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# Program Memorandum Intermediaries/Carriers

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Department of Health & Human  
Services (DHHS)  
Centers for Medicare &  
Medicaid Services (CMS)

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Transmittal AB-02-090

Date: JUNE 28, 2002

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This Program Memorandum re-issues AB-01-24, Change Request 1280 dated February 5, 2001. The only change is the discard date; all other material remains the same.

## CHANGE REQUEST 1280

**SUBJECT: Medicare Secondary Payer (MSP): (1) Procedures for “Write-Off – Closed” of MSP Accounts Receivable (AR); (2) Elimination of Automated/Systems “Write-Off – Closed” Actions for MSP AR; Zero Backend Tolerance for MSP AR (Reminder); and (3) Date for Establishment of MSP AR (Reminder)**

### I. General

Contractors have primary responsibility for collecting all MSP debts and are expected to pursue recovery of all AR to the fullest extent possible, regardless of the identity of the debtor. However, when AR cannot be collected, an appropriate write-off must be utilized.

Contractors previously received instructions stating non-MSP AR more than 2 years old would, with limited exceptions, be written off as “write-off - currently not collectible” (CNC) or “write-off - closed.” CMS is implementing these same categories for MSP AR; however, the criteria for selection for these categories and the specific instructions for implementation are/will be different due to the differing natures of MSP and non-MSP debt. As with non-MSP AR, MSP AR that fall within either category of write-off will no longer be considered an AR for financial statement reporting purposes; however, subsequent contractor action will differ depending on the write-off classification.

The AR addressed in this Program Memorandum (PM) do not require recording on the Provider Overpayment Report (POR) or Physician/Supplier Overpayment Report (PSOR) systems. However, if any of the AR were previously recorded on the POR/PSOR systems, contractors must ensure the AR are removed simultaneously from the POR/PSOR systems as they write off AR per the instructions in this PM.

### II. “Write-Off – CNC for MSP AR

This category has been implemented by central office (CO) (vs. at the contractor level) for MSP AR which are more than 180 days delinquent. CO makes the appropriate adjustment on CMS’s financial statements for this category. All such debts are currently on contractors’ Form CMS-750 “Statement of Financial Position” and Form CMS-M751 “Status of MSP Accounts Receivable” (CMS750/751 reports) and must remain on these reports until further notice. CMS is in the process of developing instructions for contractor implementation of MSP CNC and will issue these instructions, including MSP CNC reporting instructions, in a separate PM.

### III. “Write-Off - Closed” for MSP AR

- A. The following instructions are to be used by contractors to identify those AR subject to this PM. Generally, Medicare contractors may only recommend the “write-off – closed” of a debt which is being reported as part of their ending AR balance. (See section III.J. for the exception to this rule.) AR which have been **transferred** to regional offices (ROs) for referral to other agencies or entities such as the Department of Justice or Office of General Counsel will be addressed by the ROs. MSP AR with CO locations will be addressed by CO. AR which have been **referred** to another location, without transfer, remain the responsibility of the contractor.

**NOTE:** These instructions only apply to established AR. They may **not** be used to close MSP liability/no-fault/workers’ compensation leads where no settlement, judgment or award exists and no recovery demand has been issued.

- B. This “write-off – closed” policy is to be implemented on an ongoing basis.
- C. “Write-off – closed” means the same thing for MSP AR as it does for non-MSP AR, but the criteria for selection for “write-off – closed” differ. The definition is as follows:

“Write-Off – Closed” -- AR that fall within this write-off classification will no longer be reported on the financial statements/Form CMS 750/751 reports, and all collection activity and servicing of the debt will be terminated. The contractor will maintain records of the debts written off as “closed.” However, the debts will not be used for future offset or interest accruals. AR approved for “write-off – closed” classification will be closed on contractor records and reported on line 6a, bad debt, of Form CMS M751. (See section III.J.)

- D. Criteria for MSP based debts to qualify for “write-off – closed” under this PM are:
1. MSP AR, subject to the additional considerations listed in section III.D.2., will be affected as follows:
    - a. All MSP AR more than 6 years 3 months old:
      - 1) From the date of the initial demand to the current debtor with no payment or acknowledgement of the debt (**Reason 1/R1**);
      - 2) From the date of the last payment or acknowledgment of the debt by or on behalf of the current debtor (**R2**), **or**
      - 3) From the date of the initial demand to the current debtor with less than \$600 in outstanding principal and no payment, collection, recoupment, offset, or adjustment activity, for 12 months (**R3**).

AR meeting the above criteria (see section III.D.2. for information on how to measure the time period) are to be recommended for “write-off - closed” unless an exception exists or other justification is provided as to why the debt should not be written off and closed. The exceptions are AR in bankruptcy, under fraud and abuse investigation, with an appeal pending at any level, or included on CO’s list of debtors excluded due to ongoing negotiations and/or litigation (see section III.D.2.d.). (“All MSP AR” means all, without regard to whether the debt is group health plan (GHP) based or liability/no-fault/workers’ compensation based and without regard to the type of debtor (employer, insurer, beneficiary, provider/supplier etc.).)

- b. Individual MSP based provider/supplier (including physician) debt and MSP based beneficiary debt that meet all of the following criteria should be recommended for “write-off - closed” unless an exception exists or other justification is provided: (1) more than 2 years old from the date of the initial demand to the current debtor; (2) less than \$600 outstanding principal per debt; and (3) no collection, payment, recoupment, offset, or adjustment activity for 12 months (**R4**). The exceptions are AR in bankruptcy, under fraud and abuse investigation, with an appeal pending at any level, or included on CO’s list of debtors excluded due to ongoing negotiations and/or litigation (see section III.D.2.d.). Some contractors currently establish MSP AR at the Medicare paid claim level rather than at the recovery demand level (that is, if there are three Medicare paid claims involved in a recovery demand, they establish three AR). The \$600 figure is based upon the entire debt (the outstanding principal amount), not an individual underlying Medicare paid claim. See section III.D.2.h. defining “debt” for purposes of this PM.

2. Additional considerations:

- a. PM AB-00-11 (Change Request 899, dated March 2000) related issues.
- 1) Contractors may **not** implement this policy for insurers addressed in PM AB-00-11 until they have completed the required review and appropriate transfers of GHP settlement related AR associated with the MPaRTS Report IDs furnished to all contractors in connection with PM AB-00-11. All mandatory work from PM AB-00-11 on settlement related AR should have been completed prior to the issuance of this PM. If there is a problem, contact your RO MSP coordinator immediately with a cc to [BWright@cms.hhs.gov](mailto:BWright@cms.hhs.gov) and [TLawrence4@cms.hhs.gov](mailto:TLawrence4@cms.hhs.gov).
  - 2) Contractors who have completed the mandatory work from PM AB-00-11 may continue to identify some AR related to GHP settlements. If such AR meet the criteria for “write-off – closed” set forth in this PM, contractors should include them in their “write-off – closed” recommendations to the RO (under R1, R2, R3, or R4, as appropriate). However, if such AR do not meet these criteria, they should be **transferred** (not referred) to the RO, after receiving formal acceptance of the transfer from the RO, using the reporting format set forth in PM AB-00-11.
- b. AR must meet the applicable age of debt criteria (see section III.D.1.) as of the last day of the quarter prior to the quarter in which the “write-off –closed” recommendation is submitted for RO approval. For example, for recommendations submitted in the quarter ending June 30, 2001, the AR must have met the applicable age of debt criteria as of March 31, 2001.
- c. In accordance with the Debt Collection Improvement Act of 1996 (DCIA), MSP AR which are 180 days delinquent must be referred to the Department’s Program Support Center (PSC) for cross-servicing, which includes referral to the Treasury Offset Program. Where a contractor has issued a 60 day notice of CMS’s intent to refer the AR to the PSC, the AR may not be recommended for “write-off – closed” until the AR has been referred to the PSC and there has been no collection, payment, recoupment, offset, or adjustment activity for 12 months from the date of the referral to the PSC. This means that for AR for which contractors have issued a notice of CMS’s intent to refer the debt to the PSC and which would otherwise meet the criteria for “write-off – closed” set

forth in section III.D.1.a. or section III.D.1.b, no recommendation for “write-off – closed” should be made until the referral to the PSC has taken place and there has been no collection, payment, recoupment, offset, or adjustment activity for 12 months from the date of the referral to the PSC. (**NOTE:** As of October 1, 2000, a limited number of contractors were already referring MSP AR to the PSC on a pilot basis. The provisions of this paragraph apply only to contractors which have received MSP DCIA instructions. MSP DCIA instructions for all contractors are in process.)

- d. Debtors currently excluded from consideration for “write-off – closed” due to litigation/negotiations include New York Life, Aetna, and Cigna. This exclusion includes any known affiliates/subsidiaries (no specific list is available). Contractors should be careful to exclude obvious variations/abbreviations of these entities’ names. If there are changes to this list, RO MSP coordinators will notify contractors of the applicable changes, including the removal of a particular debtor from the list or the addition of a particular debtor to the list.
- e. The phrase “no activity in the past 12 months” requires careful application as it pertains to “write-off - closed.” There may be AR in which the oldest of several debts is being collected first and, therefore, no collection activity may appear for the latter years. For provider/supplier (including physician) or beneficiary AR where there has been no activity for 12 months, verify that no collections are being made on other older debts for the same debtor before “write-off – closed” is recommended.
- f. For MSP beneficiary debt, Medicare may recoup from (1) future Medicare paid claims where the payment is issued directly to the beneficiary, or (2) the beneficiary’s Social Security (SS) benefit payments. However, as a practical matter, this is generally an insufficient manner of recovery, particularly as the Social Security Administration (SSA) does not generally accept the referral of debts less than \$1,000. Additionally, beneficiaries often delay consideration of repayment until all appeals have been exhausted. Therefore, before recommending a beneficiary debt for “write-off – closed,” ascertain that at least 12 months have passed since the date the beneficiary exhausted all appeal rights with respect to that AR. Contractors must also check the status of all debt which has been referred to SSA for collection before recommending “write-off – closed.” Where a debt referred to SSA for collection is approved for “write-off – closed,” SSA must close/return its file before the “write-off – closed” action is taken.
- g. Debt which has been referred to the RO or another agency or entity such as the Office of General Counsel or the Department of Justice and is still pending with the RO or that agency or entity is not to be recommended by contractors or approved by ROs for “write-off – closed.”
- h. Contractors may not recommend “write-off – closed” of less than the full amount of an outstanding “debt.” For GHP-based AR where the demand was issued to the employer, insurer, or third party administrator, GHP, or other plan sponsor, the debt includes all of the claims in a demand to a debtor for a particular beneficiary. For GHP DM recoveries, this would be all of the claims associated with a particular mistaken payment and recovery.

Tracking System (MPaRTS) Report ID although a single cover letter might have been issued for multiple beneficiaries' Medicare reimbursed claims. For duplicate primary payment recovery demands to a provider/supplier (including physician), the debt includes all claims in the recovery demand regardless of the number of beneficiaries involved. For liability, no-fault, or workers' compensation, the debt includes all claims in the recovery demand.

- i. Currently, some contractors are including MSP based provider/supplier (including physician) AR and/or MSP based beneficiary AR in the same AR system(s) as non-MSP AR. In connection with this, these contractors often process such MSP AR for DCIA purposes and/or write-off purposes (both "write-off – closed" and "write-off – CNC") under the same procedures as non-MSP AR. **Treating MSP based AR as non-MSP based AR (that is, using non-MSP rules) must cease for all MSP based AR established on or after the implementation date of this PM.** Effective with the implementation date for this PM, contractors must: 1) track and report all new MSP based provider/supplier (including physician) AR and MSP based beneficiary AR separately from non-MSP AR, 2) report all such AR on Form CMS-M751, and 3) follow the rules for MSP debt regarding referral for DCIA purposes, referral to the RO, write-off (both "write-off – closed" and "write-off – CNC"), or any other debt related activity. A separate PM will be issued to address any corrective actions which CMS determines are necessary with respect to existing MSP based provider/supplier (including physician) AR and/or MSP based beneficiary AR which are being tracked, reported, and/or processed as non-MSP AR.

The issue is the treatment of MSP based debt, not the system the debt is tracked in. CMS does not object to the inclusion of MSP based AR in the same system as non-MSP based AR (for example, the POR/PSOR) as long as contractors: 1) can differentiate such MSP based AR from non-MSP based AR; 2) report such MSP based AR on their Form CMS-M751; and 3) follow MSP rules for the referral, transfer, or write-off of such debt. Therefore, any contractor which currently tracks MSP beneficiary AR or MSP provider/supplier (including physician) AR in the same system as non-MSP based AR, but already meets these three conditions would not need to make any changes in this area.

If an MSP based AR is being carried on the contractor's Form CMS-751 but not on its Form CMS-M751, the contractor may not make use of the "write-off – closed" criteria/process set forth in this PM for that AR.

3. Where an AR meets the criteria for "write-off – closed" under more than one of the reason codes, use a single code in the following order of priority: R1 first, followed by R2, R3, and R4.
4. 42 CFR 401.621 sets forth several bases for the termination of collection action on debts. The criteria set forth in this PM for "write-off – closed" are based upon CMS's consideration of a combination of the bases set forth in this regulation rather than any single basis. For example, contractors should not assume that the mention of 6 years for a particular "write-off – closed" means that the basis for the write-off is the statute of limitations. In some situations an AR could be written off as "closed" as of 6 years from the original demand date solely based upon the statute of limitations. In other situations this would not be true because the statute may have been suspended for some period or started anew due to a particular event, but CMS may have still determined that "write-off – closed" is appropriate because of the likelihood of recovery and/or the cost of recovery, age, or the application of some

other factor. Additionally, the fact that a particular beneficiary debt or level of beneficiary debt may not be accepted by SSA for offset does not automatically justify a “write-off – closed” action.

5. This PM sets specific criteria for “write-off – closed” recommendations which will routinely be approved by CMS. It is not intended to address every possible situation where "write-off – closed" action may be appropriate. As noted in section IV., ROs and CO have “write-off – closed” authority beyond the criteria set forth in this PM. Also, CMS may add additional criteria or implement additional specific “write-off – close” initiatives at a later date.

E. Data requirements and format for recommendations for “write-off – closed”:

1. AR recommended for “write-off - closed” require the submission of the following information to the contractor’s RO MSP coordinator:
  - Contractor name and number.
  - Contractor mailing address.
  - Contractor contact person/phone number/fax number/e-mail address.
  - Type of MSP Debt (GHP or non-GHP (this includes liability, no-fault, and workers’ compensation)).
  - Beneficiary Health Insurance Claim Number (HICN).
  - Beneficiary name.
  - Name of debtor.
  - Name of insurer **for GHP based debts** where the current debtor is the insurer/employer/third party administrator/GHP/other plan sponsor.
  - Type of debtor (A=insurer/employer/third party administrator/GHP/other plan sponsor; B=provider/supplier(including physicians); C=beneficiary, D=other (must specify)).
  - Date of initial recovery demand letter to current debtor.
  - Original AR amount for the current debtor.
  - Existing AR amount (principal and interest listed separately, as well as a total amount for principal plus interest; HI/SMI must also be listed and reported separately).
  - Date of last payment, collection, recoupment, offset, or adjustment activity (provide date or “none”)
  - Basis for recommendation (R1, R2, R3, R4, or R5 – see sections III.D.1. and 2).
  - Tax Identification Number (TIN) for debtor. (The TIN is the Employer Identification Number (EIN) or Social Security Number(SSN)).

**NOTE:** The debtor is the individual or entity to whom/which the last recovery demand was issued. Where the demand was issued to an individual in their capacity as legal counsel or representative of any type, the debtor is the beneficiary, provider/supplier (including physician), or other individual or entity being represented. Where recovery is being pursued from the attorney or other representative in their own right, the debtor is the attorney or other representative.

**NOTE:** The above listed data elements are mandatory for “write-off –closed” for all MSP AR established October 1, 2000, or later. It is also mandatory for all MSP AR with a recovery demand date of October 1, 2000, or later, regardless of when the AR was established (see section VI.). Where the TIN is unavailable, the contractor’s write-off recommendation should leave this field blank. For “write-off – closed” recommendations for AR established prior to October 1, 2000, contractors may submit recommendations without the following data elements if the “write-off – closed” recommendation certifies that these

data elements are not readily available: beneficiary name and HICN where the beneficiary is not the debtor; insurer name where the insurer is not the debtor; and type of debtor.

**NOTE:** If a contractor has bulk ARs on the GTE system for older DM and non-DM GHP debt, the contractor -- for these AR only -- must: 1) identify the AR as a bulk receivable on the GTE system, 2) identify the insurer, 3) identify the date of the demand, and 4) identify the associated dollar amounts for principal and interest. Any contractors who created bulk receivables for GHP based MSP debt using any system other than GTE must contact their RO for assistance. The RO will, in turn, discuss the issue with CO.

2. Subtotals for GHP based AR vs. non-GHP based AR (liability/no-fault/workers' compensation) are required, and within GHP or non-GHP the AR must be grouped together by each different basis for the recommended "write-off – closed" action.
3. Each listing must contain a written certification that all of the criteria/considerations set forth in this PM for "write-off - closed" are met. See section III.E.5. below.
4. A copy of the case file must be submitted to the RO for "write-off – closed" recommendations for all AR where the outstanding principal exceeds \$100,000 except for bulk AR from the GTE system.
5. "Write-off - closed" recommendations should be submitted in the format shown in the spreadsheet attached to this PM. (This format contains the required contractor certification.) Recommendations must be signed by the Vice President (VP) for Medicare Operations. The VP's signature constitutes his/her certification to all information/statements contained in the recommendation.

#### F. Write-Off Approval Process

1. Changes should not be made to the AR on any systems (contractor systems or other systems which contractors have responsibility for updating) for "write-off - closed" until the recommendation for "write-off - closed" has been processed by CMS, approved in writing, and returned to the contractor. The listing of approved write-offs will be returned to the contractors by the ROs. Receipt of this approval authorizes the contractor to write off the AR, and update the AR and associated case in all appropriate systems. Where the RO does not approve a recommended "write-off – closed" for a particular debt, the RO will annotate this clearly on the returned form.
2. CMS approval of AR written off must be retained and be available upon request (for the Office of the Inspector General or any other internal or external review organization) in accordance with retention procedures in the Medicare Intermediary and Carriers Manuals. Contractors are also reminded that under the Department of Justice's requested records freeze, all records must be retained indefinitely. This CMS approval must also be annotated by the contractor to indicate the date/quarter when the contractor writes off the AR.

#### G. Financial reporting for MSP "write-off – closed" --- the following reporting should occur for the write-off of debts by contractors:

1. Associated "interest" for write off -- Contractors should use the amount of interest currently carried on Form CMS 750/751 reports for a particular AR. If a contractor's system has not automatically updated interest, the contractor should **not** calculate and update interest.

2. AR currently on Form CMS 750/751 reports will be written off as “closed.” This action may not be taken until the contractor receives written approval from the RO. Contractors will record these write-offs as follows:
  - a. On Form CMS-M751, the amount that CMS has approved for write-off, including principal and interest, will be recorded on line 6a bad debt. This will reduce the ending balance reflected on Form CMS-M751 (which flows to Form CMS-750 and Form CMS-751). CMS recognizes that for those systems where interest is updated automatically, the interest submitted with a recommendation for “write-off closed” may differ from the interest shown in the contractor’s system at the time the contractor receives approval for the write-off. CMS approval of the principal and interest recommended for “write-off - closed” is sufficient support for the subsequent write-off, including any increase in the interest, as long as the principal remains the same.
  - b. The correct ending balance (reduced by the written off debt) will be reported on the appropriate line in the asset section of Form CMS-750. Accordingly, the bad debt expense in the expense portion of Form CMS-750 should be increased to reflect the value of the principal portion of the debt written off (line 6a of Form CMS-M751). A reduction in revenue on the bad debt line should be recorded in the revenue section of Form CMS-750 for the value of the interest written off.
  - c. Show in the remarks section of Form CMS-M751 each quarter the amounts (principal and interest) that were written off as “closed” as a result of implementation of this PM. (These remarks must be carried over to Form CMS-751.)

#### H. Contractor Mailing Instructions

1. Recommendations for the approval of “write-off – closed” should be sent to your RO MSP coordinator electronically and by hard copy no later than the 1st day of the second month of each quarter (November 1st, February 1st, May 1st, August 1st). Hard copies should be dated and mailed the same day as the electronic transmission. The hard copy must be signed by the VP of Medicare Operations.
  2. Include a preprinted address label with the hard copy for the return of approved write-off reports.
- I. The associated case file should be annotated to show that a particular AR was written off as “closed” and the date/quarter of the write-off. Contractors must also perform all other appropriate actions in connection with closing a case. This includes updating MPaRTS (where applicable, and using the standard MPaRTS codes for closed with no recovery or partial recovery) and all other affected systems (POR/PSOR, or other standard or internal contractor system where the case or debt has been recorded), as appropriate. No MPaRTS update should be done at the time a DM AR is recommended for “write-off – closed.” Update MPaRTS within 10 days of taking the approved “write-off – closed” action on a particular AR.
- J. If contractors have any debt meeting the criteria for “write-off – closed” which are on their active records but are not being carried on Form CMS 750/751 reports, such debt must also be submitted to the RO for “write-off – closed” approval on a separate recommendation. (CMS expects such debt to be rare.) The format and all information for this recommendation should be the same as the recommendation for debt being carried

on Form CMS 750/751 reports; however, the recommendation report should prominently state that it refers to debt which is **not** being carried on the contractor's Form CMS 750/751 reports. Additionally, because such debt is not being carried on Form CMS 750/751 reports, it would **not** be reported on line 6a, bad debt, on the Form CMS-M751.

#### IV. RO Responsibilities

##### A. "Write-off – Closed"

ROs are responsible for **approval or denial of all recommendations for "write-off – closed" for MSP AR made based upon the criteria set forth in section III of this PM.**

**NOTE:** For any other MSP AR "write-off – closed" requests which do not meet the criteria set forth in section III of this PM, ROs have approval authority within the limits of their delegated Federal Claims Collection Act (FCCA) authority. (In addition to limitations on the dollar amounts which ROs may approve, RO FCCA authority does not include third party payer debt.) ROs must obtain CO approval for all other "write-off – closed" recommendations, including debts of more than \$100,000. CO will be responsible for any necessary referrals to the Department of Justice.

RO approval must be by the ARA for Financial Management. ROs must complete their review of contractors' recommended write-offs and return their approval or denial of such write-offs by the 1st of the last month of each quarter (December 1st, March 1st, June 1st, September 1st). ROs may return an electronic copy annotated to show approval or denial by the RO ARA for Financial Management in order to meet the required time frame for approval, but this must be followed by a hard copy which was signed and dated by the ARA for Financial Management, within the required time frame.

Where an RO does not approve a recommended "write-off – closed" for a particular AR, the RO must annotate this clearly on the returned form. This information must be clearly shown on both any advance electronic copy of the approval as well as the hard copy signed by the ARA for Financial Management.

ROs must send copies of the signed RO approval or denial each quarter to CO to the attention of: 1) Chief, MSP Operations Branch, Division of Financial Integrity, Office of Financial Management; and 2) Chief, Financial Reporting and Oversight Branch, Division of Accounting, Office of Financial Management.

- A. As discussed in section III.D.2.a.2) of this PM, contractors who identify additional settlement related AR for the settlements addressed in PM AB-00-11 which do not meet the criteria set forth in this PM must **transfer** this AR to the RO (line 6e of Form CMS-M751), after receiving formal acceptance of the transfer from the RO, using the reporting format set forth in PM AB-00-11. ROs must include this debt on Form RM751. Form RM751 must show the transfer in of this AR (on line 5b) and then must write-off the amount of the AR as a bad debt (on line 6a). The RO must disclose in the remarks section of Form RM751, the amount of any bad debt write-off which is related to the settlements addressed in PM AB-00-11.
- B. See section III.D.2.i. regarding the current practice of some contractors of treating MSP based provider/supplier (including physician) AR and/or MSP based beneficiary AR as non-MSP AR. It is critical that ROs process such AR in the same manner that the contractor is processing such AR. If an MSP based provider/supplier (including physician) AR or an MSP based beneficiary AR is carried on the contractor's Form CMS-751 but not on the contractor's Form CMS-M751, then the AR must be carried on Form R751 but not on Form MSP R751 – that is, the reporting by the contractor and

the RO must be consistent with regard to whether an AR is or is not included in Form M751.

#### V. Elimination of Automated/Systems “Write-off – Closed” Actions for MSP AR; Reminder Regarding Zero “Backend Tolerance” for MSP AR

Some contractor and/or standard systems include automated “write-off – closed” actions for certain MSP AR based upon the outstanding amount of the AR (often referred to as a “backend tolerance”), the age of the AR, or other criteria, without specific CMS approval of the write-off of individual AR. All such automated “write-off – closed” actions must cease as soon as appropriate systems changes are made. Contractors are prohibited from performing any manual write-off actions without specific approval for such actions and were previously reminded in the Fiscal Year 2001 Budget Performance Requirements that there is no “backend tolerance” for MSP AR. MSP AR “write-off – closed” actions may take place only after recommendation for “write-off – closed” is made to CMS and written approval for such write-off is received by the contractor. Reduction of the outstanding principal below a certain amount does not automatically justify a “write-off – closed” action nor does the age of an AR, by itself, always justify a “write-off – closed” action. Changes must be made to both the standard systems and contractors systems, where necessary.

Any contractors currently performing such automated “write-off – closed” actions must track all such future automated write-offs in sufficient detail to enable the contractor to take future corrective action once CMS issues instructions for corrective actions for these automated “write-off – closed” actions.

**NOTE:** CMS has not approved an automatic “write-off – closed” action, automated or otherwise, for any type of AR (MSP or non-MSP AR). Systems changes will need to be made as necessary to all affected systems. This issue will be addressed further for non-MSP AR in a separate PM.

#### VI. Date for Establishment of MSP AR – REMINDER

MSP AR must be established as of the date of the recovery demand letter or the payment receipt date, **whichever date is earlier**. This includes unsolicited/voluntary refunds. In most instances, the contractor does not receive payment until a recovery demand letter is issued. However, particularly in MSP liability situations, a contractor may receive payment (including an unsolicited/voluntary refund) before a recovery demand letter is issued. Where this happens, the AR should be established in an amount equal to the amount of payment until further development/research is completed. Once the development/research is complete, the contractor may need to do an adjustment and refund of any excess payment or an adjustment to increase the amount of the AR with an accompanying demand letter explaining why the payment was insufficient, depending upon the results of the development/research.

This is **not** a new requirement. Contractors have never had permission to delay establishment of an AR until payment is received where a recovery demand has already been issued. The fact that standard systems users may need to manually calculate the AR at the time the demand is issued is not a basis for delay in establishment of the AR (the amount of the AR needs to be calculated in order for the demand to be issued, regardless of when the AR is established). Remember that the contractor with responsibility for issuing the recovery demand letter in a liability, no-fault, or workers' compensation case is the contractor with the responsibility for establishing the AR. **Any contractor whose practice has been to delay establishment of the AR until payment is received must take corrective action with respect to all situations where a demand has been issued and full payment has not been received.**

## VII. Miscellaneous Questions/Answers

- Q1. Do the “write-off – closed” criteria apply when the alleged defense is timely filing?
- A1. Yes, the criteria in this PM apply regardless of the alleged defense. Where there is a valid **documented** defense, contractors will continue to adjust the AR amount on line 5 of Form CMS-M751. Where an alleged defense is unsubstantiated or undocumented, contractors may recommend “write-off – closed” when the debt meets the criteria set forth in this PM.
- Q2. Will CMS provide verification that liability/no-fault/workers’ compensation AR are truly intended to be included in this PM?”
- A2. The wording of the PM is explicit on this point. Although certain portions of the PM contain specific references to MSP GHP based AR, the PM affects all types of MSP based AR. For example, section III.D.1.a. references “all MSP AR” and states: “All MSP AR” means all, without regard to whether the debt is GHP based or liability/no-fault/workers’ compensation based and without regard to the type of debtor (employer, insurer, beneficiary, provider/supplier, etc.).”
- Q3. Section III.D.1.a. references “all MSP AR” and includes a time frame of 6 years 3 months old while section III.D.1.b. references “individual MSP based provider/provider/supplier (including physician) AR and MSP based beneficiary AR” and includes a time frame of 2 years. Isn’t this contradictory?
- A3. No. As explained in the PM, “all MSP AR” means all without regard to whether the debt is GHP based or liability/no-fault/workers’ compensation based and without regard to the type of debtor (employer, insurer, beneficiary, provider/supplier, etc.). The criteria in section III.D.1.b. provide the possibility of an earlier “write-off – closed” action for certain MSP based provider/supplier (including physician) AR and MSP based beneficiary AR.
- Q4. Are all provider/supplier (including physician) and beneficiary debts that have an MSP reason code to be included in this PM?
- A4. Yes, however, see section III.D.2.i. If a contractor has MSP based provider/supplier (including physicians) AR or MSP based beneficiary AR which are being reported on Form CMS-751 but not on Form CMS-M751, such AR are not subject to the “write-off – closed” criteria in this PM.
- Q5. We are having difficulty distinguishing the different reason codes (R1, R2, R3, or R4) for “write-off – closed.” Can CMS furnish further clarification? Will CMS provide examples for the various reasons/reason codes for “write-off – closed”. Provide some examples of the demand dates that would be involved in the recommendations submitted to the RO.
- A5. R1, R2, and R3 apply to all MSP AR and all require that the AR for the current debtor be 6 years 3 months old from some particular event. This means that where a recovery demand was first issued to an insurer but then later issued to an employer, the 6 year 3 month period runs from the date of the demand to the employer. R1 has no dollar limit but requires no payment or acknowledgment of the debt. R2 addresses those situations where there has been some payment or acknowledgment. R3 has a dollar limit but could have had activity as recently as 12 months and 1 day as long as the dollar limit is met and the initial demand to the current debtor is at least 6

years 3 months old. R4 provides the possibility for an earlier than 6 year 3 month "write-off – closed" action but only for MSP based provider/supplier (including physician) and/or beneficiary AR.

Some additional examples:

- A demand for \$20,000 was sent to the insurer in January 1993 and then subsequently sent to the employer in January 1995. The 6 years 3 months for R1, assuming there has been no payment or acknowledgment of the debt, would run from January 1995. The employer is the current debtor for purposes of these criteria. Note the requirement/reference to the "current debtor" in R1, R2, R3, and R4.
- A demand for \$40,000 was sent to the insurer in January 1993. The insurer paid \$35,000 within 60 days. A subsequent demand was sent to the employer in June 1993. The employer paid \$2,000 in June 1993, with no further communications after that payment. Assuming the additional considerations in section III.D.2. are met, recommend "write-off – closed" based upon R2. (The current debtor is the employer. R1 is not applicable because there was partial payment by the employer. R3 is not applicable because of the amount of the outstanding principal.)
- A demand for \$30,000 is sent to an employer in January 1995. Payment of \$34,000 was made in February 1996. Assume that interest of \$4,500 had accrued as of the payment receipt date. The \$34,000 payment should have been applied to interest first, leaving an outstanding balance for principal owed of \$500. Assume no further payment, collection, recoupment, offset, or adjustment activity. This AR would qualify for R3 in April 2001 (6 years 3 months from the date of the demand; outstanding principal of less than \$600; no activity for 12 months) and could be included in the contractor's recommendation for "write-off -- closed" in the recommendations due to the RO on August 1, 2001 (the criteria must be met as of the quarter preceding the quarter in which the list is submitted).
- A demand for \$12,000 was sent to a beneficiary in January 1997. Assume that at the time a payment of \$12,000 was made in April 1997, \$300 in interest had accrued. The \$12,000 payment should have been credited to interest first, leaving an outstanding balance for principal owed of \$300. Assuming that the additional considerations in section III.D.2. are met and that there has been no payment, recoupment, offset, or adjustment activity for the last 12 months, this AR would meet the criteria for R4. If we assume the same facts except that the demand was sent to the insurer, the criteria for R4 are not met because R4 applies only to provider/supplier (including physician) or beneficiary AR.

Examples of demand dates involved in "write-off closed" recommendations submitted to an RO on **May 1, 2001**.

- The applicable age of debt criteria must have been met by March 31, 2001, (that is, as of the last day of the quarter prior to the quarter in which the "write-off – closed" recommendation is submitted for RO approval -- section III.D.2.b.).
- For R1 or R3, the date of the initial demand to the current debtor would have to be December 31, 1994 or earlier.

- For R2, the date of the last payment or acknowledgement by or on behalf of the current debtor would have to have been December 31, 1994, or earlier. An AR
  - with a demand to the current debtor in, for example, January 1992 and a payment of any amount in January 1995 would not qualify under R2 even if there had been no further payment or acknowledgement.
  - For R4, the AR could have been established no later than March 31, 1999.
- Q6. See section III.D.1.a. and b. We interpret this to mean that AR that qualifies for write-off under R3 also qualifies under R4. Also, it is correct that after the initial write-off effort there should be no more R3's because they should be caught under R4?
- A6. The assumptions in these questions would not be true for all established AR. Reason code R3 applies to all AR while R4 is limited to provider/supplier (including physician) and beneficiary AR. Generally there will be no R3's for provider/supplier (including physician) or beneficiary AR after the initial write-off effort. However, it is possible that a particular provider/supplier (including physician) or beneficiary AR would not meet the dollar amount and/or "lack of activity" criteria under R4 until it was old enough that the AR qualified under both R3 and R4.
- Q7. Does this instruction supercede any RO instructions to recoup from SSA benefits?
- A7. No.
- Q8. If a contractor has requested approval for RO transfer of an MSP based provider/supplier (including physician) AR and has not yet received approval, can such AR be included as part of the "write-off – closed" process in this PM?
- A8. This depends upon how the contractor is currently treating the AR. If the AR is being carried on the contractor's Form CMS-M751, the contractor should treat it under the criteria set forth in this PM and advise the RO that the AR is being removed from the list awaiting approval of RO transfer. If the AR is being carried on the contractor's Form CMS-751 but not on its Form CMS-M751, the contractor may not make use of the "write-off – closed" criteria/process set forth in this PM.
- Q9. Should MSP based provider/supplier (including physician) AR and MSP based beneficiary AR be transferred to the RO MSP coordinator or may contractors continue to transfer these debts to the RO overpayment areas?
- A9. With very limited exceptions, MSP AR are not transferred to the ROs; MSP AR are referred for RO assistance (and, therefore, remain on the contractors Form CMS 750/751 reports). Contractors which have been treating MSP based provider/supplier (including physician) and/or MSP based beneficiary AR as non-MSP AR must cease this practice. See section III.D.2.i.
- Q10. Are contractors to continue reporting identified MSP provider/supplier (including physician) and beneficiary AR on the PSOR/POR?
- A10. See section V. As explained in that section, the issue is how the AR is treated and whether or not the contractor can differentiate the MSP AR from the non-MSP AR, not the specific system the AR is tracked in.

- Q11. What should a contractor do if its system is missing one or more of the required data elements for recommending “write-off – closed”?
- A11. The contractor should notify its RO MSP coordinator of the specific data element(s) it cannot identify and why. The RO will work with CO on this issue on a case by case basis.
- Q12. Section III.C. states that any of the ARs that fall into appropriate categories for “write-off – closed” will no longer be reported on Form CMS 750/751 reports and will be posted on line 6a as bad debts. Do contractors remove the AR immediately or after it has been approved by the RO for “write-off – closed”?
- A12. See section III.G.2. This section specifically states that the “write-off – closed” action may not be taken until the contractor receives written approval from the RO.
- Q13. Looking at the debtor codes (see section III.E.1), what code does CMS expect to see used in no-fault and/or liability cases? If the debtor is the attorney/beneficiary/liability carrier, do we list them all or pick one code? If we are to pick one code, is there a priority?
- A13. See the first “NOTE” in section III.E.1. Look at exactly who the debtor is. The debtor would not be “attorney/beneficiary/liability carrier.” The debtor in a liability case would be one of these three, usually the beneficiary or the liability carrier. Remember that where a demand is issued to an individual in their capacity as legal counsel or representative of any type, the debtor is the beneficiary, provider/supplier (including physician), or other individual or entity being represented.
- Q14. What if the contractor cannot meet the deadline for the hard copy submission of recommended “write-off – closed” because their VP for Medicare Operations is in another city or physical location?
- A14. CMS does not agree that this type of situation would prevent a contractor from meeting the necessary deadline. Appropriate arrangements should be made. For example, the VP location could mail the hard copy and transmit the electronic copy to the RO on the day the VP signs it.
- Q15. Does section V.’s reminder regarding a zero “backend tolerance” for MSP AR include liability/no-fault/workers’ compensation AR?
- A15. Yes.
- Q16. If payment is received by a contractor prior to the issuance of a demand, why must the amount received be established as an AR?
- A16. This is necessary for a proper audit trail/to meet standard accounting practices. Debit and credit activity must balance.
- Q17. What happens if the RO does not agree to a recommended write-off?
- A17. CO’s expectation is that ROs will be able to approve virtually all recommended write-off recommendations which are based upon the criteria set forth in this PM. The most likely reason for disapproval is a contractor miscalculation of a particular time period or new RO information that a particular entity is involved in litigation or negotiations, etc. If the reason for the disapproval is not readily apparent, the contractor should request an explanation from the RO.

- Q18. For provider/supplier (including physician) DM originated debts, contractors are required to update the (MPaRTS). Are they also required to update the POR/PSOR for beneficiary/provider/supplier debts?
- A18. Contractors are required to update all affected systems in connection with the debt activities addressed in this PM. If the contractor uses the POR/PSOR for tracking beneficiary or provider/supplier (including physician) AR, appropriate updates must be performed. If the contractor uses an internal system or a spreadsheet, appropriate updates must also be performed.

***Funding:***

CMS will fund approved changes to contractors' non-standard systems. Supplemental Budget Requests (SBRs) (both systems related and non-systems related) should be submitted within 45 days of the issuance of this PM. Any SBRs must clearly differentiate between requested funding for systems changes and non-systems funding. Justification for systems changes and non-systems changes must differentiate between costs for the elimination of automated "write-off – closed" actions and changes to implement the other requirements of this PM. Justifications for non-systems funding must clearly explain exactly what effort will be required and why it justifies additional funding. (For example, actions to update MPaRTS in connection with closing an AR are part of standard processes and consequently are already included in current funding.) (Changes to contractors' standard systems are scheduled for the July 2001 release.)

***Effective date and implementation:***

This PM is effective immediately, and is to be implemented on an ongoing basis. Contractors should implement the PM without systems changes, to the extent possible. Contractors must implement all aspects of the PM which do not require systems changes within 30 days of issuance of the PM.

Contractors must implement the requirement to cease processing newly established MSP as non-MSP AR within 30 days of this issuance of this PM. This requirement is mandatory for all contractors even where this means manual tracking while awaiting systems changes for this requirement.

Contractors must begin implementing all other requirements of the PM within 30 days of the completion date of requested systems changes which are approved or within 45 days of the denial of systems changes if CMS determines that certain requested changes are not warranted.

Contractors are to identify and recommend for "write-off – closed" 100% of their MSP debt meeting all criteria for reasons R1, R2, and R3 by the recommendation due date for the quarter following the quarter they begin implementation of this aspect of the PM. Contractors are to identify and recommend for "write-off – closed," 100% of their MSP debt meeting all criteria for reason R4 by the recommendation due date for the second quarter following the quarter they begin implementation of this aspect of the PM. Thereafter, contractors will make "write-off – closed" recommendations each quarter as additional AR meet the criteria for "write-off – closed."

Contractors will transfer settlement related GHP AR which do not meet the criteria for "write-off – closed" under R1, R2, R3, or R4 each quarter, after RO acceptance is received, as such AR are identified.

Contractors should already be establishing MSP AR as of the date of the recovery demand letter or the payment receipt date (including unsolicited/voluntary refunds), whichever is earlier. Contractors must be in compliance with this requirement effective with the date of issuance of this PM. Any contractor whose practice has been to delay establishment of the AR until payment is received **must**

take corrective action with respect to all situations where a demand has been issued and full payment has not been received. Corrective action must be completed within 90 days of the issuance of this PM.

Contractors were already reminded in the Fiscal Year 2001 Budget Performance Requirements that there is no backend tolerance for MSP AR which authorizes “write-off – closed” when an outstanding debt falls below a certain amount. Consequently, no contractor should currently be

employing such a tolerance unless it is because they have not yet had changes made to an automated systems tolerance. Systems changes to eliminate automated MSP “write-off – closed” actions without specific CMS approval, whether based upon the outstanding amount of the AR, the age of the AR, or some other criteria, will be implemented on a systems by system basis as such changes are completed. Until such systems changes are made, any contractor which currently utilizes an automated “write-off – closed” action must track all such future automated write-offs in sufficient detail to enable to the contractor to take future corrective action once CMS issues instructions for corrective actions for these automated “write-off – closed” actions. Such tracking is required even if it must be done manually.

**This Program Memorandum may be discarded on July 1, 2003.**

**If there are any questions, contractors should contact their RO MSP coordinator. ROs should contact Barbara Wright at [bwright@cms.hhs.gov](mailto:bwright@cms.hhs.gov).**

