DEPARTMENT OF HEALTH & HUMAN SERVICES

Office of Inspector General

Memorandum

Date JUL 21 1992

From Richard P. Kusserow
Inspector General for Bryan Mitchell

Subject Review of Medical Assistance Payments Made by the New York State Department of Social Services to Eleven Free-Standing State-Operated Inpatient Alcoholism Treatment Centers (A-02-91-01048)

To William Toby
Acting Administrator
Health Care Financing Administration

This memorandum alerts you to the issuance on July 23, 1992, of our final audit report. A copy is attached. The purpose of our audit was to determine if New York State (NYS) improperly claimed Federal financial participation (FFP) on Medicaid payments made to 11 free-standing State-operated inpatient alcoholism treatment centers (ATC) during the period July 1, 1985 through October 31, 1990.

Federal regulations do not permit FFP for clients in free-standing inpatient alcoholism treatment facilities. Additionally, Federal regulations require that, as a prerequisite for claiming Medicaid reimbursement, inpatient hospitals must be certified by the Health Care Financing Administration's (HCFA) Health Standards and Quality Bureau (HSQB). Also, to participate in New York's Medicaid program, providers are required to enroll with the NYS Department of Social Services (DSS).

The NYS DSS is the single State agency for Medicaid and the NYS Division of Alcoholism and Alcohol Abuse has cognizance over the 11 State-operated ATCs included in our review. Ten of the 11 ATCs are located on the grounds of State-operated psychiatric centers (PCs). All 11 ATCs claimed Medicaid reimbursement by using provider identification numbers assigned to State-operated PCs.

Our review determined that the 11 State-operated ATCs are free-standing inpatient alcoholism treatment facilities that are separate and distinct entities from the State-operated PCs. Additionally, we found and HCFA HSQB Region II officials confirmed, that the ATCs were not certified by the Federal Government to participate in the Medicare and Medicaid programs during our audit period. Also, we determined that the ATCs were never enrolled as distinct providers under New

York's Medicaid program. As a result, DSS improperly claimed $6,846,532 (Federal share $3,423,172) in Medicaid reimbursement for inpatient alcoholism services furnished at all 11 providers.

In our opinion, the improper claiming of FFP occurred because the State was inappropriately processing Medicaid claims for clients at the 11 ATCs by using the Medicaid Management Information System (MMIS) provider identification numbers assigned to various State-operated PCs.

We are recommending recovery of the $3,423,172 Federal share amount and that the State discontinue its practice of using MMIS provider identification numbers assigned to various State-operated PCs to claim Medicaid reimbursement for inpatient services provided in State-operated ATCs. Additionally, we are recommending that the State establish appropriate edits or mechanisms within its MMIS to prevent the improper claims from occurring in the future and return the Federal share of the improper claims made subsequent to our October 31, 1990 audit cut-off date.

This audit report is the third we have issued related to free-standing inpatient alcoholism providers within NYS. In responding to the prior two reports (A-02-91-01030 and A-02-91-01033), NYS officials acknowledged that FFP should not have been claimed for services provided in free-standing inpatient alcoholism treatment facilities. However, in their comments to this report, State officials did not agree that they improperly claimed FFP. Whereas, HCFA Region II officials concurred with the findings and recommendations contained in this and our two previous reports on inpatient alcoholism services.

For further information, contact:
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Attachment

Department of Health and Human Services

OFFICE OF INSPECTOR GENERAL

REVIEW OF MEDICAL ASSISTANCE PAYMENTS MADE BY THE NEW YORK STATE DEPARTMENT OF SOCIAL SERVICES TO ELEVEN FREE-STANDING STATE-OPERATED INPATIENT ALCOHOLISM TREATMENT CENTERS

NEW YORK STATE DEPARTMENT OF SOCIAL SERVICES
ALBANY, NEW YORK

FOR THE PERIOD
JULY 1, 1985 THROUGH OCTOBER 31, 1990

The designation of the financial or management practices as questionable or a recommendation for the disallowance of costs incurred or claimed, as well as other conclusions and recommendations in this report, represent the findings and opinions of the HHS/OIG Office of Audit Services. Final determination on these matters will be made by authorized officials of the HHS operating divisions.

Richard P. Kusserow
INSPECTOR GENERAL

CIN A-02-91-01048

DEPARTMENT OF HEALTH & HUMAN SERVICES

Office of Inspector General
Office of Audit Services

Region II
Jacob K. Javits Federal Building
26 Federal Plaza
New York, NY 10278

Our Reference: Common Identification Number A-02-91-01048

Ms. Mary Jo Bane
Commissioner
New York State Department
of Social Services
40 North Pearl Street
Albany, New York 12243

Dear Ms. Bane:

This is to advise you of the results of our REVIEW OF MEDICAL ASSISTANCE PAYMENTS MADE BY THE NEW YORK STATE DEPARTMENT OF SOCIAL SERVICES TO ELEVEN FREE-STANDING STATE-OPERATED INPATIENT ALCOHOLISM TREATMENT CENTERS. The purpose of our review was to determine if New York State (NYS) improperly claimed Federal financial participation (FFP) for Medicaid payments made to the 11 providers during our audit period.

Our review determined that the NYS Department of Social Services (DSS) improperly claimed $6,846,352 (Federal share $3,423,172) in Medicaid reimbursement for inpatient alcoholism services furnished at all 11 providers. In summary, we believe the claims were ineligible for FFP for the following reasons:

1. The alcoholism treatment centers (ATC) are free-standing inpatient alcoholism treatment facilities and as such were only eligible for State but not Federal Medicaid reimbursement.

2. The Health Care Financing Administration (HCFA) did not certify the ATCs for participation in the Medicare and Medicaid programs.

3. The ATCs were not enrolled as distinct providers in New York's Medicaid program.

In our opinion, the improper claiming of FFP occurred because claims to Medicaid for clients at the 11 State-operated ATCs were inappropriately processed using the Medicaid Management

Information System (MMIS) provider identification numbers assigned to various State-operated psychiatric centers (PC). As a result, the Federal Government was overcharged $3,423,172 during the period July 1, 1985 through October 31, 1990.

We are recommending recovery of the $3,423,172 Federal share amount and that the State discontinue its practice of using the MMIS provider numbers assigned to various State-operated PCs to claim Medicaid reimbursement for inpatient services provided in State-operated ATCs. Additionally, we are recommending that the State establish appropriate edits or mechanisms within its MMIS to prevent the improper claiming from occurring in the future.

INTRODUCTION

Background

Medicaid, authorized by title XIX of the Social Security Act (the Act), as amended, provides grants to States for furnishing medical assistance to eligible low-income persons. The States arrange with medical service providers such as physicians, pharmacies, hospitals, nursing homes, and other organizations to provide the needed medical assistance.

New York initiated its Medicaid program on May 1, 1966. The NYS DSS is the single State agency for Medicaid. The DSS delegates certain of its responsibilities to other State agencies. One such agency is the Division of Alcoholism and Alcohol Abuse (DAAA). In general, the DAAA is responsible for the overall administration of inpatient and outpatient alcoholism detoxification, rehabilitation, and treatment services. Rehabilitation includes treatment, counseling, and related services, while detoxification usually encompasses short term stays to reduce or eliminate alcohol in the blood and to treat alcohol withdrawal symptoms. Within NYS, inpatient alcoholism services are offered at private free-standing alcoholism treatment facilities, alcoholism units of general acute care hospitals, institutions for mental diseases, and State-operated ATCs.

Prior to its reorganization in 1978, the Department of Mental Hygiene (DMH) was divided into several components, including the Division of Mental Health. This Division was responsible for administering the system of State-operated PCs. The ATCs, then known as alcoholism rehabilitation units, were an integral part of the PCs. Prior to 1978, the ATCs were under the administrative direction and control of the PC directors. Back then, the professional staff at the ATCs were supervised by the same staff who supervised professional staff on other PC wards. In most instances, the ATC staff had position titles and descriptions which were interchangeable with all other PC

staff. Additionally, all ancillary and support services were provided on a facility-wide basis. At the central office level, there was no distinct administrative structure with responsibility for alcoholism services provided at the PCs.

Chapter 978 of NYS' Laws of 1978 reorganized the DMH, resulting in the creation of three autonomous offices. These were the Office of Mental Health (OMH), the Office of Mental Retardation and Developmental Disabilities (OMRDD), and the Office of Alcoholism and Substance Abuse (OASA). Each of these organizational units functions independently, with complete responsibility for the planning and administration of its respective programs.

Within the OASA, the DAAA was established with responsibility for the planning, development, coordination, and evaluation of the State-operated and supervised alcoholism treatment services. This included the State-operated ATCs, which prior to the reorganization, had been part of the State-operated PCs. With the reorganization of the DMH in 1978, responsibility for the ATCs was transitioned from the OMH and the PCs to the DAAA. In April 1980, the transition was completed and the DAAA became fully responsible for administering and directing the State-operated ATCs.

In total, the DAAA operates 13 ATCs. Two of the ATCs, Bronx ATC and Manhattan ATC, are on the grounds of Bronx PC and Manhattan PC, respectively. During our audit period, both of these PCs were decertified from participation in the Medicaid program by HCFA's Health Standards and Quality Bureau (HSQB). Because of this, the State did not claim FFP for clients at either of these two ATCs. As a result, we have only included 11 of the 13 ATCs in our review. Additionally, FFP is only available for clients under age 22 or age 65 and over in State-operated PCs. Because claims to Medicaid for ATC clients were made using the MMIS provider identification numbers assigned to various PCs, all of the clients included in our review were either under the age of 22 or age 65 and over.

Below are the 11 ATCs included in our review.

Alcoholism Treatment Center

Charles K. Post Alcoholism Treatment Center
Creedmoor Alcoholism Treatment Center
Dick Van Dyke Alcoholism Treatment Center
John L. Norris Alcoholism Treatment Center
Kingsboro Alcoholism Treatment Center
Margaret A. Stutzman Alcoholism Treatment Center
McPike Alcoholism Treatment Center
Middletown Alcoholism Treatment Center

Russell E. Blaisdell Alcoholism Treatment Center
St. Lawrence Alcoholism Treatment Center
South Beach Alcoholism Treatment Center

Scope of Review

The purpose of our audit was to determine if NYS improperly made claims to Medicaid for inpatient alcoholism services provided by the 11 free-standing State-operated ATCs included in our review. Our review covered services rendered by the ATCs during the period July 1, 1985 through October 31, 1990. For our audit period, we performed various computer programming applications at the MMIS fiscal agent using the paid claims inpatient files (tapes). Our applications determined that the NYS DSS made claims to Medicaid for inpatient services provided by the 11 ATCs. These applications identified 2,132 inpatient Medicaid claims for 1,017 clients, totaling $6,846,352 (Federal share $3,423,172).

Our review was conducted in accordance with generally accepted government auditing standards. It included such tests and other auditing procedures that we considered necessary in the circumstances. During our review, it became apparent that no internal controls, edits, or other mechanisms existed to prevent State officials from using the MMIS provider numbers assigned to various PCs when making claims to Medicaid for ATC clients. As a result, we assessed control risk at the maximum level and decided to perform substantive testing of claims to Medicaid for inpatient services rendered at these 11 ATCs. We did not perform a facility-wide review of Electronic Data Processing general and application controls within the MMIS.

Audit field work was performed at DSS, DAAA, the MMIS fiscal agent in Albany, New York, and at 10 of the 11 ATCs during the period July 1991 through November 1991. During our audit period, there were only three claims to Medicaid for one client at Kingsboro ATC. As a result, rather than performing a site visit to that ATC, we chose to conduct a telephone conference with Kingsboro ATC officials regarding our review.

RESULTS OF REVIEW

Our review determined that the NYS DSS improperly claimed Medicaid reimbursement for inpatient alcoholism services provided by the 11 free-standing State-operated ATCs included in our review. The claims were ineligible for FFP because: (1) free-standing inpatient alcoholism treatment facilities are not eligible providers in the Federal Medicaid program, (2) the HCFA HSQB did not certify the ATCs for participation in the Medicare and Medicaid programs, and (3) the ATCs were not enrolled as providers in New York's Medicaid program. As a result, the Federal Government was overcharged $3,423,172.

Appendix A of our report provides a summary of the Federal share amounts questioned for each of the 11 providers.

Free-Standing Facilities

Federal regulations do not permit FFP for clients in free-standing inpatient alcoholism treatment facilities. Specifically, the statutory requirements with respect to the services covered under the Medicaid program are found at section 1905(a) of the Act. Section 1905(a) defines the term medical assistance. The Federal regulations implementing this section of the Act are found at 42 Code of Federal Regulations (42 CFR), part 440. This part delineates the services for which FFP is available. Part 440 makes no provision for inpatient services which are furnished in free-standing alcoholism treatment facilities. Recognizing this fact, title 14 of NYS Codes, Rules and Regulations, part 376.1(b) states in part that:

> "The medical assistance program is a Federal and State program to finance the costs of health care of the poor. The Federal program has not yet recognized the specialized alcoholism service delivery system. Thus, the eligibility of alcoholism facilities as alcoholism facilities is available only in the State program."

This audit report is the third report we have issued related to free-standing inpatient alcoholism treatment facilities. Our first report covered five free-standing inpatient alcoholism providers who claimed FFP after a federally-sponsored demonstration project in which they participated had ended (CIN A-02-91-01030). The second report covered eight free-standing inpatient alcoholism providers who also erroneously claimed FFP (CIN A-02-91-01033). In responding to these prior reports, the State acknowledged that FFP should not have been claimed for services provided in free-standing inpatient alcoholism treatment facilities during our audit period, which ended on October 31, 1990. In our opinion, the ATCs are also free-standing inpatient alcoholism treatment facilities and as such the State should not have claimed FFP.

Central Office DAAA officials, as well as each of the 11 ATC Directors contacted during our review, stated that the ATCs are free-standing alcoholism treatment facilities which are separate and distinct from the PCs. Although the State-operated ATCs are, for the most part, physically located on the grounds of the State-operated PCs, they share a "tenant-landlord" relationship with the PCs. Additionally, the ATCs and PCs have different governing bodies. When questioned by us about the relationship of the PCs to the ATCs, an OMH official responded in a November 16, 1989 letter that:

> "Each ATC is a freestanding facility operated by a Division of the Department of Mental Hygiene. The Division acts autonomously from the Office of Mental Health (also part of the Department of Mental Hygiene) that operates psychiatric centers."

After the reorganization of the DMH, the ATCs were kept on the grounds of the PCs to allow the State to maintain an economy of scale. As a result, the ATCs have become "tenants" of the PCs. Because of this arrangement, it became necessary for the DAAA to reimburse the OMH for services provided to the ATCs by the host PCs. These services include laundry, patient meals, safety and security, housekeeping, medical records storage, utilization review, utilities, and maintenance. The DAAA reimburses the OMH through the interagency transfer of funds from the ATCs to the PCs. The funds transfer itself is accomplished through journal entries within the State's accounting system.

The relationship between the DAAA and the OMH regarding the ATCs is governed by a Memorandum of Agreement (Agreement), signed by both the Commissioner of the OMH and the Director of the DAAA. The Agreement outlines the support services which are to be provided by the OMH and the PCs to the DAAA operated ATCs.

The Agreement opens with a "Guiding Principles" portion. This section states in part that:

> "This memorandum is intended to foster cooperation between the Office of Mental Health (OMH) and the Division of Alcoholism and Alcohol Abuse (DAAA) regarding the operation of Alcoholism Treatment Centers (ATCs) located at the State Psychiatric Centers which will include those ATCs temporarily located off campus of the host facility."

Emphasizing the autonomy of the DAAA and its ATCs, the Agreement goes on to state that:

> "The Division of Alcoholism and Alcohol Abuse (DAAA) is vested with authority for management control, and policy and program planning for the ATCs. Alcoholism Facility Directors are charged with the responsibility for policy implementation and daily management of the ATCs as directed by the Director of DAAA."

The Agreement also states that:

> "OMH is responsible for providing Support Services, Patient Resources staff, Clinical Support and non-personal services as outlined in the body of this Memorandum."

Regarding the reimbursement for services provided to the ATCs, the "Terms of the Agreement" section states that:

> "Regular NPS (non-personal services) expenditures reports will be provided at least monthly by the psychiatric center business office to the ATC director in a form agreed to by both parties. Except for emergency circumstances, expenditures of ATC funds are made only with the approval of the ATC director. Proposed charges to the ATC for proportional share of expenses for supplies, equipment and contractual services must be made with the concurrence of the ATC Director.
>
> "The Division of Alcoholism and Alcohol Abuse, within the limits of its budget appropriation and spending plan, will reimburse the Office of Mental Health for all NPS costs incurred by the psychiatric center in support of the ATC program."

Additionally, as part of the Agreement, third-party and private reimbursement activities for the ATCs are provided by the OMH finance staff. Regarding these services, the Agreement states that:

> "...DAAA will reimburse OMH for the value of services provided by the Finance Group through the Patient Resources Offices in interviewing and billing for patients and Central Office Administrative Services and limited to receipt of a specific appropriation therefore."

The ATCs became separate and distinct from the PCs after the DMH reorganization in 1978. We found that after the reorganization, the State continued to make claims to Medicaid for ATC clients using the MMIS provider identification numbers assigned to various PCs. Upon learning of this practice, officials of HCFA's HSQB determined that claims for ATC clients should not be made using MMIS provider numbers assigned to the PCs. In correspondence dated October 29, 1982, officials of HCFA's HSQB notified the State that:

> "The preliminary indications are that Medicare and Medicaid programs should view the ATCs as entities apart from the psychiatric centers."

This same HCFA correspondence goes on to state that:

> "Significant changes and adjustments will have to be made in the current billing practices of the ATCs unless your office can provide us with information that clearly expresses the fact that the ATCs and the psychiatric center are not separate entities."

In their response to HCFA's correspondence, dated January 6, 1983, State officials provided a chronology of the transitioning of the ATCs from the PCs. This chronology included such items as the legislation establishing the DAAA (which is an autonomous agency), the transfer of ATC staff from the PCs to the DAAA, and the establishment of the agreement between the OMH and the DAAA regarding the services to be provided to the ATCs. Additionally, in our opinion, State officials acknowledged in their January 6, 1983 correspondence that the ATCs are distinct entities, requiring separate Medicare and Medicaid certification, when they stated that the "Conduct of Medicare surveys...for the ATCs as separate facilities..." will be necessary.

Another indication that the ATCs are free-standing facilities is that the ATCs are accredited by the Joint Commission on Accreditation of Healthcare Organizations (JCAHO) as residential treatment facilities for alcoholism. The State-operated PCs are JCAHO accredited as psychiatric facilities. Our review determined that the JCAHO accredits the ATCs separately from the PCs. The accreditation reviews occur on different dates and are for different periods. Additionally, the JCAHO uses different accreditation manuals and standards when visiting and accrediting the ATCs and the PCs.

Our review determined, and State officials confirmed, that the ATCs were autonomous and distinct free-standing inpatient alcoholism providers which were not part of the PCs. Since Federal regulations do not permit FFP for clients in free-standing inpatient alcoholism treatment facilities, we believe that the State should not have claimed FFP for clients in these facilities during our audit period.

HCFA Certifications

Federal regulations require that as a prerequisite for claiming Medicaid reimbursement, hospitals must be certified by HCFA's HSQB. Our review determined, and officials of HCFA's HSQB confirmed, that the ATCs were never certified by the Federal Government for participation in the Medicare and Medicaid programs during our audit period. We found, and the HSQB officials confirmed, that the ATCs were not certified by themselves or as part of the PCs (which are certified by HCFA's HSQB as psychiatric hospitals) even though they are, for the

most part, physically located on the grounds of the State-operated PCs. As such, claims for FFP should not have been made.

Provider Enrollment

Our review found that the ATCs were not enrolled as distinct entities under New York's Medicaid program but rather were using the MMIS provider identification number of State-operated PCs to claim Medicaid reimbursement. The use of the PCs provider identification number was inappropriate, in our opinion.

Requirements pertaining to payments made by State Medicaid agencies for Medicaid services are delineated in 42 CFR, section 447, subpart A. Section 447.10(a) of subpart A prohibits "...State payments for Medicaid services to anyone other than a provider...." Section 400.203 of 42 CFR defines a provider as "...any individual or entity furnishing Medicaid services under a provider agreement with the Medicaid agency." Additionally, section 2.1.10 of New York's MMIS Provider Manual requires that:

> "In order to participate in the Medicaid Program, providers are required to enroll with the State Department of Social Services."

Upon enrollment, providers are issued MMIS provider identification numbers which they use to claim Medicaid reimbursement. Officials of DSS, DAAA, and OMH have all confirmed that the ATCs have not been assigned their own MMIS provider numbers. As a result, OMH patient resources personnel make claims to Medicaid for ATC clients using the MMIS provider numbers and rate codes assigned to the various host PCs. Claims to Medicaid for ATC clients were made using rate code 4200, "State Operated Alcoholism Rehabilitation."

Although we determined that the State-operated ATCs were not enrolled as distinct providers in New York's Medicaid program, we did find that two of the ATCs once applied for admission to the Medicare program. Section 931 of the Omnibus Budget Reconciliation Act (OBRA) of 1980 amended the Act to permit Medicare (but not Medicaid) participation of free-standing alcoholism treatment facilities which would provide detoxification services. In response to section 931 of OBRA 1980, both Russell E. Blaisdell ATC (then known as Rockland ATC) and St. Lawrence ATC applied for admission to the Medicare program as free-standing alcohol detoxification facilities. These providers would have been eligible to participate in the Medicare program effective April 1, 1981. However, this amendment did not address the rehabilitation services provided in these facilities, nor did it provide for the inclusion of

free-standing alcoholism facility services in the Medicaid program for either detoxification or rehabilitation. Prior to these two ATCs receiving their Medicare certification, section 212 of OBRA 1981 rescinded section 931 of OBRA 1980 and as such, free-standing facilities providing alcohol detoxification services never became Medicare eligible providers.

As stated previously in our report, to be eligible for Medicaid and FFP, providers must be enrolled in the Medicaid program. Our review found that the ATCs were not enrolled as distinct entities under New York's Medicaid program but rather were using the MMIS provider identification numbers of State-operated PCs to claim Medicaid reimbursement. We determined, and State officials confirmed, that the ATCs were autonomous and distinct free-standing inpatient alcoholism providers which were not part of the PCs. Furthermore, our review showed, and HCFA's HSQB officials confirmed, that the ATCs were not part of the PCs' certifications as psychiatric hospitals and as such were not certified by the Federal Government for participation in the Medicare and Medicaid programs during our audit period.

In summary, our review found that the State improperly made claims to Medicaid for inpatient alcoholism services provided at each of the 11 free-standing State-operated ATCs during our audit period. We believe that, based on applicable Federal and State laws and regulations, these providers are ineligible to make claims for FFP since all 11 are separate, distinct entities, none of which were enrolled in the State's Medicaid program or certified by HCFA during our audit period.

In our opinion, the improper claiming occurred because under the terms of their Agreement, the OMH provided billing services to the ATCs after the reorganization of the DMH in 1978. Since the ATCs were part of the PCs prior to the reorganization, the OMH continued processing ATC claims using the PCs' MMIS provider identification numbers, even though HCFA directed on October 29, 1982, that this billing practice cease. Additionally, the State did not establish the necessary edits or mechanisms within its MMIS to prevent these claims from occurring. As a result, the Medicaid program was overcharged $6,846,352 (Federal share $3,423,172).

Recommendations

We recommend that New York State:

1. refund $3,423,172 to the Federal Government;

2. discontinue claiming FFP for inpatient services provided in the State-operated ATCs;

3. develop appropriate edits or mechanisms within its MMIS to prevent the improper claiming of FFP from occurring in the future; and

4. identify the unallowable claims to Medicaid made for periods subsequent to our October 31, 1990 audit cut-off date and return the Federal share of these claims.

STATE AGENCY COMMENTS

In their comments, dated April 30, 1992, NYS officials did not concur that they improperly claimed FFP for clients at the 11 State-operated ATCs included in our review. The State disputed our finding that the ATCs were free-standing, distinct entities and indicated that our determination was based on incomplete information. Rather, the State contended that the ATCs and the PCs are not completely distinct. The State cited excerpts from various correspondence and the Agreement between DAAA and OMH as support for their belief that the relationship of the ATCs to the PCs goes beyond that of a landlord/tenant relationship.

The State also contended that they received permission from HCFA Region II to claim Medicaid reimbursement for clients in the State-operated ATCs through the use of the MMIS provider identification numbers of the State-operated PCs and that this method of claiming reimbursement was appropriate. Additionally, the State indicated that HCFA Region II acknowledged that the ATCs were part of the PCs and that Medicaid reimbursement could appropriately be billed by OMH. The State contended that HCFA reaffirmed this claiming commitment by approving a State Plan Amendment entitled "Methods and Standards of Setting Payment Rates For Inpatient Services Provided by Hospitals Operated by the New York State Office of Mental Health," which they attached to their comments.

Regarding our finding that the ATCs were not certified to participate in the Medicare and Medicaid programs, the State indicated that the ATCs and the PCs are combined for purposes of achieving Medicare eligibility and that the State had been informed that the Federal Government is unwilling to change the combined Medicare status. The State also indicated that the NYS Office of Health Systems Management surveyed the ATCs as part of the PCs in 1985, 1986, and 1987 for recertification purposes and that this was done at the direction of HCFA.

In their comments, the State indicated that it was not necessary to enroll the ATCs as distinct providers in New York's Medicaid program since the ATCs were using the MMIS provider identification numbers assigned to the PCs as agreed to by HCFA. The State concluded its comments by indicating

that it would be inequitable to penalize the State because of their alleged agreement with HCFA and that they believe our report should be withdrawn. The NYS' comments are provided in their entirety in Appendix B of this report.

OIG RESPONSE

Our review determined that contrary to the State's comments, HCFA Region II instructed the State to cease claiming Medicaid reimbursement for clients in the ATCs as early as October 1982. As stated in our report, officials of HCFA's HSQB determined that claims for ATC clients should not be made using the MMIS provider identification numbers assigned to the PCs. In correspondence dated October 29, 1982, officials of HCFA's HSQB notified the State that:

> "The preliminary indications are that Medicare and Medicaid programs should view the ATCs as entities apart from the psychiatric centers."

This same HCFA correspondence goes on to state that:

> "Significant changes and adjustments will have to be made in the current billing practices of the ATCs unless your office can provide us with information that clearly expresses the fact that the ATCs and the psychiatric center are not separate entities."

Furthermore, in their March 18, 1992 comments to our draft audit report, HCFA Region II officials stated that:

> "HCFA has reviewed the subject report and concurs with its findings and recommendations."

In our opinion, based on the above, HCFA Region II officials did not concur with the State's contention that HFCA permitted them to claim FFP for clients in the ATCs.

Although the State now contends that the ATCs are not separate and distinct from the PCs, our review determined, central office DAAA and OMH officials confirmed, officials at the 11 ATCs stated, and documentation showed that the ATCs <u>are</u> separate and distinct entities from the PCs. As part of our audit, we asked officials from central office DAAA and OMH and at each of the 11 ATCs about the status of the ATCs. These officials stated that the ATCs are free-standing inpatient alcoholism treatment facilities which are separate and distinct from the PCs. Documentation quoted throughout the body of our report also shows that the ATCs are free-standing distinct facilities. In fact, even the Governor of the State of New York, as early as his Fiscal Year (FY) 1979-1980 Executive Budget, recognized that the OMH, which operates the PCs, and

the DAAA, which operates the ATCs, are autonomous offices within the State's Department of Mental Hygiene and that the ATCs are separate from the PCs.

In his FY 1981-1982 Executive Budget, the Governor states that:

> "Responsibility for program direction of the ATCs was transferred from individual psychiatric centers to the Division of Alcoholism and Alcohol Abuse in the spring of 1978 when the Department of Mental Hygiene was reorganized. One year later, the ATC directors were made staff of the Division, and in April 1980 the transition was completed when the remaining ATC staff were transferred to the Division. The Division thus became fully responsible for administering and directing the State's own alcoholism services."

In our opinion, our report shows that there is overwhelming documentation and testimony that the ATCs are distinct, free-standing inpatient alcoholism providers which are not eligible for FFP.

In their comments, the State indicated that the Agreement, which is mentioned in the body of our report, shows that the legal relationship between the ATCs and the PCs goes beyond that of a tenant/landlord relationship. As part of their comments, the State quotes from various sections of the Agreement. The quoted sections deal with personnel services, issuance of identification cards, liaisons for support services, emergency physician services, and other medical coverage to the ATCs. As previously stated in our report, we would like to reemphasize that the DAAA reimburses the OMH for these services as part of the Agreement. In our opinion, the Agreement shows that OMH is a vendor which is being reimbursed for services rendered and that the ATCs are separate and distinct from the PCs. Furthermore, we believe that the existence of the Agreement itself shows that the OMH and the DAAA are distinct agencies.

In their comments, the State indicates that HCFA considers each ATC to be part of a New York State PC and that when Medicare and Medicaid certification surveys are conducted at the PCs, the ATCs are included. However, as stated in our report, we found, and HCFA's HSQB officials confirmed, that the ATCs were not certified as distinct entities or as part of the PCs. Around April 1, 1987, HCFA began using HCR of Rochester to perform its surveys for certification purposes. The Region II Director of HCFA's HSQB Survey and Certification Operations Branch obtained written testimony from the HCR surveyors which indicated that the ATCs were <u>not</u> included in their certification surveys of the PCs as the State contends. Also, the majority of the officials we interviewed at the ATCs during

our audit stated that the ATCs were not included in the surveys of the PCs and in fact, at times, officials at the ATCs stated that they were not even aware that PCs were being surveyed.

Additionally, the OMH official who wrote the November 16, 1989 letter quoted in our report and in the State's comments, also wrote to us on June 25, 1990. As part of this letter, the OMH official supplied us with information that identified the various units and wards which made up 23 State-operated PCs. In his submission, the ATCs were not included as component parts of any of the 23 PCs. As such, we believe that this provides additional evidence that the ATCs are not part of the PCs.

In their comments, the State indicates that the Office of Health Systems Management (OHSM) surveyed the ATCs as part of the PCs for certification purposes during 1985, 1986, and 1987. In our opinion, if in fact OHSM had surveyed the ATCs from our July 1, 1985 audit start date to around April 1987, when HCR of Rochester assumed the survey responsibilities, then they did so in error because HCFA has indicated that the ATCs are not certifiable entities under the Medicare and Medicaid programs.

As part of their comments, the State quotes the following excerpt from the Agreement between DAAA and OMH:

> "The Federal Government is unwilling, at this time, to change the combined Medicare status now held by OMH and their co-located ATC's. Until the combined status is altered, OMH and DAAA staff at the Central Office and facility levels will work cooperatively to ensure that neither agency is penalized by the existing arrangement. ATC Directors will work closely with psychiatric center Directors in participating in Medicare surveys and meeting Medicare standards."

The State's comments go on to indicate that the agreement also cites that the Federal Government, for certification purposes, considers the agencies (OMH and DAAA) as having a single status. We would like to point out that the agreement is an internal State document and that it was not prepared, reviewed or approved by HCFA. As such, we believe that HCFA would have no knowledge of the language which the State chose to include in their internal agreement between State agencies.

The State's comments refer to a January 12, 1983 meeting which was held between representatives of HCFA, OMH, and DAAA at which the State alleges that HCFA indicated that it would not require separate certification of the ATCs. However, the State acknowledges that this alleged agreement with HCFA was not memorialized in writing. The State's comments go on to

indicate that DAAA contacted a representative who participated in the January 12, 1983 meeting and that this representative apparently indicated that both DAAA and OMH were told that HCFA Region II acknowledged that the ATCs were part of the PCs and that Medicaid reimbursement could appropriately be billed by OMH. In preparing our response to the State's comments, we asked our DSS liaison to supply us with the name of the representative referred to in the State's comments. Our liaison refused to supply us with the name but did indicate that it was a retired DAAA employee and not an employee of HCFA. Furthermore, during our audit, we requested that DAAA and OMH supply us with any notes, minutes, or other documentation of the January 12, 1983 meeting. In response to our request, both agencies indicated that they were unable to locate any documentation related to this meeting.

As part of their comments, the State alleges that by HCFA's approval of a State Plan Amendment (which was attached to the State's comments), HCFA reaffirmed its commitment that the ATCs were part of the PCs and that Medicaid reimbursement could be billed. The amendment is entitled "Methods and Standards of Setting Payment Rates For Inpatient Services Provided By Hospitals Operated By The New York State Office of Mental Health." Our review of the amendment noted that it does not even mention the ATCs or DAAA. Rather, it discusses inpatient rates for psychiatric hospitals operated by OMH. As stated earlier in our report, the ATCs are operated by DAAA, not OMH. Furthermore, under the inpatient rate category entitled "Psychiatric/Alcoholism," the amendment states that this rate category includes all inpatient units located in OMH PCs and again does not mention the ATCs. Given the language contained within the attached amendment, we are unable to determine how the State could conclude that this amendment reaffirms HCFA's alleged commitment that the ATCs are part of the PCs and that Medicaid reimbursement could be billed.

We are also unsure of the State's source used to support the statement in their comments that the Federal Government is unwilling to change the combined Medicare status of the ATCs and the PCs. Although this language is contained in the Agreement between DAAA and OMH, as pointed out earlier in our report, the Agreement is an internal State document which was neither written nor approved by HCFA.

Finally, in their comments, the State indicates that it was unnecessary to enroll the ATCs as distinct providers in New York's Medicaid program. We disagree. As stated previously in our report, to be eligible for Medicaid and FFP, providers must be enrolled in the Medicaid program. Since we determined that the ATCs are distinct, free-standing inpatient providers, we believe that they have to be enrolled in New York's program to receive Medicaid reimbursement.

In summary, our review determined that the NYS DSS improperly claimed $6,846,352 (Federal share $3,423,172) in Medicaid reimbursement for clients at all 11 ATCs included in our review. The claims were ineligible for FFP because free-standing inpatient alcoholism treatment facilities are not eligible providers in the Federal Medicaid program, HCFA did not certify the ATCs for participation in the Medicare and Medicaid programs, and the ATCs were not enrolled as providers in New York's Medicaid program. As such, we continue to recommend that NYS DSS refund $3,423,172 to the Federal Government.

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The HHS action official will contact you to resolve the issues in this audit report. Any additional comments or information that you believe may have a bearing on the resolution of this audit may be presented at that time.

In accordance with the principles of the Freedom of Information Act (Public Law 90-23), HHS/Office of Inspector General (OIG), Office of Audit Services reports issued to the Department's grantees and contractors are available, if requested, to members of the press and general public to the extent information contained therein is not subject to exemptions in the Act, which the Department chooses to exercise. (See 45 CFR Part 5.)

To facilitate identification, please refer to the referenced common identification number in all correspondence relating to this report.

Sincerely yours,

John Tournour
Regional Inspector General
for Audit Services

APPENDICES

REVIEW OF ELEVEN FREE-STANDING INPATIENT
STATE-OPERATED ALCOHOLISM TREATMENT CENTERS

For the Period
July 1, 1985 to October 31, 1990

Common Identification No. A-02-91-01048

Summary of FFP Amounts
Questioned by our Audit

Alcoholism Treatment Center	FFP Amount Questioned
Charles K. Post ATC	$ 382,100
Creedmoor ATC	53,163
Dick Van Dyke ATC	505,077
John L. Norris ATC	412,573
Kingsboro ATC	2,207
Margaret A. Stutzman ATC	135,137
McPike ATC	670,318
Middletown ATC	293,103
Russell E. Blaisdell ATC	375,805
South Beach ATC	128,529
St. Lawrence ATC	$ 465,160
Total	$3,423,172

NEW YORK STATE
DEPARTMENT OF SOCIAL SERVICES
74 STATE STREET, ALBANY, NEW YORK 12207-2525

MARY JO BANE
Commissioner

NELSON M. WEINSTOCK
Deputy Commissioner
for Administration

April 30, 1992

Mr. John Tournour
Regional Inspector General
for Audit Services
Department of Health and Human Services
Region II
Jacob K. Javits Federal Building
26 Federal Plaza
New York, NY 10278

Re: Your Draft Report: Review of Medical Assistance Payments made by NYS to Eleven Free-Standing State-Operated Inpatient Alcoholism Treatment Centers (A-02-01-01048) 92-011

Dear Mr. Tournour:

We shared your referenced report with the State agencies affected by its findings and their comments are incorporated in this response. We disagree with the auditors' conclusion that Alcoholism Treatment Centers (ATCs) are free-standing facilities and, as presently organized, are separate and distinct entities.

This report concluded that certain Medicaid claims for clients at eleven State-operated alcoholism treatment centers (ATC's) were inappropriately processed by the NYS Department of Social Services (DSS) because we used the Medicaid Management Information System (MMIS) provider identification numbers assigned to various State-operated psychiatric centers (PC's). This conclusion was based on determinations by the auditors that: (1) the ATC's are free-standing facilities and hence are not eligible providers in the federal Medicaid program; (2) the ATC's were not certified to participate in the Medicare and Medicaid programs; and (3) the ATC's were not enrolled as providers in New York's Medicaid Program.

However, the determination that the ATC's were "autonomous and distinct free-standing inpatient alcoholism providers which were not part of the PC's", was based on incomplete information. Not only does the relationship between the ATC's and the PC's go beyond that of a traditional landlord/tenant relationship, but the Division of Alcoholism and Alcohol Abuse (DAAA) and the Office of Mental Health (OMH) received express permission from the HCFA Region II office to continue to bill in this manner. Thus, the use of the MMIS provider identification numbers for the PC's was entirely appropriate.

Finding: The ATC's are free-standing facilities and hence are not eligible providers under the federal Medicaid Program.

The report relies on selected but incomplete excerpts from a November 16, 1989 letter from an OMH official to buttress its position that the ATC's are separate and distinct from the PC's. What the report does not mention, however, are other excerpts from the same letter which tend to demonstrate that the ATC's and the PC's are not considered as completely distinct. For example, the report cites the 1989 letter as stating that:

> "Each ATC is a freestanding facility operated by a Division of the Department of Mental Hygiene. The Division acts autonomously from the Office of Mental Health (also part of the Department of Mental Hygiene) that operates psychiatric centers."

However, the report selectively leaves out the last sentence of this paragraph, which reads:

> **"Furthermore, HCFA considers each ATC to be part of a New York State operated psychiatric center. When surveys are conducted, the psychiatric center is surveyed as well as the alcoholism treatment center."** (Emphasis supplied) While the use of the opening word "Furthermore," is inappropriate and likely should be "Nevertheless," the meaning of the statement remains quite clear.

Secondly, the report references the Memorandum of Agreement between the DAAA and OMH regarding the ATC's as supporting its determination of separateness but again does not cite other references for complete context. For example, although the report focuses on distinct bookkeeping and management functions, which might suggest a traditional landlord/tenant relationship, the report does not cite the following language extracted from this same document:

> "The DAAA's Bureau of Human Resources Administration has the major personnel services responsibilities for the Alcoholism Treatment Center. The major personnel services include...and the administration of the performance evaluation program for ATC staff. **Psychiatric Center personnel offices, however, will continue to provide the following limited services to ATC employees:** (Emphasis supplied)
>
> 1. Psychiatric center personnel offices will remain accessible for the handling of routine employee questions and distribution of appropriate forms, e.g. health and dental insurance. All claims processing will be handled by DAAA.
>
> 2. The psychiatric centers will continue to provide an identification card for new employees in the ATC where identification cards are required for access to the grounds.
>
> 3. **Each Alcoholism Treatment Center will designate an employee as administrative liaison, usually the Assistant Director. That individual will be available to the psychiatric center on matters relating to the day-to-day delivery of support services to the Alcoholism Treatment Center."** (Emphasis supplied)

Also, the report fails to mention the following language also extracted from the Memorandum of Agreement:

> "In the event of an emergency or other unforeseen event, the psychiatric center will provide physician and other medical coverage to the ATC. Any assignment of ATC or psychiatric center physicians to night or weekend medical coverage responsibilities will be made pursuant to arrangements agreed upon by the psychiatric center and the ATC."

And, notably, this agreement also states:

> **"The Federal Government is unwilling, at this time, to change the combined Medicare status now held by OMH and their co-located ATC's. Until the combined status is altered, OMH and DAAA staff at the Central Office and facility levels will work cooperatively to ensure that neither agency is penalized by the existing arrangement. ATC Directors will work closely with psychiatric center Directors in participating in Medicare surveys and meeting Medicare standards."** (Emphasis supplied)

Therefore, the Memorandum of Agreement can also be used to show that the legal relationship between the ATC's and the PC's goes beyond that of mere landlord/tenant. The provisions for staff-sharing and formally established liaison clearly demonstrate an ongoing mutual dependence between the two entities. Further, the Agreement also cites that the Federal government, for purposes of Medicare, considers the agencies as having a single status. It would appear illogical to consider the entities combined for one Federal program and uncombined for another.

Finally, in this section of the report, a letter dated January 6, 1983 to HCFA is referenced in which "State officials provided a chronology of the transitioning of the ATC's from the PC's." This letter is cited to support the report's contention that the State was notified that the ATC's and PC's should be separated.

However, again the reference is incomplete. The report fails to cite language included in the aforementioned November 16, 1989 letter from an OMH official which reads:

> **"Enclosed is a copy of a January 6, 1983 letter to Region II of HCFA which summarizes the efforts at that time to transition the Alcohol Treatment Centers to separate provider status. Significant discussions and correspondence with Region II preceded this letter. However, on January 12, 1983, a meeting was held between representatives of HCFA, OMH and DAAA at which time HCFA indicated that it would no longer require the separate certification of the ATC's."** (Emphasis supplied)

Although this agreement was not memorialized in writing, when DAAA contacted a representative who was a participant at the January 12, 1983 meeting, the formation of such agreement was confirmed. According to this information, both DAAA and OMH were told that HCFA Region II acknowledged that the ATC's were part of the PC's and Medicaid reimbursement could appropriately be billed by OMH.

Attachment 4.19-A
Part II

METHODS AND STANDARDS OF SETTING PAYMENT RATES FOR INPATIENT SERVICES PROVIDED BY HOSPITALS OPERATED BY THE NEW YORK STATE OFFICE OF MENTAL HEALTH

In accordance with the Mental Hygiene Law the Office of Mental Health ("OMH") establishes Medicaid inpatient rates of reimbursement, subject to the approval of the Director of the State Division of the Budget, for psychiatric hospitals operated by the OMH.

I. GENERAL

Medicaid inpatient rates for OMH facilities are established prospectively on a statewide basis by averaging together each of the per diem rate components outlined below for all facilities operated by the OMH.

Inpatient rates are established for three separate categories as follows:

(1) Psychiatric/Alcoholism

This rate category includes all inpatient units located in OMH Psychiatric Centers with the exception of Medical/Surgical Units and Childrens Facilities listed below.

(2) Medical/Surgical

This rate category pertains to those units located within OMH Adult Psychiatric Centers which are licensed under a separate provider status within the Medicare program. These units provide treatment to acute medical patients and to patients recovering from surgery.

(3) Children's Facility

This rate category applies to those separate and distinct Children's Psychiatric Centers ("CPC") operated by the OMH. The CPC's provide psychiatric care and treatment exclusively to children and adolescents.

II. BASE YEAR OPERATING PER DIEM

The operating per diem of the OMH's Medicaid rates are developed by averaging together the following: