



Medicare Advocacy Recovery Coalition

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**VIA EMAIL AND  
FIRST CLASS MAIL**

May 24, 2018

Mr. Steve Forry  
Center for Medicare & Medicaid Services  
7500 Security Boulevard  
Baltimore, Maryland 21244-1850

**Re: CMS Referrals to Treasury of MSP Debts**

Dear Steve:

I am writing on behalf of the Medicare Advocacy Recovery Coalition (MARC) regarding the Agency's interpretation of the debt referral process and referrals of MSP debts to the Treasury Department. As we discussed several weeks ago, since Performant has begun work as the Commercial Repayment Center (CRC), numerous stakeholders have experienced a significant increase in referrals of alleged final debts to the Treasury Department. Among MARC members, we have identified three distinct types of such claims, at least two of which we believe you would agree are inconsistent with CMS's interpretation of the debt referral statutes and regulations.

First, MARC members have encountered numerous debts referred to Treasury even after an appeal has been filed (either for redetermination or with the Qualified Independent Contractor, known as the "QIC"). A debt is not legally enforceable—even if it is more than 180 days past-due—when it "is the subject of a pending administrative review process required by statute or regulation and collection action during the review process is prohibited." 31 C.F.R. § 285.12. MARC members are experiencing numerous such claims (we will provide examples under separate cover), and we request that CMS speak with Performant to eliminate this practice and recall all improperly referred claims to the Treasury Department.

Second, MARC members are receiving Treasury demands after redetermination or QIC review has been concluded, but the determination has been fully favorable for the RRE. Again, in these instances there is no fully and final adjudicated debt that can be subject to Treasury referral or recovery. It appears that the CRC is working off a "diary" system and referral claims for collection irrespective of what actually happens during the appeal.

Third, we request that CMS revisit its interpretation of the debt collection statute. More specifically, we understand that the Agency has historically interpreted the debt collection statute to permit referrals to Treasury once the necessary period has passed from the original determination date, even if an RRE has time remaining to appeal a claim to the QIC or to another level of appeal. While we appreciate that agencies have interpreted the debt collection statute differently, we suggest that those agencies which

prohibit referral to Treasury until any appeal right has been exhausted have adopted the better policy. More specifically, by allowing the CRC to refer debts to Treasury while QIC and other appeal rights are pending, CMS creates additional and unnecessary work for itself, its contractor, and regulated entities once an appeal is timely filed. (The CRC also refers cases so quickly following the denial of reconsideration that there is literally no time for an RRE to file an appeal with the QIC before the case is at Treasury.)

Instead, we urge the Agency to consider: (1) generally modifying its policies (and those of the CRC) to defer referrals until the available appeal right is exhausted, either by decision or failure to file the appeal, and (2) at a minimum, to impose a 90 day moratorium when changing contractors so that any backlogs in the system (such as created by CGI) do not result in inappropriate referrals to Treasury of cases that would otherwise be appealed in the normal course of business (but for the backlog created by the CMS contractor).

We look forward to meeting with the Agency in June, and request that we reserve 30 minutes of our meeting to discuss these issues. We thank you for your consideration of these concerns and look forward to further discussion on June 5<sup>th</sup>.

Sincerely,

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

David Farber  
Counsel to the MARC Coalition