
Program Memorandum Intermediaries/Carriers

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

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CHANGE REQUEST 2697

SUBJECT: Federal Bankruptcy/State Insurer Liquidation Actions and Medicare Secondary Payer (MSP) Debt

This Program Memorandum (PM) addresses Federal bankruptcy/State insurer liquidation situations involving MSP debts.

I. Background:

This PM will assist contractors in identifying actions that must be taken to safeguard the Medicare Trust Fund when an MSP debtor files a Federal bankruptcy notice or is ordered liquidated by a State government.

Federal Bankruptcy Proceedings:

Types of Federal bankruptcy filings that may involve Medicare MSP debtors include:

1. **Chapter 7** – Debtor files under this chapter to obtain discharge of their debts (liquidation). Companies that file under this chapter generally close. A court-appointed trustee accumulates the assets of the debtor, sells them and distributes the money among those whom the debtor owes (creditors)
2. **Chapter 9** – This type of bankruptcy involves municipalities such as a hospital district. This chapter provides for re-organization, much like Chapter 11.
3. **Chapter 11** – Debtor files under this chapter to re-organize his business. (the purpose of this chapter is to restructure company finances so that the debtor can continue to operate). To emerge from Chapter 11 the debtor submits a “Reorganization Plan”. This Plan indicates the amounts and schedules for payments to creditors. Creditors vote on the Plan and the bankruptcy court must confirm the creditors’ decision. Recovery amounts may vary. The Bankruptcy Code provides for the discharge of any remaining debts.
4. **Chapter 13** – Debtors are individuals (including sole proprietorships) with regular income. Generally the debtor must file a debt adjustment plan within 15 days after filing (it is better to file a proof of claim as early as possible after the filing date). This chapter allows the debtor to keep property and to pay debts over time, usually from 3 to 5 years.

State Ordered Insurer Liquidations:

State may order insurers authorized to do business in that State liquidated under certain circumstances. Generally, this occurs following: 1) a determination by a State agency (e.g., Insurance Commission) that an insurer is insolvent or operating in financially hazardous manner and 2) An order by a State Court that the insurer be liquidated. The assets of the insurer are sold and the proceeds are used to pay claims against the debtor as ordered by the Court.

Importance of Filing Date:

The filing date (i.e., the date a petition of bankruptcy is filed with the U.S. Bankruptcy Court or a petition for insolvency (liquidation) is filed with the State courts) distinguishes “pre-petition” services from “post-petition” services. Events that occur **on or before** the petition date are pre-petition. Events that occur **after** the petition date are post-petition. Medicare’s right to recover in these situations will depend on when services were provided.

CMS-Pub. 60AB

II. Notice of Bankruptcy/Liquidation:

The CMS through its RO or contractors may receive notice of bankruptcy/liquidation from many sources, including: the debtor/entity filing the bankruptcy or being liquidated, the State, information received by the RO in the course of non-bankruptcy activities such as information from the RO provider certification staff or regional counsel. It is imperative to act quickly when a debtor/entity files for bankruptcy or is ordered liquidated in order to meet the filing deadlines established by the bankruptcy court/liquidation court.

The RO staff and contractors must be alert to news for potential bankruptcies/liquidations and/or bankruptcy/liquidation filings by debtors/entities. Contractors must report any bankruptcy/liquidation information immediately to their MSP RO Coordinator, via telephone call, fax or hard copy.

NOTE: Information sent by Internet e-mail to the RO is not secure. Refrain from Internet e-mail communications.

III. Recovery Efforts:

RO's Role:

The RO must gather basic information, such as date of bankruptcy, court where the bankruptcy was filed, bankruptcy chapter, debtor/entity name, EIN, etc... This information is listed in the RO's Bankruptcy Manual, §4.

The RO's have the responsibility to be proactive in establishing and maintaining ongoing communications with their regional counsel. This is important because Court rules may differ significantly from one jurisdiction to the next.

Contractor's Role:

When a contractor has received notification of a bankruptcy/liquidation or potential bankruptcy/liquidation situation, in their MSP department, the Contractor must immediately notify their MSP RO coordinator. The contractor must request a copy of the petition for bankruptcy/liquidation from the debtor/entity (if not already received). Once the petition is received, the Contractor must copy the entire file, add a cover letter and forward to their MSP RO coordinator. Contractors must maintain the original file. Contractors are responsible to ensure MSP department is made aware of all non-provider/supplier bankruptcy/liquidation notifications received at the Contractor.

When a contractor learns of a bankruptcy/liquidation filing they are required to research and identify **all** MSP debts specific to the bankrupt/liquidation debtor/entity.

Pursuant to the type of bankruptcy/state ordered liquidation filed, contractors must take the following actions:

Chapter 7 – Liquidation

1. Cease new MSP recovery demands for the debtors involved in bankruptcy proceedings, regardless of filing dates.
2. Recall from Treasury previously referred debts for the debtors. Do not do any further referrals to Treasury for these debtors.
3. Report the debt on the financial statements within the appropriate bankruptcy detail line of the CMS 751 reports.

Chapter 9 – Municipal Reorganization

Follow the Chapter 11 guidance, set forth below.

Chapter 11 – Reorganization

1. Cease recovery efforts and do not issue new MSP recovery demands for claims with dates of service **on or prior** to the filing date of the bankruptcy.
2. Pursue debts for claims having dates of service **after** the filing date, after consulting with regional counsel. These debts are enforceable.
3. Recall any debt involving dates of service **on or prior** to the filing date which have been referred to Treasury.
4. Report the amount of debts **on or prior** to the filing period in the appropriate CFO detail line as well as other pertinent reports (i.e., Debt Collection Improvement Act (DCIA) status reports).

NOTE: When a debtor that is in Chapter 11 subsequently converts to Chapter 7, contractors must follow Chapter 7 guidelines as outlined above.

Chapter 13 – Individuals

In the event that a contractor has or receives notice of this bankruptcy type, the Contractor must contact their RO MSP coordinator for further instructions.

State Ordered Liquidation

Contractors should follow the procedures above for Chapter 7-Liquidation for the State liquidation proceedings.

Reminder:

Bankruptcy debts discharged by the U.S. Court/Liquidation debts discharged by State Court: Debts involved in a pending bankruptcy/liquidation cannot be recommended or approved for write-off closed. Debts that are discharged/forgiven by a U.S. Bankruptcy Court/State Court are to be recommended for write-off closed on the next quarter's write-off closed report. If there are questions about the documentation requirements regarding discharge, the Contractor must obtain advice from the RO. Reason B/RB must be used when recommending a write-off closed action for an MSP debt discharged in bankruptcy/liquidation.

Bankruptcy debts dismissed by the U.S. Bankruptcy Court: Occasionally, the U.S. Bankruptcy Court dismisses a bankruptcy action because the debtor does not qualify for bankruptcy or for some other reason. When there is a dismissal, with the advice of regional counsel, the RO and contractor can usually treat the case as if the bankruptcy action never occurred and continue the normal recovery process. (See CR 2145, PM AB-02-102 for specifics about the recovery process.)

IV. When Office of General Counsel (OGC) Pursues a Medicare Claim on CMS's behalf:

As a result of notifying the RO's of a bankruptcy filing, the regional OGC will make, in consultation with CMS, a decision as to the pursuit of a claim. When OGC does pursue a claim on behalf of Medicare, the RO's will notify contractors of this decision and the need to quantify Medicare's claim. Contractors must take the following actions:

1. Contractors must transfer established debt (including principal and accrued interest) as of the filing date to the lead RO (see note below).

2. Contractors must document the transferred debt as specified in previous instructions (TN 131-Change Request 1659 §1960.17 Exhibit-17 and TN 125-Change Request 1659 §4960.10 Exhibit-10).
3. Debts **on or prior** to the bankruptcy filing period where OGC on behalf of CMS **does not** plan to pursue a claim must be reported in the appropriate bankruptcy detail line of the financial reports, as well as other required CMS reports (i.e., DCIA status reports).

NOTE: Once a contractor has converted to HIGLAS. Bankruptcy debts will no longer need to be transferred to the RO.

Reminder: The RO that has jurisdiction over the State in which the debtor/entity files bankruptcy usually is the lead RO. Contractors will be notified of any exceptions as they occur.

V. Identified Debtors in Bankruptcy/Liquidation:

A list of known bankrupt debtors and liquidated debtors will be supplied to you by your RO and subsequent bankrupt/liquidation debtor notifications will come from your RO.

The *effective date* for this PM is August 9, 2003.

The *implementation date* for this PM is September 2, 2003.

These instructions should be implemented within your current operating budget.

This PM may be discarded July 31, 2004.

If you have any questions, contractors must contact their RO MSP Coordinator and ROs may contact Deb Pujals at dpujalskeyser@cms.hhs.gov