As summarized in the Kansas Medicare Fiscal Intermediary’s recent Bad Debt Newsletter, an “allowable bad debt”, which refers to uncollected Medicare beneficiary liable deductibles and coinsurances, must be deemed “uncollectible” after reasonable collection efforts prior to being claimed on a provider’s cost report. Our collection agency, ARSI, has developed a recommended procedure for handling Medicare accounts from start to finish.

Our agency recommends that providers separate Medicare bad debt from all other types of bad debt. The provider should establish with their collection agent one client account for Medicare bad debt and another account for all other bad debt. The only reason for separating the types of accounts is for accounting purposes. Having the Medicare bad debt segregated when you receive reports from your collection agent should facilitate any cost reporting adjustments required should the debt be recovered after having been claimed on a cost report previously; and should help the provider track the collection expense on those accounts. If the provider has a “minimum dollar amount” to be placed for collection, this amount must be the same for both categories.

In further efforts to treat all accounts in a similar fashion, the collection agent should send the same number of letters and make the same number of phone calls to both types of accounts, according to established policies, which may vary based on the dollar value of each account. Further, the Medicare Provider Reimbursement Manual-Part I, Chapter 3, Section 310 states: “Where a collection agency is used, the agency’s practices may include using or threatening to use court action to obtain payment.” While many Medicare accounts will not meet the criteria for suit-worthiness for obvious reasons, each account should be analyzed by the collection agent nonetheless. In a case where the Medicare beneficiary owns property, owns a business, is employed or has a spouse who is employed yet still refuses to pay – lawsuit should be a consideration. Any policy between a provider and their collection agent that states “No filing of
lawsuits on a Medicare account” contradicts Medicare instructions, especially if the provider approves lawsuits on other types of accounts, because in order to claim bad debts on the cost report, Medicare requires similar collection efforts on Medicare and non-Medicare balances. If the collection agent threatens to file suit against a Medicare beneficiary, but never actually does so, the collection agent is also violating a Federal Law, the Fair Debt Collection Practices Act (FDCPA). Under Section 807 (5), a debt collector may not threaten to take action against a consumer that is not intended or cannot legally be taken. This would include a debt collector threatening legal action, wage garnishment, or criminal action. Debt collectors are also barred from threatening the consumer with legal action if such action is not ordinarily taken.

This brings us to the most controversial issue: “At what point do active collection efforts cease so that a provider may claim reimbursement on the cost report?” In our agency, collectors are trained to determine when letters and phone calls have become futile on each account and when it is time to give up. At that point, the collector requests that the account be removed from their active collection file so that they may concentrate on collectible accounts. Since our providers do not want to see these accounts again any more than our collectors do, the accounts are reviewed by a collection supervisor to ensure that the collector has thoroughly skip-traced the account, exhausted all sources of payment and that “reasonable collection efforts” were made. These accounts, Medicare and non-Medicare, are then placed in an inactive status where the debt will remain on the debtor’s credit report for a period of seven (7) years from the date of delinquency. Hopes of collection are virtually nonexistent, because these days most lenders will excuse any healthcare related blemishes on a consumer’s credit report. In the unlikely event that the debt is recovered (possibly years later), the provider can easily account for such recovery on the current cost report.

The procedure our agency has established is to send a monthly report to our clients indicating when the debt has been deemed worthless and active collection efforts have ceased on any Medicare bad debt so that the provider may review and claim the bad debt on the cost report as long as criteria for doing so has been met. Although the collection agent has retained the account in order to report to the credit bureau, it is important that the collection agent no longer send letters or make phone calls in efforts to collect once the account has been reported to the provider as “uncollectible”. The provider may also wish to request this same “uncollectible” report for all other bad debt for the purpose of making adjustments to their active accounts receivable.

During the course of collection, our collectors will also be identifying accounts that may qualify for charity or financial assistance. If a debtor claims inability to pay and cooperates by completing financial forms, the information will be forwarded to our client for review. This applies to all types of accounts, Medicare or other. Providers should ensure that their collection agent will gladly cancel any account qualifying for financial assistance or a charitable write-off.

We believe the process will serve to satisfy Medicare regulations as well as FDCPA requirements, but providers should review any policies with their accountants, auditors and Medicare Fiscal Intermediary.

4. For Medicare bad debt purposes, Medicare Provider Reimbursement Manual-Part I, Chapter 3, Section 310.2 states: “If after reasonable and customary attempts to collect a bill, the debt remains unpaid more than 120 days from the date the first bill is mailed to the beneficiary, the debt may be deemed uncollectible.”
THE SERVICEMEMBERS CIVIL RELIEF ACT
BY IRENE HOHEUSLE

Why is the Servicemembers Civil Relief Act (SCRA) important to creditors? The SCRA protects active duty servicemembers and their dependents from eviction, mortgage foreclosure, repossession of property, and in some circumstances, default judgments. The Act excludes criminal matters.

Formerly known as the Soldiers and Sailors Civil Relief Act (SSCRA) of 1940, it was renamed the Servicemembers Civil Relief Act in 2003. The original Act was created during World War II, to help our fighting soldiers rest assured that their family and finances would not be devastated in their absence while they were protecting our great country. Since many things have changed since World War II, it is no surprise that the Act was also revised.

After 9/11, when our country was thrown back into another war, creditors need to realize the Act is something that must be recognized and followed or penalties can be as severe as one year jail time and fines for violations made by civilians, which includes creditors.

Not only does an affidavit need to be filed with every lawsuit to indicate the creditor made a reasonable effort to determine if an individual is in active military service, but a judge can appoint an attorney to represent the servicemember during active duty, possibly at the expense of the creditor, to make sure his or her SCRA rights are not being violated.

Servicemembers can exercise their rights under the Act to ask that all pre-military debt have the interest rate reduced to 6% during the duration of active service. This interest reduction can only be requested for debt that was created before the servicemember became active. Any debt created after the date of active duty is subject to the terms when the debt was created.

The creditor can ask servicemembers for their Leave and Earnings Statement (LES), or their current orders. Both sets of paperwork help in different ways. The LES lets the creditor and agency know when the servicemember is available for a court hearing which will eliminate default judgment being taken when the servicemember is unavailable due to military obligations. The current orders give you the date active service began which would be the date the creditor must reduce the interest rate to 6%.

ARSI and any attorneys filing lawsuits on your behalf are well-versed on the current SCRA laws, in order to protect our clients from any such violations. As an internal company policy, ARSI tries to avoid referring active servicemembers for lawsuit. We do not want to increase the stress level for a family whose loved one may be away defending our country.
Your Partner in Receivables Management. 
Serving you from 3 locations in Kansas

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The contents of this Newsletter do not constitute legal advice.

In order to better serve our clients we have expanded our Client Services department. We want to be a resource to you!

**CLIENT RESOURCE LIST**

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