.
- o Another contractor with claims representing \$3,421,312 stated that lack of funding prevented recovery letters from being initiated in a timely manner.

These examples indicate that reporting inconsistencies and inaccuracies are reflected in the backlog reports. The information in these reports has been the basis for HCFA management decisions regarding resource allocation and prioritizing activity for contractors. Yet, at the time of our review, HCFA central office had not established internal control policies and procedures for monitoring the MSP backlog and determining the validity of the data, nor had they tried to determine the reasons for contractors' noncompliance with the CY 1991 recovery deadline.

We believe HCFA's lack of controls contributed to contractors not initiating some MSP recoveries in CY 1991. The HCFA controls should have been adequate to assure that all CY 1991 recoveries were initiated timely. We believe that HCFA needs to establish internal control policies and procedures to adequately monitor and oversee the MSP claims backlog.

MSP BACKLOG FOR CY 1992

Our review of the MSP backlog reports, as of June 30, 1992, showed that a backlog of MSP claims totaling \$625 million had been reported by contractors and that recovery action had not been initiated on

these claims. Of that amount, we found that \$445 million of claims had a notification deadline of December 31, 1992.

The HCFA central office oversight of the MSP backlog activity has not been adequate. During our review, HCFA officials stated that they did not know the number of claims at risk for the notification deadline of December 31, 1992. We requested the latest available contractor backlog reports and determined that \$445 million was reported by contractors as subject to the December 31, 1992 notification requirement. Our determination was based on the June 30, 1992 reports or prior quarter reports if the June report was not available.

Our evaluation found that 23 of 87 contractor reports had not been submitted to the central office although the data was already over a month overdue. The HCFA officials stated that it was difficult to get the contractors and regional offices to submit this data in a timely manner. In addition, we were informed that HCFA believes that some contractors are not accurately completing the backlog reports. The HCFA officials added that HCFA has not established policies and procedures to review the contractors' backlog reporting in terms of completeness, accuracy, and timeliness or to ensure that all at risk MSP backlogged claims had notification. We believe that this lack of policies and procedures results in inadequate HCFA oversight of contractors' adherence to recovery regulation requirements.

The HCFA officials stated they intended to determine the claims at risk for CY 1992 notification when they received the September 30, 1992 backlog reports. The normal backlog reporting requirements will result in HCFA not obtaining this data prior to November 1992. Historical evidence shows that November 1992 may be too late for HCFA to ensure that adequate resources exist at contractors to meet the December 31, 1992 notification deadline.

During CY 1991, HCFA was faced with a similar backlog crisis that resulted in a request to Office of Management and Budget (OMB) for contingency funding of about \$20 million to meet the notification deadline. The HCFA decision to request funds for the notification problem was made in November 1991 (the first quarter of Fiscal Year (FY) 1992). However, the Federal budget reconciliation process prevented the distribution of the contingency funds until after the December 31, 1991 notification deadline. As a result, some contractors failed to meet the recovery notification deadline. It appears that a similar problem has developed for meeting the December 31, 1992 notification deadline.

**MATERIAL INTERNAL
CONTROL WEAKNESS**

Our review found that a material internal control weakness existed in HCFA oversight responsibilities over the backlog of MSP claims. The HCFA had not established adequate policies

and procedures to ensure that all at risk MSP backlogged claims have notification, that the data reported by contractors on the MSP backlog report was accurate, or that reports were submitted timely. As a result, HCFA was not able to make appropriate management decisions regarding the MSP backlog.

The HCFA is required by OMB Circular A-123 to establish, maintain, evaluate, improve, and report on internal controls in their program and administrative activities. The OMB Circular A-123 defines a material internal control weakness as a weakness that "...significantly...deprive the public of needed services; violate statutory or regulatory requirements; significantly weaken safeguards against waste, loss, unauthorized use or misappropriation of funds, property, or other assets...." In 1989, the MSP activity was classified as a material internal control weakness by HCFA and OMB. Our review of HCFA's controls over the reporting of backlog claims indicates that internal control improvements are still needed.

The HCFA required contractors to submit monthly reports on backlogged MSP claims. However, they did not use the reports to monitor the at risk backlog and determine the amount of the backlog that would require notifications by December 31, 1992 nor did they validate the data in the reports. For example, we obtained information through telephone contacts with contractors that was inconsistent with the reported data. Also, HCFA stated that contractors did not notify primary insurers by December 31, 1991 on claims totaling about \$51 million. Our analysis showed that contractors actually reported that they had not made timely notifications on claims totaling \$135 million. By not making timely notifications, the recovery of these funds has been jeopardized. Furthermore, HCFA did not have adequate procedures to ensure that the reports were timely. At the time of our review, 23 contractor reports were overdue and thus data on the backlog at these contractors was unavailable.

We believe the lack of adequate internal controls over the monitoring and reporting on the MSP backlogged claims adversely affects HCFA's ability to safeguard Federal funds and meet regulatory requirements. Therefore, we recommend that a material internal control weakness be reported under FMFIA.

CONCLUSIONS AND RECOMMENDATIONS

We concluded that HCFA has not established adequate internal control policies and procedures to manage the Medicare MSP backlog recovery activity. At the time of our review, HCFA management could not provide adequate information as to the contractors' performance in meeting the recovery regulation requirements in CY 1991 and

CY 1992. Our review found that some contractors failed to report their MSP backlog in an accurate and timely manner. Also, in CY 1991, some contractors failed to make timely notification on all MSP claims subject to the recovery regulation. Further, we found that HCFA management is facing a similar situation of a large backlog in CY 1992 that may result in contractors' failure to make the required notifications. Therefore, the internal control weakness disclosed in this report could continue to hamper the MSP safeguard activity in the future.

Accordingly, we recommend that HCFA:

- report oversight of the MSP backlog activities as a material internal control weakness under FMFIA;
- prepare a corrective action plan for developing internal control policies and procedures that result in the accurate and timely reporting of MSP backlogs by Medicare contractors; and
- ensure that contractors made notification for CY 1992 in accordance with the recovery regulation requirements.

**AUDITEE COMMENTS
AND OIG RESPONSE**

The HCFA agreed with our recommendations that the MSP backlog activities be tracked as a material internal control weakness and that a CAP be developed to address the specific deficiencies contained in this report. The HCFA stated that the MSP CAP established for a prior MSP material internal control weakness was revised for FY 1993 to focus attention on the specific backlog and recovery control deficiencies included in the report. The HCFA further stated that contractors made notification in CY 1992 in accordance with recovery regulation requirements.

Also, HCFA informed us that they have instructed contractors to pursue recovery of the CY 1991 backlog. The HCFA stated that according to regulations at 42 CFR 411.2(f)(2), contractors must initiate recovery action within 15 to 27 months in order to preserve Medicare's right to claim recovery. However, the primary insurer remains liable until their own established time limit for timely submission has passed. We agree that contractors should pursue recovery for these claims. Finally, HCFA stated that they continue to address concerns regarding the reporting of MSP activities and have provided training to improve contractor reporting.



Memorandum

RECEIVED
4/29/93

Date

William Toby, Jr. APR 26 1993
William Toby, Jr.

From

Acting Administrator

Subject

Office of Inspector General (OIG) Draft Management Advisory Report:
"Review of Backlog of Medicare Secondary Payer Claims" A-04-92-02057

To

Bryan B. Mitchell
Principal Deputy Inspector General

We reviewed the above-referenced draft management advisory report which assessed the adequacy of the Health Care Financing Administration's controls over Medicare Secondary Payer (MSP) backlog claims subject to the annual recovery notification deadline.

Our comments on the report's recommendations are attached. Thank you for the opportunity to review and comment on this draft report. Please advise us if you agree with our position at your earliest convenience.

Attachment

IG	_____
FDC	_____
DIG-AS	_____
DIG-EL	_____
DIG-OT	_____
AIG-MP	_____
OGC/IG	_____
EX SEC	_____
DATE SENT	_____

Comments of the Health Care Financing Administration (HCFA)
on Office of Inspector General (OIG) Draft Management
Advisory Report: "Review of Backlog of
Medicare Secondary Payer Claims"
A-04-92-02057

Recommendation

That HCFA report oversight of the MSP backlog activities as a material internal control weakness under FMFIA.

HCFA Response

The Medicare Secondary Payer (MSP) area was declared a high risk area/material weakness in fiscal year (FY) 1989. It continues to be tracked under this dual designation.

Recommendation

That HCFA prepare a corrective action plan for developing internal control policies and procedures that result in the accurate and timely reporting of MSP backlogs by Medicare contractors.

HCFA Response

Oversight of backlog activities was incorporated into the MSP corrective action plan (CAP) and included in the Department's 1992 Federal Managers' Financial Integrity Act (FMFIA) Annual Report. A CAP was revised for FY 1993 to focus attention on the specific backlog and recovery control deficiencies included in the report.

Recommendation

That HCFA ensure that contractors make notification for CY 1992 in accordance with the recovery regulation requirements.

HCFA Response

The most current information available to OIG at the time of the audit came from reports submitted by regional offices (ROs) following the end of the June 30, 1992, quarter. At that time, the reports indicated that there was \$445 million at risk. The figure dropped to \$304 million on the backlog report prepared by central office (CO) for the quarter ending September 30, 1992, after demand letters were sent and misclassifications were corrected. The backlog was eliminated by December 31, 1992.

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General/Technical Comments

Time Deadlines

Page 3 - OIG reports that the insurer will no longer be liable for the amount mistakenly paid by Medicare regarding the \$135 million in potential MSP cases on which the contractors failed to initiate recovery action by December 31, 1991. According to regulations at 42 CFR 411.24(f)(2), contractors must initiate recovery action within 15 to 27 months in order to preserve Medicare's right to claim recovery. However, should a contractor miss this deadline, the identified primary insurer remains liable until and unless the insurer can demonstrate that its own established time limit for the timely submission of claims has passed. Consequently, contractors have been instructed to pursue all MSP cases, even those which expire under the provisions of this regulation.

Training

In addition, we would like to note that HCFA has and continues to address the concerns of the contractors and ROs concerning MSP activities. Question and answer type informational memoranda and training materials have been sent to the contractors. Several ROs have also conducted training sessions, with CO input, that have resulted in improved contractor reporting.