

**MAY 12 2010**

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FROM: Stuart Wright /S/
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SUBJECT: Memorandum Report: *Collection Rate for Overpayments Made to Medicare Suppliers in South Florida*, OEI-03-09-00570

This memorandum report provides additional information from our recent study *Collection Status of Medicare Overpayments Identified by Program Safeguard Contractors* (OEI-03-08-00030), hereafter referred to as the *Collections* study. For that study, we determined the collection status, as of June 2008, of Medicare overpayments that Program Safeguard Contractors (PSC) identified and referred to claims processors for collection in 2007.

For this memorandum report, we conducted further analysis on data obtained during the *Collections* study. Previous Office of Inspector General (OIG) work has identified durable medical equipment, prosthetics, orthotics, and supplies (DMEPOS) in South Florida (Miami-Dade, Broward, and Palm Beach Counties) as an area vulnerable to fraud and abuse. Therefore, we focused our additional analysis on PSC-identified DMEPOS overpayments in South Florida.

We found that the collection rate of PSC-identified DMEPOS overpayments in South Florida was only 1 percent. This is compared to a national collection rate for all claim types of 7 percent and a national DMEPOS collection rate of 3 percent as identified in our *Collections* study. In addition, we found that the median overpayment was \$527,420 and that 25 percent of the overpayments were more than \$1 million each. While only 1 percent of the PSC-identified DMEPOS overpayment dollars in South Florida was collected, another 91 percent was referred for collection to the Department of the Treasury (Treasury) which historically does not have a high rate of return. In addition, by December 2008, only 1 of the 315 suppliers associated with South Florida DMEPOS overpayments was still active in the Medicare program; the remaining suppliers were either revoked or inactive. The fact that these suppliers are no longer billing the Medicare program makes overpayment collection difficult.

BACKGROUND

Previous OIG Work on Overpayment Collection and Vulnerabilities in South Florida

OIG recently completed work on the identification and the collection of PSCs' overpayment referrals. We found that PSCs referred \$835 million in overpayments to claims processors for collection in 2007; however, 2 of 18 PSCs were responsible for 62 percent of this amount.¹ We also found that overpayments referred for collection by PSCs in 2007 did not result in significant recoveries to the Medicare program. Specifically, only 7 percent (\$55 million of \$835 million) had been collected by claims processors as of June 2008.²

Previous OIG work has identified South Florida as an area vulnerable to DMEPOS fraud, waste, and abuse. For a March 2007 report, OIG conducted unannounced site visits of DMEPOS suppliers in three South Florida counties (Miami-Dade, Broward, and Palm Beach) to determine their compliance with selected Medicare supplier standards.³ In that report, we found that nearly half of DMEPOS suppliers in South Florida were not in compliance with Medicare supplier standards. For example, these suppliers did not maintain physical facilities, were not accessible during reasonable business hours, or did not have posted hours of operation.

In a followup study, OIG reviewed the appeal files for suppliers who were revoked as a result of the March 2007 study, then appealed their revocations, and received hearings.⁴ We found that hearing officers reinstated the billing privileges for 91 percent of the suppliers. However, two-thirds of suppliers whose billing privileges were reinstated subsequently had their privileges revoked again or inactivated, and some individuals connected to reinstated suppliers were indicted, convicted, and sentenced to jail time.

Referral of Overpayments by PSCs

PSCs have been tasked by the Centers for Medicare & Medicaid Services (CMS) to detect and deter fraud and abuse in the Medicare program. PSCs conduct investigations; refer cases to law enforcement; and take administrative actions, such as referring overpayments to claims processors for collection⁵ and initiating actions to deny or suspend payments where there is reliable evidence of fraud. In the course of their

¹ OIG, *Medicare Overpayments Identified by Program Safeguard Contractors*, OEI-03-08-00031.

² OIG, *Collection Status of Medicare Overpayments Identified by Program Safeguard Contractors*, OEI-03-08-00030.

³ OIG, *South Florida Suppliers' Compliance With Medicare Standards: Results From Unannounced Visits*, OEI-03-07-00150, March 2007.

⁴ OIG, *South Florida Durable Medical Equipment Suppliers: Results of Appeals*, OEI-03-07-00540, October 2008.

⁵ In 2007, claims processors that received overpayment referrals from PSCs were fiscal intermediaries, carriers, or Medicare administrative contractors. These claims processors had responsibility for specific geographic jurisdictions and claim types. Claims processors in a PSC's jurisdiction are known as the PSC's affiliated contractor.

investigative work, PSCs review Medicare payments and may identify overpayments.⁶ When PSCs identify overpayments, they are required to refer the overpayments to their affiliated Medicare claims processor for collection.⁷

In 2007, TrustSolutions, LLC, was the PSC tasked with overseeing Jurisdiction C DMEPOS claims. Jurisdiction C encompasses Florida, as well as Alabama, Arkansas, Colorado, Georgia, Louisiana, Mississippi, New Mexico, North Carolina, Oklahoma, Puerto Rico, South Carolina, Tennessee, Texas, U.S. Virgin Islands, Virginia, and West Virginia.

Collection of Overpayments by Claims Processors

In addition to paying claims, Medicare claims processors collect overpayments that are identified by PSCs and other sources. Claims processors review the overpayment referral information provided by PSCs and make a final determination as to the dollar amount to be collected.⁸ This amount may differ from the overpayment amount referred by the PSC. Outcomes of law enforcement investigations or provider appeals may also change the amount that a provider must repay on an overpayment.

Claims processors may collect overpayments by withholding a provider's future Medicare payments, through a provider's direct repayment of the full overpayment, or through a provider repaying the overpayment under an extended repayment plan. With a few exceptions, claims processors must refer debt that is 180 days (6 months) delinquent to Treasury's cross-servicing program for collection.⁹ The cross-servicing program receives referrals of nontax debt from all Federal agencies. However, overpayments referred to Treasury are not likely to be fully collected because the cross-servicing program does not have a high rate of return. For each fiscal year between 2003 and 2007, the program never collected more than 2 percent of the debt.¹⁰

During 2007 and 2008, CIGNA Government Services was the claims processor that serviced Jurisdiction C DMEPOS claims and was tasked with collecting overpayments identified by TrustSolutions, LLC.

Supplier Status

CMS contracts with the National Supplier Clearinghouse (NSC) to manage the enrollment of DMEPOS suppliers in the Medicare program. Before granting billing

⁶ CMS entered into contracts with PSCs to perform such work pursuant to the authority granted under the Medicare Integrity Program, Social Security Act, § 1893, 42 U.S.C. § 1395ddd. CMS is in the process of replacing PSCs with Zone Program Integrity Contractors (ZPIC). The first ZPIC contracts were awarded in September 2008, after our data collection timeframe.

⁷ CMS, *Medicare Program Integrity Manual*, Pub. No. 100-08, ch. 3, § 3.8.

⁸ CMS, *Medicare Financial Management Manual*, Pub. No. 100-06, ch. 4, §§ 10 and 80.2.

⁹ *Ibid.*, § 70.5.

¹⁰ Treasury, *Fiscal Year 2007 Report to the Congress: U.S. Government Receivables and Debt Collection Activities of Federal Agencies*, May 2008, p. 13. Accessed at <http://fms.treas.gov/news/reports/debt07.pdf> on December 31, 2009.

privileges, NSC conducts an unannounced site visit to determine whether suppliers meet all Medicare supplier standards. NSC may also conduct unannounced site visits at any time.¹¹ If after a site visit, NSC finds that a supplier no longer meets the supplier standards, NSC will revoke the supplier's billing privileges.^{12, 13} Suppliers may also have their billing privileges become inactive. Suppliers may become inactive for a number of reasons, such as voluntary inactivation or failure to submit claims for four consecutive quarters. NSC maintains a database of DMEPOS suppliers which contains suppliers' address information and indicates whether suppliers' billing privileges are active, inactive, or revoked.

Supplier Accreditation

As an additional safeguard to the supplier enrollment process, one of the Medicare supplier standards that suppliers must now meet is accreditation. Section 1834(a)(20) of the Social Security Act, as amended by section 154(b)(1)(A) of the Medicare Improvements for Patients and Providers Act of 2008, P.L. 110-275, required DMEPOS suppliers to meet quality standards for accreditation by September 30, 2009. However, on March 23, 2010, the President signed P.L. 111-148, which postpones until January 1, 2011, the effective date of the accreditation requirement for pharmacies that act as suppliers of Medicare items and services. At that time, only pharmacies that meet each of the requirements stipulated in section 1834(a)(20)(G)(ii) of the Social Security Act will continue to be exempted from accreditation.

CMS has approved 10 national accreditation organizations to accredit DMEPOS suppliers as meeting the new quality standards. There are quality standards that need to be met by all suppliers, e.g., financial management and product safety, and standards that apply to only certain types of suppliers, such as oxygen equipment suppliers.

Surety Bonds for DMEPOS Suppliers

The Balanced Budget Act of 1997, P.L. 105-33, mandated that certain DMEPOS suppliers be subject to a surety bond requirement, and CMS published a final rule on this requirement on January 2, 2009. A DMEPOS surety bond is a bond issued by an entity guaranteeing that a DMEPOS supplier will fulfill its obligation to the Medicare program. If the obligation is not met, Medicare will recover its losses via the surety bond, up to the bond amount.

As of October 2009,¹⁴ DMEPOS suppliers, other than those exempted from the requirement, were required to obtain and submit a surety bond in the amount of at least

¹¹ CMS, *Medicare Program Integrity Manual*, Pub. No. 100-08, ch. 10, § 22.

¹² 42 CFR § 424.517.

¹³ Twenty-six supplier standards are outlined in 42 CFR § 424.57(c) and include, for example, maintaining a physical facility and being accessible during reasonable business hours.

¹⁴ DMEPOS suppliers seeking enrollment or with a change of ownership were subject to the surety bond requirement beginning May 4, 2009. Existing DMEPOS suppliers were subject to the surety bond requirement beginning October 2, 2009. 42 CFR § 424.57(d)(1).

\$50,000 for each practice location.^{15, 16} The bond must guarantee that the surety will pay CMS the amount of any unpaid claim, plus accrued interest, for which the DMEPOS supplier is responsible, up to the surety's maximum obligation. An unpaid claim is defined as an overpayment made by the Medicare program to the DMEPOS supplier for which the DMEPOS supplier is responsible, plus accrued interest that is effective 90 days after the date of the notice sent to the DMEPOS supplier of the overpayment.¹⁷ Therefore, the overpayments identified in this memorandum report would fit the definition of an unpaid claim.

METHODOLOGY

We reviewed the Medicare overpayments data that we collected from PSCs and claims processors for our *Collections* study.¹⁸ These data contained identifying information about each overpayment that PSCs referred to claims processors in 2007. In addition, the data contained information on the claims processors' collection of those overpayments through June 2008. Because we collected information through June 2008, claims processors had 6 to 18 months to collect the overpayments depending on when they were referred in 2007.

From the Medicare overpayments data, we identified DMEPOS overpayments that were referred from TrustSolutions, LLC, the PSC tasked with overseeing Jurisdiction C DMEPOS claims. Then, to determine DMEPOS overpayments associated specifically with South Florida, we matched suppliers' identification numbers from the overpayment data with supplier identification numbers from the NSC database. This match provided an address for the suppliers associated with each Jurisdiction C overpayment, as well as their status in the Medicare program as of December 2008. We used a national ZIP Code database to determine which suppliers were located in the three South Florida counties of Miami-Dade, Broward, and Palm Beach. From these matches, we identified 315 DMEPOS overpayments for suppliers located in these 3 South Florida counties. DMEPOS overpayments associated with suppliers located in these counties are hereafter referred to as South Florida DMEPOS overpayments.

To determine the collection rate of PSC-identified South Florida DMEPOS overpayments, we divided the total amount collected by the claims processor for South Florida overpayments, by the total amount referred by the PSC for South Florida overpayments. To determine the collection status of the overpayments, we summarized

¹⁵ As described in 42 CFR § 424.57(d)(15), under certain specified conditions, the following DMEPOS suppliers are exempt from the surety bond requirement: Government-operated DMEPOS suppliers, State-licensed orthotic and prosthetic personnel in private practice, physicians and nonphysician practitioners, and physical and occupational therapists in private practice.

¹⁶ The bond amount will be raised by an additional \$50,000 for each final adverse action that has been imposed against the supplier within the previous 10 years. 42 CFR § 424.57(d)(3)(ii).

¹⁷ 42 CFR § 424.57(a).

¹⁸ OIG, *Collection Status of Medicare Overpayments Identified by Program Safeguard Contractors*, OEI-03-08-00030.

the collection information that the claims processor provided. There were four overpayments for which the PSC provided referral information, but the claims processor could not provide collection data or did not provide information necessary for OIG to determine the collection status.

To determine the number of South Florida suppliers that were active, inactive, or revoked from the Medicare program, we examined the supplier status from the December 2008 NSC database.

We also determined the additional amount that could have been collected had a \$50,000 surety bond requirement been in place. For overpayment amounts of less than \$50,000, we used the amount identified for recovery but not collected as the additional amount that could have been collected had the surety bond requirement been in place. For overpayment amounts of \$50,000 or more, we used \$50,000 as the additional amount that could have been collected had the surety bond requirement been in place. We then aggregated the amounts for all overpayments.

This study was conducted in accordance with the *Quality Standards for Inspections* approved by the Council of the Inspectors General on Integrity and Efficiency.

RESULTS

The Collection Rate for DMEPOS Overpayments in South Florida Was Only 1 Percent

We found that the collection rate for South Florida DMEPOS overpayments was only 1 percent. The total amount referred for collection by the PSC in 2007 for South Florida DMEPOS overpayments was \$246,009,437. The total amount collected, as of June 2008, was \$2,178,223. This is compared to a national collection rate for all claim types of 7 percent and a national DMEPOS collection rate of 3 percent, as identified in our *Collections* study.

The dollar amount of the South Florida overpayments referred by the PSC ranged from \$66 to \$6.6 million. The median overpayment totaled \$527,420. As shown in Table 1, 80 of the 315 overpayments (25 percent) were more than \$1 million each; just 14 overpayments totaled less than \$50,000 each. Table 1 shows the number and dollar range of South Florida overpayments referred by the PSC in 2007, along with the amount collected by the claims processor through June 2008.

Table 1: Range of South Florida Overpayments Referred by the PSC in 2007 and Collected by the Claims Processor through June 2008

Dollar Range of Overpayments Referred by PSC	Number of Overpayments	Percentage of Overpayments ¹	Dollar Amount Referred	Dollar Amount Collected
Less than \$50,000	14	4%	\$355,547	\$93,726
\$50,000–\$99,999	10	3%	\$829,917	\$23,664
\$100,000–\$499,999	123	39%	\$37,713,461	\$222,932
\$500,000–\$999,999	88	28%	\$61,983,447	\$1,299,936
\$1 million or more	80	25%	\$145,127,065	\$537,965
Total	315	100%	\$246,009,437	\$2,178,223

Source: OIG analysis of PSC-identified DMEPOS overpayments in South Florida.

¹Percentages in this column add up to 99 percent rather than 100 percent because of rounding.

Had a \$50,000 surety bond requirement been in effect at the time of our study, Medicare could have collected an additional \$15 million (6 percent) on the South Florida DMEPOS overpayments. Just 14 of the overpayments would have been totally covered by the surety bond. The additional \$15 million would bring the total amount collected, as of June 2008, to just \$17 million out of the \$246 million referred for collection.

Most South Florida DMEPOS Overpayment Dollars Were Eventually Forwarded to Treasury

Ninety-one percent of the PSC-identified overpayment dollars (\$224 million) was eventually forwarded to Treasury’s cross-servicing program for collection. Because this program has a low rate of return, these overpayments will not likely be recovered by the Medicare program.

As of June 2008, the remaining 8 percent of PSC-identified overpayments dollars (\$20 million) were (1) no longer owed by providers because the overpayment amounts were reduced by the claims processor, (2) not likely to be collected because of provider bankruptcy, (3) still being collected (e.g., provider was on an extended repayment plan), (4) in appeal, or (5) overpayments for which the claims processor could not provide data or did not provide information necessary for OIG to determine the collection status.

Only One of the Suppliers Associated With South Florida DMEPOS Overpayment Referrals Was Still Active in the Medicare Program as of December 2008

Only 1 of the 315 South Florida suppliers associated with DMEPOS overpayments was still active in the Medicare program as of December 2008. This one supplier owed \$296,367 and was on an extended repayment plan. Of the remaining 314 suppliers, 282 suppliers were revoked and 32 suppliers were inactive. The fact that these suppliers are no longer billing the Medicare program makes overpayment collection difficult.

CONCLUSION

This memorandum report provides information on the collection rate and status of PSC-identified DMEPOS overpayments associated with South Florida. We found that the collection rate of DMEPOS overpayments in South Florida was 1 percent or \$2 million of the \$246 million in overpayments referred for collection. Moreover, we found that even if the surety bond had been in place at the time of our study, Medicare would have collected just an additional \$15 million or 6 percent of South Florida DMEPOS overpayment dollars. We also found that the vast majority of DMEPOS overpayment dollars were eventually referred to Treasury, which historically does not have a high rate of return. In addition, as of December 2008, only one supplier was still active, making future overpayment collection difficult since the suppliers are no longer billing Medicare.

Given that South Florida DMEPOS overpayments identified by the PSC resulted in low returns to the Medicare program, overpayment identification and collection may not be the most effective program integrity tool for DMEPOS claims especially in South Florida and other high-fraud areas. Ensuring that claims are legitimate and appropriate prior to payment would eliminate the need to expend resources for postpayment collection efforts that are not likely to yield high returns.

This report is being issued directly in final form because it contains no recommendations. If you have comments or questions about this report, please provide them within 60 days. Please refer to report number OEI-03-09-00570 in all correspondence.