

CARL LEVIN, MICHIGAN
DANIEL K. AKAKA, HAWAII
THOMAS R. CARPER, DELAWARE
MARK L. PRYOR, ARKANSAS
MARY L. LANDRIEU, LOUISIANA
CLAIRE McCASKILL, MISSOURI
JON TESTER, MONTANA
ROLAND W. BURRIS, ILLINOIS
MICHAEL F. BENNETT, COLORADO

SUSAN M. COLLINS, MAINE
TOM COBURN, OKLAHOMA
JOHN McCAIN, ARIZONA
GEORGE V. VOINOVICH, OHIO
JOHN ENSIGN, NEVADA
LINDSEY GRAHAM, SOUTH CAROLINA
ROBERT F. BENNETT, UTAH

United States Senate

COMMITTEE ON

HOMELAND SECURITY AND GOVERNMENTAL AFFAIRS

WASHINGTON, DC 20510-6250

MICHAEL L. ALEXANDER, STAFF DIRECTOR
BRANDON L. MILHORN, MINORITY STAFF DIRECTOR AND CHIEF COUNSEL

September 30, 2009

Charlene Frizzera
Acting Administrator
Centers for Medicare & Medicaid Services
U.S. Department of Health and Human Services
200 Independence Avenue SW
Washington, DC 20201

Dear Ms. Frizzera:

As part of the Subcommittee's ongoing oversight of government contracting, I am writing today to request information regarding the management and oversight of the Medicare Secondary Payer Recovery Contractor (MSPRC) by the Centers for Medicare and Medicaid Services (CMS).

The Medicare Secondary Payer (MSP) program was established in 1980 to reduce Medicare costs by establishing that Medicare should not serve as the primary payer in situations in which other parties bear the primary responsibility to cover the Medicare beneficiary's medical expenses. For example, Medicare is the secondary payer for Medicare beneficiaries who are working and covered by their employer's group health insurance plan. Medicare is also the secondary payer when a Medicare beneficiary has expenses that are ultimately covered by worker's compensation insurance, automobile medical insurance, and no-fault and liability insurance.¹

In 2006, Medicare awarded a sole-source cost-plus contract to Chickasaw Nation Industries, a tribally-owned firm based in Oklahoma, to recover money owed to Medicare under MSP.² Chickasaw's responsibilities include identifying mistaken MSP payments for recovery, determining amounts that are potentially subject to recovery, issuing recovery demand letters, and tracking MSP debt.³

¹ Congressional Research Service, *Medicare Secondary Payer: Coordination of Benefits* (July 10, 2008) (RL33587).

² U.S. Government Accountability Office, *Medicare Secondary Payer: Improvements Needed to Enhance Debt Recovery Process* (August 2004) (GAO 04-783).

³ Congressional Research Service, *Medicare Secondary Payer: Coordination of Benefits* (July 10, 2008) (RL33587).

On June 24, 2009, I wrote to you raising concerns about significant delays in Medicare's identification and recovery of MSP monies, which cause significant hardship to Medicare beneficiaries and their families and also deprive Medicare of money owed to the Agency. I asked you to provide me with information including: the total amount of money CMS is owed under the MSP process; the average time taken to identify and recover funds; and how long CMS has been waiting for reimbursement. I also asked you to identify the controls CMS has in place to ensure that the money owed is identified and that the funds are fully recovered.⁴

On September 17, 2009, you responded to my letter, assuring me that CMS is "committed" to ensuring the timely recovery of MSP funds. You also stated that the total amount of funds owed by Non-Group Health Plans (e.g. monies owed through insurance settlements) was approximately \$201 million as of June 30, 2009. You also advised that the MSPRC "usually" issues demands for monies owed to Medicare within 21 to 30 days of receiving a notice of settlement, and that "the majority" of this is collected within 60 days of the demand.⁵

I appreciate your response to my questions. However, as Chairman of the Subcommittee on Contracting Oversight, I am concerned that the delays in recovery about which I wrote to you in June may be linked to the performance, management, and/or oversight of the MSPRC. In the Department of Health and Human Services' FY 2008 Financial Statement Audit, the independent auditors Ernst and Young questioned the effectiveness and efficiency of the MSPRC's recovery efforts.⁶ According to the auditors:

We noted several instances where internal controls related to this third-party contractor [CNI], including CMS's oversight of the contractor, segregation of incompatible duties and the untimely application of cash receipts, were not designed or operating effectively."⁷

The auditors recommended that CMS improve its oversight of the MSPRC.⁸ According to the auditors, CMS should:

Implement controls and enhance CMS monitoring controls over the Medicare Secondary Payor [sic] recovery contractor. In addition, CMS should evaluate its overall directives to third-party contractors to ensure that adequate controls are in

⁴ Letter from Sen. Claire McCaskill to CMS Acting Administrator Charlene Frizzera to (June 24, 2009).

⁵ Letter from CMS Acting Administrator Charlene Frizzera to Sen. Claire McCaskill (Sept. 17, 2009).

⁶ Department of Health and Human Services, *FY 2008 Agency Financial Report: Report of Independent Auditors* (Dec. 8, 2008).

⁷ *Id.*

⁸ *Id.*

place and that appropriate documentation is maintained to support the conduct of those controls.⁹

To assist the Subcommittee with its investigation, I request that you provide the following information and documents:

- (1) The final MSPRC contract as well as any amendments or modifications;
- (2) All performance evaluations or audits of the MSPRC's performance pursuant to the contract conducted by government officials or contractors, including but not limited to onsite reviews and annual reviews conducted by independent auditors;
- (3) All reports prepared by the MSPRC for CMS relating to the MSPRC's progress and efficiency in collecting outstanding debt;
- (4) A list of the names and employers of all Department contractor personnel involved with the administration, management, or oversight of the MSPRC contract;
- (5) A current organizational chart for the MSPRC program office;
- (6) The total amount of MSP recoveries for each month since August 2004, broken out by category, including but not limited to group health plan and non-group health plan, working aged, working disabled, auto/no fault insurance, and liability insurance;
- (7) The total amount owed to Medicare for each month since August 2004, broken out by category, including but not limited to group health plan and non-group health plan, working aged, working disabled, auto/no fault insurance, and liability insurance; and
- (8) Information sufficient to show the volume of unanswered correspondence from attorneys representing Medicare beneficiaries since 2007.

I request that you provide this information as soon as possible, but in no case later than **October 16, 2009**. If you determine that you will be unable to make a complete production by this date, please contact Subcommittee staff to discuss possible modifications to this schedule.

I also ask that you provide a briefing for Subcommittee staff on or before **October 23, 2009**. In addition to the issues detailed above we ask that the briefing include information about (1) the Coordination of Benefits Contractor and all other contractors involved in secondary payer recovery; (2) the development of the ReMAS system; (3) the identity and performance of the contractor(s) previously responsible for the duties now performed by the MSPRC; and (4) the corrective actions taken by CMS relating to the MSP program in response to the findings of the FY 2008 Financial Statement Audit.

⁹ *Id.*

Charlene Frizzera
September 30, 2009
Page 4

The jurisdiction of the Subcommittee on Contracting Oversight is set forth in Senate Rule XXV clause 1(k); Senate Resolution 445 section 101 (108th Congress); and Senate Resolution 73 (111th Congress). An attachment to this letter provides additional information about how to respond to the Subcommittee's request.

Please contact Margaret Daum at (202) 228-3862 with any questions and to schedule the requested briefing.

Sincerely,



Senator Claire McCaskill
Chairman
Subcommittee on Contracting Oversight

cc: Robert F. Bennett
Ranking Member

Enclosure

**Responding to Document Requests from
the Subcommittee on Contracting Oversight**

In responding to the document request from the Subcommittee on Contracting Oversight, please apply the instructions and definitions set forth below.

Instructions

1. In complying with the request, you should produce all responsive documents in your possession, custody, or control.
2. Documents responsive to the request should not be destroyed, modified, removed, transferred, or otherwise made inaccessible to the Subcommittee.
3. In the event that any entity, organization, or individual denoted in the request has been, or is currently, known by any other name than that herein denoted, the request should be read also to include them under that alternative identification.
4. Each document produced should be produced in a form that renders the document capable of being copied.
5. When you produce documents, you should identify the paragraph or clause in the Subcommittee's request to which the documents respond.
6. Documents produced in response to this request should be produced together with copies of file labels, dividers, or identifying markers with which they were associated when this request was issued. To the extent that documents were not stored with file labels, dividers, or identifying markers, they should be organized into separate folders by subject matter prior to production.
7. Each folder and box should be numbered, and a description of the contents of each folder and box, including the paragraph or clause of the request to which the documents are responsive, should be provided in an accompanying index.
8. It is not a proper basis to refuse to produce a document that any other person or entity also possesses a non-identical or identical copy of the same document.
9. If any of the requested information is available in machine-readable or electronic form (such as on a computer server, hard drive, CD, DVD, memory stick, or computer backup tape), you should consult with Subcommittee staff to determine the appropriate format in which to produce the information. Documents produced in electronic format should be organized, identified, and indexed electronically in a manner comparable to the organizational structure called for in (6) and (7) above. Documents produced in an electronic format should also be produced in a searchable format.

10. In the event that a responsive document is withheld on any basis, you should provide the following information concerning the document: (a) the reason the document is not being produced; (b) the type of document; (c) the general subject matter; (d) the date, author, and addressee; and (e) the relationship of the author and addressee to each other.
11. If any document responsive to this request was, but no longer is, in your possession, custody, or control, you should identify the document (stating its date, author, subject and recipients) and explain the circumstances by which the document ceased to be in your possession, custody, or control.
12. If a date or other descriptive detail set forth in this request referring to a document is inaccurate, but the actual date or other descriptive detail is known to you or is otherwise apparent from the context of the request, you should produce all documents which would be responsive as if the date or other descriptive detail were correct.
13. This request is continuing in nature and applies to any newly discovered document. Any document not produced because it has not been located or discovered by the return date should be produced immediately upon location or discovery subsequent thereto.
14. All documents should be bates-stamped sequentially and produced sequentially.
15. Two sets of documents should be delivered, one set to the majority staff and one set to the minority staff. The majority set should be delivered to the majority staff in Room 613B of the Hart Senate Office Building, and the minority set should be delivered to the minority staff in Room 442 of the Hart Senate Office Building. You should consult with Committee staff regarding the method of delivery prior to sending any materials.
16. Upon completion of the document production, you should submit a written certification, signed by you or your counsel, stating that: (1) a diligent search has been completed of all documents in your possession, custody, or control which reasonably could contain responsive documents; and (2) all documents located during the search that are responsive have been produced to the Subcommittee or identified in a privilege log provided to the Subcommittee.

Definitions

1. The term “document” means any written, recorded, or graphic matter of any nature whatsoever, regardless of how recorded, and whether original or copy, including, but not limited to, the following: memoranda, reports, expense reports, books, manuals, instructions, financial reports, working papers, records notes, letters, notices, confirmations, telegrams, receipts, appraisals, pamphlets, magazines, newspapers, prospectuses, interoffice and intra-office communications, electronic mail (email), contracts, cables, notations of any type of conversation, telephone calls, meetings or other communications, bulletins, printed matter, computer printouts, teletypes, invoices, transcripts, diaries, analyses, returns, summaries, minutes, bills, accounts, estimates, projections, comparisons, messages, correspondence, press releases, circulars, financial statements, reviews, opinions, offers, studies and investigations, questionnaires and surveys, and work sheets (and all drafts, preliminary versions, alterations, modifications, revisions, changes, and amendments of any of the foregoing, as well as any attachments or appendices thereto). The term also means any graphic or oral records or representations of any kind (including without limitation, photographs, charts, graphs, voice mails, microfiche, microfilm, videotape, recordings and motion pictures), electronic and mechanical records or representations of any kind (including, without limitation, tapes, cassettes, disks, computer server files, computer hard drive files, CDs, DVDs, memory sticks, and recordings), and other written, printed, typed, or other graphic or recorded matter of any kind or nature, however produced or reproduced, and whether preserved in writing, film, tape, disk, videotape or otherwise. A document bearing any notation not a part of the original text is to be considered a separate document. A draft or non-identical copy is a separate document within the meaning of this term.
2. The term “documents in your possession, custody, or control” means (a) documents that are in your possession, custody, or control, whether held by you or your past or present agents, employees, or representatives acting on your behalf; (b) documents that you have a legal right to obtain, that you have a right to copy, or to which you have access; and (c) documents that you have placed in the temporary possession, custody, or control of any third party.
3. The term “communication” means each manner or means of disclosure or exchange of information, regardless of means utilized, whether oral, electronic, by document or otherwise, and whether face-to-face, in a meeting, by telephone, mail, telexes, discussions, releases, personal delivery, or otherwise.
4. The terms “and” and “or” shall be construed broadly and either conjunctively or disjunctively to bring within the scope of the request any information which might otherwise be construed to be outside its scope. The singular includes plural number, and vice versa. The masculine includes the feminine and neuter genders.

5. The terms “person” or “persons” means natural persons, firms, partnerships, associations, corporations, subsidiaries, divisions, departments, joint ventures, proprietorships, syndicates, or other legal, business or government entities, and all subsidiaries, affiliates, divisions, departments, branches, and other units thereof.
6. The terms “referring” or “relating,” with respect to any given subject, means anything that constitutes, contains, embodies, reflects, identifies, states, refers to, deals with, or is in any manner whatsoever pertinent to that subject.

CERTIFICATION

I, (*insert name*), am the (*insert title*) of (*Agency name*) (“the Agency”), and have served in this position for (*number of years*) years. I am authorized by the Agency to provide this certification to the U.S. Senate, Committee on Homeland Security and Governmental Affairs, Subcommittee on Contracting Oversight regarding the Agency’s production of documents responsive to the Subcommittee’s document request letter of (*insert date*).

I hereby certify that the Agency has conducted a diligent search of all files and places under its custody and control, including computer servers and other electronic storage media, which reasonably could contain documents responsive to one or more of the enumerated requests in the Committee’s document request letter. I certify that as of the date listed below, the Agency has produced to the Subcommittee, in accordance with the instructions and definitions provided by the Subcommittee with the document request letter, all documents located during the search that are responsive to one or more of the enumerated requests.

Under the pains and penalties of perjury, I attest that the foregoing is true and accurate to the best of my knowledge.

Name

Date