DEPARTMENT OF HEALTH & HUMAN SERVICES REGION III

Memorandum

Date AUG 29 2003

From Regional Inspector General for Audit Services

Subject Audit Report – **REVIEW OF MEDICAID CLAIMS MADE FOR 21 TO 64 YEAR OLD RESIDENTS OF PRIVATE INSTITUTIONS FOR MENTAL DISEASES IN THE COMMONWEALTH OF VIRGINIA** (A-03-02-00206)

To Sonia A. Madison
Regional Administrator
Centers for Medicare & Medicaid Services

Attached are two copies of the U.S. Department of Health and Human Services (HHS), Office of Inspector General report entitled, "Review Of Medicaid Claims Made For 21 To 64 Year Old Residents Of Private Institutions For Mental Diseases In The Commonwealth of Virginia" during the period July 1, 1997 through June 30, 2001.

This review was self-initiated and the objective of our review was to determine if the Virginia Department of Medical Assistance Services (DMAS) had adequate controls to prevent it from claiming federal financial participation (FFP) under the Medicaid program for medical services made on behalf of 21 to 64 year old residents of private psychiatric hospitals that were Institutions For Mental Diseases (IMDs). We identified Medicaid overpayments made by DMAS totaling $127,678. Should you have any questions or comments concerning matters commented on in this report, please contact me or have your staff contact Eugene Berti, Audit Manager at 215-861-4474.

To facilitate identification, please refer to Report Number A-03-02-00206 in all correspondence related to this report.

Stephen Virbitsky

Attachment

DEPARTMENT OF HEALTH & HUMAN SERVICES
OFFICE OF INSPECTOR GENERAL
OFFICE OF AUDIT SERVICES
150 S. INDEPENDENCE MALL WEST
SUITE 316
PHILADELPHIA, PENNSYLVANIA 19106-3499

AUG 29 2003

Report Number: A-03-02-00206

Mr. Patrick W. Finnerty, Director
Department of Medical Assistance Services
Suite 1300
600 East Broad Street
Richmond, Virginia 23219

Dear Mr. Finnerty:

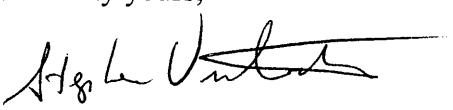
Enclosed are two copies of the Department of Health and Human Services (HHS), Office of Inspector General report entitled, **Review Of Medicaid Claims Made For 21 to 64 Year Old Residents Of Private Institutions For Mental Diseases In The Commonwealth Of Virginia** during the period July 1, 1997 through June 30, 2001. This review was self-initiated and the objective of our review was to determine if the Virginia Department of Medical Assistance Services (DMAS) had adequate controls to prevent it from claiming federal financial participation (FFP) under the Medicaid program for medical services made on behalf of 21 to 64 year old residents of private psychiatric hospitals that were Institutions For Mental Diseases (IMDs). We identified Medicaid overpayments made by DMAS totaling $127,678. A copy of this report will be forwarded to the HHS action official noted below for review and any action deemed necessary.

Final determination as to actions taken on all matters reported will be made by the HHS action official named below. We request that you respond to the HHS action official within 30 days from the date of this letter. Your response should present any comments or additional information that you believe may have a bearing on the final determination.

In accordance with the principles of the Freedom of Information Act (5 U.S.C. 552, amended by Public Law 104-231), Office of Inspector General reports are made available to members of the public to the extent information contained therein is not subject to exemption in the Act (See 45 CFR part 5). As such, within 10 business days after the final report is issued, it will be posted on the world wide web at http://oig.hhs.gov.

To facilitate identification, please refer to report number A-03-02-00206 in all correspondence relating to this report.

Sincerely yours,



Stephen Virbitsky
Regional Inspector General
for Audit Services

Enclosures

Direct Reply to HHS Action Official

Sonia A. Madison
Regional Administrator
Centers for Medicare & Medicaid Services, Region III
U.S. Department of Health and Human Services
Suite 216, Public Ledger Building
150 South Independence Mall West
Philadelphia, Pennsylvania 19106-3499

Department of Health and Human Services

OFFICE OF
INSPECTOR GENERAL

REVIEW OF MEDICAID CLAIMS MADE FOR 21 TO 64 YEAR OLD RESIDENTS OF PRIVATE INSTITUTIONS FOR MENTAL DISEASES IN THE COMMONWEALTH OF VIRGINIA

August 2003
A-03-02-00206

Office of Inspector General

http://oig.hhs.gov/

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THIS REPORT IS AVAILABLE TO THE PUBLIC
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In accordance with the principles of the Freedom of Information Act, 5 U.S.C. 552, as amended by Public Law 104-231, Office of Inspector General, Office of Audit Services, reports are made available to members of the public to the extent information contained therein is not subject to exemptions in the Act. (See 45 CFR Part 5.)

OAS FINDINGS AND OPINIONS

The designation of 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/OAS. Authorized officials of the awarding agency will make final determination on these matters.

DEPARTMENT OF HEALTH & HUMAN SERVICES
OFFICE OF INSPECTOR GENERAL
OFFICE OF AUDIT SERVICES
150 S. INDEPENDENCE MALL WEST
SUITE 316
PHILADELPHIA, PENNSYLVANIA 19106-3499

AUG 29 2003

Report Number: A-03-02-00206

Patrick W. Finnerty, Director
Department of Medical Assistance Services
Suite 1300
600 East Broad Street
Richmond, Virginia 23219

Dear Mr. Finnerty:

This final audit report provides you with the results of an Office of Inspector General (OIG) *Review Of Medicaid Claims Made For 21 To 64 Year Old Residents Of Private Institutions For Mental Diseases In The Commonwealth of Virginia* during the period July 1, 1997 through June 30, 2001.

Objective

The objective of our review was to determine if the Virginia Department of Medical Assistance Services (DMAS) had adequate controls to prevent it from claiming federal financial participation (FFP) under the Medicaid program for medical services made on behalf of 21 to 64 year old residents of private psychiatric hospitals that were Institutions For Mental Diseases (IMDs).

Summary

The DMAS did not establish controls to prevent it from claiming FFP under the Medicaid program for medical services provided to 21 to 64 year old residents of private IMDs in the Commonwealth of Virginia. Our review showed that DMAS claimed $127,678 of unallowable FFP under the Medicaid program for patients aged 21 to 64 residing in 12 private psychiatric hospitals that were IMDs. The services claimed for reimbursement included personal care, practitioner, pharmacy and transportation services. Federal laws and regulations prohibit FFP for the care and treatment of IMD patients in this age range.

Recommendations

We recommend that DMAS:

1. Refund $127,678 to the Federal Government representing the unallowable FFP claimed under the Medicaid program for services rendered to 21 to 64 years old residents of private IMDs.

2. Establish controls to prevent it from claiming FFP for medical services provided to IMD residents aged 21 to 64 in private psychiatric hospitals.

In a written response to a draft of this report, DMAS officials stated that they did not dispute the fact that federal regulations prohibit federal financial participation for services rendered to residents of IMDs. They stated that Virginia should not be penalized, as it was impossible to comply with the regulations as defined and interpreted. DMAS officials stated that they make every effort to comply with the regulations but cannot identify persons who receive IMD services from private IMDs since claims are not submitted for IMD facility services, nor are there any pre-authorization requirements for non-reimbursable facilities. DMAS officials asked that the findings be waived on the grounds that there is no way for them to identify the affected recipients.

We have summarized DMAS' response along with our comments after the conclusions and recommendations section of the report. The full text of DMAS' response is included as an APPENDIX to this report.

INTRODUCTION

BACKGROUND

Federal Laws and Regulations

Section 1905(a) of the Social Security Act, 42 Code of Federal Regulations (CFR) Part 441.13, and 42 CFR Part 435.1008 preclude FFP for any services to residents under the age of 65 who are in an IMD except for inpatient psychiatric services provided to individuals under the age of 21 and in some cases for those who are under the age of 22. This 21 to 64 year old exclusion of FFP was designed to assure that States, rather than the Federal government, continue to have principal responsibility for funding inpatients in IMDs. Under this broad exclusion, no FFP payments can be made for services provided either in or outside the facility for IMD patients in this age group.

State Medicaid Manual

The Centers for Medicare & Medicaid Services (CMS) has consistently provided guidance to States that FFP is only available for inpatient psychiatric services under the Medicaid program for individuals who are under the age of 21 and in

some instances those under the age of 22. In March 1994 and again in June 1996, CMS issued guidance to the states regarding the general IMD exclusion:

> "... FFP is not available for any medical assistance under title XIX for services provided to any individual who is under age 65 and who is a patient in an IMD unless the payment is for inpatient psychiatric services for individuals under age 21. . . . Under this broad exclusion, no Medicaid payment can be made for services provided either in or outside the facility for IMD patients in this age group."
> [HCFA Publication 45-4, sec.4390]

Commonwealth of Virginia IMDs

In Virginia, the DMAS is the State agency responsible for operating the State's Medicaid program. The DMAS is also the Medicaid operating agency that provides assistance with claims processing to certain other operating agencies through a contract with First Health Services. The First Health Services is the Medicaid Management Information System (MMIS) fiscal agent for the Medicaid program. The MMIS is a computerized payment and information reporting system that processes and pays Medicaid claims.

Our review at DMAS showed that there were 12 private IMDs in Virginia that served patients between the ages of 21 to 64. Four of the 12 private IMDs were closed during our audit period.

OBJECTIVE, SCOPE, AND METHODOLOGY

Objective

The objective of our review was to determine if DMAS had adequate controls to prevent it from claiming FFP under the Medicaid program for medical services made on behalf of 21 to 64 year old residents of private psychiatric hospitals that were IMDs.

Scope

Our review covered Medicaid payments for personal care, practitioner, pharmacy, and transportation services for the period July 1, 1997 through June 30, 2001. Our review did not require us to review the overall internal control structure of DMAS or the Medicaid program. Rather our review was limited to obtaining an understanding of DMAS's controls to prevent FFP from being claimed under the Medicaid program for all medical services provided to IMD residents between the ages of 21 to 64.

Methodology

To accomplish our audit objective we:

- Reviewed Medicaid laws, regulations, and CMS guidelines provided to the states concerning the allowability of FFP claimed under the Medicaid program for 21 to 64 year old residents of private psychiatric hospitals that were IMDs.

- Held discussions with CMS officials and obtained cost-reporting data regarding Medicaid claims, including IMDs from the Commonwealth of Virginia.

- Held discussions with DMAS officials and reviewed policies and procedures for claiming FFP under the Medicaid program for 21 to 64 year old residents of private IMDs in Virginia.

- Obtained a listing of 12 private IMDs from DMAS and identified residents with Medicaid claims for medical services at other providers for the period July 1, 1997 through June 30, 2001. The DMAS provided us with Medicaid recipients name, date of birth, recipient identification number, admission dates, discharge date and other data for each admission on the Medicaid paid claims history file.

- Contacted eight private IMDs[1] via letter and obtained the dates of services that the Medicaid recipients, identified on the DMAS files, were patients of the IMDs. We matched these dates of services with the dates of services obtained from the DMAS and questioned those medical services that were paid by Medicaid to other providers while the recipients were in private IMDs. This match allowed us to review 100 percent of all paid claims for Medicaid recipients in private IMDs. We did not question claims (1) denied by the DMAS, (2) for Medicaid recipients the private IMDs had no record of admission, or (3) where the date of service equaled the date of admission to or discharge from the private IMDs.

- To validate the data match, we visited 3 private IMDs and reviewed 55 selected patient files for services received and service dates.

- The following schedule identifies the IMD and the number of Medicaid claims paid by DMAS.

[1] Four of the 12 IMDs were closed at the time of our review.

MEDICAID CLAIMS FOR 21 TO 64 YEAR-OLD RESIDENTS OF PRIVATE IMDs:

IMDs	Medicaid Claims
Virginia Beach Psychiatric Center	1,754
Virginia Psychiatric Co., Inc., Hampton	922
Carilion Saint Albans Hospital	600
Poplar Springs Hospital Petersburg	724
West End Behavioral Healthcenter	41
Dominion Hospital Falls Church, VA	7
Piedmont Behavioral HC LLC	2
Catawba Hospital, Catawba, VA	38
Charter Westbrook (Closed)	1,162
Charter Hospital Charlottesville (Closed)	331
Charter BHS of Charlottesville (Closed)	6
Charter Westbrook BHS (Closed)	1
Total:	**5,588**

Our review was accomplished from August 2002 to December 2002. Our review was conducted in accordance with generally accepted government auditing standards.

FINDINGS AND RECOMMENDATIONS

DMAS Claimed Unallowable FFP

The DMAS claimed $127,678 of unallowable FFP for 2,607 claims under the Medicaid program for patients aged 21 to 64 residing in 12 private psychiatric hospitals that were IMDs. The services claimed for reimbursement included personal care, practitioner, and pharmacy and transportation services. Federal laws and regulations prohibit FFP for the care and treatment of IMD patients in this age range.

The chart below identifies the number of claims and unallowable FFP for IMD residents of private psychiatric hospitals. The total cost of this care was the Commonwealth's responsibility.

IMDs	Medicaid Claims	Medicaid Payments	Claims Questioned	FFP
Virginia Beach Psychiatric Center	1754	$160,355	1099	$ 49,314
Virginia Psychiatric Co., Inc., Hampton,	922	85,951	149	10,658
Carilion Saint Albans Hospital	600	59,353	559	29,920
Poplar Springs Hospital Petersburg	724	61,283	149	9,478
West End Behavioral Healthcenter	41	1,510	21	365
Dominion Hospital Falls Church, VA	7	230	-0-	-0-
Piedmont Behavioral HC LLC	2	125	-0-	-0-
Catawba Hospital, Catawba, VA	38	436	8	103
Charter Westbrook (Closed)	1162	76,890	527	18,928
Charter Hospital Charlottesville (Closed)	331	27,046	94	8,741
Charter BHS of Charlottesville (Closed)	6	678	1	171
Charter Westbrook BHS (Closed)	1	75	-0-	-0-
Total	**5,588**	**$473,932**	**2,607**	**$127,678**

Controls Were Not Established

The DMAS did not establish controls under its Medicaid program to identify claims for IMD residents 21 to 64 years old as not eligible for FFP. The DMAS officials informed us that they have no way of knowing that a Medicaid patient is in an IMD when the claim is coming from a secondary medical provider during the same service dates. Our review of Medicaid laws, regulations, and CMS guidelines showed that FFP is not available for any medical assistance provided to any individual who is under age 65 and who is a patient in an IMD unless the payment is for inpatient psychiatric services for individuals under age 21.

CONCLUSION AND RECOMMENDATIONS

Controls were not in place to effectively preclude DMAS from claiming FFP under the Medicaid program for medical services rendered to 21 to 64 year-old residents of private IMDs. For the period July 1, 1997 through June 30, 2001, DMAS improperly claimed FFP of $127,678 for residents of IMDs between the ages of 21 to 64 who received medical services other than inpatient psychiatric services.

We recommend that DMAS:

1. Refund $127,678 to the Federal Government representing the unallowable FFP claimed under the Medicaid program for services rendered to 21 to 64 year old residents of private IMDs.

2. Establish controls to prevent it from claiming FFP for medical services provided to IMD residents aged 21 to 64 in private psychiatric hospitals.

DMAS'S RESPONSE

By letter dated July 2, 2003, DMAS officials responded to a draft of this report. DMAS officials stated that they did not dispute the fact that federal regulations prohibit federal financial participation for services rendered to residents of IMDs. They stated that Virginia should not be penalized, as it was impossible to comply with the regulations as defined and interpreted. DMAS officials stated that they make every effort to comply with the regulations but cannot identify persons who receive IMD services from private IMDs since claims are not submitted for IMD facility services, nor are there any pre-authorization requirements for non-reimbursable facilities. DMAS has no way of knowing which fee-for-service recipients are admitted to IMDs or for how long.

DMAS stated that due to confidentially laws and regulations governing healthcare and more specifically, mental health and substance abuse treatment, DMAS believes that it does not have a legal basis to require the names of Medicaid recipients admitted to IMDs be provided. Further, because Medicaid does not reimburse for admissions to IMDs or for IMD services, it is not provided access to the information as a health care transaction.

DMAS will continue to provide guidance to IMD facilities that inpatient and other medical services are not permitted while a Medicaid recipient is a resident of an IMD. DMAS will continue to attempt to identify these recipients.

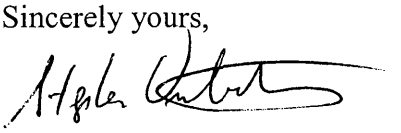
DMAS officials asked that the findings be waived on the grounds that there is no way for them to identify the affected recipients.

OIG COMMENTS

The OIG commends DMAS for its efforts to continue to provide guidance to IMD facilities that inpatient and other medical services are not permitted while a Medicaid recipient is a resident of an IMD. DMAS agreed that federal regulations prohibit FFP for services rendered to residents of IMDs. As such, any Medicaid payments made on behalf of recipients in IMDs are unallowable and should be refunded to the federal government.

To facilitate identification, please refer to report number A-03-02-00206 in all correspondence related to this report.

Sincerely yours,



Stephen Virbitsky
Regional Inspector General
for Audit Services

Direct Reply to HHS Action Official

Sonia A. Madison
Regional Administrator
Centers for Medicare & Medicaid Services, Region III
U.S. Department of Health and Human Services
Suite 216, Public Ledger Building
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COMMONWEALTH of VIRGINIA

Department of Medical Assistance Services

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DIRECTOR

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July 2, 2003

Stephen Virbitsky
Regional Inspector General for Audit Services
Department of Health & Human Services
Office of the Inspector General
150 S. Independence Mall West, Suite 316
Philadelphia, Pennsylvania 19106-3499

Re: A-03-02-00206

Dear Mr. Virbitsky:

The purpose of this letter is to respond to the draft report entitled "Review of Medicaid Claims Made For 21 To 64 Year Old Residents Of Private Institutions For Mental Diseases In The Commonwealth of Virginia". The Department of Medical Assistance Services (DMAS) appreciates the work of your staff involved in the audit. The Department is also appreciative of the fact that the decision was made to recognize and allow for payment for services rendered on the date of admission.

Based on our review of the audit report and considering the circumstances under which ancillary payments were made for residents of private Institutions for Mental Diseases (IMD), the Department wishes to contest the report. Virginia does not dispute the fact that federal regulations prohibit federal financial participation (FFP) for services rendered to residents of IMDs. Virginia believes it should not be penalized for as it is impossible to comply with the regulations as defined and interpreted. Virginia makes every effort to comply with the regulations but cannot identify persons who receive IMD services from private IMDs since claims are not submitted for IMD facility services, nor are there any pre-authorization requirements for non-reimburseable facilities. DMAS has no way of knowing which fee-for-service recipients are admitted to IMDs or for how long.

Additionally, due to confidentiality laws and regulations governing healthcare and more specifically, mental health and substance abuse treatment, DMAS does not believe that the agency has a legal basis to require the names of Medicaid recipients admitted to IMDs be provided. Further, because Medicaid does not reimburse for admissions to IMDs or for IMD services, it is not provided access to the information as a healthcare transaction. An authority to require that the treating facility disclose protected patient information to DMAS does not exist. Absent the authority to request or access this information, there is no way for DMAS to identify

and exclude payments for services except through provider education, and occasionally, provider audits.

DMAS will continue to provide guidance to IMD facilities that inpatient and other medical services are not permitted while a Medicaid recipient is a resident of an IMD. DMAS will continue to attempt to identify these recipients.

DMAS requests that the OIG waive the deficiencies cited on the grounds that there is no way for the agency to identify the affected recipients. Thank you for your review and consideration of this appeal.

Sincerely,

Patrick W. Finnerty

PWF:ckh

J:\Admin\Operations\Virbitsky 7-2-03

ACKNOWLEDGMENTS

This report was prepared under the direction of Stephen Virbitsky, Regional Inspector General for Audit Services. Other principal Office of Audit Services staff that contributed includes:

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Michael Jones, *Senior Auditor*
John Brisco, *Auditor*
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David Mackay, *Auditor*

For information or copies of this report, please contact the Office of Inspector General's Public Affairs office at (202) 619-1343.