



## *Fact Sheet*

# **NEW INFORMATION ABOUT THE MEDICARE SECONDARY PAYER RECOVERY CONTRACTOR**

**Senator Claire McCaskill**

**Chairman, Subcommittee on Contracting Oversight**

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The Medicare Secondary Payer (MSP) program was established in 1980 to reduce Medicare costs by establishing that Medicare should not serve as the primary payer in situations in which other parties bear the primary responsibility to cover the Medicare beneficiary's medical expenses. For example, Medicare is the secondary payer for Medicare beneficiaries who are working and covered by their employer's group health insurance plan. Medicare is also the secondary payer when a Medicare beneficiary has expenses that are ultimately covered by worker's compensation insurance, automobile medical insurance, and no-fault and liability insurance.<sup>1</sup>

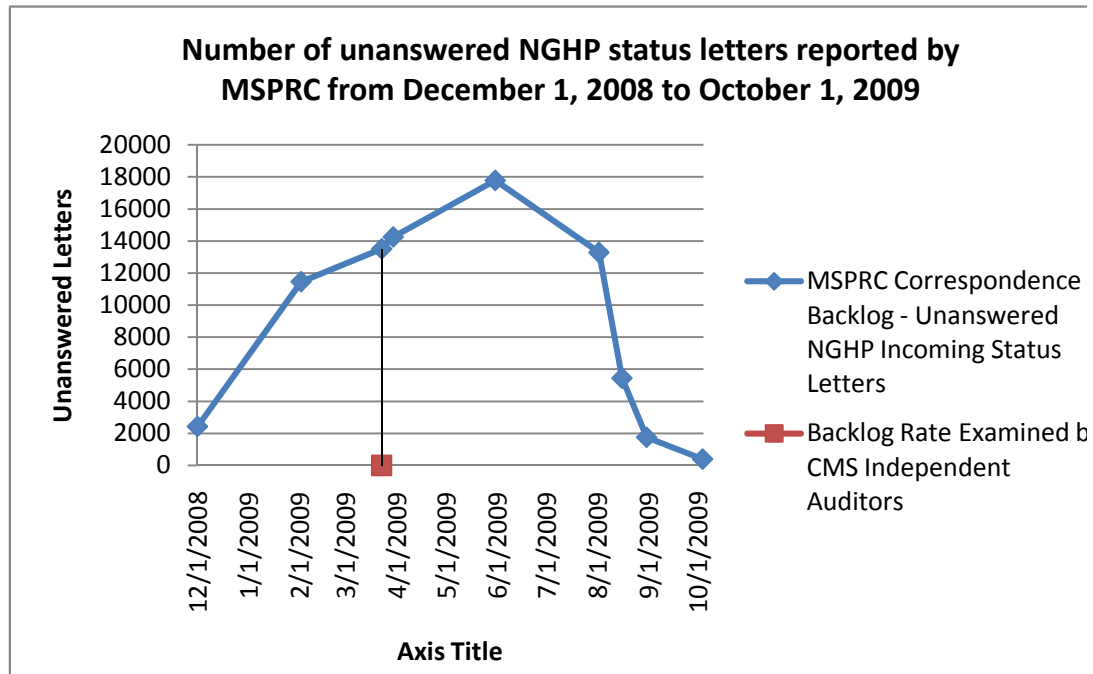
In 2006, CMS consolidated the MSP recovery contracts into a single \$200 million cost-plus contract and awarded the contract on a sole-source basis to Chickasaw Nation Industries (CNI), a tribally-owned firm based in Oklahoma.<sup>2</sup> As the Medicare Secondary Payer Recovery Contractor (MSPRC), CNI's responsibilities include identifying mistaken MSP payments for recovery, determining amounts that are potentially subject to recovery, issuing recovery demand letters, and tracking MSP debt.<sup>3</sup> In 2009, CNI received \$63.3 million under the MSPRC contract.<sup>4</sup>

On September 30, 2009, the Subcommittee initiated an investigation of the Medicare Secondary Payer Recovery Contractor.<sup>5</sup> The Subcommittee's investigation revealed that there have been ongoing performance problems on the MSPRC contract.

*Significant Deficiencies:* In July 2009, CMS' independent auditors concluded that the combination of control deficiencies found during their review constituted a "significant deficiency." The report defines a "significant deficiency" as "a deficiency in internal control, or combination of deficiencies ... such that there is more than a remote likelihood that a misstatement of the entity's financial statements that is more than inconsequential will not be prevented or detected."<sup>6</sup>

*Failure to Respond to Communications in a Timely Manner:* CMS' independent auditors also found that CNI failed to meet contract requirements relating to communications with beneficiaries, attorneys, and insurance companies. For example, the MSPRC contract requires the contractor to respond to all telephone voicemails by the next business day and all correspondence within 45 business days. The independent auditors found that CNI failed to meet either deadline. In addition, the auditors found that CNI had failed to issue repayment demand letters within the required 10 day timeframe in 39 of 45 cases sampled.<sup>7</sup>

The chart below indicates the progression of CNI's attempt to comply with correspondence requirements.<sup>8</sup>



In the second half of 2009, CNI significantly improved its rate of response to communications. By October 2009, CNI failed to answer only 570 of the 18,890 non-group health plan (NGHP) status letters received within the 45 day required time frame.<sup>9</sup>

Lack of Internal Controls: In September 2009, CMS found that although CNI had reduced its backlog and improved case management, the MSPRC continued to fail to comply with contract requirements.<sup>10</sup> Significant internal control weaknesses included:

- Case Management: CNI failed to adequately manage its cases. Of nine liability cases reviewed, two had the wrong debtor, one had no follow-up for resolution, one did not have a demand letter issued for over a year, one case was not closed because MSPRC did not follow-up with the insurance company and for one case the debtor had to ask for a compromise three times.
- Accounting Problems: Cash and check receipts were posted to Accounts Receivable but were not reconciled to deposits or to the log submitted by the bank. CNI also failed to reconcile adjustments to Accounts Receivable. In addition, there was no reconciliation between actual cash deposited and cash collection reported to CMS.
- Debt Write-Offs: No internal controls existed to ensure the principal amount of the debt write-off did not exceed the amount approved by CMS. In one of nine debts reviewed, the amount written off significantly exceeded the approved amount and two cases had activity pending at the time of the write-off request. In addition, CNI failed to reconcile the amounts reported as written-off and the amounts approved by CMS.<sup>11</sup>

Insufficient Funding? CNI officials have acknowledged that the MSPRC failed to meet several contractual requirements related to the timely performance of its recovery duties. However, CNI told Subcommittee staff that many of its deficiencies were due to insufficient funding rather than deficient internal controls. According to CNI, CMS “didn’t have enough money to do the job.”<sup>12</sup>

In the past several years, the MSPRC has made significant improvements in performance. In 2003 CMS recovered only \$0.38 for every dollar spent on recovery activities.<sup>13</sup> According to CNI, the MSPRC now recovers \$8.97 for every dollar spent on recovery activities.<sup>14</sup>

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<sup>1</sup> Congressional Research Service, *Medicare Secondary Payer: Coordination of Benefits* (July 10, 2008).

<sup>2</sup> U.S. Government Accountability Office, *Medicare Secondary Payer: Improvements Needed to Enhance Debt Recovery Process* (Aug. 2004) (GAO-04-783).

<sup>3</sup> Congressional Research Service, *Medicare Secondary Payer: Coordination of Benefits* (July 10, 2008).

<sup>4</sup> For data on contracting at CMS, Subcommittee staff relied on data obtained by GAO from CMS at the Subcommittee's request.

<sup>5</sup> Letter from Chairman Claire McCaskill to Acting Administrator Charlene Frizzera (Sept. 30, 2009).

<sup>6</sup> Grant Thornton, *OMB Circular A-123 Appendix A Review of Internal Control over Financial Reporting of the Centers for Medicare & Medicaid Services (CMS) Final Site Review Report: Medicare Secondary Payer Recovery Contractor (MSPRC) Fiscal Year 2009* (July 23, 2009).

<sup>7</sup> *Id.*

<sup>8</sup> *Id.*

<sup>9</sup> MSPRC Weekly Backlog Report (Oct. 18, 2009).

<sup>10</sup> Centers for Medicare and Medicaid Services, *Contractor Performance Evaluation (CPE) Review Report, Site Visit – Jackson, Mississippi* (Oct. 26, 2009).

<sup>11</sup> *Id.*

<sup>12</sup> Subcommittee on Contracting Oversight, *Staff Interview of Chickasaw Nation Industries President Wendell Gilliam* (April 12, 2010).

<sup>13</sup> U.S. Government Accountability Office, *Medicare Secondary Payer: Improvements Needed to Enhance Debt Recovery Process* (Aug. 2004) (GAO-04-783).

<sup>14</sup> Subcommittee on Contracting Oversight, *Staff Interview of Chickasaw Nation Industries President Wendell Gilliam* (April 12, 2010).