



MAY 5 1992

**Memorandum**

Date *RK*  
From Richard P. Kusserow  
Inspector General

Subject Medicare and Medicaid Need a Priority in the Recovery of  
Overpayments from Bankrupt Providers (A-09-90-00141)

To William Toby  
Acting Administrator  
Health Care Financing Administration

The attached management advisory report addresses the need to improve the recovery of Medicare and Medicaid overpayments from bankrupt providers. We found that: (1) the current Federal bankruptcy law does not provide Medicare and Medicaid with a priority in the recovery of overpayments from bankrupt providers, (2) neither Medicare nor Medicaid prepared management information reports on receivables written-off as bad debts, and (3) the losses to the Government from these bad debts may be substantial.

We believe that the Health Care Financing Administration (HCFA) should be informed about Medicare and Medicaid losses from bankrupt providers. We also believe that, as involuntary creditors, Government programs are more vulnerable than most creditors in financial dealings with medical providers and should be given a priority in bankruptcy proceedings.

Accordingly, we recommend that HCFA: (1) prepare periodic management information reports on Medicare and Medicaid receivables written-off as bad debts and (2) propose a legislative change that would provide Medicare and Medicaid with a priority in bankruptcy proceedings.

The HCFA partially agreed with our first recommendation and agreed to consider our second recommendation for the Department of Health and Human Services' annual legislative program.

Please advise us, within 60 days, on actions taken or planned on our recommendations. 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 FTS 646-7104. Copies of this report are being sent to other interested departmental officials.

Attachment

Department of Health and Human Services

**OFFICE OF  
INSPECTOR GENERAL**

**MEDICARE AND MEDICAID NEED A  
PRIORITY IN THE RECOVERY OF  
OVERPAYMENTS FROM BANKRUPT  
PROVIDERS**



**Richard P. Kusserow  
INSPECTOR GENERAL**

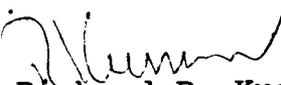
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To

William Toby  
Acting Administrator  
Health Care Financing Administration

This management advisory report presents the results of our review on improving the recovery of Medicare and Medicaid overpayments from bankrupt providers through a priority in the Federal bankruptcy law. With a priority, a creditor's bankruptcy claims are superior to the claims of other general unsecured creditors. Our objective was to review Federal bankruptcy legislation and determine whether a priority would be appropriate for Medicare and Medicaid to protect their interests in bankruptcy proceedings.

We found that Medicare and Medicaid once had a priority, but it was eliminated in 1979 by the Bankruptcy Reform Act of 1978 (Public Law (P.L.) 95-598). Three primary reasons were given at that time for eliminating the Government's nontax priority: (1) the Government entered into business relationships on an equal basis with other creditors, (2) the Government had the ability to choose its nontax debtors, and (3) the amount of losses that the Government would incur were not considered significant.

The reasons cited for the removal of the Government's priority were not, in our opinion, fully valid then or today for Medicare and Medicaid. Voluntary creditors may assess the financial viability of debtors before selling them (or even buying from them) goods and services, or lending funds. The two health programs, however, are not voluntary creditors of medical providers and do not choose providers as debtors.

Medical providers, of whom there are hundreds of thousands, are eligible to participate in Medicare and Medicaid, regardless of financial viability. The health programs do not perform financial evaluations of them, nor do they ask providers to obtain performance bonds or security interests for indebtedness. Provider debts to the health programs generally arise from after-the-fact Government

determinations that providers claimed and were paid too much. Thus, the programs become involuntary creditors of medical providers and are highly vulnerable for losses when they go bankrupt.

Neither Medicare nor Medicaid prepared management information reports on receivables due from bankrupt providers that were written-off as bad debts. Nonetheless, there were indications that Government losses from bad debts may be substantial. For example, as of March 1991, Health Care Financing Administration's (HCFA) records showed that about \$106 million of Medicare Hospital Insurance (Part A) unsecured debt was owed from bankrupt providers. Although HCFA representatives said they were unable to estimate how much of the \$106 million would be collected, State agencies with similar kinds of receivables due from bankrupt Medicaid providers indicated that minimal (between 5 percent and 10 percent) provider indebtedness would be recovered.

We believe that, for decision making purposes, health care policymakers should be informed about Medicare and Medicaid losses from bankrupt providers. We also believe that, as involuntary creditors, the Medicare and Medicaid programs are more vulnerable than most creditors in financial dealings with medical providers and should be given a priority in bankruptcy proceedings.

We recommend that HCFA staff: (1) prepare periodic management information reports on Medicare and Medicaid receivables written-off as bad debts and (2) propose a legislative change to the Federal bankruptcy law that would provide Medicare and Medicaid with a priority in provider bankruptcy proceedings.

The HCFA partially agreed with our first recommendation and agreed to consider our second recommendation for the Department of Health and Human Services' (HHS) annual legislative program.

#### BACKGROUND

Federal bankruptcy legislation is designed to provide equality to all creditors in the distribution of a debtor's

assets. However, there are three main exceptions to the equal distribution principle that allow some creditors to receive more than others. The three main devices for some creditors getting more are (1) liens, (2) exceptions to discharge, and (3) priorities.

A lien involves creditors obtaining mortgages on real property or security interests on personal property. With mortgages and security interests, creditors can, with court approval, repossess and sell the collateral. These collateral interests are generally obtained by written agreements at the time credit is extended to debtors.

With the second device (exceptions to discharge), some creditors' claims survive bankruptcy and debtors still remain liable for their liabilities. Examples of exceptions to discharge are taxes and child support payments.

The third main exception is labeled a priority. With a priority, creditors have a demand to first payment from any assets the debtors have available for payment to unsecured creditors. Creditors with priorities get paid before other unsecured creditors.

The Federal Government has long had a priority for taxes, duties, and related penalties. However, it does not have a priority for nontax claims, such as Medicare and Medicaid overpayments to providers. The Government's priority for nontax claims was abolished when P.L. 95-598, the first comprehensive revision to bankruptcy statutes since 1938, became law on October 1, 1979. As a reform measure, P.L. 95-598 modernized the existing bankruptcy law in response to the growth in bankruptcies at that time.

The rise in bankruptcies in the 1960's was reported to have placed a great deal of strain on the existing bankruptcy system and to have prompted the creation of the Commission on the Bankruptcy Laws of the United States (the Commission) by the Congress in 1970. The Commission conducted a comprehensive study of the bankruptcy system and recommended changes in several areas of the bankruptcy law. One of these recommendations called for the elimination of the Government's priority for nontax claims.

### The Commission's Recommendations

In its 1973 report,' the Commission recommended that the Congress: (1) limit the priority claims of the Government to administrative expenses, wages, and taxes and (2) abolish the Government's priority for nontax claims. In making these recommendations, the Commission reasoned that when the Government entered into business relationships, it did so on an equal basis with other creditors of bankrupt debtors. As such, the Commission believed that the Government should be ready to accept bankruptcy losses. The Commission also concluded that since the Government is free to choose its nontax debtors, security could be required before doing business with these debtors.

In addition to its report, the Commission testified before a 1977 Senate subcommittee conducting hearings on the Federal bankruptcy law. The Commission was asked if it could provide an estimate of the amount of Government losses that would occur if the nontax priority was eliminated. Citing a United States (U.S.) Department of Treasury estimate, a Commission spokesperson told the subcommittee that the Government would incur losses of about \$100 million for all Federal programs if priorities and liens were eliminated. In terms of the then annual Federal budget of \$400 billion, the Commission considered these losses to the Government to be insignificant. The Commission did not address State government losses.

### Government's Priority Defended

The Commission's recommendations to eliminate the Government's priority for nontax claims were objected to by two Federal officials, the U.S. Attorney General and the U.S. Deputy Assistant Attorney General. They testified before Senate and House subcommittees in favor of retaining the Government's nontax priority.

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'Report of the Commission on the Bankruptcy Laws of the United States, House Document No. 93-137, Part I, dated July 31, 1973.

The Attorney General maintained that the Government did not form relationships with debtors merely from a business standpoint. Rather, he pointed out that the Government did so primarily to carry out the interests mandated by public policy. He also testified that, as part of the policy, the Government was an involuntary creditor that deserved the protection afforded by the nontax priority.

Similarly, the Deputy Assistant Attorney General noted that the nontax priority protected the Government in its never-ending collection efforts to recover program funds, efforts that were necessary to maintain the increasing programs and activities authorized by the Congress. Without the Government's participation, many of these programs and activities would not have been possible, according to the Deputy Assistant Attorney General.

#### Some Government Losses Are Identified

One of the Government programs that interested the Congress at the time P.L. 95-598 was being considered was the Guaranteed Student Loan (GSL) program. During congressional hearings, pressure was generated to amend the bankruptcy law to exclude educational loans made by the Government from discharge. Consequently, the Congress requested that the General Accounting Office (GAO) perform a study to develop information on educational loan losses. .

In its study, the GAO identified some losses related to the GSL program. The GAO reported to the Congress in letters dated December 23, 1976 and April 15, 1977, that, for the period July 1, 1975 through June 30, 1976, about \$13 million in bankruptcy claims were paid by the then Office of Education (formerly part of the U.S. Department of Health, Education and Welfare (HEW)) and other GSL guarantee agencies. The GAO concluded that, on the average, borrowers were repaying little on student loans before filing for bankruptcy.

In response to the concern over student loan bankruptcies, the Congress provided that educational loans would not always be discharged in bankruptcies. Educational loans are one of the exceptions to discharge.

Also, as part of its study, the GAO attempted to obtain loss information on Government loan or loan guarantee programs which were not related to education. It contacted officials from the U.S. Department of Agriculture, the then HEW (now HHS), the Department of Housing and Urban Development, the Small Business Administration, and the Veterans Administration. According to the GAO, these agencies did not maintain information on bankruptcy losses.

### METHODOLOGY

Our objectives were to (1) review the priorities provided in Federal bankruptcy law, (2) determine why the current Federal bankruptcy law does not provide the Government with a priority in the recovery of Medicare and Medicaid overpayments from failed providers, (3) ascertain how much is lost from bad debt write-offs, and (4) determine if the health programs need a priority in bankruptcy proceedings.

We identified and reviewed 42 congressional committee and subcommittee hearing reports and records on P.L. 95-598. In addition, we also reviewed House and Senate remarks on P.L. 95-598, as reported in the Congressional Record. These congressional reports, records, and statements covered the period February 1975 through October 1978. The congressional committees and subcommittees included:

- o the Senate Committee on the Judiciary,
- o the Senate Subcommittee on Taxation and Debt Management,
- o the Senate Subcommittee on Improvements in Judicial Machinery,
- o the Senate Committee on Finance,
- o the House Committee on Ways and Means, and
- o the House Subcommittee on Civil and Constitutional Rights.

A general library research of books, periodicals, and published studies on the subject of bankruptcy was also made. In addition, we interviewed HCFA regional and central office (CO) representatives and obtained information from them on overpayments due the Medicare program from bankrupt providers. We did not verify the accuracy of HCFA overpayment data.

To obtain information on overpayments due the Medicaid programs, we contacted the 50 Medicaid agencies (49 States and the District of Columbia). Arizona, which has a demonstration project under Medicaid, was excluded from our review. Medicaid representatives were asked if they could provide us with current information on the amount of overpayments due from bankrupt providers, as well as the actual losses resulting from unrecovered overpayments.

We attempted to determine the amount of write-offs by asking the Medicaid agency representatives if they could provide us with current, as well as prior, collection statistics on overpayments recovered from failed providers. We also asked the Medicaid representatives for an estimate of the amount of overpayments that they could recover if they had a priority. We did not verify the accuracy of overpayment data provided to us by Medicaid agencies.

To determine the availability of Government data or studies on losses, we spoke with representatives of the: GAO; Congressional Budget Office (CBO); and Administrative Office of the U.S. Courts; and the U.S. Bankruptcy Court, Eastern District of California.

Our review was performed in Baltimore, Maryland and Sacramento, California during Fiscal Year 1991.

#### RESULTS OF REVIEW

In its 1973 report to the Congress, the Commission maintained that the Government entered into business relationships on an equal footing with other creditors. It also believed that the Government could require security from its debtors as a requirement for program participation. Further, the Commission did not apparently view the potential losses to the Government to be all that significant.

In our opinion, the Commission's reasons for recommending the elimination of the Government's priority were not fully valid for Medicare and Medicaid then or now. First, these health programs have not been in a position to assess the financial wherewithal of providers who seek to participate in the programs. Unlike voluntary creditors who determine the financial viability of companies and organizations

before selling them (or even buying from them) goods or services, or lending money, neither Medicare nor Medicaid make such evaluations. Given the hundreds of thousands of providers' doing business with these health programs, making such evaluations is not feasible. Thus, the programs do not enter into business relationships with providers on an equal basis with other creditors, as had been claimed by the Commission.

A second Commission rationale cited for removing the Government's priority status that was not relevant to Medicare and Medicaid was the claim that the programs could require security before doing business with providers. In fact, it would be extremely difficult for the two programs to obtain security interests, such as liens on real property or performance bonds, from the hundreds of thousands of providers participating in the Medicare and Medicaid programs.

Also, the health programs' receivables generally arise as a result of after-the-fact Government determinations that providers had claimed reimbursement for and had been paid amounts to which they were not entitled. The two health programs are involuntary creditors, just as the Attorney General had claimed about the Government as a whole when he testified before the Congress in 1977. The Commission's suggestion that the Government could seek security interests would not be applicable to providers' indebtedness to the health programs. Such interests are secured by creditors at the time of the credit sale or loan, not later when it is found that an overpayment occurred.

The third reason cited by the Commission (Government losses would not be significant) was not substantiated for Medicare and Medicaid. There was, and still is, a lack of data on the two health programs' losses. Although no data on Medicare and Medicaid were presented by the Commission, we found indications that the health programs' losses may, in fact, be quite significant.

#### Lack of Government Data On Losses

Our review of available congressional reports and records on P.L. 95-598 disclosed that, other than the U.S. Department of Treasury's loss estimate and the GAO study on

student loans, not much additional data were available to the Congress on Government bankruptcy losses. cost estimates on P.L. 95-598, prepared by the CBO and the Administrative Office of the U.S. Courts, did not address losses to the Government resulting from the elimination of the nontax priority.

Current information on Government losses is also lacking in both the Government and private sectors. For example, representatives of the GAO and the CBO informed us that they were not aware of any available governmental data or studies on bankruptcy losses. We noted that although the Administrative Office of the U.S. Courts publishes some bankruptcy data, such as the number of bankruptcy filings and the chapters in which the petitioners filed, it does not maintain statistics on Government bankruptcy losses.

Others who have researched bankruptcy statistics have also found a dearth of governmental data on the issue. As authors Sullivan, Warren and Westbrook reported in their book, As We Forgive Our Debtors:<sup>2</sup>

"Bankruptcy... is one (phenomenon) about which we have little hard information...nowhere does the government publish data on how much debt was discharged in bankruptcy... (or) which creditors bore what losses in bankruptcy...."

#### Medicare Bankruptcy Losses

Although we were unable to find data on Government bankruptcy losses, we learned that Medicare could potentially lose a significant amount of funds as a result of provider indebtedness to the program. In interviews with HCFA CO representatives, we were advised that an electronic on-line Provider Overpayment Reporting System (PORS) is used by HCFA to identify providers that receive overpayments. The PORS, established in 1985, is a uniform

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<sup>2</sup>T.A. Sullivan, E. Warren, and J.L. Westbrook, As We Forgive Our Debtors, (New York, Oxford University Press, 1989) p. 4. This book was based on the Consumer Bankruptcy Project, reported to be the largest study of consumer bankruptcy ever undertaken. The project was funded, in part, by the National Science Foundation.

method for reporting overpayment data. The March 1991 PORS report, provided to us by HCFA, showed that about \$106 million in Part A unsecured debt was due from bankrupt providers.<sup>3</sup>

We asked HCFA CO representatives if they could identify Medicare overpayment cases written-off as a result of bankruptcy discharges. Citing the coding limitations of PORS, they advised us that the amount of overpayments actually written-off could not be determined.

We also asked HCFA CO representatives if they could determine how much of the \$106 million could be recovered if Medicare had a priority. The HCFA CO representatives were unable to estimate this amount. We were advised by a HCFA regional representative that Medicare overpayment bankruptcy cases were aggressively pursued by HCFA before the Government lost its priority in 1979. The HCFA regional representative estimated that, with its previous priority, about 80 percent of the overpayments were recovered from bankrupt providers. Such a high prior recovery rate might portend well for Medicare and Medicaid if a priority were reestablished.

#### Medicaid Bankruptcy Losses

Like the Medicare program, we found that the Medicaid programs could also suffer significant losses as a result of their inability to fully recover overpayments from bankrupt providers. Information was provided to us by 11 of the 50 Medicaid agencies (Arkansas, California, Illinois, Kentucky, Maine, Michigan, Minnesota, New Jersey, New Mexico, Tennessee, and Virginia). Each State provided us with accounts receivable balances due from bankrupt providers for various points in time from September 1990 to March 1991. These balances totaled about \$41 million. For the remaining 39 Medicaid agencies interviewed, representatives advised us that they did not have data available on the amount of overpayments due from bankrupt providers.

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<sup>3</sup>In addition to Part A receivables, the Medicare Supplementary Medical Insurance (Part B) program had receivables due from providers. As of July 31, 1991, about \$3 million was owed by Part B bankrupt providers.

Medicaid representatives from the 11 States told us that they were unable to determine how much of the \$41 million would be lost through eventual write-offs. However, 3 of the 11, as well as 2 other States contacted, believed that recoveries would be minimal (between 5 percent and 10 percent). The other 8 of the 11 had no estimates on recoveries.

Of the 11 Medicaid agencies that provided us with overpayment information, we found that the California program could suffer the most. The California agency used an on-line accounts receivable system to track overpayments due from bankrupt providers. According to the State's March 1991 accounts receivable records, almost \$27 million, or 66 percent of the \$41 million due to the 11 States, was owed by California bankrupt providers.

Like HCFA's PORS for Medicare overpayments, the California receivable system did not identify those overpayment cases that were written-off as a result of bankruptcy. A California representative estimated that the State would probably collect from 5 percent to 10 percent of the \$27 million. The California representative also estimated that, if the State had a priority, the recovery of overpayments from bankrupt providers could be improved to as much as 80 percent (similar to the HCFA regional representative's estimate of Medicare recoveries when it had a priority).

Besides seeking data on bankruptcy losses, we also interviewed Medicaid representatives and sought their views on the need for a priority. Of the 50 agencies interviewed, 40 favored a change in the Federal bankruptcy law and believed that a priority would help. The other 10 had no comment.

### Conclusion and Recommendations

Medicare and Medicaid are more vulnerable than most creditors in provider bankruptcies. They become involuntary creditors when the Government subsequently determines that providers claimed and were paid more than they should have been. When these determinations are made, it is generally not feasible to obtain security interests or performance bonds to protect the Government's claim. Other creditors, however, can obtain such protections from

debtors when they sell them (or even buy from them) goods and services, or lend money. It should be emphasized that other voluntary creditors have the opportunity to seek this protection before doing business with the debtors.

The potential bankruptcy losses to the two health programs are significant. We found that Medicare Part A had about \$106 million in receivables due from bankrupt providers. Eleven State agencies which keep data had about \$41 million in Medicaid bankruptcy receivables. Some States believed that recoveries on receivables from bankrupt providers would be minimal (between 5 percent and 10 percent) without a priority.

Although their potential bankruptcy losses are significant, the health programs are not tracking receivables being written-off as such bad debts. We recommend that HCFA take action to provide health care policymakers with information on such losses. We also believe that the bankruptcy priority, which the two programs once had, should be reinstated to better protect the vulnerable Government interests. Accordingly, we recommend that HCFA propose a legislative change to the Federal bankruptcy law that would provide Medicare and Medicaid with a priority in bankruptcy proceedings.

#### HCFA's Comments

On the first recommendation, HCFA believed that further action was not necessary because it stated that (i) the Medicare PORS has been modified to identify receivables written-off as bad debts from bankrupt providers and (ii) States are currently required to report to the HCFA regional offices data on bad debts for which they are seeking Federal Medicaid reimbursement.

Regarding our second recommendation proposing a legislative priority, HCFA indicated that it would consider such a proposal in developing HHS' annual legislative program.

The HCFA questioned our estimate of receivables due from bankrupt providers but it did not offer an alternative estimate. It also indicated that about \$54 million of the \$106 million of receivables cited in our report represented deemed overpayments. A deemed overpayment is the entire amount of Medicare funds paid to the debtor during each

cost reporting period for which the debtor failed to file adequate cost reports. If the debtors were able to produce the required documentation, HCFA believed that the Medicare receivables could be significantly reduced.

The HCFA also stated that it plans to implement new delegations on compromising claims to improve Medicare's chances of recovering overpayments through litigation. Delegations on compromising claims will allow HCFA to settle claims in-house rather than having to refer them to the U.S. Department of Justice.

The HCFA requested that we acknowledge current Medicaid overpayment rules as contained in section 9512 of the Consolidated Omnibus Budget Reconciliation Act of 1985, adding section 1903(d)(2)(D) of the Social Security Act. The rules referred to by HCFA deal with States refunding the Federal share of Medicaid overpayments made to providers. (The HCFA's reply is included in its entirety as an Appendix to this report.)

#### OIG's Comments

We were advised by HCFA representatives that the Medicare PORS was modified in December 1991 in response to our draft report. With respect to Medicaid, there was no overall reporting by HCFA on the national extent of receivables written-off as bad debts. We still believe that health care policymakers should be kept informed on Medicaid funds being lost through bankruptcies and that HCFA should gather such data and periodically report on the losses.

With regard to HCFA's comment that if debtors produce documentation they could substantially reduce their debts to Medicare, HCFA presented no evidence that such an event is likely to occur. We tend to believe that since the providers could not produce such documentation before filing for bankruptcy there is less likelihood that they will be able to do so now.

We did not acknowledge the current Medicaid rules regarding Federal adjustments on debts discharged through bankruptcy because they were not relevant to the issues of this report. This report basically dealt with the need for Medicaid to have a priority in bankruptcies, whereas the

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current rules cited by HCFA essentially pertain to a State refunding the Federal share of Medicaid overpayments made to providers.



## Memorandum

Date FEB 3 1992

From Gail R. Wilensky, Ph.D. *GW*  
Administrator

Subject  
TO  
Inspector General  
Office of the Secretary

OIG Draft Report - "Medicare and Medicaid **Need** a Priority in the **Recovery** of Overpayments **from Bankrupt** Providers" (A-09-90-00141)

We have reviewed **the** subject draft **report** which examines the size of potential losses for both the Medicare and Medicaid programs due to provider bankruptcies. The report **also** reviews the current **legal** priority given to both these programs for recovery of overpayments from bankrupt providers.

The report found that potential overpayments due from **bankrupt** Part A Medicare providers was approximately \$106 million. A survey of 11 State **Medicaid** programs found **balances** due from bankrupt providers to be about \$41 million for 7 months during 1990-1991. Therefore, OIG has recommended that the Health Care **Financing** Administration (HCFA) direct both programs to develop periodic management information reports in order to identify write-offs due to **bankruptcies**, and propose a legislative change **that** would provide Medicare and Medicaid a priority **in** bankruptcy proceedings.

HCFA questions the value of proceeding with these recommendations considering **the results** of previous attemptu to collect these debts, current legal requirements, and the scope of administrative reporting systems already in place. Our specific comments on the report's recommendations are attached for your consideration.

Thank you for the **opportunity** to review and comment on this draft report. Please advise us as to whether you agree with our position on the report's recommendations at your earliest convenience.

Attachment

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### General Comments

HCFA plans to implement **new** delegations on compromising claims as a **means** to improve the **fiscal** integrity of current payment activities. These **new** delegations will streamline the process for compromising **claims**, thereby increasing **HCFA's** chances for recovery of overpayments through litigation,

OIG needs to acknowledge current Medicaid overpayment recovery rules as **contained** in section **9512** of **the** Consolidated Omnibus Budget Reconciliation Act of 1985. Section 9512(d) prohibits adjustments in Federal payments when States are unable to recover debts representing overpayments that have **been** discharged in bankruptcies or are **otherwise uncollectible**. Additionally, section 1903(d)(2)(A) of the Social Security Act exempts a State from refunding the Federal share of an overpayment made to a provider if the overpayment is a debt that has been discharged in bankruptcy or is otherwise **uncollectible**. implementing regulations for **this** statutory provision are found at 42 CFR 433.312(b).

The Provider Overpayment Reporting System shows that \$101 million in **Medicare** Part A unsecured **debt** is currently due from bankrupt providers. However, the Medicare debt is partially based on deemed overpayments in **the** amount of \$54 million. A deemed overpayment represents the entire amount of Medicare funds paid to **the debtor** during each cost **reporting period** for which the debtor failed to file adequate cost reports. Since **in** most cases the debtors provided **services** to beneficiaries, the amount of the outstanding debt could be substantially reduced if the debtors were to produce records and to submit adequate cost reports.

Health Care Financing Administration's (HCFA) Comments  
on OIG Draft Report: "Medicare and Medicaid Need a  
Priority in the Recovery of Overpayments from Bankrupt Providers"  
(A-09-90-00141)

Recommendation 1

That HCFA direct Medicare and Medicaid to prepare **periodic** management reports on receivables written off as bad debts.

HCFA Response

Although HCFA agrees with this recommendation, we believe no additional initiatives are necessary to **fulfill** this recommendation.

We have already modified overpayment reporting systems to identify receivables written off as bad debts from Medicare **bankrupt** providers. **HCFA management** will be provided with this information on a quarterly basis.

Medicaid currently requires **States** to report the Federal share of potentially recoverable and reclaimed overpayments on HCFA Forms 64 and 64.9 on a quarterly basis. These forms are returned to HCFA with supporting documentation including descriptions of reasonable efforts to obtain recovery. **HCFA** Regional Offices are responsible for review of these forms and **all** supporting documentation.

We believe these actions satisfy **the** intent of OIG's recommendation relative to **Medicare/Medicaid** bankrupt providers.

Recommendation 2

That HCFA propose a legislative change to **the** Federal bankruptcy law that would provide Medicare and Medicaid with a priority in provider bankruptcy proceedings.

HCFA Response

We question OIG's estimate of accounts receivable composed of overpayments due **from** bankrupt Medicare and Medicaid providers (\$106 million and \$41 million, respectively), as well as the estimated collection percentages associated with these amounts. Even if OIG's estimates were accurate, the total dollar amount relative to HCFA programs on the whole may not warrant a **legislative** change. However, in the context of developing the Department's annual legislative program, we will consider taking further action on this proposal.