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# **CMS Medicare Manual System**

## **Pub. 100-6 Financial Management**

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

**Transmittal 12**

**Date: OCTOBER 18, 2002**

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### **CHANGE REQUEST 2350**

<b>CHAPTERS</b>	<b>REVISED SECTIONS</b>	<b>NEW SECTIONS</b>	<b>DELETED SECTIONS</b>
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Attachments  
A and B

*Red italicized font identifies new material.*

***NEW MATERIAL – EFFECTIVE DATE: October 18, 2002***  
***IMPLEMENTATION DATE: October 25, 2002***

**Medicare contractors only: these instructions should be implemented within your current operating budget. No systems changes are to be done at this time. Another change request will follow when the systems changes can be fit into a quarterly release. Contractors should continue to process overpayments related to bankruptcy cases as they have been doing in their usual course of business.**

**Section 140, Bankruptcy**, is added as new instructions for carrier and intermediary processing of overpayments where bankruptcy is involved which expand upon material which had previously been in the Medicare Intermediary Manual. The Medicare Intermediary Manual contained a section Part 2, Chapter IX, §2760, Providers Involved in Bankruptcy Proceedings which is superseded by this new material.

**Section 140.1, Glossary of Acronyms**, provides a list of acronyms which are commonly used in bankruptcy.

**Section 140.2, Basic Bankruptcy Terms and Definitions**, discusses bankruptcy terms and definitions that are common in bankruptcy.

**Section 140.2.1, Bankruptcy is Litigation**, explains how bankruptcy is litigation, it is not “business as usual”.

**Section 140.2.2, Types of Bankruptcies**, describes the four types of bankruptcies that may involve Medicare providers.

**Section 140.2.3, Filing Bankruptcy Draws a Line in the Sand**, discusses how the petition date draws a line in the sand between prepetition and postpetition actions.

**Section 140.2.4, Bankruptcy Affects Nearly All Medicare Operations**, explains how bankruptcy can affect every aspect of the interaction between the Medicare program and the debtor. It discusses importance of coordination among contractors, Regional Office (RO) and Regional Counsel on these cases.

**Section 140.2.5, Recoupment and Set-off**, describes recoupment and set-off as two of Medicare’s strongest tools for recovering overpayments to debtor providers.

**Section 140.2.6, Time is of the Essence**, discusses the importance of the contractor to notify the RO and Regional Counsel when the contractor gets credible information that a bankruptcy case is about to occur.

**Section 140.2.7, Definitions**, provides a list of definitions to the contractors to give them a general understanding of bankruptcy cases.

**Section 140.3, Contractor's Establishment of Relationships to Ensure Effective Actions Regarding Providers in Bankruptcy**, this section emphasizes importance of contractors establishing relationships with the RO and Regional Counsel to ensure they receive information promptly about provider bankruptcies.

**Section 140.3.1, Contractor Staff Must Establish Relationships to Ensure That the RO and Regional Counsel Receive Prompt Notice of Provider Bankruptcies, so That Medicare Can Take Quick Action**, states that it is imperative that contractor staff act quickly when a provider files for bankruptcy in order to meet filing deadlines in the bankruptcy court.

**Section 140.3.2, Contractors Must Recognize and Advise RO Staff About Potential Provider Bankruptcies**, states that contractor staff must be alert to news or notices of bankruptcy and notify RO staff immediately.

**Section 140.3.3, Contractor Staff Will Establish a Relationship With the RO That has Jurisdiction Over the Bankruptcy**, states that contractors will proactively establish and maintain ongoing communications with the RO that has jurisdiction over a particular bankruptcy case.

**Section 140.3.4, RO Jurisdiction Generally Parallels the Bankruptcy Court Where Case is Filed**, states that in most cases the RO which has jurisdiction over a bankruptcy case is the one which has jurisdiction over the State in which the debtor files for bankruptcy.

**Section 140.3.5, Contractor and Regional Office Bankruptcy Point of Contact Staff Member**, states that the contractor should contact their home RO to determine which RO will have responsibility for the bankruptcy case.

**Section 140.4, Actions to Take When a Provider Files for Bankruptcy**, discusses actions a contractor must take when it learns that a provider has filed for bankruptcy.

**Section 140.4.1, Establish Effective Lines of Communications With Partners**, lists the partners a contractor must notify immediately when it learns that a provider has filed for bankruptcy.

**Section 140.4.2, Respond to RO Requests for Information**, states that the contractor will report the listed overpayment information to the RO using the Referral Checklist as a reference when the contractor is seeking technical advice on a request from the RO.

**Section 140.4.3, Immediate Contractor Directives From the RO,** provides the guidance that the RO will give the contractor as soon as a provider files for bankruptcy.

**Section 140.4.4, Tracking Debts/CO Communications,** discusses financial reporting of debts associated with bankruptcy cases.

**Section 140.5, Chain Bankruptcies,** explains the responsibilities of contractors when chain providers file for bankruptcy.

**Section 140.5.1, Chain Providers,** describes what a chain provider is and also contractor, RO and Regional Counsel responsibilities for these bankruptcy cases.

**Section 140.5.2, Single Providers Serviced by a National Contractor,** explains that when a single provider that is serviced by a national contractor files for bankruptcy the same principle for processing a bankruptcy of a chain provider will apply.

**Section 140.6, Affirmative Recovery Actions,** this section explains Medicare's relationship with the provider when the provider who has filed for bankruptcy either assumes or does not assume its executory contract (provider agreement).

**Section 140.6.1, Working With the RO and Regional Counsel's Office,** states that the contractor will notify the RO and Regional Counsel's office immediately after it receives information that a provider has filed for bankruptcy. It also explains that that it is essential for the contractor to obtain Medicare identifying information such as provider and supplier numbers.

**Section 140.6.2, Assumption of the Medicare Provider Agreement,** this section explains steps the contractor will be asked to take if the provider who has filed for bankruptcy either assumes or does not assume its executory contract (provider agreement).

**Section 140.6.3, Settlement Agreements or Stipulations,** states that during the course of a bankruptcy, the RO and Regional Counsel may negotiate a settlement agreement or stipulation with the debtor's attorney. The RO will advise affected contractors on how their actions must conform to conditions established in the settlement agreement or stipulation.

**Section 140.6.4, Recoupment,** describes how Medicare may recoup payments to a bankrupt provider.

**Section 140.6.5, Administrative Freeze/Set-off,** explains that bankruptcy law allows a creditor like Medicare to freeze payments if it thinks it has the right to set-off those payments.

**Section 140.7, Preparing and Filing Proof of Claim**, explains how Regional Counsel will file a proof of claim form which alerts the court to the existence of Medicare's claim. This section states that it is critical that contractors produce accurate and detailed overpayment data to the RO and Regional Counsel.

**Section 140.8, Closure of Bankruptcy Cases and Treatment Of Overpayment Reporting Systems at End of Bankruptcy**, this section explains how contractors are to close out financial records after the bankruptcy case is closed.

**Section 140.8.1, Closing the Bankruptcy Case**, explains that after a bankruptcy case is fully administered and the bankruptcy court has discharged the trustee, the bankruptcy court closes the case. The RO and Regional Counsel will provide guidance to the contractor regarding any further actions.

**Section 140.8.2, Debt Located at the Debt Collection Center or Department of the Treasury**, explains how debts located at the Debt Collection Center or Department of the Treasury are handled when a provider files for bankruptcy.

**Section 140.8.3, Managing Bankruptcy Debt at the Contractor Location**, this section explains that bankruptcy debts will remain at the contractor location throughout the life of the debt.

**Attachment A**, this attachment provides Referral Checklists for Part A and Part B providers and suppliers when the contractor is seeking technical advice from the RO.

**Attachment B**, this attachment provides a checklist for information the contractor should send to the RO when it learns that a provider has or may file for bankruptcy.

## ***140 - Bankruptcy - (Rev. 12, 10-18-02)***

*This section contains actions that the contractors must take to safeguard the Medicare Trust Funds when a provider files for bankruptcy. This section does not address bankruptcy issues involving debts arising under the MSP provisions. (Although this Manual will usually use the term “provider,” its provisions also apply to suppliers, including physicians). However, use of the term “provider” does not mean that the Medicare program considers suppliers and physicians to be providers. It also explains how to report accurately the Centers for Medicare & Medicaid Services’ (CMS) accounts receivable balances and support CMS’s efforts to effectively evaluate and manage bankruptcy cases.*

*This Manual will guide contractor staff through the initial stages of a provider bankruptcy. It is not intended to be, and cannot be, a step by step process from beginning to end. **Bankruptcy is litigation.** Bankruptcy law and the bankruptcy court affect all the actions CMS and its contractors take concerning a bankrupt Medicare provider. Therefore, contractor staff must consult closely with the Regional Office (RO) before taking, omitting, continuing or discontinuing actions regarding a bankrupt provider. In some cases, attorneys from the Department of Justice (DOJ) in Washington, D.C. or United States Attorney’s Offices will work directly with RO staff. However, in most cases, the RO will be in contact with Regional Counsel.*

*This section consists of eight subsections which are listed in the Table of Contents.*

### ***140.1 - Glossary of Acronyms - (Rev. 12, 10-18-02)***

*ARMG - Accounting and Risk Management Group*

*CMS - Centers for Medicare & Medicaid Services*

*DME - Durable Medical Equipment*

*DMERC - Durable Medical Equipment Regional Carrier*

*DMSO - Division of Medicaid and State Operations*

*DFRDR - Division of Financial Reporting and Debt Referral*

*DCC - Debt Collection Center*

*DOJ - Department of Justice*

*FI - Fiscal Intermediary*

*NPR - Notice of Program Reimbursement*

*POR - Provider Overpayment Report*

*PORS - Provider Overpayment Reporting System*

***PSOR** - Physician/Supplier Overpayment Report*

***RC** - Regional Chief Counsel's Office - the regional office component of the Office of the General Counsel*

***RO** - Regional Office of the Centers for Medicare and Medicaid Services*

## **140.2 - Basic Bankruptcy Terms and Definitions - (Rev. 12, 10-18-02)**

### **140.2.1 - Bankruptcy is Litigation - (Rev. 12, 10-18-02)**

*An individual or company declares bankruptcy by filing a petition for bankruptcy in a United States Bankruptcy Court. The Bankruptcy Court then opens a bankruptcy case. The Bankruptcy Court closely monitors the affairs of the individual or company (the debtor) including the creditors' treatment of the debtor. Bankruptcy may appear to be "business as usual" for a debtor, **but it is not**. You should not take **any** action for or against a debtor until you consult the Regional Office who will consult with the Regional attorney handling the bankruptcy. Do not share any information about bankruptcy strategy or activities with the bankrupt provider.*

### **140.2.2 - Types of Bankruptcies - (Rev. 12, 10-18-02)**

*Title 11 of the United States Code (the Bankruptcy Code) identifies four types of bankruptcies that may involve Medicare providers: Chapter 7, 9, 11 and 13. We briefly describe each type here to familiarize you with these types of bankruptcy. However, these general descriptions do not replace your attorney's specific advice in a particular bankruptcy case.*

***1. Chapter 7** - Debtors file Chapter 7 bankruptcies to obtain discharge of their debts. Companies that file under Chapter 7 generally close. A court-appointed trustee accumulates the assets of the debtor, sells them, and distributes the money among those whom the debtor owes (the creditors).*

***2. Chapter 9** - Chapter 9 bankruptcies involve municipalities such as a hospital district. Chapter 9 provides for reorganization, much like Chapter 11.*

***3. Chapter 11** - Debtors file Chapter 11 to reorganize the debtor individual or business. To emerge from Chapter 11, the debtor in possession submits a Plan of Reorganization ("Plan"). The Plan indicates the amount and schedule for payments to creditors. Creditors vote on the Plan, and the Court must confirm it. Recovery amounts vary. The Bankruptcy Code provides for discharge of the remainder of the debt.*

***4. Chapter 13** - Chapter 13 bankruptcies adjust the debts of individuals (including sole proprietorships) with a regular income. Generally, debtors must file a debt adjustment plan within 15 days after filing.*

### ***140.2.3 - Filing Bankruptcy Draws a Line in the Sand – (Rev. 12, 10-18-02)***

*The petition date (i.e., the date the debtor files its petition in bankruptcy with the Bankruptcy Court) draws a line in the sand between prepetition and postpetition actions. Events that occur on or before the petition date are prepetition. Events that occur after the petition date are postpetition. The automatic stay governs many actions that contractors may take concerning a debtor postpetition. You must therefore consult the RO before you take action concerning the debtor postpetition.*

*Medicare’s right to recover overpayments can depend on whether they are prepetition or postpetition. The RO will direct you how to treat payments for prepetition services (prepetition payments) and payments for postpetition services (postpetition payments) to maximize Medicare’s recovery.*

### ***140.2.4 Bankruptcy Affects Nearly All Medicare Operations – (Rev. 12, 10-18-02)***

*Bankruptcy can affect every aspect of the interaction between the Medicare program and a debtor. Each contractor staff member who may come in contact with a debtor, is effectively a part of the Medicare “bankruptcy team” for that case. You, as contractor point of contact, must ensure that all potential bankruptcy team members alert you if they anticipate actions concerning the debtor, and that they then coordinate those actions with you and with the RO and Regional Counsel. In bankruptcy, **both** inaction and inappropriate action hurt Medicare’s chances of recovery. Some commonly affected areas are:*

#### ***1. Overpayment Recovery***

*Medicare’s right to recover prepetition and postpetition overpayments also varies by federal jurisdiction. (See discussion on set-off and recoupment in section F below). If you have overpaid a debtor, you must consult the RO, then take appropriate action to maximize recovery of Medicare overpayments from debtors. Contractor overpayment staff should not send any letters to the debtor until the RO approves them for release.*

#### ***2. Fraud and Abuse***

*Ensure that you consult with CMS Program Integrity staff and the RO before you suspend an entity for fraud and/or abuse, recover fraud overpayments, or continue suspensions. If you have evidence that the provider filed for bankruptcy because of fraud it committed, advise the RO handling the bankruptcy.*

#### ***3. Reimbursement***

*Contractor reimbursement staff must notify the RO before suspending payments to a*



debtor for failure to file a cost report or a credit balance report. **DO NOT** issue tentative settlement payments in bankruptcy cases unless explicitly requested by the RO.

Unless otherwise directed, contractor reimbursement staff should continue to review and audit cost reports as usual. However, the contractor must submit notices of program reimbursement to the RO for review and obtain approval before issuing them.

CMS will advise the contractor reimbursement staff about stipulations and settlements that affect audit and/or reimbursement. In making global settlements decisions CMS will consider the cost and benefits of auditing cost reports in cases where recovery is unlikely and direct contractor staff accordingly.

#### **4. Payment**

Contractor payment staff must receive approval from the RO before taking any action that changes the amounts payable or owed by a debtor.

#### **5. Appeals**

Contractor staff will be asked about recent and current Administrative Law Judge, Provider Reimbursement Review Board and Department Appeal Board appeals involving a provider in bankruptcy.

#### **6.Changes of Ownership**

A debtor may attempt to transfer provider agreements so that both parties may avoid overpayment recovery. DMSO staff will notify other regional office staff when a debtor provider files for a CHOW, and immediately notify the Regional Counsel who is handling the bankruptcy. The CHOW will not be processed until the regional office obtains the concurrence of the Regional Counsel who is handling the bankruptcy.

### **140.2.5 - Recoupment and Set-off (see also §140.6.4) - (Rev. 12, 10-18-02)**

Recoupment and set-off are two of Medicare's strongest tools for recovering overpayments to debtor providers. Jurisdictions vary in their decisions about how Medicare can use these tools. Some jurisdictions consider the Medicare part A provider agreement one contract /transaction and allow it to be the basis for broad powers of recoupment. Other jurisdictions consider each cost report year as a distinct contract and restrict recoupment to periods within a particular cost report year. Your RO/Regional Counsel can advise you whether current law in a given jurisdiction permits recoupment.

#### **1.Recoupment**

Recoupment permits a party to reduce current payments to account for prior overpayments made under the same contract or transaction. Recoupment permits adjustment across the petition date and does not require approval of the bankruptcy court. Therefore, Medicare should recoup in any jurisdiction where it is permitted. Do

*not begin, continue or discontinue recoupment without approval of the RO.*

## **2. Set-off**

*If recoupment is not permitted, set-off will be considered. Medicare must take quick action to recover overpayments using set-off. Set-off should not take place without specific instructions by the RO.*

*Set-off permits making similar adjustments in situations involving one or more contracts or transactions. For example, suppose B owes A \$40.00 under one contract and A owes B \$50.00 under another contract. If set-off is allowed then A can take her \$40 from the \$50 she is holding for B (A would only pay B \$10.00). Generally, parties can request court permission to set-off. If allowed, parties can set-off prepetition claims against prepetition payments or postpetition claims against postpetition payments. They cannot set-off prepetition claims against postpetition claims.*

## **3. Administrative Freeze**

*Once it is discovered that a provider is in bankruptcy, Medicare can enact a **temporary** administrative freeze. An administrative freeze (sometimes called a Strumpf freeze, named after a Supreme Court case) will allow time for Medicare to determine if there are any overpayments and to ask the bankruptcy court to allow set-off. Speed is essential because courts do not permit set-off across the petition date. A pre-petition overpayment can only be set-off against a pre-petition claim.*

### **140.2.6 - Time is of the Essence - (Rev. 12, 10-18-02)**

*Do not wait for formal notice of a bankruptcy and do not assume that someone else has notified the appropriate party. Medicare does not always receive timely and proper notice. By waiting, we may lose the opportunity to recover Medicare overpayments. Notify the RO/Regional Counsel immediately when you get credible information that a bankruptcy is about to occur. Good sources to obtain early information about bankruptcies include the Internet; newspapers, trade journals, and business magazines are good sources. Each individual item listed below should be relayed to the RO as soon as you receive it:*

- 1. Name and address(s) of the individual or entity,*
- 2. Type and timing of Medicare reimbursement the provider receives,*
- 3. Amounts and types of outstanding overpayments,*
- 4. Date of pending or planned reopening,*
- 5. Status of any unsettled cost report years (expected settlement date and expected results); remember, DO NOT make tentative settlement payments to an individual or entity in bankruptcy, and make final settlement payments only after obtaining the RO's concurrence.*

6. *Dates and amounts of next Medicare payments if possible,*
7. *The name of the court and jurisdiction, case number, phone number of the debtor's attorney in the matter, and*
8. *Any current changes of ownership or quality of care issues).*

### **140.2.7 – Definitions - (Rev. 12, 10-18-02)**

*You may encounter the terms listed below. The definitions are provided to give a general understanding. Specific terms may apply differently based upon the circumstances of a particular bankruptcy case.*

**Adversary Proceeding** *is litigation in bankruptcy court to recover money or property; determine the validity, priority or ranking of an interest in property; get approval for selling an estate's property interest; revoke a discharge or an order of confirmation; and obtain declaratory judgments related to matters of the bankruptcy estate. Litigation against CMS to turn over recouped monies is an example of an adversary proceeding.*

**Affirmative Recovery Actions** *is debtor's assumption of its executory contract (its provider agreement).*

**Automatic Stay** *is an injunction that automatically springs into effect concurrent with the filing of the bankruptcy petition. The automatic stay protects the assets of the estate from lawsuits, foreclosures, garnishments, and any other collection activities that are not specifically exempt from the stay by statute or specifically approved by the bankruptcy court. The automatic stay applies to Medicare overpayment letters that demand repayment, assess interest or otherwise attempt to gain possession of property of the bankruptcy estate.*

**Bankruptcy Trustee** *is a private individual or corporation appointed to represent the interests of the bankruptcy estate and the debtor's creditors.*

**Bar Date** *is the deadline for filing a proof of claim. In general the bar date for government agencies such as CMS is 180 days after the date of the order for relief (usually, the date the provider files for bankruptcy). In some bankruptcies, however, the court may set a different date.*

**Claim** *is the creditor's right to payment or equitable relief creating a right to payment from a debtor or the debtor's property whether or not that right is reduced to judgment, liquidated, unliquidated, fixed, contingent, matured, unmatured, disputed, undisputed, legal, equitable, secured or unsecured. The date a claim arises determines whether it is prepetition or postpetition. In Medicare, the date of service is the date of the claim.*

**Confirmation** *is bankruptcy court approval of a plan of reorganization.*

**Contingent Claim** *is a claim that may be owed by the debtor under certain circumstances, for example, where the debtor is a co-signer on another person's loan*

*and that person has not yet defaulted, but may fail to pay.*

**Creditor** is a person or a business to which the debtor owes money or which claims to be owed money by the debtor.

**Debtor** is a person or business who has filed a bankruptcy petition.

**Discharge** is a release of a debtor from liability for certain dischargeable debts. It prevents the creditors that are owed those debts from taking any action to collect those debts from the debtor or the debtor's property. Prohibited actions include making telephone calls, sending letters, and having contact that is intended to induce the debtor to pay the debt.

**Dischargeable Debt** is a debt for which the Bankruptcy Code allows the debtor's personal liability to be eliminated.

**Dismiss** does not release a debtor from liability on any debts. It does not prevent creditors that are owed those debts from taking appropriate action to collect those debts from the debtor or the debtor's property. When a case is dismissed it is as if the debtor never filed. Therefore, you may proceed with actions that include making telephone calls, sending demand letters, and having contact that is intended to induce the debtor to pay the debt.

**Estate** is the name for the Debtor's property interests overseen by the bankruptcy court. Filing a petition in bankruptcy creates an estate consisting of all legal and equitable interests the Debtor has. In general, a legal interest is a direct ownership of property. In contrast, an equitable interest typically is indirect and may require court involvement to obtain control or exercise the property rights.

**Executory Contract** is a contract under which the parties to an agreement have duties remaining to be performed. A Medicare Part A provider agreement is treated as an executory contract.

**Exemption** is property that the Bankruptcy Code or applicable state law permits a debtor to keep from creditors.

**Fraudulent Transfer** is a knowing and fraudulent transfer or concealment of property by the debtor with intent to defeat the provisions of the Bankruptcy Code.

**Lien** is a recorded claim upon specific property in order to secure payment of a specific debt or performance of an obligation. Medicare does not have a lien on overpayments.

**Liquidation** is the conversion of the debtor's property into cash with the proceeds to be used for the benefit of creditors.

**Liquidated Claim** is a creditor's claim for a fixed amount of money.

**Motion to Lift the Automatic Stay** is a request by a creditor to allow the creditor to take an action against a debtor or the debtor's property that would otherwise be prohibited by the automatic stay.

**Non-Dischargeable Debt** is a debt that cannot be eliminated in bankruptcy. Overpayments resulting from fraud are non-dischargeable. A complaint to determine dischargeability must be filed in the bankruptcy court. See Adversarial Proceeding, above.

**Plan of Reorganization** is a debtor's detailed description of how the debtor proposes to pay creditors' claims over a fixed period of time.

**Priority** is the Bankruptcy Code's statutory ranking of unsecured claims. It determines the order in which unsecured claims will be paid if there is not enough money to pay all unsecured claims in full.

**Priority Claim** is an unsecured claim that is entitled to be paid ahead of other unsecured claims that are not entitled to priority status. Administrative expenses for preserving the estate (e.g., certain accounting fees or postpetition Medicare overpayments) are considered priority claims.

**Secured Debt** is a debt backed by a mortgage, pledged collateral, or other lien. The creditor that has a secured debt has the right to pursue specific pledged property upon default. See lien above.

**Schedule** is a list submitted by the debtor along with the petition (or shortly thereafter) showing the debtor's assets, liabilities, and other financial information. (There are official forms a debtor must use.)

**Settlement Agreement** is an agreement settling a dispute between two or more parties.

**Stipulation** is an agreement between parties respecting the conduct of legal proceedings approved by the Bankruptcy Court. With appropriate approval, Medicare may enter a stipulation agreement to facilitate a change of ownership or to resolve an overpayment earlier than could be expected by litigation.

**United States Trustee** is an officer of the Department of Justice responsible for supervising the administration of bankruptcy cases, estates, and trustees, monitoring plans and disclosure statements, monitoring creditors' committees, monitoring fee applications, and performing other statutory duties.

**Unsecured debt** is one that is not backed by property or collateral. Medicare's claims are generally unsecured.

### **140.3 - Contractor's Establishment of Relationships to Ensure Effective Actions Regarding Providers in Bankruptcy - (Rev. 12, 10-18-02)**

***140.3.1 - Contractor Staff Must Establish Relationships to Ensure That the RO and Regional Counsel Receive Prompt Notice of Provider Bankruptcies, so That Medicare Can Take Quick Action – (Rev. 12, 10-18-02)***

*The contractor may receive notice of a bankruptcy from many sources including the provider, other fiscal intermediaries or carriers, the State, the Regional Office Certification staff, or Regional Counsel. It is imperative that contractor staff act quickly when a provider files for bankruptcy in order to meet filing deadlines in the bankruptcy court. Therefore, contractor staff must establish relationships to ensure that they receive information promptly about provider bankruptcies.*

***140.3.2 - Contractors Must Recognize and Advise RO Staff About Potential Provider Bankruptcies - (Rev. 12, 10-18-02)***

*Contractor staff must be alert to news or notices of bankruptcy and notify RO staff immediately. Contractor staff should alert the RO to all potential bankruptcies via a telephone call, an e-mail, or a fax.*

*Bankruptcy warning signs for contractors (indications that a provider is experiencing financial difficulty, and may file for bankruptcy):*

- 1. Frequent unfiled or late-filed cost reports.*
- 2. Failure to make timely payments on an extended repayment plan schedule.*
- 3. Frequent changes of ownership.*
- 4. Litigation*
- 5. Voluntary or involuntary termination from the Medicare Program.*
- 6. Provider has difficulty meeting payroll.*
- 7. History of significant overpayment determinations.*
- 8. Significant decline in Medicare and/or total patient census.*

***140.3.3 – Contractor Staff Will Establish a Relationship With the RO That has Jurisdiction Over the Bankruptcy - (Rev. 12, 10-18-02)***

*Contractors will proactively establish and maintain ongoing communications with the RO that has jurisdiction over a particular bankruptcy case. This is important because bankruptcy law may differ significantly from one jurisdiction to another, due to the structure of the federal court system.*

*In the federal system, a party may appeal lower level court decisions to a higher court, which has the power to affirm or reverse the lower court. In order of increasing rank and authority, the federal system is comprised of Bankruptcy Courts, District Courts, Courts of Appeals, and the Supreme Court. Each court in this list generally hears appeals from the court immediately preceding it. Although the Supreme Court has the final word, it hears a highly limited number of cases each year. This permits conflicts between lower court decisions to continue for many years until they are resolved by the Supreme Court.*

*As a result, absent a Supreme Court decision, the most authoritative precedents that may exist (and which may conflict with one another) are issued by the Courts of Appeals. There are 11 Courts of Appeals (known as Circuits) covering various States, plus a District of Columbia Circuit. The decision of each Court of Appeals is controlling within the States covered by that Circuit.*

*As discussed in greater detail below, CMS may want to take different actions in a bankruptcy case for different providers, including suspending payments, or recouping overpayments. In addition, CMS may have taken such actions before the provider filed for bankruptcy. Whether CMS can legally take or leave in place such actions may well depend on where the provider filed for bankruptcy, and the existing legal precedents within that Circuit.*

*For example, at the time of this writing there is conflict in the Circuits about whether CMS may recoup prepetition overpayments from postpetition payments without first obtaining relief from the automatic stay. The Third Circuit (covering **Pennsylvania, New Jersey, Delaware and the Virgin Islands**) forbids recoupment over different fiscal years without such relief. By contrast, the Ninth Circuit (**Alaska, Arizona, California, Guam, Hawaii, Idaho, Nevada, Oregon and Washington**) and the District of Columbia Circuit permit such recoupment. No other Court of Appeals has decided the issue. There are various District Court decisions going both ways.*

*There are also conflicting decisions by District Courts on whether CMS may continue to suspend payments due to suspected fraud when the provider files for bankruptcy.*

*For these reasons, the contractors should **neither initiate nor discontinue** significant action affecting payment without first contacting Regional Counsel.*

#### ***140.3.4 - RO Jurisdiction Generally Parallels the Bankruptcy Court Where Case is Filed - (Rev. 12, 10-18-02)***

*In most cases, the RO which has jurisdiction over a bankruptcy case is the one which has jurisdiction over the State in which the debtor files for bankruptcy (bankruptcy is filed in federal court). This RO will usually be the lead RO. The RO will contact the contractor.*

*The ROs will review each bankruptcy, even when no current overpayments exist, since the possibility of overpayment determinations remains until the FI settles all cost reports. Medicare is an unsecured creditor in bankruptcy, and is among the last creditors to*

*receive a distribution of funds, unless it takes proactive steps to protect Medicare's interests.*

### ***140.3.5 - Contractor and Regional Office Bankruptcy Point of Contact Staff Member - (Rev. 12, 10-18-02)***

*The contractors should contact their home RO to determine which RO will have responsibility for the bankruptcy case. The RO point of contact may be at the RO level or the Consortium level in keeping with Consortium agreements. The RO point of contact will consolidate information and manage, report, and coordinate ongoing communication and activities among the appropriate involved parties (e.g., contractors, other ROs, Chief Counsels, and Central Office) regarding bankruptcies. The RO will communicate the name, phone number, fax and e-mail address of the point of contact in writing or via e-mail to the Accounting Management Group, Regional Counsel, and the affected Associate Regional Administrators for Financial Management and respective contractors.*

### ***140.4 - Actions to Take When a Provider Files for Bankruptcy - (Rev. 12, 10-18-02)***

#### ***140.4.1 - Establish Effective Lines of Communications With Partners – (Rev. 12, 10-18-02)***

*As soon as the contractor learns that a provider has filed for bankruptcy, it must immediately notify the following partners:*

- 1. RO, Division of Financial Management Staff*
- 2. Program Integrity Staff.*

*Obtain the name of individual(s) whom you should contact to obtain information quickly and to communicate information about the bankrupt Medicare provider.*

#### ***140.4.2 - Respond to RO Requests for Information - (Rev. 12, 10-18-02)***

##### ***1. For Part A bankruptcies, provide overpayment information using the Part A Referral Checklist (see Attachment A).***

*Contractor staff must divide the overpayment information into prepetition and postpetition amounts.*

*The contractor will report the following overpayment information to the RO using the Referral Checklist as a reference when the contractor is seeking technical advice:*



*a. Provider Information:*

- 1. Provider Number*
- 2. Provider Name*
- 3. Provider Address*
- 4. Tax Identification Number (TIN)*

*b. Information about each overpayment:*

- 1. Cost year end*
- 2. Determination date*
- 3. Original overpayment*
- 4. Whether overpayment is based on a tentative or final settlement*
- 5. Notice of Program Reimbursement containing overpayment determination*
- 6. Amounts Recouped*
- 7. CMS 750/751 Line 7 reports a total ending balance for region. The intermediary would need to provide specific information on specific bankrupt providers, which are reflected on Line 7.*
- 8. The date of the CMS 750/751 report on which the receivable was reported*
- 9. Overpayment type*

*c. Information to Estimate Potential Future Overpayments:*

- 1. Cost Reports in-house pending settlement with expected completion date*
- 2. Cost Reports pending submission with expected dates*
- 3. Cost Reports, which are overdue, and total amount of payments made for those cost years*
- 4. Interim Rate Information by Cost Year for Previous three years*
- 5. Overpayment History by Cost Year for Previous three years*
- 6. Medical Review Overpayments or Fraud and Abuse Overpayments or Investigations. You should also include these in the totals above.*

**NOTE:** *If the bankruptcy involves a provider with an audit and claims intermediary,*

*(e.g., hospital with a provider-based home health agency or hospice), the RO will establish guidelines for obtaining information through the audit intermediary or establish direct communication with both intermediaries.*

**2. For Part B Bankruptcies, Carriers and/or DMERCs will provide overpayment information using the Referral Checklist (see Attachment A) as a reference when the contractor is seeking technical advice from the RO:**

*a. Provider Information:*

- 1. Provider Number*
- 2. Provider Name*
- 3. Provider Address*
- 4. Tax Identification Number (TIN)*

*b. Overpayment Information:*

- 1. Claim numbers related to the overpayment*
- 2. Dates of service for related claims (check with Regional Counsel on the need for this)*
- 3. Dates of payment for related claims (check with Regional Counsel on the need for this)*
- 4. Determination date of original overpayment*
- 5. Correspondence notifying provider of overpayment*
- 6. Original overpayment*
- 7. Amounts recouped*
- 8. CMS 750/751 Line 7 reflects outstanding receivable balance totals for entire region (both principal and interest)-You must request specific outstanding balances from FI carried for specific providers*
- 9. The date of the CMS 750/751 report on which the receivable was reported*
- 10. Overpayment Type*
- 11. Medical Review overpayments*
- 12. Fraud and Abuse overpayments or investigations*

**3. Inform the RO of any underpayments owed to providers.**

*Ascertain whether any prepetition or postpetition underpayments have been determined. Do not release such funds until you have received RO approval.*

**140.4.3 - Immediate Contractor Directives From the RO –  
(Rev. 12, 10-18-02)**

*The RO will give the contractors the following guidance as soon as a provider files for bankruptcy.*

**1. The RO will notify the Contractor of Provider Bankruptcy/Litigation.**

**a. Bankruptcy Filed**

*RO will inform the contractor that the RO has opened a bankruptcy case. RO will inform the contractor that it should clear any future actions concerning the bankrupt provider(s) through the RO.*

**b. Bankruptcy Filing Date.**

*The RO will notify the contractor of the bankruptcy filing date, since it impacts on actions that the contractor can take and the evaluation of whether payments are prepetition or postpetition.*

**c. Immediate response to requests.**

*Since bankruptcy has court imposed deadlines, the contractor must take immediate action whenever the RO or Regional Counsel makes a request.*

**d. Obtain approval of all correspondence to provider.**

*The contractor must submit all correspondence addressed to the provider to the RO for approval prior to release. The RO will inform Part B Carriers/DMERCs that they should write a notification letter to replace the system generated demand letter.*

**e. Lead RO**

*If another RO has the lead on the bankruptcy, the RO will provide the contractor with a contact name and telephone number. The Regional Office that supervises the contractor may need to continue to assist the contractor in an advisory role.*

**2. The RO Will Notify Contractor of Immediate Actions It Must Take.**

**a. Interim Rate Adjustment.**

*After consultation with Regional Counsel, RO will direct the intermediary to*

*immediately perform an interim rate adjustment to ensure that payments are accurate and that no future overpayments occur. (Medicare Intermediary Manual §2760.1(C). 42 CFR §413.64(i).*

*b. Recoupment.*

*RO will inform the contractor (after discussion with Regional Counsel) whether it should continue or cease any current recovery action.*

*c. Administrative Freeze.*

*RO will inform the contractor (after discussion with Regional Counsel) whether or not it should place payments in administrative freeze.*

**3. Actions The Contractor Must Take on an Ongoing Basis.**

*a. Expedite Cost Report Settlement*

*RO will tell the FI to expedite the settlement of any open cost reports. RO will caution the FI not to perform any tentative settlements unless explicitly requested by the RO (in consultation with Regional Counsel) and not to issue any final settlements to the provider without first obtaining permission from the RO (in consultation with Regional Counsel).*

*b. Contractors should suspend payments if provider does not timely file cost report.*

*If the bankrupt provider fails to submit a timely, acceptable cost report, immediately notify the RO and Regional Counsel prior to placing the provider in 100% withhold and immediately notify the RO and Regional Counsel that you have done so. When the provider submits an acceptable cost report consult with the RO and the Regional Counsel prior to release of the withheld funds.*

*c. Part B - Tracking Overpayments and Refunds*

*The carrier or DMERC may need to track overpayments and voluntary refunds for a bankrupt provider. The RO will work with Regional Counsel to determine what information Regional Counsel needs. The contractor should be aware of the impact on beneficiary deductibles and coinsurance in a Part B bankruptcy.*

*d. Contractors should check with RO before making other payments to provider.*

*It is important that intermediaries, carriers, and DMERCs establish a process to ensure they do not make payments (e.g., underpayments, lump sum payments, or payments resulting from appeals) to bankrupt providers who have outstanding overpayments unless the RO (in consultation with Regional Counsel) so directs. This is especially critical for intermediaries who must continue to settle open cost reports.*

#### **4. Contractors Will Track and Report Information to RO.**

##### *a. Cost Report Settlements and Claims Processed*

*Contractor staff should notify the RO promptly of any and all proposed cost report settlements, changes in the amount of determined overpayments or underpayments, and claims processed.*

##### *b. Appeals*

*If a bankrupt provider files an appeal on an overpayment, contractor staff must keep RO staff informed on the outcome of the appeal. Appeals may take place at the contractor location, with an Administrative Law Judge, or at any Office of Hearings and Appeals, at the Provider Reimbursement Review Board, or at Federal District Court. If the appeal is favorable to the provider, it may require CMS to amend its proof of claim because the provider would have a smaller overpayment. Alternatively, in some cases, the RO may direct the contractor to freeze any outgoing funds. The contractor will keep the RO and Regional Counsel updated on the status of appeals.*

#### **5. Record-Keeping.**

##### *a. Interest*

*The RO will advise the contractor whether or not it should continue to calculate interest for overpayments. Medicare's ability to assess interest varies based on the circumstances of the case. RO will consult with the Regional Counsel before determining whether the contractor should make an adjustment. If the bankruptcy is in a district where interest should stop accruing on the petition filing date, the contractor must make an adjustment to remove the interest.*

*The contractor should post these adjustments to the contractors' internal systems, the Provider Overpayment Reporting System (PORS) and the Physician Supplier Overpayment Report (PSOR) within ten (10) days of notice of transaction. The PORS reflects interest assessed and the PSOR reflects interest collected. It should also post the adjustments to the CMS 750/751 reports.*

##### *b. PORS/PSOR Update*

*RO will instruct the contractor to update the PORS/PSOR with appropriate bankruptcy status codes.*

##### *c. Bankruptcy Case At Contractor's Location.*

*RO will inform the contractor that they may not refer bankruptcy cases to the Debt Collection Center for collection under the Debt Collection Improvement Act. If the contractor has already referred a case to DCC and no recovery action has begun, the RO will take steps to retrieve the case. The overpayment case will*

*remain at the contractor location for financial reporting purposes until the case is ready for termination write-off, or until the RO advises the contractor otherwise.*

#### ***140.4.4 - Tracking Debts/CO Communications - (Rev. 12, 10-18-02)***

*Financial Reporting. While the lead RO is responsible for managing the bankruptcy case, all bankruptcy debt will remain at the contractor location for financial reporting purposes on the CMS 750/751 report. RO staff must work with contractor staff to ensure proper reporting on CMS 751 reports throughout the bankruptcy.*

#### ***140.5 - Chain Bankruptcies - (Rev. 12, 10-18-02)***

##### ***140.5.1 - Chain Providers - (Rev. 12, 10-18-02)***

*A chain provider is one that is owned by the same entity that owns another provider or providers. Chain affiliates may include facilities that are public, private, charitable, or proprietary. They may also include subsidiary organizations and holding corporations. Provider-based facilities, such as hospital-based clinics, are not chain affiliates (MFMM § 2760.1).*

*As set forth in §140.3.4, the lead RO for a bankruptcy is generally the office with jurisdiction over the state in which the provider files for bankruptcy. Nevertheless, Central Office staff may assign a chain bankruptcy to a specific region, or the Regional Counsel may request that a specific RO take the lead in a specific chain bankruptcy.*

*When a chain files bankruptcy, there may be multiple contractors involved in processing payments for the chain. If the bankruptcy involves other ROs and their contractors, the lead RO will work directly with the contractors, after informing their home RO(s) that they will be communicating directly with their contractor on the bankruptcy case. The lead RO and Regional Counsel are responsible for making all decisions. However, the lead RO should keep the contractor's home RO informed about its contractor's workload in connection with the bankruptcy.*

##### ***140.5.2 - Single Providers Serviced by a National Contractor – (Rev. 12, 10-18-02)***

*When a single provider who is serviced by a national contractor files for bankruptcy, the same principle for processing a bankruptcy of a chain provider will apply. The location where the bankruptcy is filed will determine the lead RO. The lead RO will work directly with the national contractor staff on the bankruptcy case. The lead RO will keep the home RO of the national contractor informed in **all** issues related to the case (e.g., a provider within the jurisdiction of the San Francisco RO files for bankruptcy and their contractor is Mutual of Omaha). The San Francisco RO will assume lead responsibilities and will keep the Kansas City RO informed of **all** issues related to this case.*

## ***140.6 - Affirmative Recovery Actions - (Rev. 12, 10-18-02)***

### ***140.6.1 - Working With the RO and Regional Counsel's Office – (Rev. 12, 10-18-02)***

*The contractor will notify the RO/Regional Counsel's office immediately after it receives information that a provider has filed for bankruptcy. It is essential that you obtain information on all Part A, Part B, or DME entities involved in the bankruptcy, including Medicare identifying information, such as provider and supplier numbers. If the contractor has difficulty obtaining this information, it will consult with the RO/Regional Counsel. After gathering the information described in §140.4.2, it will send it to the RO.*

*The contractor will discuss with RO/Regional Counsel whether it should put payments in administrative freeze (a holding account) until Medicare has time to assess its position in the bankruptcy. Also, during initial discussions with Regional Counsel, the RO will determine when the proof of claim is due and whether the Regional Counsel or the RO will need additional information to prepare the proof of claim. The contractor shall share all new information regarding the provider's overpayments and underpayments, cost report settlements, etc. with RO/Regional Counsel. The contractor will not take any further steps without obtaining the advice of RO/Regional Counsel. For example, the contractor should not send any overpayment letters to the debtor without RO/Regional Counsel approval. In addition, the contractor should not initiate new withholding or discontinue withholding without RO/Regional Counsel approval.*

*As the bankruptcy progresses, the Regional Counsel may ask the contractor to expedite settlement of cost reports, update the Regional Counsel on provider overpayments or underpayments, and provide Counsel with assistance on all aspects of the bankruptcy. As bankruptcy cases often have short deadlines for filing pleadings and other documents, requests from RO/Regional Counsel must have the highest priority in the workload, in order to protect Trust Fund assets.*

### ***140.6.2 - Assumption of the Medicare Provider Agreement – (Rev. 12, 10-18-02)***

*The Medicare Part A Provider Agreement is considered an executory contract for purposes of bankruptcy. Bankruptcy law permits a debtor to affirm ("assume") or reject each of its executory contracts. The debtor must first get the formal approval of the bankruptcy court.*

*If the debtor formally assumes the Medicare provider agreement, and the Bankruptcy Court approves that assumption, the relationship between the provider and Medicare will generally return to the ordinary course of business. The RO will inform the contractor if the provider assumes the Provider Agreement.*

*If the debtor rejects the Provider Agreement, the rejection is a voluntary termination of*

*the Provider Agreement. The RO will inform the contractor if the provider terminates its provider agreement in this way. The contractor should not reimburse the provider for services it performs after the date it rejects/terminates the Provider Agreement.*

*If the bankrupt provider sells a facility to another entity and that entity assumes the debtor's provider agreement, any outstanding Medicare underpayments or overpayments regarding that facility should be transferred to the new owner (the purchaser) when the new owner assumes the provider agreement. Although the debtor and the new owner may have a private agreement regarding who is responsible for refunding Medicare overpayments and who should receive any Medicare underpayments, CMS is not bound by such agreements.*

*The contractor shall calculate net amounts that may be due to or owing from the debtor.*

### ***140.6.3 - Settlement Agreements or Stipulations - (Rev. 12, 10-18-02)***

*During the course of a bankruptcy, the RO and the Regional Counsel, working with DOJ, may negotiate a settlement agreement or stipulation with the debtor's attorney. Once a settlement agreement or stipulation goes into effect, the RO will advise all affected contractors, ROs, and the Office of Financial Management, CO. The contractors will consult with the lead RO to ensure that they conform to the conditions established in the settlement agreement or stipulation.*

### ***140.6.4 – Recoupment - (Rev. 12, 10-18-02)***

*Generally, bankruptcy law prohibits recovery of prepetition debt (debt arising prior to the filing of the bankruptcy petition) from postpetition payments. However, Medicare Part A payments require adjustments of ongoing payments to a provider to account for overpayments previously made to that provider. 42 U.S.C. §1395g(a); §1395x(v)(1)(A). Most courts recognize this method of adjusting payments as recoupment, which is permitted in bankruptcy, and is not subject to the automatic stay. Alternatively, they recognize that bankruptcy law does not alter the adjustment of payments that the Medicare statute requires. Thus, in most jurisdictions recoupment is appropriate. Nevertheless, the contractor should always consult RO/Regional Counsel's office about the adjustment (or recoupment) of any payments to a bankrupt provider **before you take, omit, continue or discontinue any action.** (See also, discussion of Recoupment in §140.2.5).*

*Some courts do not agree that Medicare can recoup overpayments (without first obtaining relief from the automatic stay), unless the provider incurred the overpayments in the current fiscal year. For instance, in bankruptcy cases filed in Pennsylvania, New Jersey, Delaware and the Virgin Islands, Medicare cannot recoup overpayments across fiscal years unless the debtor assumes the Medicare provider agreement or Regional Counsel obtains permission from the court. RO/Regional Counsel will advise the contractor whether it can recoup overpayments in these jurisdictions. Again, the*



*contractor must consult RO/Regional Counsel before adjusting or recouping payments to a bankrupt provider.*

### ***140.6.5 - Administrative Freeze/Set-off - (Rev. 12, 10-18-02)***

*Medicare can ask the court's permission to set-off prepetition debts against prepetition payments (payments for prepetition services, even if made postpetition) and postpetition debts against postpetition payments (payments for postpetition services). Regional Counsel, through DOJ will file a motion requesting permission to set-off.*

*Bankruptcy law allows a creditor like Medicare to freeze payments if it thinks it has the right to set-off those payments. Generally, in the Part A context, the first 2-3 weeks of Medicare payments after a debtor files for bankruptcy result from prepetition services. Therefore, the RO and Regional Counsel might decide to freeze all payments for prepetition services and then request bankruptcy court permission to set-off those payments against prepetition overpayments. Because there is such a short period during which there might be prepetition payments available to set-off available to freeze for set-off, it is critical to find out about the bankruptcy and the provider's overpayments quickly.*

*Other prepetition payments, such as underpayments or payments delayed because of medical review may be available to set-off against prepetition overpayments. It is important to notify the RO and Regional Counsel of any such underpayments or delayed payments.*

*Finally, because the U.S. Government is considered one creditor in bankruptcy, a contractor may be asked to freeze prepetition payments to recover the debts owed by the provider to other government agencies. However, we must use prepetition payments to recover Medicare overpayments before applying them to debts owed to other agencies.*

### ***140.7 - Preparing and Filing Proof of Claim - (Rev. 12, 10-18-02)***

*We provide a working definition of the term "claim" in §140.2.8. The proof of claim form alerts the court to the existence of Medicare's claim. While exceptions exist, the general rule of thumb is that in order to share in the bankruptcy estate Medicare must file a proof of claim. Regional Counsel will file the proof of claim. It is critical that contractors produce accurate and detailed overpayment data to the RO and Regional Counsel when requested so that Regional Counsel can file a timely proof of claim.*

*In Chapter 7 and Chapter 13 bankruptcies, the deadline ("bar date") for the Government to file a proof of claim is 180 days after the bankruptcy court's order granting relief from creditors (usually the date the provider files for bankruptcy). The bankruptcy court establishes the bar date by court order in Chapter 9 and Chapter 11 bankruptcies. In order to meet the bar date the Government must:*

- 1. Get notice of the bankruptcy;*

2. *Direct that notice to the appropriate agency and appropriate personnel;*
3. *Determine exactly how many payment agreements the entity in bankruptcy has with Medicare (i.e., do they owe Medicare and if so how much);*
4. *Determine the status of each payment agreement*
5. *Prepare the proof of claim form;*
6. *Get Regional Counsel approval;*
7. *Sign it; and*
8. *File it in the bankruptcy court.*

*Because the time to finalize a proof of claim can be short, contractors should update overpayment information on an ongoing basis.*

## ***140.8 - Closure of Bankruptcy Cases and Treatment Of Overpayment Reporting Systems at End of Bankruptcy - (Rev. 12, 10-18-02)***

### ***140.8.1 - Closing the Bankruptcy Case - (Rev. 12, 10-18-02)***

*After a bankruptcy case is fully administered and the bankruptcy court has discharged the trustee (if there was one), the bankruptcy court closes the case. RO/Regional Counsel will provide guidance to the contractor regarding any required further actions.*

*Once the debtor has emerged from bankruptcy it resumes business as usual. A Chapter 11 bankruptcy ordinarily ends with the debtor emerging from Chapter 11 with a confirmed plan of reorganization. The ordinary course of business typically begins on the “effective date” of the plan of reorganization. In the case of a Chapter 7, the bankruptcy typically ends when the Trustee has dissolved the corporation, shut down operations, and distributed assets to pay creditors. RO/Regional Counsel will provide specific guidance to the contractor.*

*When a bankruptcy case closes, whether a Chapter 7, a Chapter 11, or a proceeding under some other chapter of the bankruptcy code, the contractor must modify its financial records to reflect the outcome of the bankruptcy. In general, amounts that bankruptcy law does not require the provider to repay are considered “discharged,” and Medicare must release the provider from liability for the debt.*

*All of the contractor’s debt information, including the POR, PSOR, CMS-750, CMS-751, and Schedule 9 of contractor’s financial statement, must incorporate the bankruptcy outcome by writing off or adjusting the amounts owed in accordance with applicable bankruptcy orders. This frequently will require you to remove line items and include new line items on affected reports. You must maintain detailed support for all revisions, as well as for any extended repayment arrangements. Detailed documentation related to*

*principal, interest charges and immediate payments and extended repayment plans without interest are especially important in global settlement adjustments which are common in chain bankruptcy situations. These amounts may need to be modified based on the global settlement. In global settlements which may cut across providers in a chain, existing amounts may be removed from the provider listing and the new amount(s) substituted in accordance with the bankruptcy documents. This will require close coordination among the Regional Counsel, the RO, CO and affected contractor staff. Coordination and immediate action is especially important if you discover that a bankruptcy discharge for a provider has occurred in a previously unknown bankruptcy proceeding.*

*Occasionally, the court dismisses a bankruptcy 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 had never occurred and continue the normal recovery process, which might include an “intent to refer” letter and subsequent transfer to the Debt Collection Center. Contractors and ROs must ensure that their internal processing systems and financial reports no longer reflect the case as one under bankruptcy, and interest should be reassessed.*

*Always contact the RO/Regional Counsel for guidance on the closure of a bankruptcy. There is no formula for closing a bankruptcy, as it all depends upon the nature of the proceedings and the court orders in the case. The closure could be preceded by a successful reorganization under Chapter 11, a conversion to Chapter 7, or the result of a settlement agreement or stipulation. In all cases, obtain approval from the RO/Regional Counsel before closing the bankruptcy.*

### ***140.8.2 - Debt Located at the Debt Collection Center or Department of the Treasury - (Rev. 12, 10-18-02)***

*If a debt is at the Debt Collection Center (DCC) and the provider files for bankruptcy, the certifier of the debt (contractor or RO) must immediately notify the Central Office Division of Financial Reporting and Debt Referral (DFRDR). The certifier must request that Central Office recall this debt from DCC as debts in bankruptcy status are ineligible for crossservicing and offset.*

***NOTE:*** *Debts for unfiled cost reports are not reported on the H751 and/or R751, therefore, if these debts become “bankrupt,” you will record no transaction on these forms.*

*If the debt is active (less than two years old), the DFRDR, Central Office will recall the debt, update the POR/PSOR to reflect a bankruptcy status, and change the location back to the contractor location. DCB will send an email or fax of the location change to the RO.*

*If the DCC or Department of Treasury receives the initial notification of a bankruptcy*

*filing while servicing a debt, they will notify CMS Central Office, who, in turn, will notify the RO of the bankruptcy.*

### ***140.8.3 - Managing Bankruptcy Debt at the Contractor Location - (Rev. 12, 10-18-02)***

*All bankruptcy debts will remain at the contractor location throughout the life of the debt. The lead RO will assume full ownership and the responsibility for managing the debt at the respective contractor site. The contractor, will help the RO establish communication procedures and will ensure that contractor staff follow them.*

*When chain providers are involved, the lead RO will contact the appropriate contractor and RO staff and establish dialogue procedures that will provide timely and accurate transfer of required information.*

*The lead RO is responsible for management of the debt from the initial filing of the Proof of Claim until the closure of the Bankruptcy. The Associate Regional Administrator for the Division of Financial Management will have the authority to terminate collection activity for cases that meet the criteria for being written off at the Associate Regional Administrator level.*

**ATTACHMENT A**

**PART A PROVIDER OVERPAYMENT**

**REFERRAL CHECKLIST**

**(CMS Pub. 100-6, §140)**

**REFERRALS WILL NOT BE ACCEPTED WITHOUT A COPY OF THE 855**

**Intermediary Name** \_\_\_\_\_ **Date Prepared:** \_\_\_\_\_

**Intermediary No. that OP is reported under on POR** \_\_\_\_\_

**Intermediary No. that OP is reported under on Accounts Receivable Report (751)** \_\_\_\_\_

**I. Provider & Overpayment Information**

**(All information that has corresponding field on Provider Overpayment Report (POR) must agree with POR. Discrepancies should be immediately resolved rather than the form delayed.)**

**A. Provider Name** \_\_\_\_\_ **B. Provider No.** \_\_\_\_\_

**C. Cost Report Period** \_\_\_\_\_

**D. Responsible Individual(s) (Most Current)**

**Name:** \_\_\_\_\_ **Title:** \_\_\_\_\_

**Address:** \_\_\_\_\_

**City, State, Zip:** \_\_\_\_\_ **Telephone:** \_\_\_\_\_

**E. Overpayment Information (List information for each outstanding overpayment)**

**\*\*Original Amount** \_\_\_\_\_ **\*\*Interest Assessed** \_\_\_\_\_ **/Rate**

**\*Principal Recouped** \_\_\_\_\_ **\*Interest Recouped** \_\_\_\_\_

**Principal Referred** \_\_\_\_\_ **Interest Referred**

**Through Date** \_\_\_\_\_ / \_\_\_\_\_ / \_\_\_\_\_

**F. Overpayment Type** \_\_\_\_\_ **G. Determination Date** \_\_\_\_\_

**H. Intermediary Control #** \_\_\_\_\_

**NOTE:** *If unfiled cost report is the overpayment type, indicate the date unfiled cost report is (was) due to be filed, as well as the interim payments.*

**\*Attach detailed information with case regarding recoupments, include dates applied.**

**\*\*Include copies of the Master screen from the POR, for both principal and interest.**

**Page 2**  
**Part A Referral Checklist**

**II. Accounts Receivable Reporting**

*(All information reported in I.E. must reconcile with amounts reported on the Accounts Receivable Report (H751)) (N/A is not acceptable)*

	<u>Line</u>	<u>Amount</u>
A. HI Principal Reported on H751 Part A as transferred to RO		_____
Line Reported on	_____	
HI Interest Reported on H751 Part A as transferred to RO		_____
Line Reported on	_____	
SMI Principal Reported on H751 Part B as transferred to RO		_____
Line Reported on	_____	
SMI Interest Reported on H751 Part B as transferred to RO		_____
Line Reported on	_____	
Total		_____
 B. Indicate quarter information was reported on the H751		 ____ / ____ / ____

**III. Collection Efforts**

*(For items III A-C, unless there is a postpetition demand letter, this information would not be relevant to recovering in bankruptcy).*

- A. *Include copies of the First, Second and Third demand letters (Ref. CMS Pub. 13-2, § 2222). If full series of letters was not sent, explain why.*
  
- B. *Include copies of all correspondence, telephone contacts, etc. pertinent to this transfer.*
  
- C. *List additional actions you have taken to recoup overpayment and include copies of all; (e.g., attempts to locate through directory assistance, AMA, post office forwarding addresses; disconnected phones, flags against other legal entities*
  
- D. *The contractor **must** establish whether or not a particular provider is participating in the Medicaid Program so that the Federal Share of Medicaid payments can be withheld, if appropriate, in accordance with CMS Pub. 13-2, § 2226ff.      **PARTICIPATING: Yes** \_\_\_\_ **No** \_\_\_\_*

*Medicaid Number/State: \_\_\_\_\_  
(If Yes, Medicaid # and State must be included)*

- E. *Is the provider listed in the Fraud Investigation Data Base? (FID)    Yes* \_\_\_\_ *No* \_\_\_\_

**Page 3**  
**Part A Referral Checklist**

**IV. Ownership**

Check the appropriate ownership affiliation:

- A.  INCORPORATED**      **B.  PARTNERSHIP**  
**Chain Organization** Yes  No       EIN # \_\_\_\_\_  
If yes, who is the home office intermediary? \_\_\_\_\_  
Incorporation Date \_\_\_\_\_  
EIN # \_\_\_\_\_

1) If partnership, list names and SS#s of all partners. 2) If Corporation, list names and addresses of officers. 3) If Chain organization, list other provider names, addresses, and provider numbers.

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- C. Is "Responsible Individual(s)" information the most current?** Yes \_\_\_\_\_ No \_\_\_\_\_  
Provide alternate contact(s), Name, Title, Address and Telephone Number

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- D. Are claims for services still being submitted?** Yes \_\_\_\_\_ No \_\_\_\_\_  
If yes, why is referral being made. \_\_\_\_\_

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- E. Has there been a change of ownership?** Yes \_\_\_\_\_ No \_\_\_\_\_  
If yes, what is the date? \_\_\_\_\_  
Has the new owner assumed the previous owner's provider agreement? Yes \_\_\_\_\_ No \_\_\_\_\_  
**(Provide copy of sales agreement.)**

- F. Has recoupment from new owner been attempted?** Yes \_\_\_\_\_ No \_\_\_\_\_

**Page 4**  
**Part A Referral Checklist**

**V. General**

**A.** *Is the provider still participating in the Medicare program?* Yes \_\_\_\_\_ No \_\_\_\_\_

*Note: If the provider is still participating in the program and claims recoupments are being made, do not transfer case to the RO.*

**B.** *Are you aware of any bankruptcy proceedings planned or commenced on behalf of the provider transferred?* Yes \_\_\_\_\_ No \_\_\_\_\_

*Copies of pertinent court documents should be submitted. Take the following program safeguard actions when a bankruptcy situation is identified:*

- *Adjust interim payment calculation to ensure that no overpayment is made*
- *Consult the CMS RO before applying any disposition regarding cost report underpayments*
- *Expedite cost report desk reviews and audit settlements*
- *Tentative settlements should not be made in bankruptcy cases*
- *Consult the CMS RO regarding any cost reports pending submission and the expected dates of submission*

**C.** *Did the provider request an extended repayment schedule (ERS)?* Yes \_\_\_\_\_ No \_\_\_\_\_

*If yes, was it approved?* Yes \_\_\_\_\_ No \_\_\_\_\_ *Length of ERS* \_\_\_\_\_

*Number of payments made* \_\_\_\_\_

*Attach any financial documentation submitted.*

**D.** *Did provider request an intermediary or PRRB hearing?* Yes \_\_\_\_\_ No \_\_\_\_\_

*If yes, do not transfer unless the decisions have been rendered. Submit all pertinent information.*

**Cases pending a Reopening, Bankruptcy, BCA Review, or PRRB Decision, should not be transferred to the CMS-RO until judgment has been rendered. Copies of all decisions must be included.**

**INSTRUCTIONS:** *If you do not provide any requested information, you must give a detailed explanation of why you cannot secure the information. We will return incomplete forms with the entire case.*

**Signature:** \_\_\_\_\_

**Name:** \_\_\_\_\_

**Title:** \_\_\_\_\_

**Telephone:** \_\_\_\_\_

**Date:** \_\_\_\_\_





**PART B PHYSICIAN/SUPPLIER OVERPAYMENT**  
**Referral CHECKLIST**  
(CMS Pub. 14-3, § 7142.2)

**REFERRALS WILL NOT BE ACCEPTED WITHOUT A COPY OF THE 855**

Carrier Name \_\_\_\_\_ Date Prepared: \_\_\_\_\_

Carrier No. that OP is reported under on PSOR \_\_\_\_\_ Carrier No. that OP is reported under on  
Accounts Receivable Report (751) \_\_\_\_\_

**I. Physician/Supplier Overpayment Information**

*(All information that has corresponding field on Physician Supplier Overpayment Report (PSOR) must agree with PSOR)*

A. Phy/Supp. Name \_\_\_\_\_ B. Phy/Supp No. \_\_\_\_\_

UPIN \_\_\_\_\_

**C. Responsible Individual(s)**

Name: \_\_\_\_\_ Title: \_\_\_\_\_

Address: \_\_\_\_\_

City, State, Zip: \_\_\_\_\_ Telephone: \_\_\_\_\_

**D. Overpayment Information**

\*\*Original Amount \_\_\_\_\_ \*\*Interest Assessed \_\_\_\_\_ /Rate

\*Principal Recouped \_\_\_\_\_ \*Interest Recouped \_\_\_\_\_

Principal Referred \_\_\_\_\_ Interest Referred \_\_\_\_\_

Through date \_\_\_\_\_

**Query if overpayment is based on fraud.**

*\*Attach detailed information with case regarding recoupments, include dates applied.*

*\*\*Include a copy of the Master screen from the PSOR.*

*Information requested in E though L is needed for all claims involved in overpayment.*

*E. Discovery Date \_\_\_\_\_ F. Determination Date \_\_\_\_\_*

*G. DCN \_\_\_\_\_ H. Cause of OP \_\_\_\_\_*

*I. Claim Number \_\_\_\_\_ J. Claim Paid Date \_\_\_\_\_*

*K. Beneficiary Name \_\_\_\_\_ L. HI Claim No. \_\_\_\_\_*

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**Part B Referral Checklist**

**II. Accounts Receivable Reporting**

*(All information reported in I.D. must reconcile with amounts reported on the Accounts Receivable Report (H751)) (N/A is not acceptable)*

	<u>Line</u>	<u>Amount</u>
A. SMI Principal Reported on H751 Part B as transferred to RO	_____	_____
Line Reported on	_____	_____
SMI Interest Reported on H751 Part B as transferred to RO	_____	_____
Line Reported on	_____	_____
B. Indicate quarter information was reported on the H751	_____	_____
C. Is this Overpayment reported on the M751	Yes _____ No _____	

**III. Collection Efforts**

- A. Include copies of the First and Second demand letters (Ref. CMS Pub. 14-3, Sec. 7142). If full series of letters was not sent, explain why.
  
- B. Include copies of all correspondence, telephone contacts, etc. pertinent to this transfer.
  
- C. List additional actions you have taken to recoup overpayment and include copies of all, (e.g., attempts to locate through directory assistance, AMA, post office forwarding addresses; disconnected phones, flags against other numbers).
  
- D. The Carrier **must** establish whether or not a particular provider is participating in the Medicaid program so that the Federal Share of Medicaid payments can be withheld, if appropriate, in accordance with CMS Pub. 14-3, § 7170.1.  
**PARTICIPATING:** Yes \_\_\_\_\_ No \_\_\_\_\_

Medicaid Number/State: \_\_\_\_\_  
*(If Yes, Medicaid # and State must be included)*

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**Part B Referral Checklist**

**IV. Ownership**

Check the appropriate ownership affiliation:

**A. \_\_\_\_\_ INDIVIDUAL**  
Tax ID # \_\_\_\_\_  
SS # \_\_\_\_\_

**B. \_\_\_\_\_ INCORPORATED**  
Chain Organization Yes \_\_\_\_\_ No \_\_\_\_\_  
Incorporation Date \_\_\_\_\_  
TIN # \_\_\_\_\_

**C. \_\_\_\_\_ PARTNERSHIP**  
TIN # \_\_\_\_\_

**D. Is A Responsible Individual(s) information the most current?** Yes \_\_\_\_\_ No \_\_\_\_\_

Provide alternate contact(s), Name, Title, Address and Telephone Number

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

**E. Is recovery due from the beneficiary or other 3rd party payor?** Yes \_\_\_\_\_ No \_\_\_\_\_

If yes, why was recovery not made (enclose copies of letters and replies).

**F. Are claims for services still being submitted?** Yes \_\_\_\_\_ No \_\_\_\_\_

If yes, why is referral being made.

**G. Are claims for services/supplies being submitted under another physician/supplier number?**

Yes \_\_\_\_\_ No \_\_\_\_\_ If Yes, provide alternate number \_\_\_\_\_

*Is the tax identification, or social security number the same as debtor's? If yes, recoupment should be attempted.*

**H.** *Has there been a change of ownership? Yes \_\_\_\_\_ No \_\_\_\_\_*  
*If Yes, Has the new owner assumed any of the previous owner's liabilities? Yes \_\_\_\_\_ No \_\_\_\_\_*  
**(Provide copy of sales agreement.)**

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**Part B Referral Checklist**

**V. General**

A. Is the physician/supplier still participating in the Medicare program? Yes \_\_\_\_\_ No \_\_\_\_\_

B. Are you aware of any bankruptcy proceedings planned or commenced on behalf of the provider transferred? Yes \_\_\_\_\_ No \_\_\_\_\_ Please provide copies of pertinent court documents.

C. Did the physician/supplier request an extended repayment schedule (ERS)?  
Yes \_\_\_\_\_ No \_\_\_\_\_  
If yes, was it approved? Yes \_\_\_\_\_ No \_\_\_\_\_ Length of ERS \_\_\_\_\_  
Number of payments made \_\_\_\_\_  
Attach any financial documentation submitted.

D. Did the physician/supplier request a Fair Hearing or ALJ Hearing?  
Yes \_\_\_\_\_ No \_\_\_\_\_  
If yes, do not transfer unless the both fair hearing and ALJ decisions have been rendered. Submit all pertinent documentation.

**THIS FORM MUST BE COMPLETE. IF ANY REQUESTED INFORMATION IS NOT PROVIDED, A DETAILED EXPLANATION MUST BE GIVEN AS TO WHY THE INFORMATION CANNOT BE SECURED. INCOMPLETE FORMS WILL BE RETURNED WITH THE ENTIRE CASE.**

**Signature:** \_\_\_\_\_

**Name:** \_\_\_\_\_

**Title:** \_\_\_\_\_

**Telephone:** \_\_\_\_\_

**Date:** \_\_\_\_\_





**ATTACHMENT B**  
**CONTRACTOR BANKRUPTCY CHECKLIST**

- *Send the following information to the RO upon learning that a provider has or may soon file for bankruptcy:*
- *Provider Name*
- *Provider Medicare Number*
- *Provider Address*
- *Provider Tax Identification Number*
- *Overpayment Determination Date*
- *Original Overpayment, Amounts Recouped, Current Balance Reported on the CMS 750/751 reports of principal and interest outstanding balances. Date the receivable was included on the CMS 750/751.*
- *Overpayment Type*
- *Fraud and Abuse Overpayments or Investigations*
- *For Part A Intermediaries, the Cost Report Year*
- *For Part A Intermediaries, the Cost Reports Settlements Pending Inhouse with Expected Completion Dates*
- *For Part A Intermediaries, the Cost Reports Pending Submission with Expected Dates*
- *For Part A Intermediaries, Interim Rate Information by Cost Year for Previous Three Years*
- *For Part A Intermediaries, Overpayment History by Cost Year for Previous Three Years*
- *For Part B Carriers or DMERCs, the Claim Numbers Relating to Overpayments*
- *For Part B Carriers or DMERCs, the Dates of Service for Related Claims*
- *For Part B Carriers or DMERCs, the Dates of Payment for Related Claims*
- *Medicare Review Overpayments or Reviews*
- *Anticipated Reopenings*