

## Medicare's Repo Men



*Granny beware—Medicare's "debt collectors" could be coming soon to a nursing home near you.*

—By [Stephanie Mencimer](#)

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One hot summer evening in 1995, Sumaya Coury was driving her 81-year-old mother, Mollie Coury, and some of her friends back to Los Angeles after a trip to San Diego to play bingo. Around midnight, Sumaya's Cadillac slammed into the car of a drunk driver who'd parked and passed out in the middle of the five-lane 210 freeway, east of Pasadena. Mollie's legs were crushed; doctors thought she'd never walk again. But after weeks in hospital, she regained her mobility, and eventually put the accident behind her. Then, 13 years later, in the fall of 2008, [Medicare](#) sent Mollie some staggering news: She owed \$66,000 for what the agency said were medical expenses related to the accident. If she didn't pay within 60 days, the Treasury Department would seize her Social Security checks until the money was repaid.

The reason for the enormous bill? After the accident, Coury had received about \$20,000 from her daughter's insurance policy. This settlement subjected her to an obscure law called [Medicare Secondary Payer Act](#), created decades ago to prevent Medicare from paying medical expenses that

were the responsibility of private insurers or other parties. Here's how it works: If a Medicare recipient gets in a car crash or is injured by a defective pacemaker, the government picks up the hospital tab.

But if that person receives a payment from a legal settlement, insurance policy, or jury award that covers accident-related medical bills, Medicare is entitled to its money back.

So far, so reasonable. The law saved taxpayers nearly \$7 billion in 2008, according to the [Centers for Medicare and Medicaid Services](#) (CMS). Most of this sum came from Medicare ensuring the correct parties got billed in the first place. But in recent years, Congress has pushed Medicare to aggressively pursue debts from injured elderly people who have won compensation through lawsuits or liability insurance.

This can work well when the government calculates its share before plaintiffs get their checks.

Attorney Matt Garretson says his firm alone has probably generated at least \$100 million for Medicare through litigation over the prescription painkiller [Vioxx](#). But those settlements were paid out long before any of the plaintiffs ever got a dime. Chasing debts *after* a payout is far less lucrative—and a lot more prone to error. That's because compensation often comes years after an accident, forcing Medicare and its contractors to sift through mountains of medical bills to determine which ones are accident related. And contrary to popular opinion, most lawsuits involve relatively small sums. Of the \$1 billion Medicare recovered from collections last year, only about \$7 million came from "post-payment" liability insurance and tort cases. For people on the receiving end of the collections process—mostly elderly car accident victims like Mollie Coury—it can be a traumatic ordeal.

Coury actually got snared in Medicare's net twice, the first time in 2002, when the agency began seizing her only income, a \$498 monthly Social Security check, for nearly three years until she repaid more than \$16,000 (her settlement minus some legal fees). After that, she thought her troubles were over. But in 2008, Medicare returned for more. Its \$66,000 bill not only failed to recognize that Coury had already repaid what she owed; it also far exceeded the \$20,000 she'd received from her daughter's insurance company in the first place. Eventually, Sumaya, a former accountant, discovered

that Medicare had included every procedure Mollie had undergone since her accident, including unrelated care like open-heart surgery and treatment for emphysema.

Sumaya, who was herself battling lung cancer, tried repeatedly to straighten out the problem. Instead, Medicare stopped paying her mother's medical bills. Mollie so feared visiting the doctor that when she suffered internal bleeding from complications from a hiatal hernia, she refused to go to the hospital and nearly died. "It's like a nightmare," says Sumaya. "They should be paying *her* for all the harassment."

Despite its good-government origins, Medicare's debt recovery program has not been a model of efficiency. The Government Accountability Office discovered that during the 2001 fiscal year, other parties were responsible for nearly \$2 billion in outstanding Medicare debts, but the Centers for Medicare and Medicaid Services had only referred about \$47 million for collection. In the 2003 fiscal year, the agency employed more than 50 collection contractors, yet recouped just 38 cents for every dollar it spent trying to gather old debt from employer-sponsored health plans. During that same period, eight of those contractors didn't process a single case, yet still received a total of \$1.8 million.

Congress pressed CMS for improvements. So in 2006, the agency consolidated collection activities into one massive contract, worth \$72.5 million in the first two years. Under a law permitting the government to grant no-bid contracts to Native American corporations, it awarded the deal to [Chickasaw Nation Industries](#), based just outside of Oklahoma City. The contract gave the firm \$32.5 million the first year and \$40 million the second. (Michael Webb, CNI's head of business development, says the agency granted the sole-source contract based on work the company was already doing handling medical records for the Indian Health Service.) It was CNI that sent Coury her \$66,000 bill. Webb told *Mother Jones* he couldn't comment on individual cases and referred questions to CMS, which also wouldn't comment on specific cases. However, agency officials said mistakes were inevitable in a system that processes more than 300,000 new liability claims and more than a million pieces of correspondence every year.

According to CMS officials, the Chickasaws have stepped up Medicare recoveries, but errors persist. Part of the problem is that for many years, Medicare had no systematic way of learning when someone got a settlement or judgment, making its collection efforts hit or miss. For a while, the agency tried to lean on plaintiff lawyers, threatening to sue them if they turned over settlement or insurance money to their clients before paying any Medicare liens. In many cases, though, courts sided with the lawyers who argued that Medicare was exceeding its authority. The issue was headed to the Supreme Court, but in 2003, Congress passed the Medicare drug benefit and included a small provision that officially put the onus on lawyers to make sure Medicare got its money.

As it turns out, lawyers found complying with the law a real challenge, largely because Medicare often can't tell them just how much their clients owe. When it does, it's often spectacularly wrong. And, they say, getting a straight answer from Medicare and its contractor is a process that can outlive the beneficiaries. Arizona lawyer Frank Verderame once held more than \$160,000 in trust accounts for more than three years because Medicare ignored his requests for an accounting for five of his clients. In 2006, he sued Medicare to try to free his clients' money. In response, Medicare sent an itemized bill in excess of \$50,000 for someone Verderame estimated only owed \$15,000. Medicare eventually settled the whole case for about \$2,500, he says. "These old folks are real sweet, greatest generation folks. They just want to do what's fair and they don't begrudge having to pay the government—until this happens. Then they get pissed," he says.

After forcing plaintiffs' lawyers to serve as Medicare's debt collectors failed to produce the desired results, Congress passed new debt-collection measures as part of the 2007 SCHIP reauthorization. Starting next year, insurance companies must report any settlements or judgments involving Medicare beneficiaries to CMS. If a Medicare beneficiary fails to reimburse the agency for health care costs it paid, the agency can punish the insurance company with double damages. This gives the insurers a big incentive to make sure Medicare gets paid first—and will hopefully cut down the number of cases where Medicare chases down old debts years after the fact, as the insurance companies are better placed to work out the bills than plaintiff lawyers because they do it all the time. Still, it's not a perfect

solution. The prospect of harsher penalties is already leading to insurance company overkill that, combined with Medicare's bureaucracy, has kept some elderly folks from receiving money that's rightfully owed them.

Take the case of 87-year-old Hannah Cohen, who was hit by a car in 2005. She sued the driver and got an \$18,000 settlement in December 2007. Knowing that the feds were more aggressively pursuing such payments, the driver's insurance company had a policy of making Medicare a payee on any settlement check for plaintiffs older than 62. But Cohen, an Israeli citizen, was ineligible for Medicare, and therefore owed nothing. Still, it took more than a year—and a lawsuit—for Cohen's lawyer to extract her money from the insurance and Medicare bureaucracy. Cohen's lawyer has another similar case pending.

After all of Sumaya Coury's calls and letters, in March, a contractor working for Medicare wrote to say that her mother, who is now 95, now owes only \$18,378.40—a little more than the amount she repaid four years ago. Sumaya hired a lawyer to deal with the mess. One day, she says, she complained to an employee of the Chickasaw contractor that the situation was "totally bizarre." The woman replied, "Oh no, it's not. It happens every day."

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