

CMS Manual System

Pub 100-05 Medicare Secondary Payer

Transmittal 52

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

Date: MAY 26, 2006

Change Request 4393

SUBJECT: Medicare Secondary Payer (MSP) Bankruptcy/Liquidation Notices

I. SUMMARY OF CHANGES: The CR will provide manual clarifications to instructions previously issued.

NEW/REVISED MATERIAL

EFFECTIVE DATE: June 26, 2006

IMPLEMENTATION DATE: June 26, 2006

Disclaimer for manual changes only: The revision date and transmittal number apply only to red italicized material. Any other material was previously published and remains unchanged. However, if this revision contains a table of contents, you will receive the new/revised information only, and not the entire table of contents.

II. CHANGES IN MANUAL INSTRUCTIONS: (N/A if manual is not updated)

R = REVISED, N = NEW, D = DELETED – *Only One Per Row.*

R/N/D	Chapter / Section / SubSection / Title
	Table of Contents
R	7/80/Federal Bankruptcy/State Insurer Liquidation Actions and Medicare Secondary Payer (MSP) Debt
R	7/80.1/Types of Federal Bankruptcy Proceedings
R	7/80.2/State Ordered Insurer Liquidation
R	7/80.3/Importance of Various Dates in Bankruptcy/Liquidation Proceedings
N	7/80.4/Difference Between Automatic Stay, Relief, and Discharge
N	7/80.5/Affiliates
N	7/81/Notice of Bankruptcy/Liquidation
N	7/81.1/Identifying MSP Based Debts for Entities in Bankruptcy/Liquidation
N	7/81.2/Contractor's Role

N	7/81.2.1/Identifying MSP Based Debts for Entities in Bankruptcy/Liquidation at Contractor Sites
N	7/82/Recovery Efforts and Managing Debts of Entities in Bankruptcy/Liquidation
N	7/82.1/Bankruptcy Debts Discharged by the U.S. Court/Liquidation Debts Discharged by State Court
N	7/82.2/Bankruptcy Debts Dismissed by the U.S. Bankruptcy Court
N	7/82.3/Appeal Request Citing Bankruptcy Defense
N	7/83/Spreadsheet Identifying Entities in Bankruptcy/Liquidation
N	7/84/Example of CMS Bankruptcy/Liquidation Notice to Contractors as a Result of a Prior Treasury Notification

III. FUNDING:

No additional funding will be provided by CMS; Contractor activities are to be carried out within their FY 2006 operating budgets.

IV. ATTACHMENTS:

Business Requirements

Manual Instruction

**Unless otherwise specified, the effective date is the date of service.*

Attachment - Business Requirements

Pub. 100-05	Transmittal: 52	Date: May 26, 2006	Change Request 4393
-------------	-----------------	--------------------	---------------------

SUBJECT: Medicare Secondary Payer (MSP) Bankruptcy/Liquidation Notices

I. GENERAL INFORMATION

- A. Background:** This CR is to provide clarification to previously published instructions.
- B. Policy:** The Debt Collection Referral Act of 1996 (DCIA) lists “bankruptcy” as an exclusion to referring debts to Treasury for cross-servicing.

II. BUSINESS REQUIREMENTS

“Shall” denotes a mandatory requirement
“Should” denotes an optional requirement

Requirement Number	Requirements	Responsibility (“X” indicates the columns that apply)								
		F I R I S S	R H I R I S S	C H I R I S S	D E R I V E D	Shared System Maintainers				Other
						F I S S	M C S	V M S	C W F	
4393.1	Contractors shall use the spreadsheet in Pub. 100-5, Chapter 7, Section 83 to document bankruptcy/liquidation information and notify the Regional Office (RO).	X	X	X	X					
4393.2	Contractors shall respond to periodic update requests from CMS regarding previously reported bankruptcy/liquidation proceedings.	X	X	X	X					
4393.3	Contractors in receipt of updated or new information regarding a bankruptcy/liquidation from someone other than CMS shall relay that updated information to their ROs via the required spreadsheet.	X	X	X	X					
4393.4	Contractors shall request copies of bankruptcy/liquidation petitions when in receipt of a defense to a debt in which the debtor is asserting it is in bankruptcy/liquidation and the bankruptcy/liquidation was not previously identified.	X	X	X	X					

IV. SUPPORTING INFORMATION AND POSSIBLE DESIGN CONSIDERATIONS

A. Other Instructions: N/A

X-Ref Requirement #	Instructions

B. Design Considerations: N/A

X-Ref Requirement #	Recommendation for Medicare System Requirements

C. Interfaces: N/A

D. Contractor Financial Reporting /Workload Impact: N/A

E. Dependencies: N/A

F. Testing Considerations: N/A

V. SCHEDULE, CONTACTS, AND FUNDING

Effective Date*: June 26, 2006 Implementation Date: June 26, 2006 Pre-Implementation Contact(s): Deb Pujals (410) 786-8096 Post-Implementation Contact(s): Deb Pujals (410) 786-8096	No additional funding will be provided by CMS; contractor activities are to be carried out within their FY 2006 operating budgets.
---	---

***Unless otherwise specified, the effective date is the date of service.**

Medicare Secondary Payer (MSP) Manual

Chapter 7 - Contractor MSP Recovery Rules

Table of Contents (Rev.52, 05-26-06)

- 80.1 – Types of Federal Bankruptcy Proceedings*
- 80.2 – State Ordered Insurer Liquidations*
- 80.3 – Importance of Various Dates in Bankruptcy/Liquidation Proceedings*
- 80.4 – Difference Between Automatic Stay, Relief, and Discharge*
- 80.5 – Affiliates*
- 81- Notice of Bankruptcy/Liquidation*
 - 81.1 – Identifying MSP Based Debts for Entities in Bankruptcy/Liquidation*
 - 81.2 – Contractor’s Role*
 - 81.2.1 – Identifying MSP Based Debts of Entities in Bankruptcy/Liquidation at Contractor Sites*
- 82 – Recovery Efforts and Managing Debts of Entities in Bankruptcy/Liquidation*
 - 82.1 – Bankruptcy Debts Discharged by the U.S. Court/Liquidation Debts Discharged by State Court*
 - 82.2 – Bankruptcy Debts Dismissed by the U.S. Bankruptcy Court*
 - 82.3 – Appeal Requests Citing Bankruptcy Defense*
- 83 – Spreadsheet Identifying Entities in Bankruptcy/Liquidation*
- 84 – Example of CMS Bankruptcy/Liquidation Notice to Contractors as a Result of a Prior Treasury Notification*

80 – Federal Bankruptcy/State Insurer Liquidation Actions and Medicare Secondary Payer (MSP) Debt

(Rev. 52, Issued: 05-26-06, Effective: 06-26-06, Implementation: 06-26-06)

Action must be taken to safeguard the Medicare Trust Funds when an MSP debtor files a Federal *bankruptcy petition (voluntary); creditors of an MSP debtor petition the bankruptcy court to order the MSP debtor bankrupt (involuntary);* or *an MSP debtor* is ordered liquidated by a State government.

80.1 - Types of Federal Bankruptcy Proceedings

(Rev. 52, Issued: 05-26-06, Effective: 06-26-06, Implementation: 06-26-06)

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

1. **Chapter 7** – Debtors *or creditors* file under this chapter to obtain discharge of *debtor's* debts (liquidation). Companies that file under this chapter generally close. *(the debtor ceases operations and disposes of the assets over a period of time)*. 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 *and debt restructuring to be developed and approved*, 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 between three to five years.

80.2 – State Ordered Insurer Liquidations

(Rev. 52, Issued: 05-26-06, Effective: 06-26-06, Implementation: 06-26-06)

The State may order insurers, *incorporated or otherwise organized, that do* business in that State *to be* 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.

80.3 – Importance of Various Dates in Bankruptcy/Liquidation Proceedings

(Rev. 52, Issued: 05-26-06, Effective: 06-26-06, Implementation: 06-26-06)

The filing date (i.e., the date a petition of bankruptcy is filed with the U.S. Bankruptcy Court or *the date* 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.

Initially, creditors file claims for pre-petition services. Creditors often update their pre-petition claims as additional debts are identified.

At various points during the process, the bankruptcy court may allow creditors to file claims for post-petition service.

Ultimately, a debtor will be discharged (released from the jurisdiction of the bankruptcy court). Generally the discharged entity is fully responsible for the debts arising from post-discharge services, unless the court makes other arrangements.

80.4 – Difference Between Automatic Stay, Relief, and Discharge

(Rev. 52, Issued: 05-26-06, Effective: 06-26-06, Implementation: 06-26-06)

*The “Automatic Stay” goes into effect when the bankruptcy petition is filed. It gives the debtor/entity a break from the creditors’ collection efforts. The “stay” is **not** permanent. In certain circumstances the creditor can ask for “relief” from the “stay.”*

“Relief” from the “Stay” is petitioned by the creditor and shall be granted only by the court.

The “Discharge” from bankruptcy occurs at the end of the court process and closes the bankruptcy. It voids any judgment to the extent that it is a determination of the liability of a debtor/entity for a pre-petition debt. The effect of the discharge is to totally prohibit debt collection activities against the debtor as specified in the discharge papers by the court.

80.5 – Affiliates

(Rev. 52, Issued: 05-26-06, Effective: 06-26-06, Implementation: 06-26-06)

*Businesses (including insurance companies) often have complex legal structures. It is not uncommon for a business entity to have multiple subsidiaries using different business names, called “Affiliates.” A bankruptcy/liquidation proceeding may involve all affiliates or only certain affiliates. Affiliates, if any, should be listed on the bankruptcy petition. An affiliate is **not** automatically part of the bankruptcy unless the petition states that the affiliate **is** part of the bankruptcy.*

81 – Notice of Bankruptcy/Liquidation

(Rev. 52, Issued: 05-26-06, Effective: 06-26-06, Implementation: 06-26-06)

81.1 – Identifying MSP Based Debts for Entities in Bankruptcy/Liquidation

(Rev. 52, Issued: 05-26-06, Effective: 06-26-06, Implementation: 06-26-06)

Identifying actual and potential MSP-based debts for insurers in liquidation as well as employers, insurers and other entities in liquidation, has become an ongoing process at CMS. As a result, Office of General Council (OGC) will make, with CMS consultation, a decision as to the pursuit of a Medicare claim as part of a bankruptcy proceeding. When Department of Justice (DOJ)/OGC does pursue a claim on behalf of Medicare, contractors shall take the following actions:

Upon receipt of an email request from OGC regarding a specific bankruptcy/liquidation, CO will forward this email to its CMS Regional Office (RO) MSP Coordinators in order to allow them to gather information from all (or selected) contractors regarding debts where demand letters have been sent, as well as cases where the entity in bankruptcy/liquidation is involved (e.g., as the worker's compensation or liability insurer), but demands have not yet been sent. CO will request that the spreadsheet in Section 83 be sent to the RO (the time line may be very short if DOJ has identified a "critical need"). All due dates will be specified in CO's email requests.

The CMS anticipates that DOJ/OGC may periodically request updates and additional information and will try to get as much time as possible for ROs and contractors to gather and report such updated information.

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

CO will update and maintain a list of known bankrupt debtors and liquidated debtors, which CO will supply to the contractors via their MSP RO Coordinators.

81.2 – Contractor's Role

(Rev. 52, Issued: 05-26-06, Effective: 06-26-06, Implementation: 06-26-06)

The contractor shall upon receiving its MSP RO Coordinator's email request take the following actions:

- 1) Shall identify all MSP debts/cases/ARs specific to the bankruptcy/liquidation debtor/entity on the spreadsheet in Section 83.*
- 2) Shall respond to its MSP RO coordinators by the due date specified in the email request*
- 3) Shall, in compliance with Pub 100-05 MSP Chapter 7 Section 10.4- Contractor Recovery Case Files (Audit Trails) for GHP and Section 50.6- Documenting an MSP Liability or Auto No-Fault Case File, copy and send all case files for debts recorded on the spreadsheet in Section 83 to its MSP RO coordinator*

Reminder: *If during the course of other business, the contractor identifies additional debts/cases/A/Rs for a debtor/entity on a pending bankruptcy or adjudged bankruptcy, the contractor shall take appropriate action with respect to the debt and notify its MSP RO Coordinator of the updated information. Contractors shall capture the information*

on Attachment A. As questions arise for a particular case, the contractor shall refer such questions to its MSP RO Coordinator.

NOTE: *When a bankruptcy notification is received from Treasury, via a Treasury Action Form, at the CO, CO will update the DCS to reflect the bankruptcy status. CO will fax the information back to the Medicare contractor (see Section 84). The Medicare contractor shall update its internal systems, report the bankruptcy for financial reporting purposes and make its MSP RO coordinator aware of the filing.*

REMINDER: *The Medicare contractor does not need to send a recall to the PSC, all updates to DCS are automatically referred to Treasury.*

81.2.1 - Identifying MSP Based Debts of Entities in Bankruptcy/Liquidation at Contractor Site

(Rev. 52, Issued: 05-26-06, Effective: 06-26-06, Implementation: 06-26-06)

Contractors must report any bankruptcy/liquidation information immediately to their MSP RO Coordinator, via telephone call, fax, or hardcopy. If a contractor receives notification of a bankruptcy/liquidation or potential bankruptcy/liquidation situation from other than CO or its MSP RO coordinator, the contractor must track on a spreadsheet and notify immediately its MSP RO coordinator. Contractors are responsible to ensure the MSP department is made aware of all non-provider/supplier bankruptcy/liquidation notifications received by the contractor.

NOTE: *Information sent by Internet e-mail to the RO is not secure. Contractors shall refrain from Internet e-mail communications, containing beneficiary information. Contractors may send the information via e-mail for corporate debtors - because the information is public.*

When the contractor receives a defense to an MSP recovery demand letter and the entity in bankruptcy/liquidation is the debtor (as opposed to the debtor's insurer, for example), the contractor shall determine if the bankruptcy/liquidation is already known to CMS (generally from previous MSP RO Coordinator's requests). If it has been previously identified, the contractor shall follow prior guidance. If the bankruptcy/liquidation had not been previously identified, the contractor shall take the following actions:

- 1) The contractor shall request a copy of the petition for bankruptcy/liquidation from the debtor/entity.*

- 2) *If the contractor does not receive a copy of the filing, the contractor shall notify the debtor that the posed "defense" is not valid and the proper documentation must be submitted.*
- 3) *When the proper bankruptcy documentation is received, the contractor shall update all internal systems, DCS and Financial reports with the bankruptcy status.*

***NOTE:** Please note that "defense" here does not invalidate the debt but merely refers to a defense to Treasury referral and our active pursuit of recovery through other venues other than the bankruptcy court. Also note that in no way does the bankruptcy notice alleviate the debtor of its responsibility to repay Medicare. All debts for pending bankrupt debtors remain open on the contractor's systems and financial reports.*

- 4) *Contractors shall cease new MSP recovery demand letters to the bankrupt debtor.*
- 5) *Contractors shall identify all existing open debts/A/Rs for that specific debtor. Do not refer any new debts to Treasury.*
- 6) *Contractors shall recall any debts that were previously referred to Treasury for that specific debtor.*
- 7) *Contractors shall report the debts on the contractor's financial statements within the appropriate bankruptcy detail line of the Form CMS-751 reports.*

82 – Recovery Efforts and Managing Debts of Entities in Bankruptcy/Liquidation

(Rev. 52, Issued: 05-26-06, Effective: 06-26-06, Implementation: 06-26-06)

NOTE: A bankruptcy/liquidation proceeding may be identified in numerous ways by a variety of organizations and brought to CMS' attention.

Pursuant to all types of bankruptcy/state ordered liquidation filed, contractors shall take the following actions:

1. Cease new MSP recovery demands for the debtor 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 Form CMS-751 reports.

NOTE: Once the bankruptcy has been finalized, consult with your Regional Office of the General Counsel before proceeding further.

NOTE: When a debtor/entity that is in Chapter 7 converts to Chapter 11 (an unusual occurrence), contractors must contact CO through their MSP RO Coordinator for further instructions.

NOTE: In the event that a contractor has or receives notice of Chapter 13 bankruptcy, the contractor and MSP RO Coordinator shall work with their RO OGC (There are many factors to be considered).

- **State Ordered Liquidation**

Contractors shall consult with your Regional Office of the General Counsel before proceeding further.

82.1 – Bankruptcy debts discharged by the U.S. Court/Liquidation debts discharged by State Court

(Rev. 52, Issued: 05-26-06, Effective: 06-26-06, Implementation: 06-26-06)

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.

82.2 – Bankruptcy debts dismissed by the U.S. Bankruptcy Court

(Rev. 52, Issued: 05-26-06, Effective: 06-26-06, Implementation: 06-26-06)

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 *Pub. 100-05 Medicare Secondary Payer Manual Chapter 7* for specifics about the recovery process.)

82.3 – Appeals Requests citing Bankruptcy Defense

(Rev. 52, Issued: 05-26-06, Effective: 06-26-06, Implementation: 06-26-06)

The contractor shall refer all appeal requests with a bankruptcy defense to the RO.

84 - Example of CMS Bankruptcy/Liquidation Notice to Contractors as a Result of a Prior Treasury Notification

(Rev. 52, Issued: 05-26-06, Effective: 06-26-06, Implementation: 06-26-06)

DEPARTMENT OF HEALTH & HUMAN SERVICES
Centers for Medicare & Medicaid Services
7500 Security Boulevard, Mail Stop N3-12-00
Baltimore, Maryland 21244-1850



To:	From:
Fax:	Date: May 26, 2006
Phone:	Pages: 2
Re: Bankruptcy Notification from Treasury	CC:

For Review Please Comment Please Reply Urgent

Attached you will find _____Debt Management Services Action Forms indicating that the debtor entered into bankruptcy along with the supporting documentation submitted by the Department of the Treasury.

CMS CO staff reviewed each Treasury Debt Management Services Action Form and the related supporting documentation and initiated the following actions as indicated below:

_____ DCS has been updated

_____ Debt has been recalled and returned to CMS by Treasury

Upon receipt of the Treasury Debt Management Services Action Form, contractors should review the attached documentation and update their systems/files to reflect

