Department of Health and Human Services

DEPARTMENTAL APPEALS BOARD

Civil Remedies Division

In the Case of:	
Charles K. Angelo, Jr., M.D.,	DATE: October 20, 1993
Petitioner,	Docket No. C-92-130
- v. -	Decision No. CR290
The Inspector General.	

DECISION

On May 12, 1992, the Inspector General (I.G.) notified Petitioner, Charles K. Angelo, Jr., M.D., that he was being excluded from participation in the Medicare and State health care programs.[1] The I.G. informed Petitioner that he was being excluded from participation in Medicare pursuant to section 1892 of the Social Security Act (Act). The I.G. informed Petitioner that he was being excluded also from participation in Medicaid pursuant to section 1128(b)(14) of the Act. The I.G. further informed Petitioner that he was being excluded because he had failed to repay his Health Education Assistance Loans (HEALs) or to enter into an agreement to repay the loans. The I.G. advised Petitioner that he would be excluded until his debt had been satisfied completely.

Petitioner requested a hearing, and the case was assigned to me for a hearing and decision. Petitioner then requested that the proceeding be stayed while he pursued

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[1] "State health care program" is defined by section 1128(h) of the Social Security Act to cover three types of federally financed health care programs, including Medicaid. Unless the context indicates otherwise, I use the term "Medicaid" hereafter to represent all State health care programs from which Petitioner was excluded.

attempts to resolve his indebtedness. The I.G. did not object to a stay, and I stayed the proceeding. Subsequently, Petitioner requested that the case be heard and decided.

I provided the I.G. with the opportunity to file a motion for summary disposition in this case. The I.G. filed a motion for summary disposition. Petitioner opposed the motion.

I have carefully considered the I.G.'s motion, the undisputed material facts of this case, and Petitioner's opposition to the motion. I conclude that I lack authority to adjudicate the I.G.'s exclusion of Petitioner from participating in Medicare, which the I.G. imposed pursuant to section 1892 of the Act. I conclude further that the I.G. had authority pursuant to section 1128(b)(14) of the Act to exclude Petitioner from participating in Medicaid. Finally, I conclude that the term of the exclusion imposed pursuant to section 1128(b)(14) is reasonable based on the I.G.'s representation to me that, under the exclusion imposed pursuant to section 1128(b)(14), Petitioner will be eligible to apply for reinstatement to Medicaid at such time as the Public Health Service (PHS) notifies the I.G. that either Petitioner's HEAL default is cured or that Petitioner's indebtedness has been resolved to PHS' satisfaction. I.G.'s Motion for Summary Disposition, p. 12; 42 C.F.R. § 1001.1501(b).

ISSUES

The issues in this case are whether:

1. I have authority to adjudicate the exclusion from Medicare which the I.G. imposed pursuant to section 1892 of the Act.

2. The I.G. had authority to exclude Petitioner from participation in Medicaid pursuant to section 1128(b)(14) of the Act.

3. The term of the exclusion imposed pursuant to section 1128(b)(14) of the Act is reasonable.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

1. On November 22, 1983, Petitioner applied for a HEAL to enable him to pursue his education as a physician. I.G. Ex. 2, p. 1.[2]

2. On January 26, 1984, Petitioner received approval for a HEAL in the amount of $4,630. I.G. Ex. 2, p. 1.

3. On August 1, 1984, Petitioner applied for a second HEAL. I.G. Ex. 2, p. 3.

4. On August 30, 1984, Petitioner received approval for a HEAL in the amount of $11,098. I.G. Ex. 2, p. 3.

5. In promising to repay the HEALs, Petitioner agreed to make payments beginning on the first day of the tenth month after he ceased being a full-time student at a HEAL-recognized school, or an intern or resident in an approved program. I.G. Ex. 3, p. 1; I.G. Ex. 4, p. 1.

6. In promising to repay the HEALs, Petitioner agreed that he would be required to repay them in not less than 10 years, or more than 25 years, and that he would make annual payments of at least the annual interest on the unpaid balance of the HEALs. I.G. Ex. 3, p. 1; I.G. Ex. 4, p. 1.

7. In promising to repay the HEALs, Petitioner agreed that, in the event of his default, the entire unpaid amounts of the loans, including interest due and accrued, would, at the option of the holder, become immediately due and payable. I.G. Ex. 3, p. 1; I.G. Ex. 4, p. 1.

8. Petitioner was granted a deferment until August 1986 from his obligation to repay the HEALs. I.G. Ex. 5.

9. On November 7, 1985, the Student Loan Marketing Association (SLMA) issued a repayment schedule to Petitioner. I.G. Ex. 6.

10. Petitioner failed to repay the HEALs. I.G. Ex. 7; Memorandum in Support of Opposition of Petitioner, Charles K. Angelo, Jr., M.D. to Inspector General's Motion for Summary Disposition (Petitioner's Memorandum), p. 2.

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[2] I hereby admit the I.G.'s Exhibits 1 - 22 into evidence. I hereby admit Petitioner's Exhibits 1 and 2 into evidence. I refer to the I.G.'s Exhibits as "I.G. Ex."

11. On June 18, 1988, SLMA advised Petitioner that, if he did not repay the HEALs by July 18, 1988, his account would be filed as a default claim. I.G. Ex. 7.

12. On August 5, 1988, SLMA filed a claim with PHS, based on Petitioner's failure to repay his HEALs. I.G. Ex. 8.

13. On August 31, 1988, PHS agreed to pay SLMA the amount of $24,284, for unpaid principal and interest on Petitioner's HEALs. I.G. Ex. 9, p. 2; see I.G. Ex. 8, p. 3.

14. On September 26, 1988, Skyline Credit Corporation notified Petitioner that it had been authorized by the United States Government to collect the unpaid interest and principal on Petitioner's HEALs, and it demanded that Petitioner repay the loans. I.G. Ex. 10, pp. 1 - 2.

15. Skyline Credit Corporation sent to Petitioner additional demands for repayment on November 15, 1988, December 16, 1988, January 26, 1989, and April 12, 1989. I.G. Ex. 10, pp. 3 - 7.

16. Petitioner did not respond to the repayment demands. See Finding 15.

17. On September 8, 1989, PHS notified Petitioner that it intended to refer his debt to the Internal Revenue Service for collection under provisions of the Deficit Reduction Act of 1984. I.G. Ex. 11.

18. PHS advised Petitioner that his repayment of his indebtedness would terminate debt collection action. I.G. Ex. 11, p. 2.

19. On January 23, 1990, September 21, 1990 and September 26, 1990, PHS notified Petitioner that he would be afforded the opportunity to enter into a debt repayment agreement with the Department of Health and Human Services. I.G. Ex. 12, pp. 1 - 3.

20. Petitioner did not respond to these notices. See Finding 19.

21. On September 27, 1990, PHS again notified Petitioner that it intended to refer his debt to the Internal Revenue Service for collection. I.G. Ex. 13.

22. On November 26, 1990, Petitioner entered into a repayment agreement with PHS, in which he agreed to repay

his indebtedness with monthly payments of $350. I.G. Ex. 16.

23. Petitioner defaulted on the repayment agreement after making four payments of $350 to PHS. I.G. Ex. 17; I.G. Ex. 18; Petitioner's Memorandum, p. 2.

24. On December 10, 1991, PHS sent Petitioner an offer to resolve his debt by offsetting against the debt claims made by Petitioner for reimbursement for Medicare and Medicaid items or services provided by Petitioner. I.G. Ex. 19.

25. PHS sent the offer to Petitioner at his home address of 715 Majestic Place, New Orleans, Louisiana. I.G. Ex. 14, p. 3; I.G. Ex. 16, p. 1; I.G. Ex. 19.

26. Petitioner did not agree to enter into a Medicare and Medicaid reimbursement offset agreement with PHS. See Finding 25.

27. On July 16, 1992, a suit was filed against Petitioner in the United States District Court for the Eastern District of Louisiana to collect the outstanding indebtedness on Petitioner's HEALs. I.G. Ex. 20.

28. On May 12, 1992, the I.G. excluded Petitioner from participating in Medicare and directed that he be excluded from participating in Medicaid.

29. As of May 12, 1992, Petitioner had not repaid his HEAL debt, nor had he honored an agreement with PHS to repay his HEAL debt. Findings 1 - 27.

30. The I.G. excluded Petitioner from participating in Medicare pursuant to section 1892 of the Act. Social Security Act, section 1892.

31. The I.G. excluded Petitioner from participating in Medicaid pursuant to section 1128(b)(14) of the Act. Social Security Act, section 1128(b)(14).

32. The Secretary of the United States Department of Health and Human Services (Secretary) has not delegated to administrative law judges of the Departmental Appeals Board (DAB) the authority to hear and decide requests for hearings concerning exclusions imposed pursuant to section 1892 of the Act.

33. I do not have authority to hear and decide Petitioner's request for a hearing concerning his

exclusion from participating in Medicare which the I.G. imposed pursuant to section 1892 of the Act. Finding 32.

34. Petitioner's HEAL debt is an indebtedness on loans in connection with health professions education which have been secured by the Secretary. Findings 1 - 27; Social Security Act, section 1128(b)(14).

35. The Secretary's duty to take all reasonable steps available to collect Petitioner's debt prior to excluding Petitioner under section 1128(b)(14) of the Act does not require the Secretary to serve Petitioner with an offer to resolve his debt by offsetting against his debt claims for reimbursement for Medicare and Medicaid items or services provided by Petitioner. Social Security Act, section 1128(b)(14); see Social Security Act, section 1892; 42 C.F.R. § 1001.1501(a)(2).

36. PHS offered to resolve Petitioner's debt when it mailed to Petitioner's home address a proposal to offset against his debt claims for reimbursement for Medicare and Medicaid items or services provided by Petitioner. 42 C.F.R. § 1001.1501(a)(2); Social Security Act, section 1128(b)(14).

37. The Secretary has taken all reasonable steps available to her to secure repayment from Petitioner of his HEAL debt. Findings 13 - 27, 34 - 36.

38. The Secretary delegated to the I.G. the authority to determine, impose, and direct exclusions pursuant to section 1128 of the Act. 48 Fed. Reg. 21,662 (1983).

39. The I.G. had authority to impose and direct an exclusion pursuant to section 1128(b)(14) of the Act. Findings 1 - 38.

40. An exclusion imposed pursuant to section 1128(b)(14) of the Act is reasonable if the excluded party is excluded until such time as PHS notifies the I.G. that the default has been cured or the debt has been resolved to PHS' satisfaction. 42 C.F.R. § 1001.1501(b).

41. The exclusion imposed against Petitioner pursuant to section 1128(b)(14) of the Act was intended by the I.G. to exclude Petitioner until such time as PHS notifies the I.G. that Petitioner's default of his HEAL debt has been cured or that his HEAL debt has been resolved to PHS' satisfaction. I.G.'s Motion for Summary Disposition, p. 12.

42. The exclusion which the I.G. imposed against Petitioner pursuant to section 1128(b)(14) of the Act is reasonable. Findings 1 - 41.

ANALYSIS

The parties to this case do not disagree that Petitioner applied for and received two HEALs to pursue his education in medicine. Nor do they disagree that Petitioner defaulted on his HEALs and, subsequently, defaulted on a repayment agreement which he entered into with PHS. Petitioner contends, however, that, notwithstanding these undisputed material facts, the I.G. is without authority to exclude him under section 1128(b)(14) of the Act. He asserts that the I.G. has not shown that all reasonable efforts were made to collect Petitioner's debts prior to excluding him.

1. I do not have authority to decide whether the I.G. can exclude Petitioner under section 1892 of the Act, or to decide whether an exclusion imposed under section 1892 is reasonable.

The exclusions imposed by the I.G. include an exclusion imposed under section 1892 of the Act, affecting Petitioner's participation in the Medicare program. A threshold issue in this case is whether I have jurisdiction to decide whether the I.G. has the authority to impose this exclusion. I conclude that the authority delegated to me by the Secretary to hear and decide cases does not include exclusions imposed pursuant to section 1892.[3] Therefore, I make no findings as to whether the I.G. has authority to impose an exclusion under section 1892 or whether the exclusion which the I.G. imposed pursuant to that section is reasonable.

I previously considered and decided this issue in James F. Cleary, D.D.S., DAB CR252 (1993). Petitioner has not asserted here that my decision in that case was incorrect, nor does he argue that I have the delegated authority to consider issues concerning the exclusion imposed pursuant to section 1892.

Section 1892(a)(1)(A) of the Act directs the Secretary to enter into a repayment agreement with any individual who, by reason of a breach of contract entered into with entities including the HEAL program, owes a past-due

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[3] Section 1892 of the Act does not, on its face, provide for administrative hearings.

obligation to the United States. Section 1892(a)(3)(B) of the Act provides that if such an individual refuses to enter into a repayment agreement or breaches any provision of a repayment agreement, the Secretary shall immediately exclude such individual from participating in Medicare.

I cannot hear cases involving exclusions imposed under section 1892 absent either delegated authority to hear such cases or an agreement by the parties to be bound by my decision. I am unaware of any delegation of authority by the Secretary to the DAB or to administrative law judges to provide hearings to individuals excluded pursuant to section 1892. Neither party to this case has contended that such delegations have been made.

2. The I.G. has authority under section 1128(b)(14) of the Act to exclude Petitioner from participating in Medicare and Medicaid.

The I.G. excluded Petitioner from participating in Medicaid pursuant to section 1128(b)(14) of the Act. That section is part of a section of the Act which provides for administrative hearings for parties who are dissatisfied with exclusion determinations. The DAB has been delegated authority to hear and decide cases involving hearing requests challenging exclusions made pursuant to section 1128 of the Act and this delegation includes exclusions made pursuant to section 1128(b)(14). Therefore, I have authority to hear and decide Petitioner's request concerning his exclusion from Medicaid under section 1128(b)(14).

Section 1128(b)(14) of the Act provides that the Secretary (or her delegate, the I.G.) may exclude a party from participating in Medicare and Medicaid who:

> is in default on repayments of scholarship obligations or loans in connection with health professions education made or secured, in whole or in part, by the Secretary and with respect to whom the Secretary has taken all reasonable steps available to the Secretary to secure repayment of such obligations or loans, . . .

The I.G.'s motion for summary disposition assumes that the exclusion imposed pursuant to section 1128(b)(14) applies both to Petitioner's participation in Medicare and in Medicaid. In fact, although section 1128(b)(14) permits the Secretary (or her delegate, the I.G.) to impose exclusions from participating in Medicare or Medicaid, assuming that the requisite authority to

exclude exists, the exclusion which was imposed here under section 1128(b)(14) applies only to Petitioner's participation in Medicaid. The notice letter which the I.G. sent to Petitioner advising him of his exclusion states:

> This letter is to notify you that, according to the authority delegated to the Inspector General by the Secretary of DHHS, you are being excluded from participation in the Medicare program, pursuant to section 1892 of the Social Security Act (Act) (42 U.S.C. 1395cc). In addition, pursuant to the authority contained in section 1128(b)(14) of the Act, you are also being excluded from participation in the Medicaid and State health care programs as defined in section 1128(h) of the Act.

(Emphasis added). Thus, although the I.G. could have excluded Petitioner from participating in Medicare and Medicaid pursuant to section 1128(b)(14), the I.G. elected only to exclude him from participating in Medicaid pursuant to that section. The I.G. did not move to amend the notice to Petitioner. I conclude that the notice must be construed to mean what it plainly says. Therefore, I find that the I.G. excluded Petitioner only from participating in Medicaid pursuant to section 1128(b)(14) of the Act.

There is no dispute in this case that Petitioner's HEAL debt arises from loans made "in connection with health professions education." Nor is there any dispute that Petitioner defaulted on repayment of his HEAL debt. Therefore, I must find that the I.G. had authority to exclude Petitioner under section 1128(b)(14) if I conclude that the Secretary took "all reasonable steps available" to secure repayment from Petitioner of his HEAL debt.[4]

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[4] Section 1128(b)(14) provides that the Secretary shall not exclude a physician who is:

> the sole community physician or sole source of essential specialized services in a community if a State requests that the physician not be excluded, and . . . the Secretary shall take into account, in determining whether to exclude any other physician pursuant to . . . [section 1128(b)(14)] access of beneficiaries to physician services for which payment may be made under . . . [Medicare or Medicaid].

The record of this case is replete with efforts agencies operating on behalf of the Secretary made to obtain repayment from Petitioner of his HEAL debt. Those efforts included sending numerous notices to Petitioner, entering into a debt repayment agreement with Petitioner, and sending a proposal to Petitioner to offset his debt with reimbursement for Medicare and Medicaid items or services provided by Petitioner. When all else failed, the Secretary referred Petitioner's debt to the Department of Justice for commencement of a lawsuit against Petitioner in federal court.

Petitioner asserts that these efforts do not constitute "all reasonable steps available." He argues that, as an absolute prerequisite to imposing an exclusion, the Secretary had to serve him with an offer to offset his debt with reimbursement for Medicare and Medicaid items or services provided by Petitioner. He does not dispute that such an offer was mailed to him. He asserts, however, that he never received the offer, and therefore, was never served with it in accordance with the requirements of the Act and regulations. Inasmuch as this is a case in which the I.G. has moved for summary disposition, and Petitioner has denied receiving the proposal, I must assume for the purpose of deciding the motion that Petitioner did not receive the proposed offset agreement.

In this case, the undisputed material facts establish that the Secretary took all reasonable steps to collect Petitioner's HEAL debt prior to excluding him. First, I do not agree with Petitioner's argument that, as a prerequisite to imposing an exclusion under section 1128(b)(14), the Secretary must tender to a debtor an offer to enter into a Medicare and Medicaid reimbursement offset agreement. While the making of such an offer is conclusive evidence that the Secretary has taken all reasonable steps short of exclusion to collect the debt, it is not a necessary condition for finding that the Secretary has taken all reasonable steps. I find further that the Secretary's efforts to collect Petitioner's debt meet the statutory requirement that all reasonable steps short of exclusion be taken, without considering the

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[4](...continued)
Petitioner does not contend that he qualifies for the exception from exclusion provided by this section. Nor does Petitioner contend that the I.G. failed to take into account beneficiaries' access to physician services in determining whether to exclude him.

issue of whether PHS made an offset agreement offer to Petitioner.

Second, I conclude that, in this case, PHS in fact made an offset agreement offer to Petitioner. PHS made that offer when it mailed it to Petitioner at the address which Petitioner provided to PHS as his home address. Accepting as true Petitioner's contention that he never received the offer, I find that PHS had no duty to assure that Petitioner was actually served with the offer. Thus, the Secretary did that which was necessary to establish conclusively that all reasonable efforts were made to collect the debt from Petitioner, as prescribed by 42 C.F.R. § 1001.1501(a)(2).

The intent of Congress in enacting section 1128(b)(14) was in part to provide the Secretary with a mechanism by which she could assert some leverage over parties who default on their HEAL debts.[5] In assuming Petitioner's HEAL debt, the Secretary acquired the right -- and the obligation -- to collect on that debt. Section 1128(b)(14) is a debt collection tool, among other things. The term "all reasonable steps available" means all reasonable and legitimate means of debt collection. In attempting to collect a debt, the Secretary must be "reasonable" only in the sense that she should not insist on repayment arrangements or resort to collection actions that are palpably unfair.

There is no language in section 1128(b)(14) which requires the Secretary to offer a Medicare and Medicaid reimbursement offset agreement to a party as a necessary element of the "all reasonable steps available" to the Secretary. Section 1128(b)(14) cannot be construed as a debtors' rights statute which gives debtors absolute rights to enter into offset agreements.[6] Certainly, there may be circumstances where offering an offset agreement to a debtor might be a reasonable step. On the

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[5] Another purpose of section 1128(b)(14) is to protect the integrity of federally funded health care programs from parties who demonstrate that they cannot be trusted to deal with public funds.

[6] Section 1128(b)(14) does not mention offset agreements. Arguably, an offer by the Secretary to a debtor of an offset agreement is a prerequisite to imposing an exclusion under section 1892 of the Act. See Social Security Act, sections 1892(1)(A), (2). However, section 1128(b)(14) does not incorporate section 1892 either explicitly, or by reference.

other hand, there are circumstances where such an offer is not required.

The regulations do not require the offer of a Medicare and Medicaid reimbursement offset agreement as a prerequisite to imposing an exclusion. The relevant regulation, 42 C.F.R. § 1001.1501(a)(2), states that the Secretary will be deemed to have taken all reasonable steps to collect a debt if she offers a debtor a Medicare and Medicaid reimbursement offset agreement prior to imposing an exclusion. The regulation provides that the making of such an offer is conclusive proof that all reasonable steps have been taken by the Secretary. However, the regulation does not state that the Secretary must make an offer of an offset agreement as a necessary element of "all reasonable steps."

The facts of this case are that PHS, acting on the Secretary's behalf, made numerous demands of Petitioner that he repay his HEAL debt. Petitioner knew that he was in default of his loans, and he knew also that PHS was demanding that he repay his debt. After making numerous attempts to collect the debt, PHS entered into a repayment agreement with Petitioner. Petitioner then defaulted on that agreement, as well as on the underlying debt. I conclude that at the point that Petitioner defaulted on the repayment agreement, the Secretary had taken "all reasonable steps" to collect Petitioner's debt. The Secretary had been eminently fair to Petitioner. She had provided him with many opportunities to repay his debt. She had entered into a repayment agreement with Petitioner which took into account Petitioner's income, his resources, and his other obligations. She could have inferred, reasonably, from Petitioner's default of his repayment agreement that Petitioner was unlikely to repay his debt voluntarily. The I.G. was, therefore, authorized to exclude Petitioner at the moment Petitioner defaulted on the repayment agreement.

However, the record of this case demonstrates that the Secretary did even more to attempt to obtain Petitioner's voluntary repayment of his debt. Although the Secretary and her agents are not required under section 1128(b)(14) to tender a proposed Medicare and Medicaid reimbursement offset agreement to defaulting debtors prior to excluding them, the undisputed facts of this case establish that PHS tendered such an agreement to Petitioner. On December 10, 1991, PHS mailed a proposal to Petitioner at his home address offering to offset Petitioner's debt with Medicare and Medicaid reimbursement for items or services provided by Petitioner. Findings 24 - 25.

The proposed offset agreement was "offered" within the meaning of 42 C.F.R. § 1001.1501(a)(2) when PHS mailed it to Petitioner's home address. The regulation does not prescribe the manner in which proposed offset agreements must be offered. I conclude that the regulation does not impose a service requirement on PHS. It is plainly within the spirit of the regulation and the purpose of section 1128(b)(14) that PHS be permitted to communicate offers of offset agreements by regular mail, relying on debtors' statements of their home addresses as the mailing destinations for such offers. Neither the regulation or the Act suggests that PHS has the additional duty of assuring that such offers are received and reviewed by debtors.

As I held above, section 1128(b)(14) is not a debtors' rights statute. The Secretary's obligation to take reasonable steps to collect debts -- if in fact, it includes an obligation to propose offset agreements -- does not go beyond taking reasonable steps to communicate such offers to debtors. Reasonable communication includes mailing such offers to debtors at the addresses which debtors provide as their home addresses. The possibility that some mailings may not be received imposes no additional obligations on PHS or the Secretary.

In Louis W. DeInnocentes, Jr., M.D., DAB CR247 (1992), I held that, under section 1156 of the Act, a peer review organization discharged its duty to give notice to a provider under review by mailing the notice to the provider at the provider's home address. I concluded that the peer review organization had no responsibility to assure that the provider received and read the notice. In that decision, I analogized the peer review organization's responsibility to that of a party providing notice pursuant to Rule 5(b) of the Federal Rules of Civil Procedure. DeInnocentes, p. 38.

The present situation is not identical to that which I addressed in DeInnocentes, but it is analogous. Unlike the present case, the regulations at issue in DeInnocentes, 42 C.F.R. §§ 1004.40 and 1004.50, specifically require peer review organizations to provide notice to affected providers. Here, the regulation is silent as to the manner by which the Secretary should notify debtors of proposed offset agreements. However, as in DeInnocentes, the section of the Act which is at issue here is a section which is designed to enable the Secretary to take remedial action to protect federally funded health care programs. As with section 1156, Congress intended section 1128(b)(14) to ensure that the

remedy imposed by the Secretary not be imposed without providing due process to affected providers. Under the regulations which govern the application of section 1156, due process requires sending notices to affected providers. The regulation at issue here, to the extent that it requires the Secretary to provide debtors with an opportunity to enter into offset agreements, implicitly requires also that some reasonable notice be sent to debtors. But, in both instances, in setting the balance between protecting programs and protecting the interests of affected providers, Congress opted to establish a notice standard which would not impede the Secretary in the discharge of her duties to protect the programs.

As with the notice requirement under section 1156, the duty to communicate an offer of an offset agreement under section 1128(b)(14) -- assuming, arguendo, that such duty exists -- is limited to providing reasonable notice of such an offer. PHS communicates an offer of an offset agreement to a debtor by sending the debtor notice of that offer through regular mail to the address which the debtor provides to PHS as his or her home address. If such communication is made, then the Secretary will be deemed to have taken all reasonable steps to collect the debt pursuant to 42 C.F.R. § 1001.1501(a)(2). It is irrelevant whether the debtor actually receives the proposal.

I premise this analysis on my conclusion that the paramount purpose of section 1128(b)(14) is to provide the Secretary with a tool by which to collect a debt once voluntary persuasion has failed. It would frustrate the purpose of the Act and jeopardize the integrity of federally funded programs if clever or lucky debtors were able to avoid their obligations. Yet that is precisely the result which would occur were I to construe the Act or regulations to require actual service on debtors of offset offers, as is advocated by Petitioner.

Petitioner asserts additionally that the document which contains the offset agreement proposal does not state the proposal clearly. In fact, the proposal to enter into an offset agreement is clear and explicit, and not in the least ambiguous. The notice which was sent to Petitioner provides:

> An alternative is to establish an offset agreement with this office to have your Medicare and/or Medicaid reimbursements directly forwarded to this office and applied to your account. If you elect to do this, please provide this office with your provider

number, place of employment, present carrier, proposed offset amount, and a signed statement authorizing us to commence offset procedures.

I.G. Ex. 19.

3. The exclusion which the I.G. imposed under section 1128(b)(14) of the Act is reasonable.

The notice of exclusion which the I.G. sent to Petitioner advised him that he would be excluded, both under sections 1128(b)(14) and 1892 of the Act, until his HEAL debt had been completely satisfied. However, the I.G. now avers that the intent is that the exclusion imposed under section 1128(b)(14) will be effective until PHS notifies the I.G. that Petitioner's default has been cured or that Petitioner's debt has been resolved to PHS' satisfaction. I.G.'s Motion for Summary Disposition, p. 12.

The I.G.'s clarification of the term of the exclusion is consistent with the requirements of 42 C.F.R. § 1001.1501(b). I therefore find that the exclusion which the I.G. imposed under section 1128(b)(14) is reasonable, and I sustain it. Furthermore, the exclusion is on its face reasonable because it enables Petitioner to negotiate an agreement with PHS to repay his HEAL debt.[7]

CONCLUSION

I conclude that the I.G. had authority to exclude Petitioner from participating in Medicaid under section 1128(b)(14) of the Act. I conclude further that the exclusion which the I.G. imposed under section 1128(b)(14) is reasonable. I make no findings or

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[7] Petitioner now avers that he is willing to enter into a Medicare and Medicaid offset agreement as a way of resolving his debt. I have no authority to direct either the I.G. or PHS to accept a proposal from Petitioner to resolve his debt. Furthermore, the fact that Petitioner may now be willing to enter into a settlement agreement does not detract from the I.G.'s authority to exclude him.

conclusions as to whether the I.G. had the authority to exclude Petitioner pursuant to section 1892, or whether the exclusion which the I.G. imposed under section 1892 is reasonable.

/s/

Steven T. Kessel
Administrative Law Judge