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VIA EMAIL AND FIRST CLASS MAIL

Mr. John Albert
Ms. Suzanne Mattes
Center for Medicare & Medicaid Services
Office of Financial Management
7500 Security Boulevard
Baltimore, Maryland 21244-1850

Re: MSP and Treasury Debt Collection/DCIA

Dear John and Suzanne:

Thank you again for speaking with the MARC Coalition on June 10. We truly appreciate the Agency's time and insight on emerging Medicare Secondary Payer ("MSP") issues.

During our conversation, we requested that CMS/OFM reach out to Treasury to request a joint meeting to discuss the current MSP debt collection process. As you know, this is an issue we have raised with CMS for the past three years, and we have recently brought several case examples to your attention. However, we wanted to take this opportunity to outline several systemic problems that we believe would benefit from discussion between the three stakeholders at issue (CMS, Treasury, and the regulated community) to resolve and ensure that money owed is returned expeditiously.

Most significantly, there is a need for better information to accompany claims subject to the Treasury debt collection process. While in some cases there is an identification number on a Treasury demand letter that will allow the parties to identify the CMS MSP demand at issue, in many cases (we believe due to the varying nature of ways in which Treasury can pursue debt collection through contractors, through direct offset, or through other means) there is no identification of the underlying debt. Indeed, when stakeholders ask Treasury or its contractors for information supporting the underlying debt, they are told "we don't have any information, other than it was a final adjudicated claim from HHS."

We are aware of several cases in which CMS has inadvertently deemed a debt final and referred the debt to Treasury, even when the primary plan at issue was never notified of the claim. We appreciate that many of those situations are matters that can be resolved directly

between MARC and other stakeholders and CMS.¹ However, there are numerous claims that primary plans hear of for the first time from Treasury, and we believe all parties involved would benefit from a better methodology to track information about the underlying claim so that primary plans are able to investigate information about a particular claim, or identify a claim for Treasury as one that was never the subject of an underlying adjudication. MARC members report that they rarely, if ever, receive claim information and the details of the lien (dates of service, ICDs, amounts owed, etc.). Even when such information is provided by the Treasury Department, the plan often ends up going back and forth with the collection entity to no avail.

In yet another example of miscommunication between CMS, Treasury, beneficiaries and primary plans, in the past week we learned of a case in which repayment in full by a primary plan occurred in 2013, but the CMS contractor misapplied certain funds, resulting in CMS believing an outstanding debt existed and referring the matter to Treasury. Following referral the Treasury Contractor (Performant) began offsetting the beneficiary's paycheck, and failed to explain to the beneficiary the basis for the offset (the beneficiary believed the offset was improperly related to child support payments, and the contractor did not correct the beneficiary's misunderstanding even though it was clearly erroneous). When the beneficiary's counsel notified the primary plan's agent of the issue, the CBRC refused to even speak to the agent (who had completely paid the debt two years earlier), even when the beneficiary's counsel was on the phone. Ultimately, the CBRC would not adjust the records, and instructed the primary plan to wait until the next reporting period to electronically reverse claims in the system for this matter to be resolved.

We appreciate that the MSP debt collection process is complex given that CMS is not dealing with a direct debtor (for example, a contractor) but instead is seeking to recover funds from third parties with which CMS has no direct relationship other than the fact that they become statutorily responsible for a conditional payment. We further appreciate that the data exchange between HHS and Treasury has had its challenges in the past and may encounter problems in the future. Given these unique circumstances, we believe a meeting between regulated entities, Treasury and HHS can begin to address the situation, and find a pathway that allows for claim identification at every step of the debt collection process.

The difficulty for primary plans in identifying a claim also leads to problems with escalation of debt collection. For example, it often occurs that Treasury believes a debtor is not addressing a payment demand when in fact the "debtor" is trying to resolve the issue or correct an incorrect claim. It may make sense to establish an ombudsman to be able to navigate the interagency aspects of the claims/collection process, and we would welcome discussing that with both Agencies at a meeting.

¹ Example of such situations include where the CMS demand was sent to a retail outlet rather than RRE headquarters, or where the CBRC ignored an appeal and referred a disputed claim to Treasury notwithstanding the dispute. We have previously brought these examples to your attention and recognize that these issues are within CMS's ability to resolve. Thus, we do not propose to address these issues at a joint meeting with CMS and Treasury.

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Thank you for consideration of this request. We look forward to following up with you shortly.

Very truly yours,

A handwritten signature in black ink, appearing to read "David J. Farber". The signature is fluid and cursive, with the first name "David" and last name "Farber" clearly distinguishable.

David J. Farber