

GAO

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on Investigations, Committee on
Homeland Security and Governmental
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June 2008

MEDICARE

Thousands of Medicare Providers Abuse the Federal Tax System





Highlights of [GAO-08-618](#), a report to the Permanent Subcommittee on Investigations, Committee on Homeland Security and Governmental Affairs, U.S. Senate

Why GAO Did This Study

Under the Medicare program, the Centers for Medicare & Medicaid Services (CMS) and its contractors paid over \$400 billion in Medicare benefits in calendar year 2006.

GAO was asked to determine if Medicare providers have unpaid federal taxes and, if so, to (1) determine the magnitude of such debts, (2) identify examples of Medicare providers that have engaged in abusive or potentially criminal activities, and (3) determine whether CMS prevents delinquent taxpayers from enrolling in Medicare or levies payments to pay taxes.

To determine amount of unpaid taxes owed by Medicare providers, GAO compared claim payment data from CMS and tax debt data from the Internal Revenue Service (IRS). In addition, GAO reviewed policies, procedures, and regulations related to Medicare. GAO also performed additional investigative activities.

What GAO Recommends

GAO recommends that CMS consider issuing guidance to require Medicare contractors to screen prospective Medicare providers for unpaid taxes, including obtaining consent from these providers to disclose federal tax debts. GAO also recommends that CMS incorporate all Medicare payments into the continuous levy program as expeditiously as possible. CMS stated that it has taken some actions and is planning other actions to address GAO's two recommendations.

To view the full product, including the scope and methodology, click on [GAO-08-618](#). For more information, contact Gregory Kutz at (202) 512-6722 or kutzg@gao.gov.

MEDICARE

Thousands of Medicare Providers Abuse the Federal Tax System

What GAO Found

Our analysis of data provided by CMS and IRS indicates that over 27,000 health care providers (i.e., about 6 percent of all such providers) paid under Medicare during calendar year 2006 had payroll and other agreed-to federal tax debts totaling over \$2 billion. The \$2 billion in unpaid tax debts only includes those debts reported on a tax return or assessed by IRS through its enforcement programs. This \$2 billion figure is understated because some of these Medicare providers owed taxes under separate tax identification numbers (TIN) from the TINs that received the Medicare payments or they did not file their tax returns.

We selected 25 Medicare providers with significant tax debt for more in-depth investigation of the extent and nature of any abusive or potentially criminal activity. Our investigation found abusive and potentially criminal activity, including failure to remit to IRS payroll taxes withheld from their employees. Rather than fulfill their role as "trustees" of this money and forward it to IRS as required by law, these Medicare providers diverted the money for other purposes. Willful failure to remit payroll taxes is a felony under U.S. law. Furthermore, individuals associated with some of these providers at the same time used payroll taxes withheld from employees for personal gain. Some of these individuals accumulated substantial wealth and assets, including million-dollar houses and luxury vehicles, while failing to pay their federal taxes. In addition, some providers received Medicare payments even though they had quality-of-care issues, such as losing track of a patient in their care who has not been found.

Examples of Abusive and Criminal Activity

Type of business	Unpaid tax debt	CMS payments	Description of Medicare health care provider activity
Hospital	\$15 million	\$21 million	Owners were found liable for submitting false claims to Medicare from another medical business.
Nursing home	\$7 million	\$15 million	IRS records indicate that the owner purchased luxury cars and other personal items with money funneled through a charitable foundation.
Nursing home	\$4 million	\$4 million	Owner constructed multimillion-dollar home while business was not paying its taxes.

Source: GAO analysis of IRS, CMS, public, and other records.

CMS has not developed a policy to require contractors (1) to obtain consent for IRS disclosure of federal tax debts and (2) to screen providers for unpaid taxes. Further complicating this issue, absent consent by the taxpayer, which CMS does not require, federal law generally prohibits the disclosure of taxpayer data to CMS or its contractors.

IRS can continuously levy up to 15 percent of each payment made to a federal payee—for example, a Medicare hospital—until that tax debt is paid. However, CMS has not incorporated most of its Medicare payments into the continuous levy program. As a result, for calendar year 2006, the government lost opportunities to potentially collect over \$140 million in unpaid taxes.

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Abbreviations

CMS	Centers for Medicare & Medicaid Services
DOD	Department of Defense
FCTC	Federal Contractor Tax Compliance
FMS	Financial Management Service
GSA	General Services Administration
HHS	Department of Health and Human Services
HIGLAS	Healthcare Integrated General Ledger Accounting System
IRS	Internal Revenue Service
LLC	limited liability company
OIG	Office of Inspector General
TFRP	trust fund recovery penalty
TIN	taxpayer identification number
TOP	Treasury Offset Program

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United States Government Accountability Office
Washington, DC 20548

June 13, 2008

The Honorable Carl Levin
Chairman
The Honorable Norm Coleman
Ranking Member
Permanent Subcommittee on Investigations
Committee on Homeland Security and Governmental Affairs
United States Senate

This report continues a body of work that has identified federal contractors, grant recipients, and exempt organizations with unpaid federal taxes. In hearings held by this subcommittee,¹ we testified that Department of Defense (DOD), federal civilian agency and General Services Administration (GSA) contractors abused the federal tax system with little consequence. Because of the significance of the issues raised during these hearings, you asked us to provide additional information about whether health care providers who were paid by the government for Medicaid and Medicare-related services were engaged in similar tax abuses and to provide recommendations to increase the effectiveness and efficiency of tax revenue collections from federal contractors under the Federal Payment Levy Program.

This is the third in a series of reports and testimonies to respond to your request. In March 2007, we testified that Medicare physicians, health professionals, and suppliers paid under the Supplemental Medical Insurance program, also known as Medicare Part B, had abused the federal tax system while doing business with the federal government.² In November 2007, we testified and reported on Medicaid health care providers from seven selected states that also abused the federal tax

¹GAO, *Financial Management: Some DOD Contractors Abuse the Federal Tax System with Little Consequence*, [GAO-04-414T](#) (Washington, D.C.: Feb. 12, 2004); *Financial Management: Thousands of Civilian Agency Contractors Abuse the Federal Tax System with Little Consequence*, [GAO-05-683T](#) (Washington, D.C.: June 16, 2005); and *Financial Management: Thousands of GSA Contractors Abuse the Federal Tax System*, [GAO-06-492T](#) (Washington, D.C.: Mar. 14, 2006).

²GAO, *Medicare: Thousands of Medicare Part B Providers Abuse the Federal Tax System*, [GAO-07-587T](#) (Washington, D.C.: Mar. 20, 2007).

system.³ This report will cover all Medicare health care providers that have abused the federal tax system, expanding on our March 2007 testimony.

The specific objectives of this forensic audit and related investigations were to determine, to the extent possible, if Medicare providers have unpaid federal taxes and, if so, to (1) determine the magnitude of tax debts owed (2) identify examples of Medicare providers involved in abusive or potentially criminal activities and (3) determine whether the Centers for Medicare & Medicaid Services (CMS) prevents Medicare providers with tax problems from enrolling in Medicare or levies Medicare payments to pay tax debts.

To identify the magnitude of Medicare providers with unpaid federal taxes, we obtained and analyzed the Internal Revenue Service (IRS) tax debt data as of September 30, 2006, and obtained and analyzed the CMS database of Medicare-approved claims and payments paid to Medicare providers for calendar year 2006. We matched the list of Medicare providers with IRS tax debts using taxpayer identification numbers (TIN). To identify specific instances of abusive and potentially criminal activities by selected Medicare providers and their owners, we performed investigative work on a nonrepresentative selection of 25 Medicare providers. We selected these 25 providers using primarily the amount of tax debt and number of delinquent tax periods as selection factors. For these 25 cases, we reviewed copies of automated tax transcripts and other tax records (for example, revenue officers' notes) and performed additional searches of criminal, financial, health care, and public records. To determine whether CMS prevents health care providers from enrolling in Medicare or levies Medicare payments to pay taxes, we examined the CMS regulations, policies, and procedures for conducting determinations in the enrollment approval process. We also interviewed officials from CMS, two large CMS Medicare contractors, IRS, and the Department of the Treasury's (Treasury) Financial Management Service (FMS) concerning any barriers to levying Medicare payments. To determine the potential levy collections on Medicare payments during calendar year 2006, we used 15 percent of the total paid claim or total tax debt amount reported to the continuous levy program, whichever was less. A more detailed description of the

³GAO, *Medicaid: Thousands of Medicaid Providers Abuse the Federal Tax System*, [GAO-08-17](#) (Washington, D.C.: Nov. 14, 2007), and *Medicaid: Thousands of Medicaid Providers Abuse the Federal Tax System*, [GAO-08-239T](#) (Washington, D.C.: Nov. 14, 2007).

scope and methodology related to our audit and investigative work supporting this report is provided in appendix I.

We conducted this forensic audit and related investigations from July 2007 to June 2008 in accordance with generally accepted government auditing standards. Those standards require that we plan and perform the audit to obtain sufficient, appropriate evidence to provide a reasonable basis for our findings and conclusions based on our audit objectives. We believe that the evidence obtained provides a reasonable basis for our findings and conclusions based on our audit objectives. We performed our investigative work in accordance with standards prescribed by the President's Council on Integrity and Efficiency.

Results in Brief

In calendar year 2006, thousands of Medicare providers abused the federal tax system with little consequence. Specifically, our analysis of data provided by CMS and IRS indicated that over 27,000 Medicare providers had unpaid federal taxes totaling over \$2 billion. This represented over 6 percent of the number of all Medicare providers paid during calendar year 2006. The unpaid taxes largely consisted of individual income and payroll taxes. However, the \$2 billion of tax debts owed by Medicare providers is substantially understated because IRS data do not reflect all amounts owed by businesses and individuals. Specifically, it does not include amounts owed by businesses and individuals that have not filed tax returns or that have failed to report the full amount of taxes due (referred to as nonfilers and underreporters) and for which IRS has not determined that specific tax debts are owed. Also, there are Medicare providers that owed taxes under separate TINs from those that received the Medicare payments and are not included in the \$2 billion figure. For example, our analysis does not include federal taxes owed by individuals where payments are made to the limited liability companies (LLC), partnerships, or other businesses. These businesses then pass the income from Medicare to business owners to be reported on their personal tax returns.

Our audits and investigations detail examples of abusive and criminal activity related to the federal tax system by 25 Medicare providers. These 25 providers were paid by Medicare for a variety of services, including hospital, hospice, and skilled nursing facility services. Many were established businesses (such as corporations) that owed payroll taxes withheld for their employees. Rather than fulfill their role as "trustees" of this money and forward it to IRS as required by law, these Medicare providers diverted the money for other purposes. In one case, a home health company received over \$15 million in Medicare payments but did

not pay \$7 million in federal taxes. The owner of the company had a history of asset concealment schemes and other questionable dealings involving trusts, partnerships, and other entities. For example, the owner established a charitable foundation. However, the funds from this foundation were used to purchase luxury cars and other personal items. Our audit also identified quality of care problems involving our cases, including patient neglect, for example, losing track of a patient in the provider's care who has not been found and not taking appropriate actions to prevent a patient's suicide.

CMS has not developed Medicare regulations or an implementing policy to (1) require contractors to obtain consent for IRS disclosure of federal tax debts and (2) require CMS or its contractors to screen providers for unpaid taxes. As a consequence, CMS has no mechanism to prevent providers with substantial unpaid federal taxes from becoming Medicare providers or receiving payments from Medicare. A provision of the Taxpayer Relief Act of 1997 authorizes IRS to continuously levy certain federal payments made to delinquent taxpayers.⁴ However, in the 11 years since its passage, CMS has not incorporated most of its Medicare payments into the continuous levy program.⁵ As a result, for calendar year 2006, the government lost opportunities to potentially collect over \$140 million in unpaid federal taxes.⁶ CMS officials stated that they plan to incorporate all payments made through the Healthcare Integrated General Ledger Accounting System (HIGLAS), Medicare's central accounting system, into the levy program by October 2008. According to CMS officials, this will cover about 60 percent of all Medicare fee-for-service payments. CMS officials stated that the remaining 40 percent will be implemented into the continuous levy program in the next several years as the Medicare contractors convert their systems to HIGLAS.

We provided a draft of our report to FMS, CMS, and IRS for review and comment. FMS did not have any comments on the draft. IRS stated that it

⁴Pub. L. No. 105-34, 111 Stat. 788 (1997).

⁵According to CMS officials, certain Medicare payments that are disbursed by Treasury (such as managed care and drug benefit payments) do go through the continuous levy program.

⁶To determine the potential levy collections on Medicare payments during calendar year 2006, we used 15 percent of the total paid claim or total tax debt amount reported to the continuous levy program, whichever was less. IRS officials stated that Medicare payments can only be levied at 15 percent of payments under current law.

understood the importance and potential benefits of considering unpaid federal tax debt in the Medicare screening process and will support the CMS in its efforts to address the recommendations. CMS did not disagree with our recommendations, and stated that it issued proposed rules that would require prospective durable medical equipment, prosthetic, and orthotic suppliers to be free of federal or state tax debt and it will consider whether to use its authority to establish a similar requirement for the other provider and supplier types. CMS also stated that it is scheduled to begin subjecting its Medicare fee-for-service payments to the levy program in October 2008. We are pleased that both CMS and IRS have shown the willingness to improve the process of utilizing available tax information to prevent providers with tax problems from participating in Medicare and collecting tax debts. See the Agency Comments and Our Evaluation section of this report for a more detailed discussion of the agency comments. We have reprinted IRS's written comments in appendix III and CMS's written comments in appendix IV.

Background

Authorized by the Title XVIII of the Social Security Act, Medicare is the nation's largest health insurance program. In 2006, Medicare provided medical services to 43.2 million beneficiaries and paid claims totaling \$402 billion in 2006. CMS, an operating division of the Department of Health and Human Services (HHS), administers the Medicare program. Medicare benefits are divided into four parts: (1) Part A consists of inpatient hospital care, skilled nursing facility care, qualified home health care, and hospice care; (2) Part B includes physicians' services, outpatient hospital services, treatment for end-stage renal disease, laboratory services, durable medical equipment, certain elements of home health care, and other medical services and supplies; (3) Part C, the Medicare Advantage program, includes traditional health maintenance organizations, preferred provider organizations, and private fee-for-service plans; and (4) Part D offers beneficiaries an outpatient prescription drug benefit through private plans that contract with Medicare. For Medicare Parts A and B, also known as fee-for-service, CMS Medicare contractors are responsible for screening Medicare providers prior to enrollment into the Medicare program. Medicare contractors also process and pay Medicare fee-for-service claims and are reimbursed by CMS through the Medicare Trust Fund.⁷

⁷For Medicare Parts C and D, CMS processes the payment files, which are sent to Treasury for disbursement.

Magnitude of Unpaid Taxes of Medicare Providers

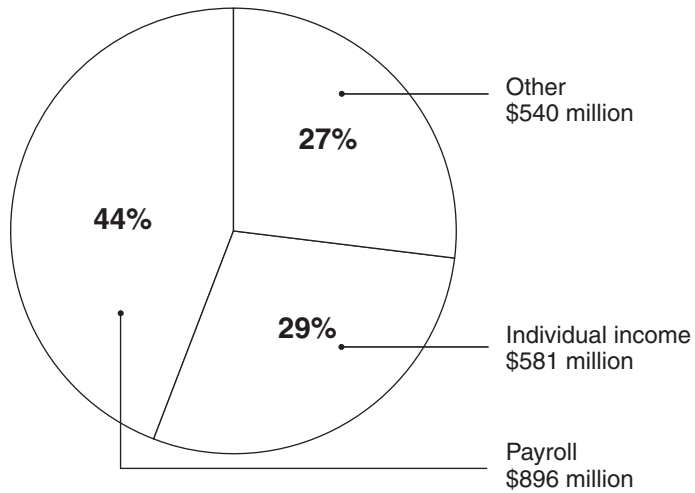
Our analysis found that over 27,000 Medicare providers had over \$2 billion in unpaid federal taxes as of September 30, 2006.⁸ This represented over 6 percent of the approximately 436,000 Medicare providers paid during calendar year 2006. This represented over 6 percent of the approximately 436,000 Medicare providers paid during calendar year 2006. The amount of unpaid federal taxes we identified among Medicare providers was substantially understated because (1) we intentionally limited our scope to providers with agreed-to federal tax debt for tax periods prior to 2006; (2) the IRS taxpayer data reflected only the amount of unpaid taxes either reported by the taxpayer on a tax return or assessed by IRS through its various enforcement programs and thus the unpaid tax debt amount did not include entities that did not file tax returns or underreported their income; and (3) our analysis does not include Medicare providers that owed taxes under separate TINs from those that received the Medicare payments.

Characteristics of Medicare Providers' Unpaid Federal Taxes

As shown in figure 1, 73 percent of the approximately \$2 billion in unpaid taxes comprised individual income and payroll taxes. The other 27 percent of taxes included corporate income, excise, unemployment, and other types of taxes.

⁸Our analysis included all Medicare providers (i.e., Parts A, B, C, and D) that were paid during calendar year 2006. Our analysis of Medicare providers with tax debt as of September 30, 2006, excluded (1) tax debts that have not been agreed to by the tax debtor or affirmed by the court, (2) tax debts from calendar year 2006, (3) approved Medicare claims less than \$100, and (4) tax debts less than \$100.

Figure 1: Medicare Providers' Unpaid Taxes by Tax Type



Source: GAO analysis of Medicare payments data and IRS data as of September 30, 2006.

As shown in figure 1, Medicare providers owed \$896 million in payroll taxes. Employers are subject to civil and criminal penalties if they do not remit payroll taxes to the federal government. When an employer withholds taxes from an employee's wages, the employer is deemed to have a responsibility to hold these amounts "in trust" for the federal government until the employer makes a federal tax deposit in that amount. When these withheld amounts are not forwarded to the federal government, the employer is liable for these amounts as well as the employer's matching Federal Insurance Contribution Act contributions for Social Security and Medicare. Individuals within the business (e.g., corporate officers) may be held personally liable for the withheld amounts not forwarded⁹ and assessed a civil monetary penalty known as a trust fund recovery penalty (TFRP). Failure to remit payroll taxes can also be a criminal felony offense punishable by imprisonment of not more than 5 years,¹⁰ while the failure to properly segregate payroll taxes can be a criminal misdemeanor offense punishable by imprisonment of up to a year.¹¹

⁹26 U.S.C. § 6672.

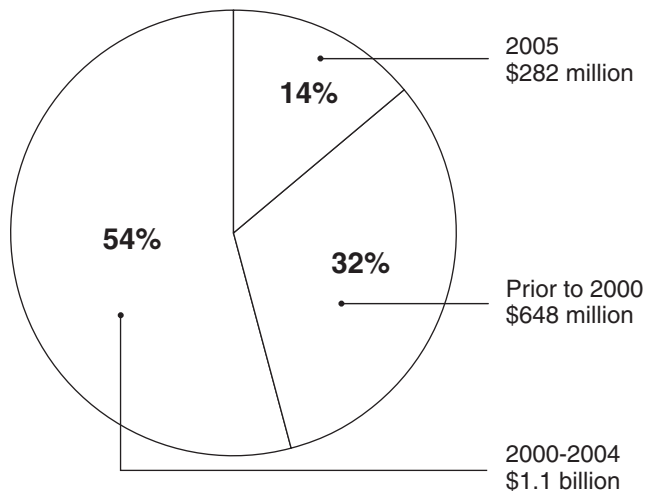
¹⁰26 U.S.C. § 7202.

¹¹26 U.S.C. § 7215 and 26 U.S.C. § 7512 (b).

The law imposes no penalties on an employee for the employer's failure to remit payroll taxes since the employer is responsible for submitting the amounts withheld. The Social Security and Medicare trust funds are subsidized or made whole for unpaid payroll taxes by the general fund. Thus, personal income taxes, corporate income taxes, and other government revenues are used to pay for these shortfalls to the Social Security and Medicare trust funds.

A substantial amount of the unpaid federal taxes shown in IRS records owed by Medicare providers had been outstanding for several years. As reflected in figure 2, about 54 percent of the \$2 billion in unpaid taxes were for tax periods from calendar year 2000 through calendar year 2004, and approximately 32 percent of the unpaid taxes were for tax periods prior to calendar year 2000.¹²

Figure 2: Unpaid Taxes of Medicare Providers by Calendar Year



Source: GAO analysis of Medicare payments data and IRS data as of September 30, 2006.

¹²A "tax period" varies by tax type. For example, the tax period for payroll and excise taxes is generally one quarter of a year. The taxpayer is required to file quarterly returns with IRS for these types of taxes, although payment of the taxes occurs throughout the quarter. In contrast, for income, corporate, and unemployment taxes, a tax period is 1 year. A tax period may not always correspond to the age of the tax debt, as when a tax form is filed years after the due date or when IRS assesses additional taxes to earlier tax periods.

Our previous work has shown that as unpaid taxes age, the likelihood of collecting all or a portion of the amounts owed decreases.¹³ This is, in part, because of the continued accrual of interest and penalties on the outstanding tax debt, which, over time, can dwarf the original tax obligation. The amount of unpaid federal taxes reported above does not include all tax debts owed by Medicare providers because of statutory provisions that give IRS a finite period under which it can seek to collect unpaid taxes. Generally, there is a 10-year statutory collection period beyond which IRS is prohibited from attempting to collect tax debt.¹⁴ Consequently, if the Medicare providers owe federal taxes beyond the 10-year statutory collection period, the older tax debt may have been removed from IRS's records. We were unable to determine the amount of tax debt that had been removed.

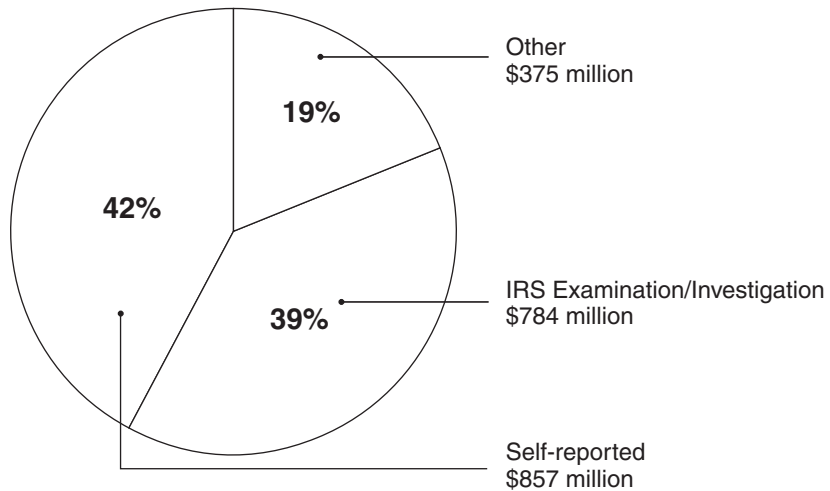
As shown in figure 3, Medicare providers did not disclose to IRS a significant amount of taxes owed instead the taxes were discovered through IRS examination or investigation. Specifically, \$784 million, or about 39 percent of the \$2 billion in unpaid taxes, was assessed by an IRS examination or investigation.¹⁵ Medicare providers did report about \$857 million of the tax debt amount. These amounts were generally reported on tax returns filed but containing a balance due.

¹³GAO, *Internal Revenue Service: Recommendations to Improve Financial and Operational Management*, GAO-01-42 (Washington D.C.: Nov. 17, 2000).

¹⁴The 10-year time limit may be suspended and include periods during which the taxpayer is involved in a collection due process appeal, litigation, a pending offer-in-compromise, or an installment agreement. As a result, fig. 2 includes taxes that are for tax periods from more than 10 years ago.

¹⁵Assessments from IRS examinations and investigations include assessments as a result of the creation of a substitute form. Other sources of IRS assessments include adjustments to modules, credit discrepancies, math errors, penalties, Underreporting Program assessments, drug assessments, delinquent return notice status, Windfall Profits program assessments, and other assessments with none of the other categorized conditions.

Figure 3: Source of Unpaid Assessment



Source: GAO analysis of Medicare payments data and IRS data as of September 30, 2006.

Unpaid Federal Taxes of Medicare Providers Are Understated

Although the over \$2 billion in unpaid federal taxes owed by Medicare providers as of September 30, 2006, is a significant amount, it likely substantially understates the full extent of unpaid taxes owed by these or other businesses and individuals. The IRS tax database reflected only the amount of unpaid federal taxes either reported by the individual or business on a tax return or assessed by IRS through its various enforcement programs. The IRS database does not reflect amounts owed by businesses and individuals that have not filed tax returns and for which IRS has not assessed tax amounts due. For example, during our audit, we identified several instances from our 25 case studies in which Medicare providers failed to file tax returns for a particular tax period and IRS had not assessed taxes for these tax periods. Consequently, while these providers had unpaid federal taxes, they were listed in IRS records as having no unpaid taxes for those periods. Further, our analysis did not attempt to account for businesses or individuals that purposely underreported income and were not specifically identified by IRS as owing the additional federal taxes. According to IRS, underreporting of income accounted for more than 80 percent of the estimated \$345 billion annual gross tax gap.¹⁶ Finally, our analysis did not attempt to identify Medicare

¹⁶According to IRS, nonfiling and underpayment of taxes made up the rest of the gross tax gap.

providers that owed taxes under separate TINs from those that received the Medicare payments. For example, sole proprietors and certain LLCs may file Medicare claims under their employer identification numbers. If these Medicare providers owe personal income taxes the analysis will not capture the amount of the personal income taxes owed. Consequently, the full extent of unpaid federal taxes for Medicare providers is not known.

Examples of Medicare Providers Involved in Abusive and Potentially Criminal Activity Related to the Federal Tax System

For all 25 cases involving Medicare providers with outstanding tax debt that we audited and investigated, we found abusive activity, potentially criminal activity, or both related to the federal tax system.¹⁷ All of these cases involved Medicare providers that had unpaid payroll taxes, many dating as far back as the early 1990s.¹⁸ Rather than fulfill their role as “trustees” of this money and forward it to IRS as required by law, these Medicare providers diverted the money for other purposes. IRS had TFRPs in effect for 11 of the 25 business cases at the time of our review. In addition, as discussed previously, willful failure to remit payroll taxes is a criminal felony offense punishable by imprisonment up to 5 years.¹⁹

Our review of selected Medicare providers revealed significant challenges that IRS faces in its enforcement of tax laws, a continuing high-risk area for IRS.²⁰ Although the nation’s tax system is built upon voluntary compliance, when businesses and individuals fail to pay voluntarily, IRS has a number of enforcement tools, including the use of levies, to compel compliance or elicit payment. Our review of the 25 Medicare providers found that IRS attempted to work with the businesses and individuals to achieve voluntary compliance, pursuing enforcement actions later rather than earlier in the collection process. Our review of IRS records with respect to the 25 cases showed that IRS did not issue paper levies to the

¹⁷For all cases, we performed searches of criminal, financial, tax, and public records to determine whether the Medicare providers are involved in related entities. For each related entity, we determined whether that entity had Medicare payments for calendar year 2006 and had unpaid federal taxes as of September 30, 2006. In instances where we identified related parties with both Medicare payments and tax debts, we defined a case study to include those related entities, and reported on the combined unpaid taxes and combined Medicare payments for the original individual/business and all the related entities.

¹⁸The 10-year time limit may be suspended and include periods during which the taxpayer is involved in a collection due process appeal, litigation, a pending offer-in-compromise, or an installment agreement.

¹⁹26 U.S.C. § 7202.

²⁰GAO, *High-Risk Series: An Update*, GAO-07-310 (Washington, D.C.: Jan. 2007).

Medicare contractors to levy the payments of Medicare providers for 10 of the 25 cases. As a result, many of the Medicare providers in our case studies continued to receive Medicare payments while failing to pay their federal taxes.

Our investigations revealed that despite owing substantial amounts of federal taxes to IRS, some owners of Medicare providers had substantial personal assets—including multimillion-dollar homes and luxury cars. For example, the auditor for one Medicare provider found that the owner misappropriated assets for personal gain. At the same time as owing taxes, the owner was building a multimillion-dollar residence and had over \$1.5 million in home furnishings and artwork.

In addition to failure to pay taxes, our investigations also revealed that certain Medicare providers had significant quality-of-care and other problems. For example, several cases involved quality-of-care problems, including patient neglect, for example, losing track of a patient in the provider's care who has not been found and not taking appropriate actions to prevent a patient's suicide. In addition, a couple of nursing homes were cited by regulators for violating patient health and safety regulations. In another case, an owner of one Medicare provider was excluded from the Medicare program for submitting false Medicare claims, and in another case a provider continued to receive Medicare payments even though it was barred from receiving government contracts. In yet another case, the owner used funds from the business to fund the owner's statewide political campaign during the time the business was not paying its payroll taxes.

Table 1 highlights 10 of the 25 cases of Medicare providers with unpaid taxes. IRS has collection actions during 2007 on 18 of 25 cases. Appendix II provides details on the other 15 cases we examined. We are referring all 25 cases we examined to IRS for further collection activity and criminal investigation.

Table 1: Summary Information on 10 Medicare Providers with Unpaid Federal Taxes

Case	Nature of work/type of entity	Medicare paid claims during calendar year 2006 ^a	Unpaid federal tax ^b	Comments
Case 1	Home health care	\$400,000	\$600,000	<ul style="list-style-type: none"> • Company has history of not paying all taxes owed since the 1990s. • Owner has personal real estate worth over \$1 million. Owner transferred vacation house to spouse for practically nothing during IRS collection efforts. • According to IRS records, all attempts to bring company into voluntary compliance have failed. • Owner made large cash deposits and withdrawals totaling hundreds of thousands of dollars during the time little payroll taxes were paid to IRS.
Case 2	Nursing home	\$1 million	\$6 million	<ul style="list-style-type: none"> • Company has history of not paying all taxes owed since the 1990s. • Company entered into installment agreement for tens of thousands of dollars a month but subsequently defaulted without making any of the installment payments. • Company was investigated for tax fraud. • Owner transferred personal residence worth over \$1 million to spouse in mid-2000s at same time company owed taxes. • Owner was convicted of diversion of funds from federally backed loans. • Owner was indicted for Medicaid fraud and patient neglect. • Owner recently received over \$150,000 in consulting business and \$100,000 in interest payments from several real estate entities.
Case 3	Nursing home	\$100,000	\$800,000	<ul style="list-style-type: none"> • Company has history of not paying all taxes owed since the 1990s. • Company has generally not made tax payments or filed tax returns since the mid-2000s. • Owner's personal residence valued at over \$1 million. • Owner annually received over \$20,000 in Social Security disability payments. • Company received over \$1.5 million in income from a real estate investment company in late 2000s. • IRS assessed a TFRP against the owner.

Case	Nature of work/type of entity	Medicare paid claims during calendar year 2006 ^a	Unpaid federal tax ^b	Comments
Case 4	Nursing home	\$15 million	\$7 million	<ul style="list-style-type: none"> • Tax debts mainly consisted of payroll taxes owed from several related companies in the early 2000s. • Owner has personal residence valued at over \$1 million and owned another property valued at over \$1 million while owing taxes. • IRS records indicate that owner has a history of asset concealment schemes and questionable dealings with trusts, partnerships, LLCs, and other entities. • Owner established charitable foundation that was used to purchase luxury cars and other personal items. • In addition to Medicare payments, company also received hundreds of thousands of dollars from another federal agency and millions from a state agency. • Company offered to compromise the debt for hundreds of thousands of dollars in the 2000s, but offer was rejected by IRS because taxpayer had sufficient resources to pay the tax debts. • Company was investigated for check kiting activity for millions of dollars.
Case 5	Nursing home	\$1 million	\$11 million	<ul style="list-style-type: none"> • Company has history of not paying all payroll taxes owed since the 1990s. • Regulator cited company for history of failure to maintain compliance with licensure rules and serious deficiencies in health and safety of its residents. The deficiencies were significant enough to require a ban on all admissions for the facility. • IRS records indicate that owner attempted to hide income through use of partnerships, tiered agreements, and leasehold interest. In addition, owner has business holdings in two foreign countries. • Owner made frequent trips out of the country at the same time business owed taxes. • In addition to Medicare payments, company also received hundreds of thousands of dollars from another federal agency and millions of dollars from a state agency. • Owner was investigated for underreporting income. • Entity owner has many assets, including timeshares, a boat, an unrelated business, and hundreds of thousands of dollars of decorative items at the owner's personal residence. • Company was investigated for check kiting activity of hundreds of thousands of dollars. • IRS assessed a TFRP against the owner.

Case	Nature of work/type of entity	Medicare paid claims during calendar year 2006 ^a	Unpaid federal tax ^b	Comments
Case 6	Nursing home	\$4 million	\$4 million	<ul style="list-style-type: none"> • Company has history of not paying all payroll taxes owed since the early 2000s, including not filing tax returns for one year during this time. • Company was sued for wrongful death and employment discrimination. • Owner owns real estate worth millions of dollars. • Owner recently built a personal residence worth over \$2 million while claiming that the owner had no funds to repay the company's taxes. Building contractor claims that the house was built using overseas funds. • IRS records indicate that owner owns over \$1 million in home furnishings and artwork. • Owner uses an LLC for income reporting so no income is reported in owner's name. Owner reports a small amount of income to IRS while living a lavish lifestyle. • IRS records indicate that owner purchased property overseas and plans to move there to avoid paying delinquent taxes. • Owner had several luxury vehicles at same time company owed taxes. • In addition to Medicare payments, company also received millions of dollars from a state agency. • IRS assessed a TFRP against the owner.
Case 7	Nursing home	\$2 million	\$1 million	<ul style="list-style-type: none"> • Company's tax debts primarily consisted of payroll taxes. • Owner's personal residence is worth over \$1 million. • Company paid owner millions of dollars for management fees and rent. • Owner used company funds to augment owner's affluent lifestyle including purchase of luxury cars and multiple vacations. • Company offered to compromise tax debts for less than \$100,000 but offer was rejected by IRS. • IRS records indicate that company structured cash withdrawals to evade reporting requirements. • In addition to Medicare payments, company also received millions of dollars from a state agency. • Company made multiple large cash deposits totaling tens of thousands of dollars. Many of these transactions appear to have been structured to avoid mandatory IRS reporting.

Case	Nature of work/type of entity	Medicare paid claims during calendar year 2006 ^a	Unpaid federal tax ^b	Comments
Case 8	Home health care	\$300,000	\$600,000	<ul style="list-style-type: none"> Company's tax debts primarily consisted of payroll taxes. Owner and related trust own nearly \$6 million in real estate, including residence valued at over \$2 million. Owner pays about \$100,000 a year in mortgage interest and receives over \$200,000 in investment income. Owner closed company that owed taxes and started new business. Owner's new company still receives medical payments under the closed company's TIN. Owner gambled tens of thousands of dollars at the same time the company owed taxes.
Case 9	Home health care	\$900,000	\$11 million	<ul style="list-style-type: none"> Company has history of not paying all payroll taxes owed since the 1990s. Owner's personal residence is worth over \$5 million. Owner received millions of dollars in federal grants while company was incurring tax debts. Owner's annual mortgage interest was about \$300,000. Owner sold over \$100 million in real estate in the late 2000s. IRS assessed a TFRP against the owner.
Case 10	Hospital	\$21 million	\$15 million	<ul style="list-style-type: none"> Company's tax debts primarily consisted of payroll taxes. An owner's personal residence is worth over \$6 million. Owners were found liable for millions of dollars to Medicare for submitting false claims from another medical business. IRS assessed a TFRP against the owner.

Source: GAO's analysis of IRS, FMS, Medicare claims, public, and other records.

Note: Dollar amounts are rounded.

^aMedicare payments are Medicare provider claims approved by CMS for payment for calendar year 2006.

^bUnpaid tax amount as of September 30, 2006.

The following provides illustrative detailed information on four of the cases we examined.

- Case 4: The nursing home consists of several companies that received over \$15 million in Medicare payments while owing more than \$7 million in tax debts. IRS records indicated that the company owners attempted to conceal assets through questionable business entities such as trusts, partnerships, LLCs, and other fictitious entities. While the nursing home owed taxes, the owner possessed a \$1 million personal residence and an additional \$1 million piece of real estate. IRS records also showed that the owner purchased luxury cars and other personal items from money funneled through a charitable foundation. Specifically, the company owner donated large sums of money to the

foundation then claimed the deductions on their personal tax return while purchasing expensive personal items.

- Case 5: The nursing home has a history of tax noncompliance since the late 1990s. The nursing home received over \$1 million in Medicare payments while owing more than \$11 million in tax debt. IRS records indicated that the nursing home owner has attempted to shield income through partnerships, tiered agreements, and leasehold agreements. In addition, the owner has various companies using over 100 bank accounts, wire transfers, an overseas billing company, and a large financial transaction to an overseas bank account. The nursing home has been sanctioned by regulators for quality-of-care deficiencies so serious that the home was barred from accepting new admissions.
- Case 6: The nursing home received over \$4 million in Medicare payments and hundreds of thousands of dollars in federal government contracts while simultaneously owing over \$4 million in tax debt. Although the owners of the nursing home claimed an inability to pay delinquent taxes because of lack of resources, one owner constructed a \$4 million home while the other owner lived in a multimillion-dollar home while owing taxes. IRS records indicated that the owners also underreported income on their personal tax returns and received financial compensation, such as salary and bonuses, from another company to disguise reporting of income. IRS records indicated that one company owner may relocate overseas to avoid paying taxes.
- Case 10: The company received over \$21 million in Medicare payments while simultaneously owing over \$15 million in tax debt. The company was under investigation for underreporting income, bankruptcy fraud, and submitting false claims to Medicare. The company's owner also owns a multimillion-dollar residence.

Medicare Providers with Unpaid Taxes Are Not Prohibited from Enrolling in or Receiving Payments from Medicare

CMS does not prevent Medicare providers with tax debts from becoming Medicare providers or receiving payments from the Medicare program.²¹ Neither Medicare regulations nor CMS implementing guidance require CMS or its contractors to screen Medicare providers for tax debts prior to enrollment. Even if such requirements did exist, absent taxpayer consent, federal law generally prohibits IRS from disclosing taxpayer data, and consequently, CMS and its contractors have no access to tax data directly from IRS. In addition, CMS has not fully participated in the continuous levy program. Specifically, CMS has not incorporated Medicare fee for service payments in the continuous levy program. As a result, the federal government potentially lost opportunities to collect over \$140 million in unpaid taxes during calendar year 2006.²²

CMS Medicare contractors are generally responsible for screening Medicare providers prior to enrollment into the Medicare program.²³ However, as part of the screening process, neither CMS policies nor CMS regulations require Medicare contractors to consider the tax debts or tax-related abuses of prospective Medicare providers or conduct any criminal background checks on these individuals.²⁴ Medicare contractors are required to review the HHS Office of Inspector General (OIG) exclusion list and the GSA debarment list; however, these lists do not include all individuals or businesses that have abused the federal tax system.²⁵

²¹If a Medicare provider is convicted of a felony, including tax evasion, CMS and its contractors can revoke the Medicare providers' enrollment and billing privileges. See 42 C.F.R. § 424.535.

²²To determine the potential levy collections on Medicare payments during calendar year 2006, we used 15 percent of the total paid claim or total tax debt amount reported to the continuous levy program, whichever is less.

²³CMS screens and enrolls managed care organizations for the Medicare Advantage program.

²⁴CMS has recently proposed a new regulation for additional safeguards on durable medical equipment, prosthetics, orthotics, and supplies. In this proposed regulation, issued on January 25, 2008, CMS requires that prospective providers must not have federal or state tax debts.

²⁵The OIG exclusion list provides information on health care providers that are excluded from participation in Medicare, Medicaid, and other federal health care programs because of criminal convictions related to Medicare or state health programs or other major problems related to health care (e.g., patient abuse or neglect). The GSA debarment list provides information on individuals or entities that are debarred, suspended, or otherwise excluded from participating in any other federal procurement or nonprocurement activity. Federal agencies can place individuals or entities on the GSA debarment list for a variety of reasons, including fraud, theft, bribery, and tax evasion.

Exclusion of certain individuals and entities from participation in Medicare programs is made by statute.²⁶ The statute provides for both mandatory and permissive exclusions. Mandatory exclusions are confined to health-related criminal offenses, while permissive exclusions concern primarily non-health-related offenses. The *Federal Acquisition Regulation* cites conviction of tax evasion as one of the causes for debarment; indictment on tax evasion charges is cited as a cause for suspension.²⁷ Moreover, while a felony offense, the deliberate failure to remit taxes, in particular payroll taxes, will likely not result in an individual or entity being placed on the OIG exclusion or GSA debarment lists unless the taxpayer is convicted. Based on our work, we believe that it is unlikely that companies will be excluded or debarred for failure to pay delinquent payroll taxes.

Even if a taxpayer is convicted of tax evasion or other tax-related crime, the individual or business still may not be placed on the OIG exclusion or GSA debarment lists. To place them on these lists, federal agencies must identify those individuals and businesses and provide them with due process. As part of due process, the agency must determine whether the exclusion or debarment is in the government's interest. For example, in our March 2007 testimony, we noted several cases involving conviction of tax-related crimes where the providers were not reported on the OIG exclusion or GSA debarment lists.²⁸

Further complicating CMS decision making on the consideration of tax debts for Medicare, federal law does not permit IRS to disclose taxpayer information, including tax debts, to CMS or Medicare contractor officials unless the taxpayer consents, which CMS does not currently require.²⁹ Thus, certain tax debt information can only be discovered from public records if IRS files a federal tax lien against the property of a tax debtor or a record of conviction for tax offense is publicly available.³⁰ Consequently, CMS and its contractors do not have ready access to information on unpaid tax debts to consider in making decisions on Medicare providers.

²⁶42 U.S.C. § 1320a-7.

²⁷48 C.F.R. § 9.406-2 and 48 C.F.R. § 9.407-2.

²⁸[GAO-07-587T](#).

²⁹26 U.S.C. § 6103.

³⁰Under section 6321 of the Internal Revenue Code, IRS has the authority to file a lien upon all property and rights to property, whether real or personal, of a delinquent taxpayer.

Further, CMS has not implemented a process for continuously levying payments made by Medicare contractors.³¹ As a result, IRS does not capture at least a portion of payments made to Medicare providers that owe federal tax debts. Thus, none of the 25 providers on which we performed a detailed review had their Medicare fee-for-service payments subject to the continuous levy program. As stated earlier, federal law allows IRS to continuously levy federal vendor payments until the tax debt is paid. IRS implemented this authority by creating a continuous levy program that utilizes FMS's Treasury Offset Program system. In July 2001, we reported that CMS did not have any plan to participate in the continuous levy program and we recommended that the Commissioners of IRS and FMS work with CMS to develop plans to include Medicare payments in the continuous levy program.³² In July 2006, IRS began to pursue HHS participation in the continuous levy program through the Federal Contractor Tax Compliance (FCTC) Task Force, a multiagency group dedicated to improving the continuous levy process.³³ In response to IRS's request, and a month before your subcommittee's hearing on Medicare physicians, health professionals, and suppliers that owe federal taxes, CMS began to participate in the FCTC Task Force meetings in February 2007.

According to CMS officials, CMS plans to incorporate all payments made through HIGLAS, Medicare's central accounting system, into the levy program by October 2008. CMS officials stated that this will cover about 60 percent of all Medicare fee-for-service payments. CMS officials said that the remaining 40 percent will be implemented into the continuous levy

³¹Payments processed by CMS headquarters are made through Treasury. These payments consist largely of payments for managed care, drug subsidy, and contracts. Since these payments are processed by Treasury, they are subject to the continuous levy program. According to CMS, these payments represent about 30 percent of all Medicare payments. In addition, CMS reported that it received 970 paper levies from IRS revenue officers totaling \$109 million. CMS did not report the amount it actually collected from these paper levies. However, our discussions with selected Medicare contractors and review of our case studies indicate that paper levies are not a significant source of collection revenue.

³²GAO, *Tax Administration: Millions of Dollars Could Be Collected If IRS Levied More Federal Payments*, [GAO-01-711](#) (Washington, D.C.: July 20, 2001).

³³To address issues raised by our February 12, 2004, report and testimony, this multiagency task force was established to help improve the continuous levy program. The task force includes representatives from DOD, the Defense Finance and Accounting Service, IRS, FMS, GSA, the Office of Management and Budget, and the Department of Justice. As a result of the actions undertaken by the task force, IRS reported collecting millions in taxes through the improvements in the continuous levy program.

program in the next several years as the Medicare contractors convert their systems to HIGLAS.

If there was an effective levy program in place, we estimate that CMS through its Medicare contractors potentially could have collected over \$140 million of unpaid federal taxes during fiscal year 2006. This estimate was based on those debts that IRS reported to the Treasury Offset Program as of September 30, 2006.³⁴

Conclusions

As federal deficits continue to mount, the federal government must take all effective measures to collect the billions of dollars of unpaid taxes. Because payroll taxes fund the Medicare program, Medicare providers should especially pay their fair share of taxes owed, especially payroll taxes. However, with respect to the continuous levy program, the federal government continues to fail to reach its potential. A substantial amount of Medicare payments to delinquent taxpayers will continue to go uncollected until CMS can establish a process to incorporate its payments into the continuous levy program. The failure to enforce tax laws against Medicare providers has a detrimental affect on compliance.

Recommendations for Executive Action

We recommend that the Administrator of CMS take the following two actions:

- To enhance program integrity, consider (1) issuing guidance requiring Medicare contractors to determine to the extent feasible if prospective Medicare providers (including any Medicare providers that reenroll into Medicare) have delinquent federal taxes, including obtaining applicant consent to inquire as to tax debt status from IRS, and (2) using the results of those inquiries in determining whether to enroll such providers into the Medicare program. In making this determination, CMS could also build in consideration of the potential

³⁴In October 2004, Congress passed the American Jobs Creation Act of 2004, Pub. L. No. 108-357, 118 Stat 1418 codified as amended in scattered sections of 26 U.S.C., to increase the maximum continuous levy from 15 percent to up to 100 percent of payments to contractors with unpaid taxes. The act specifically increased the continuous levy on payments to vendors for “goods and services” sold or leased to the government. According to IRS, the legal language, which specified that goods and services be subject to the 100 percent levy provision, excludes Medicare payments from the new levy requirement. As such, Medicare payments will have to be levied at 15 percent.

adverse effect that this requirement may have on Medicare's ability to provide health care to the elderly and other Medicare beneficiaries.

- Incorporate all Medicare payments into the continuous levy program as expeditiously as possible.

Agency Comments and Our Evaluation

We provided a draft of our report to FMS, CMS, and IRS for review and comment. FMS did not have any comments on the draft. We received written comments on a draft of this report from the Commissioner of Internal Revenue (see app. III). We also received comments from the Acting Administrator of CMS on our draft, who did not disagree with our two recommendations (see app. IV).

The Commissioner of Internal Revenue stated that he understood the importance and potential benefits of considering unpaid federal tax debt in the Medicare screening process and will support CMS in addressing our recommendations to CMS. Further, the Commissioner of Internal Revenue stated that if CMS established a process by which Medicare providers supply their TINs to IRS, IRS would be able to provide CMS a historical record of the taxpayers' accounts, which would indicate any periods of unpaid taxes. The Commissioner of Internal Revenue stated that IRS is currently working with CMS and FMS on a pilot program to levy CMS Medicare payments through the continuous levy program.

In its response to the draft of the report, the Acting Administrator of CMS stated that CMS has taken some actions and is planning other actions to address our recommendations. Specifically, in response to our first recommendation, CMS stated that it issued proposed rules that would require prospective durable medical equipment, prosthetic, and orthotic suppliers to be free of federal or state tax debt. CMS stated that it will consider whether to use its authority to establish a similar requirement for the other provider and supplier types. CMS also stated that it will carefully consider public policy implications of balancing the interests of denying or revoking Medicare program participation with Medicare's responsibility for paying for the health care needs of the Medicare beneficiaries. In response to our second recommendation, CMS stated that it is scheduled to begin subjecting its Medicare fee-for-service payments to the levy program in October 2008.

We are pleased that both CMS and IRS have shown the willingness to improve the process of utilizing available tax information to prevent providers with tax problems from participating in Medicare and collecting

tax debts. As discussed in our draft report, we agree with CMS that in determining whether to require the screening of prospective Medicare providers for delinquent federal taxes, CMS should consider the potential adverse effect that this requirement may have on Medicare's ability to provide health care to the elderly and other Medicare beneficiaries. Further, as also discussed in our draft report, we also believe that the incorporation of Medicare fee-for-service payments into the levy program will significantly improve collections of outstanding federal taxes owed by Medicare providers.

As agreed with your offices, unless you publicly release its contents earlier we plan no further distribution of this report until 30 days from its date. At that time, we will send copies of this report to the Secretary of the Treasury, the Commissioner of the Financial Management Service, the Commissioner of Internal Revenue, the Acting Administrator of Centers for Medicare & Medicaid Services, and other interested parties.

The report is also available at no charge on the GAO Web site at <http://www.gao.gov>. If you have any questions concerning this report, please contact either Gregory D. Kutz at (202) 512-6722 or kutzg@gao.gov. Contact points for our Offices of Congressional Relations and Public Affairs may be found on the last page of this report.

A handwritten signature in black ink that reads "Gregory D. Kutz". The signature is written in a cursive, flowing style.

Gregory D. Kutz
Managing Director
Forensic Audits and Special Investigations

Appendix I: Scope and Methodology

To identify the magnitude of unpaid federal taxes owed by Medicare providers, we obtained and analyzed the Internal Revenue Service (IRS) tax debt data as of September 30, 2006. We also obtained and analyzed calendar year 2006 Medicare payments to providers from the Centers for Medicare & Medicaid Services (CMS). Our analysis included all Medicare providers (i.e., Parts A, B, C and D) that were paid during calendar year 2006. We matched the Medicare payment data to the IRS unpaid assessment data using the taxpayer identification number (TIN) field. To avoid overestimating the amount owed by Medicare providers with unpaid tax debts and to capture only significant tax debts, we excluded from our analysis tax debts and paid claims meeting specific criteria to establish a minimum threshold in the amount of tax debt and in the amount of paid claims to be considered when determining whether a tax debt is significant. The criteria we used to exclude tax debts are as follows:

- tax debts that IRS classified as compliance assessments or memo accounts for financial reporting,¹
- tax debts from calendar year 2006 tax periods, and
- total unpaid taxes and Medicare paid claims of less than \$100.

The criteria above were used to exclude tax debts that might be under dispute or generally duplicative or invalid and tax debts that are recently incurred. Specifically, compliance assessments or memo accounts were excluded because these taxes have neither been agreed to by the taxpayers nor affirmed by the court, or these taxes could be invalid or duplicative of other taxes already reported. We excluded tax debts from calendar year 2006 tax periods to eliminate tax debt that may involve matters that are routinely resolved between the taxpayer and IRS, with the taxes paid or abated within a short period. We excluded tax debts and Medicare paid claims of less than \$100 because they are insignificant for the purpose of determining the extent of taxes owed by Medicare providers.

¹Under federal accounting standards, unpaid assessments require taxpayer or court agreement to be considered federal taxes receivable. Compliance assessments and memo accounts are not considered federal taxes receivable because they are not agreed to by taxpayers or the courts.

To identify indications of abuse or potentially criminal activity, we selected 25 Medicare providers for a detailed audit and investigation.² The 25 providers were chosen using a nonrepresentative selection approach based on our judgment, data mining, and a number of other criteria. Specifically, we narrowed the 25 providers with unpaid taxes based on the amount of unpaid taxes, number of unpaid tax periods, amount of payments reported by Medicare, and indications that owner(s) might be involved in multiple companies with tax debts. For these 25 cases, we obtained copies of automated tax transcripts and other tax records (for example, revenue officer's notes) from IRS and performed additional searches of criminal, financial, and public records. In cases where record searches and IRS tax transcripts indicate that the owners or officers of a business are involved in other related entities³ that have unpaid federal taxes, we also reviewed the related entities and the owner(s) or officer(s), in addition to the original business we identified. Because our investigations were generally limited to publicly available information, our audit of the 25 cases may not have identified all related parties, criminal activity or significant assets (such as personal bank data, companies established to hide assets, etc.) related to these Medicare providers.

To determine the potential levy collections on Medicare payments during calendar year 2006, we used 15 percent of the total paid claim or total tax debt amount reported to the TOP per IRS records, whichever was less. A gap will exist between what could be collected and the maximum levy amount calculated because (1) tax debts in TOP may not be eligible for immediate levy because IRS has not completed due process notifications

²We excluded physicians, health professionals, and suppliers paid under Medicare Part B because they were the focus of our previous March 2007 testimony. See [GAO-07-587T](#). Our prior investigation found Medicare physicians, health professionals, and suppliers with abusive and potentially criminal activity, including failure to remit to IRS individual income taxes, payroll taxes withheld from their employees, or both. Rather than fulfill their role as "trustees" of this money and forward it to IRS, they diverted the money for other purposes. Willful failure to remit payroll taxes is a felony under U.S. law. Further, individuals associated with some of these providers used payroll taxes withheld from employees for personal gain (e.g., to purchase new homes) or to help fund their businesses. Many of these individuals accumulated substantial wealth and assets, including million-dollar houses and luxury vehicles, while failing to pay their federal taxes. In addition, some physicians received Medicare payments even though they have serious quality-of-care issues, including license reprimands, prior suspensions from state medical boards, revocations of hospital privileges, and previous exclusions from the Medicare program.

³We define related entities as entities that share common owner(s) or officer(s), a common TIN, or a common address.

and (2) tax debts may become ineligible for levy because of a change in collection status (e.g., tax debtor filed for bankruptcy).

To determine the extent to which Medicare payments to providers are continuously levied to pay tax debts, we examined the statutory and regulatory authorities that govern the continuous levy program and interviewed officials from CMS, IRS, and the Financial Management Service (FMS) to determine whether any legal barriers exist.

To determine the potential levy collections on Medicare payments during calendar year 2006, we used 15 percent of the total paid claim or total tax debt amount reported to the Treasury Offset Program (TOP) per IRS records, whichever is less. A gap will exist between what could be collected and the maximum levy amount calculated because (1) tax debts in TOP may not be eligible for immediate levy because IRS has not completed due process notifications and (2) tax debts may become ineligible for levy because of a change in collection status (e.g., tax debtor filed for bankruptcy).

Data Reliability Assessment

To determine the reliability of the IRS unpaid assessments data, we relied on the work we performed during our annual audits of IRS's financial statements. While our financial statement audits have identified some data reliability problems associated with the coding of some of the fields in IRS's tax records, including errors and delays in recording taxpayer information and payments, we determined that the data were sufficiently reliable to address this report's objectives. Our financial audit procedures, including the reconciliation of the value of unpaid taxes recorded in IRS's masterfile to IRS's general ledger, identified no material differences.

For the Medicare payment databases and FMS's TOP databases, we interviewed CMS and FMS officials responsible for their respective databases. In addition, we performed electronic testing of specific data elements in the databases that we used to perform our work. Based on our discussions with agency officials, our review of agency documents, and our own testing, we concluded that the data elements used for this testimony were sufficiently reliable for our purposes.

We conducted this forensic audit from July 2007 to June 2008 in accordance with generally accepted government auditing standards. Those standards require that we plan and perform the audit to obtain sufficient, appropriate evidence to provide a reasonable basis for our findings and conclusions based on our audit objectives. We believe that the evidence

obtained provides a reasonable basis for our findings and conclusions based on our audit objectives. We performed our investigative work in accordance with standards prescribed by the President's Council on Integrity and Efficiency.

Appendix II: Medicare Providers with Unpaid Taxes

This appendix presents summary information on the abusive or potentially criminal activity associated with 15 of our 25 case studies.¹ Table 2 summarizes the abuse or potentially criminal activity related to the federal tax system for these 15 Medicare providers. The cases involving businesses primarily involved unpaid payroll taxes.

Table 2: Summary Information on 15 Medicare Providers with Unpaid Federal Taxes

Case	Nature of work/type of entity	Medicare paid claims during calendar year 2006 ^a	Unpaid federal tax ^b	Comments
Case 11	Nursing home	\$800,000	\$3 million	<ul style="list-style-type: none"> • Company has history of not paying all payroll taxes owed since the 1990s. • Company officer owed hundreds of thousands of dollars in individual income taxes. • IRS assessed trust fund recovery penalties (TFRP) of millions of dollars against several company officers. • Company filed Chapter 11 bankruptcy. • Owner was associated with dozens of business entities. Several of these companies were closed by the state tax department. • IRS assessed a TFRP against the owner.
Case 12	Durable medical equipment supplier	\$400,000	\$400,000	<ul style="list-style-type: none"> • Company tax debt consisted primarily of payroll taxes. • Company had hundreds of thousands of dollars in suspicious bank activities while owing taxes. • Company paid to remodel an officer's personal residence from employee retirement contributions. • Company is under investigation for Medicare and Medicaid fraud. • Company officer owes tens of thousands of dollars in individual income taxes and has not filed an individual income tax return in the past couple of years.
Case 13	Home health care	\$200,000	\$2 million	<ul style="list-style-type: none"> • Company has history of not paying all payroll taxes owed since the 1990s. • Company made multiple large cash deposits totaling tens of thousands of dollars. Many of these transactions appear to have been structured to avoid mandatory IRS reporting. • Company defaulted on installment agreement. • Company owner is under IRS investigation for using financial investments and company loans to avoid IRS levies. • IRS assessed a TFRP against the owner.

¹Table 1 in the main portion of this testimony provides detailed data on 10 cases.

Appendix II: Medicare Providers with Unpaid Taxes

Case	Nature of work/type of entity	Medicare paid claims during calendar year 2006^a	Unpaid federal tax^b	Comments
Case 14	Nursing home	\$1 million	\$1 million	<ul style="list-style-type: none"> • Company tax debt consisted primarily of payroll taxes. • Owner owns real estate worth more than \$4 million including a personal residence valued at about \$800,000. • Owner sold off over \$2 million in real estate while company owed taxes. • Owner has a yacht and luxury vehicle. • Owner had numerous stock sales totaling \$10 million. The largest transaction was hundreds of thousands of dollars from an energy company. • Owner received federal government contract worth hundreds of thousands of dollars while owing taxes.
Case 15	Home health care	\$400,000	\$600,000	<ul style="list-style-type: none"> • Company has history of not paying all payroll taxes owed since 2002. • Company filed for bankruptcy and submitted an installment plan to emerge from bankruptcy in the 2000s. • Owner has personal residence valued at about \$900,000 and sold personal real estate for about \$400,000 while company owed taxes. Owner paid over \$75,000 a year in mortgage interest. • Company owner owned luxury vehicle. • IRS assessed a TFRP against the owner.
Case 16	Home health care	\$800,000	\$600,000	<ul style="list-style-type: none"> • Company tax debt primarily consisted of payroll taxes. • Company has had tax compliance issues since the 1990s and defaulted on multiple installment agreements. • Company leased a luxury vehicle for the owner and owner's spouse also owned a luxury vehicle. • IRS records indicate that the high salary of the owner contributed to the company's failure to pay taxes. • IRS assessed a TFRP against the owner.
Case 17	Home health care	\$400,000	\$900,000	<ul style="list-style-type: none"> • Company has history of not paying all payroll taxes owed since the early 2000s. • Owner received tens of thousands of dollars in unemployment compensation.
Case 18	Hospital	\$3 million	\$2 million	<ul style="list-style-type: none"> • Company tax debt primarily consisted of payroll taxes. • Company filed for bankruptcy.
Case 19	Home health care	\$1 million	\$100,000	<ul style="list-style-type: none"> • Company has history of not paying all payroll taxes owed since the early 2000s. • Owner purchased several personal properties in the 2000s worth over \$1 million. • Company owner owned luxury vehicle.

Appendix II: Medicare Providers with Unpaid Taxes

Case	Nature of work/type of entity	Medicare paid claims during calendar year 2006^a	Unpaid federal tax^b	Comments
Case 20	Hospital	\$3 million	\$1 million	<ul style="list-style-type: none"> • Company generally has history of not paying all payroll taxes owed since the early 2000s. • Company provided owner with luxury vehicle. • Owner was investigated for check fraud of tens of thousands of dollars. • IRS assessed a TFRP against the owner.
Case 21	Nursing home	\$7 million	\$13 million	<ul style="list-style-type: none"> • Company has history of not paying all payroll taxes owed since the early 2000s. • IRS investigated company related to offshore accounts. • Bank closed company's checking accounts because of check kiting of hundreds of thousands of dollars. • Officer owned luxury cars, boats, luxury furniture, timeshares, and numerous possessions. • Company was sued for rental housing-related issues and paid tens of thousands of dollars to settle the suit.
Case 22	Nursing home	\$800,000	\$1 million	<ul style="list-style-type: none"> • Company's tax debts primarily consisted of payroll taxes. • In addition to Medicare payments, company also received millions of dollars from Medicaid. • IRS records indicate that a company officer did not bill patients for their care for hundreds of thousands of dollars because officer wanted company to go into receivership. Company officer planned to take over company after it went into receivership. • IRS did not seize company because of significant hardship to the patients. • Company owns building worth about \$2 million.
Case 23	Durable medical equipment supplier	\$1 million	\$200,000	<ul style="list-style-type: none"> • Company's tax debts primarily consisted of payroll taxes from the early 2000s. Owner has generally not made any federal payroll tax payments for the last couple of years. • Owner claims slow Medicare payment processing is cause for tax delinquency. • Company submitted installment agreement of about \$7,000 a month but was denied for failure to pay federal tax deposits. • Company paid for owner's luxury vehicle.
Case 24	Nursing home	\$1 million	\$1 million	<ul style="list-style-type: none"> • Company's tax debts primarily consisted of payroll taxes from the early 2000s. • Owner and related trust own about \$2 million in real estate, including a residence valued at over \$1 million. • Owner recently received thousands of dollars in unemployment compensation. • In addition to Medicare payments, company also received millions of dollars from Medicaid. • IRS assessed a TFRP against the owner.

Appendix II: Medicare Providers with Unpaid Taxes

Case	Nature of work/type of entity	Medicare paid claims during calendar year 2006^a	Unpaid federal tax^b	Comments
Case 25	Nursing home	\$1 million	\$600,000	<ul style="list-style-type: none"> • Company's tax debts primarily consisted of payroll taxes. • Company pays majority of its income to company officers. Company also paid for the vehicles of the officers. • Company received thousands of dollars from another federal agency.

Source: GAO's analysis of IRS, FMS, Medicare claims, public, and other records.

Note: Dollar amounts are rounded.

^aMedicare payments are Medicare provider claims approved by CMS for payment for calendar year 2006.

^bUnpaid tax amount as of September 30, 2006.

Appendix III: Comments from the Internal Revenue Service



COMMISSIONER

DEPARTMENT OF THE TREASURY
INTERNAL REVENUE SERVICE
WASHINGTON, D.C. 20224

May 19, 2008

2008 05 20 11 30 AM
U.S. GAO

Mr. Gregory Kutz
Managing Director, Forensic Audits and
Special Investigations
Government Accountability Office
441 G Street, N.W.
Washington, D.C. 20548

Dear Mr. Kutz:

Thank you for the opportunity to review your draft report titled: "Medicare: Thousands of Medicare Providers Abuse the Federal Tax System" (GAO-08-618). I understand the importance and potential benefits of considering unpaid federal tax debt in the Medicare screening process and will support the Centers for Medicare and Medicaid Services (CMS) in their efforts to address their recommendations.

The first recommendation directs CMS to consider issuing guidance to require Medicare contractors to screen prospective Medicare providers for unpaid taxes, including obtaining consent from these providers to inquire as to tax debt status from IRS. The second recommends that CMS incorporate all Medicare payments into the continuous levy program as expeditiously as possible.

If CMS established a process by which Medicare providers consent to CMS supplying their Taxpayer Identification Numbers to the IRS, the IRS would be able to provide CMS a historical record of the taxpayers' accounts, which would indicate any periods of unpaid taxes.

With regard to the second recommendation, we are currently working with CMS and Financial Management Services on a pilot program to levy CMS Medicare payments through the continuous levy program. We scheduled the pilot for production in October 2008.

If you have any questions, or if you would like to discuss this response in more detail, please contact Frederick W. Schindler, Director, Collection Policy at (202) 283-7650.

Sincerely,

A handwritten signature in black ink, appearing to read "D. Shulman".

Douglas H. Shulman

Appendix IV: Comments from the Centers for Medicare & Medicaid Services

Note: GAO comments supplementing those in the report text appear at the end of this appendix.



DEPARTMENT OF HEALTH & HUMAN SERVICES

Office of the Assistant Secretary
for Legislation

Washington, D.C. 20201

MAY 29 2008

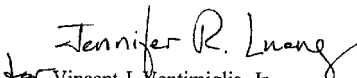
Gregory D. Kutz
Managing Director
Forensic Audits and Special Investigations
U.S. Government Accountability Office
441 G Street, NW
Washington, DC 20548

Dear Mr. Kutz:

Enclosed are the Department's comments on the U.S. Government Accountability Office's (GAO) draft report entitled: Medicare: "Thousands of Medicare providers Abuse the Federal Tax System" (GAO 08-618).

The Department appreciates the opportunity to review and comment on this report before its publication.

Sincerely,


for Vincent J. Ventimiglia, Jr.
Assistant Secretary for Legislation

Attachment

Appendix IV: Comments from the Centers for Medicare & Medicaid Services



DEPARTMENT OF HEALTH & HUMAN SERVICES

Centers for Medicare & Medicaid Services

Administrator
Washington, DC 20201

DATE: MAY 29 2008

TO: Gregory D. Kutz
Managing Director
Forensic Audits and Special Investigations

FROM: Kerry Wechsler
Acting Administrator

SUBJECT: Government Accountability Office (GAO) Draft Report: MEDICARE:
Thousands of Medicare Providers Abuse the Federal Tax System
(GAO-08-618)

Thank you for the opportunity to review and comment on the above GAO draft report. GAO's study focused on Medicare providers who were identified as owing federal tax debt and provided recommendations for the Centers for Medicare & Medicaid Services (CMS) to improve the process of collecting tax debt and for utilizing available tax liability information to prevent providers with tax problems from participating in the Medicare program. CMS appreciates the time and resources that GAO invested in this study and has already taken several steps to implement the recommendations.

The report recognizes that federal law does not permit the Internal Revenue Service (IRS) to disclose taxpayer information, including tax debts, to CMS or its Medicare contractors without consent. However, certain tax debt can be discovered from public records if IRS files a tax lien or if a record of a conviction for tax offense is publicly available. CMS and its contractors do not have ready access to information on unpaid tax debts to consider in making enrollment or other decisions related to Medicare providers.

Despite these challenges, as your report notes, CMS is making changes in its processes to more efficiently assist the IRS in collecting unpaid taxes. Additionally, CMS complies with IRS policies on reporting of income, responds to paper tax levies and sends a portion of its Medicare payments to Treasury for the Federal Payment Levy Program (FPLP). We would like the final report to acknowledge that CMS has been working with GAO to provide ownership information from the CMS Provider Enrollment Chain Ownership System. We understand that GAO is using this information to review for tax delinquency and fraud.

The GAO recommends that the Administrator of CMS take the following two actions:

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GAO Recommendation

To enhance program integrity, consider: (1) issuing guidance requiring Medicare contractors to determine to the extent feasible if prospective Medicare providers (including any Medicare providers that reenroll into Medicare) have delinquent federal taxes, including obtaining applicant consent to inquire as to tax debt status from IRS; and (2) using the results of those inquiries in determining whether to enroll such providers into the Medicare program. In making this determination, CMS could also build in consideration of the potential adverse effect that this requirement may have on Medicare's ability to provide health care to the elderly and other Medicare beneficiaries.

CMS Response

As noted by GAO on page 21 of its report, CMS issued proposed rules on January 25, 2008 that would require prospective durable medical equipment, prosthetic and orthotic suppliers to be free of federal or state tax debt. CMS is considering whether to use its authority to establish a similar requirement for other provider and supplier types.

Very importantly, as GAO suggests, Medicare must balance the interests of denying or revoking Medicare program participation with Medicare's responsibility for paying for the health care needs of the Medicare beneficiary. While CMS must enforce its payment safeguard role and take appropriate enforcement actions, public policy implications would have to be carefully considered. These larger issues as they relate to tax delinquencies might be better addressed by Congress with specific consideration of the merits of singling out health care reimbursement to enforce forfeiture of livelihood or facility closure. As we gain experience with FPLP, beginning in October 2008, we will continue to work with GAO, the health care provider industry and Congress regarding the ways we can safeguard the Medicare program from those individuals and organizations that have tax delinquencies.

GAO Recommendation

Incorporate all Medicare payments into the continuous levy program as expeditiously as possible.

CMS Response

As GAO noted on page 24 of the draft report, in October 2008, CMS is scheduled to begin subjecting Medicare fee-for-service payments to FPLP. CMS has been consistently consolidating its Medicare claims processing systems and will have, by this October, successfully migrated a number of its largest contractors to a single integrated financial ledger—the Healthcare Integrated General Ledger Accounting System (HIGLAS). This effort will result in over 60 percent of Medicare payments being subject to the continuous levy program. Historically, CMS had over 75 claims and financial processing systems that would have made earlier participation in FPLP difficult and costly. With the implementation of HIGLAS, execution of the continuous levy will be efficient and

Appendix IV: Comments from the Centers for Medicare & Medicaid Services

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timely. CMS will exchange Medicare payment information daily with Treasury's Financial Management Service (FMS).

In addition to the above, CMS has additional comments outlined below:

See comment 1.

- The draft report does not mention that CMS issues over 1 million IRS 1099s for its Medicare payments made during the year. These are available for IRS to match tax debts with payments.

See comment 2.

- We would like the report to reflect that in 2006, CMS received 970 paper levies from IRS Revenue Officers totaling \$109 million.

See comment 3.

- The draft report suggests that CMS has not incorporated most of its debt into the FPLP since the passage of the Taxpayer Relief Act of 1997 when it authorized the continuous levy of federal payments. Presently, over \$11 billion in Medicare payments per month are subject to the FPLP, representing 30 percent of Medicare monthly payments. These are payments to managed care organizations, prescription drug plans, certified laboratories and those made under an authorized demonstration plan.

See comment 4.

- The CMS' Chief Financial Officer (CFO) became aware of the Federal Contractor Tax Compliance (FCTC) Taskforce in February 2007, and immediately began participating, on a biweekly basis, in the Taskforce in order to develop plans to bring Medicare contractor payments into the FPLP. We believe it is significant that CMS will be ready to send payments, using a new IT solution, 20 months after first meeting with the FCTC Taskforce.

See comment 5.

- Additionally, the draft report fails to recognize that, through the IRS/CMS/SSA Data Match, CMS uses IRS data from citizens tax returns, coupled with their SSA data and Medicare enrollment records to identify other health plan coverage. Annually, CMS saves over \$1.2 billion in Medicare Trust Fund for services that are the responsibility of other insurers. This exchange of information since 1991 has saved billions.

See comment 6.

- On page 7 of the report, the GAO reports that over 27,000 Medicare providers had unpaid federal taxes. However, until reaching footnote 36 on page 28, which says the report addresses only Part A providers, the report does not indicate which categories of the more than 1,000,000 Medicare Part A and B providers and suppliers this includes. On page 4, the draft report says that the 27,000 providers represent 6 percent of all Medicare providers paid in 2006. We do not understand the basis for this calculation and recommend that the GAO provide more detail. There are approximately 1,000,000 Part B providers and suppliers alone. Of the 25 examples discussed, all are either a healthcare organization or a corporation. The majority of Medicare providers are physicians and over 82 percent of these physicians have assigned themselves to a corporation. In GAO's report of last

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year specifically addressing Part B providers, the report said that 21,000 of these had tax debts. Is the combined total 48,000 and what is the provider universe to which that total should be compared?

See comment 7.

- On page 22 of the draft report, the GAO cites the difficulty imposed by the existing debarment system and says that Federal agencies must provide potentially barred individuals and businesses with due process, implying that it might not be necessary or desirable. The CMS solicits any recommendations the GAO could offer on this issue.

See comment 8.

- The GAO says that the \$2 billion owed in unpaid tax debts includes debts already known to and assessed by the IRS through its enforcement programs. As of September 2006, those tax debts remained uncollectible. Beginning in October 2008, CMS will be sending over 60 percent of its Medicare payments through the FPLP enforcement program. We recommend that the GAO review the results of that effort to determine actual collections and whether the estimate needs to be revised.

See comment 9.

- The study established a minimum (\$100) threshold for tax debt. The report does not, however, include any data on the number of providers or dollars of taxes owed above the \$100 threshold. For example, if one percent (270) of the debtors owe at least \$10,000 and in the aggregate this amounts to 99 percent of the \$2 billion owed, the implications for enforcement are different than if the debt amounts were less skewed. Additionally, there is no information on tax debts by provider type. Enforcement efforts targeted to a few thousand high-risk corporations or provider types could be a strategic objective.

The CMS would like to again acknowledge our appreciation to the GAO for its efforts and appreciates the opportunity to review and comment on the draft report. We look forward to any additional insights that GAO can provide so that CMS can strengthen its stewardship of the Medicare Trust Funds.

The following are GAO's comments on CMS's letter dated May 29, 2008.

GAO Comments

1. IRS Form 1099 is an annual information report of income to IRS. However, this report cannot be used to continuously levy Medicare payments because they reflect prior calendar year payments that have already been made to the provider.
2. We have revised the report to state that CMS reported that it received 970 paper levies from IRS revenue officers totaling \$109 million. We also noted that while CMS did not report the amount it actually collected from these paper levies, we do not believe paper levies are a significant source of revenue collection.
3. We have revised the report to include the amount of Medicare payments that are subject to the continuous levy program.
4. IRS provided documentation that showed that in July 2006 IRS began to pursue Department of Health and Human Services participation in the continuous levy program through the Federal Contractor Tax Compliance Task Force.
5. The IRS/CMS/SSA¹ data match program is not used to collect delinquent federal taxes. Therefore, a discussion of this program is not relevant to our report.
6. We have revised the report to clarify that the 27,000 Medicare providers with unpaid federal taxes encompasses all Medicare providers that have received payments during calendar year 2006. This includes all Medicare providers for Parts A, B, C, and D. Our analysis only included Medicare providers that had TINs that received Medicare payments greater than \$100. As our draft report states, we believe that our estimate is substantially understated because, among other things, our analysis does not include Medicare providers that owed taxes under separate TINs from those that received the Medicare payments.
7. In our draft report, we stated that we believe that it is unlikely that companies will be excluded or debarred for failure to pay delinquent payroll taxes. Although we appreciate CMS's solicitation, we are not making any recommendations on the use of the existing debarment system to collect unpaid taxes at this time.

¹SSA is the Social Security Administration.

8. In our draft report, we state that to determine the potential levy collections on Medicare payments during calendar year 2006, we used 15 percent of the total paid claim or total tax debt amount reported to TOP per IRS records, whichever was less. A gap will exist between what could be collected and the maximum levy amount calculated because (1) tax debts in TOP may not be eligible for immediate levy because IRS has not completed due process notifications and (2) tax debts may become ineligible for levy because of a change in collection status (e.g., tax debtor filed for bankruptcy). We plan to follow up on our recommendation to CMS in incorporating Medicare payments into the continuous levy program; however, we do not believe that a revision to the estimate in this report is necessary.
9. In our draft report, we state that our analysis only included tax debts and Medicare paid claims of \$100 or more because they are significant for the purpose of determining the extent of taxes owed by Medicare providers.

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