DEPARTMENT OF HEALTH & HUMAN SERVICES

Office of Inspector General

Memorandum

Date . DEC 31 1992

From Bryan B. Mitchell
Principal Deputy Inspector General

Subject Review of General and Administrative and Fringe Benefit Costs Included in the Fiscal Year 1991 Medicare Cost Reports by Allied Services, Inc., Scranton, Pennsylvania (A-03-92-00008)

To

William Toby, Jr.
Acting Administrator
Health Care Financing Administration

This memorandum alerts you to the issuance on January 5, 1992, of our final audit report. A copy is attached.

The report presents the results of our review of general and administrative (G&A) and fringe benefit costs included in the Fiscal Year (FY) 1991 Medicare cost reports submitted by Allied Services Management Services, Inc. (ASM), Allied Services Institute for Rehabilitative Medicine (ASIRM), and the John Heinz Institute for Rehabilitative Medicine (JHIRM), Scranton, Pennsylvania. The ASM, ASIRM, and JHIRM were 3 of 23 providers included in a nationwide review by the Office of Inspector General. This review was in response to a request of the Subcommittee on Oversight and Investigations of the Committee on Energy and Commerce, U.S. House of Representatives. The three providers operate under the umbrella of Allied Services, Inc. (AS).

The primary objective of our review was to determine if the G&A costs reported by AS on its FY 1991 Medicare cost reports were allowable, reasonable, and allocable in accordance with Medicare cost principles. We also determined the relationship of these costs to patient care activities, and whether the costs might be perceived as extravagant or otherwise inappropriate.

The AS reported G&A costs totaling approximately $7 million, as subject to allocation to Medicare for the year ended June 30, 1991 (FY 1991). Our review disclosed that this amount included $207,352 which were not allowable for allocation to Medicare. The unallowable costs included $105,695 for marketing activities, $28,447 for unallowable travel, $23,741 for charitable contributions, and $49,469 for miscellaneous unallowable costs. In our opinion, these costs were not related to patient care.

The inclusion of the $207,352 of unallowable costs in the FY 1991 cost reports resulted in increased Medicare reimbursement of $85,848. We are recommending that AS remove these costs from its FY 1991 cost report and implement controls to prevent the inclusion of these costs in the future.

Our review also disclosed $99,260 of costs which we have identified as costs for concern. While these costs were not specifically unallowable under Federal guidelines, there is some concern on the appropriateness of the costs. Recent congressional hearings on colleges and universities have raised questions as to whether these types of costs should be allocated to Federal programs. These costs pertain to various social and employee related activities.

The AS disagreed with our findings and recommendations that the identified costs were unallowable and should be removed from the cost reports. The AS stated that it is allowed to claim all incurred costs that are ordinary business expenses resulting from providing patient care and related services to Medicare beneficiaries. The regulations permit providers to seek reimbursement for any costs not clearly precluded, even if such costs subsequently may be determined to be nonreimbursable under the Medicare program. The AS further stated that it claims reimbursement for costs that it believes, in good faith, are properly reimbursable by the Medicare program. The Health Care Financing Administration regional office stated that the costs identified in this report will be further reviewed by the fiscal intermediary.

For further information, contact:
G. A. Rafalko
Regional Inspector General for
Audit Services, Region III
215-596-6744

Attachment

Department of Health and Human Services

OFFICE OF INSPECTOR GENERAL

REVIEW OF GENERAL AND ADMINISTRATIVE AND FRINGE BENEFIT COSTS INCLUDED IN THE FISCAL YEAR 1991 MEDICARE COST REPORTS BY ALLIED SERVICES, INC. SCRANTON, PENNSYLVANIA

DECEMBER 1992 A-03-92-00008

DEPARTMENT OF HEALTH & HUMAN SERVICES

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Our Reference: Common Identification Number A-03-92-00008

Mr. James Brady
President
Allied Services
475 Morgan Highway
Scranton, Pennsylvania 18501

Dear Mr. Brady:

This audit report presents the results of our analysis of general and administrative (G&A) and fringe benefits (FB) costs included in the Fiscal Year (FY) 1991 Medicare cost reports submitted by Allied Services Management Services, Inc. (ASM), Allied Services Institute for Rehabilitative Medicine (ASIRM), and the John Heinz Institute for Rehabilitative Medicine (JHIRM), Scranton, Pennsylvania.

The ASM, ASIRM, and JHIRM were 3 of 23 providers included in a nationwide review by the Office of Inspector General (OIG) in response to a request from the Subcommittee on Oversight and Investigations (Subcommittee) of the Committee on Energy and Commerce, U.S. House of Representatives. The Subcommittee was conducting an inquiry into the health care system. The three providers operate under the umbrella of Allied Services, Inc., (AS), and were selected in accordance with our objective to include a geographic representation of hospitals nationwide.

The primary objective of our review was to determine if the G&A costs included in FY 1991 Medicare cost reports were allowable, reasonable, and allocable in accordance with Medicare cost principles as set forth in the Provider Reimbursement Manual (PRM); and related to patient care. We also identified costs which, although upheld in the past by fiscal intermediaries (FI) or the Provider Reimbursement Review Board (PRRB), may be perceived to be extravagant or otherwise inappropriate.

Based on our analysis, we believe that the majority of G&A costs included on the FY 1991 Medicare cost reports submitted by the three organizations were allowable. We noted, however, that some of the G&A costs were, in our opinion, not allowable because the costs were not related to patient care. In our opinion, AS inappropriately included in its FY 1991 Medicare

cost reports G&A costs of $207,352 which were not related to patient care. We are recommending that AS remove these costs from the cost reports.

SUMMARY OF REVIEW

Organization	Total G&A Costs	Costs Questioned	Federal Share
ASM	$5,438,088	$185,665	$72,038
ASIRM	642,779	6,300	4,718
JHIRM	942,534	15,387	9,092
Total	$7,023,401	$207,352	$85,848

The above costs for ASIRM and JHIRM do not include the home office cost allocation as these costs are included in the ASM total.

On March 17, 1992, AS responded to a draft of this report. In its response, AS disagreed that the identified costs were unallowable, and that these costs should be removed from the cost report. In its general comments, AS stated that it is not responsible for identifying and self-disallowing costs. The AS believes that the current regulations enable providers to claim all incurred costs, and that providers can claim any costs not clearly precluded, even though such costs subsequently may be determined to be nonreimbursable. The AS also provided comments and additional information on specific items of questioned costs.

In response to the information provided by AS in its comments to our report, we have revised or eliminated certain findings that were included in the draft report. As a result, the amount of questioned costs referred to in AS' response may not be reflected in this final report. We have summarized AS' response after the Conclusions and Recommendations section of this report, and have included the entire response as an appendix.

In addition to the unallowable costs, we have identified $99,260 of costs for which we have concerns regarding the nature of the expenditure. While these expenditures have been historically allowed by the FI or the PRRB, we believe that these areas need to be further analyzed in view of increasing health care costs and Federal fiscal constraints. These costs

include expenses for employee health and welfare activities. These costs are discussed in the OTHER MATTERS section of this report.

BACKGROUND

The Social Security Amendments of 1983 (Public Law 98-21) established the prospective payment system (PPS) of reimbursement to hospitals under Medicare. Under PPS, hospitals are reimbursed prospectively on a per discharge basis. However, certain types of hospitals, such as AS, are excluded from hospital PPS reimbursements, and are reimbursed on the basis of reasonable costs, as defined in the PRM, section 2100.

Final reimbursement is made upon settlement of the annual Medicare cost report (HCFA-2552) submitted by a hospital to a Medicare FI under contract with the Health Care Financing Administration (HCFA). Blue Cross of Western Pennsylvania is the FI for AS.

In defining cost reimbursement principles the PRM, section 2100, states:

> *that all payments to providers of services must be based on reasonable cost of services covered under Title XVIII of the ACT and related to the care of beneficiaries or, in the case of acute care hospitals, the PPS. Reasonable cost includes all necessary and proper costs incurred in rendering the services, subject to principles relating to specific items of revenue and cost.*

Section 2102.2 of the PRM states that costs related to patient care include all necessary and proper costs which are appropriate and helpful in developing and maintaining the operation of patient care facilities and activities.

SCOPE OF AUDIT

Our review was made in accordance with generally accepted government auditing standards to the extent that they were applicable to the scope of our review as defined in an audit guide developed to ensure adequate audit coverage of the concerns expressed by the Subcommittee. The audit guide was limited to these concerns and, as such, a review of internal controls was not performed.

The objective of our review was to determine if the G&A costs totaling $7,023,401, which were included in the FY 1991 Medicare cost reports were (1) allowable, reasonable, and allocable under Medicare cost principles; (2) related to

patient care activities; and (3) of a type which may be perceived to be extravagant or otherwise inappropriate.

To accomplish our objective, we selected for review transactions totaling $1,240,813 which were included in the G&A accounts in AS' FY 1991 Medicare cost reports. In selecting these transactions, we included only those items which we believed had the greater risk of noncompliance with Federal regulations. Therefore, the results of our analysis cannot be considered to be representative of the overall operations of AS.

In reviewing the allowability and allocability of costs, we considered whether the costs incurred were (1) reasonable, (2) beneficial to patient care, (3) necessary to the overall operation of the hospital, and (4) deemed to be assignable to patient care in view of the principles provided in the PRM and PRRB rulings. In reviewing the reasonableness of costs, we considered whether or not the individuals that caused the costs to be incurred acted with due prudence in the circumstances considering their responsibilities to the hospital, its employees, its patients, the Federal Government, and the public at large.

During our review of transactions, we classified costs into three separate categories:

- ***Allowable.*** The expenditure is clearly allowable under Medicare if it benefits the provision of patient care.
- ***Unallowable.*** The expenditure is clearly not related to patient care based on its nature.
- ***Costs for Concern.*** The expenditure, in our opinion, may have questionable benefit to patient care. However, these expenditures, such as Christmas parties and costs related to employee morale, have been historically allowed by the FI or the PRRB (discussed under OTHER MATTERS section).

To understand whether costs are allowable, it is necessary to understand the following factors that affect the allowability of costs:

- ***Reasonableness of cost.*** This factor takes into account whether the cost is of a type generally recognized as necessary for the operation of the hospital in view of the AS' size, scope of services, and utilization (PRM section 2102.1).

- ***Relationship to patient care.*** This factor is defined as including all necessary and proper costs which are appropriate and helpful in developing and maintaining the operation of patient care facilities and activities (PRM section 2102.2).

- ***Prudent buyer concept.*** This concept requires that providers act as a prudent and cost-conscious buyer and seek to economize by minimizing costs (PRM section 2103).

The PRM section 2102.3 states that:

> *Costs not related to patient care are costs which are not appropriate or necessary and proper in developing and maintaining the operation of patient care facilities and activities. Such costs are not allowable in computing reimbursable costs.*

Our field work was performed at AS' corporate offices in Scranton, Pennsylvania from October 1991 to February 1992.

RESULTS OF REVIEW

Unallowable G&A Costs Allocated to Medicare

In our opinion, AS included in its FY 1991 Medicare cost reports unallowable costs of $207,352. We estimate that about 41.4 percent of these unallowable costs, or $85,848 are subject to reimbursement under the Medicare program. The costs were unallowable because, in our opinion, they were not related to patient care. These costs included $105,695 for marketing, $28,447 for travel costs, $23,741 for charitable contributions, and $49,469 for miscellaneous unallowable costs.

Marketing

We identified $105,695 of G&A costs in the FY 1991 cost reports that were spent on advertising and miscellaneous items. This amount consisted of expenditures for:

- costs related to National Rehabilitation Week (NRW)--$68,005; and

- advertisements on radio, television, and in theater and baseball program booklets, and giveaway items, such as, paperweights and drinking glasses--$37,690.

Section 2136 of the PRM in defining the allowability of advertising costs states:

> *The allowability of advertising costs depends on whether they are appropriate and helpful in developing, maintaining and furnishing covered services to Medicare beneficiaries.... Advertising costs incurred with the provider's public relations activity are allowable if the advertising is primarily concerned with the presentation of a good public image and directly or indirectly related to patient care.... Costs of advertising to the general public which seeks to increase patient utilization of the provider's facilities are not allowable.*

We identified $68,005 related to AS' sponsorship of NRW. In our opinion, the costs related to the sponsorship of NRW are unallowable. The NRW is sponsored by AS to highlight the success of people with disabilities, to salute those people who provide care to the disabled, and to call attention to the unmet needs of people with disabilities. Included in the activities sponsored by ASM in conjunction with NRW were educational seminars, a festival, an awards dinner, and the opening of a toy library for children with disabilities.

In our opinion, while the sponsorship of NRW may promote the AS facilities and is a noteworthy endeavor, it does not relate to the provision of patient care. Therefore, the sponsorship does not meet the definition of allowable costs in the PRM.

Additionally, we identified $37,690 related to various types of advertisements and miscellaneous items. Although these advertisements may have promoted a good public image for AS, in our opinion, they did not relate either directly or indirectly to patient care as required by PRM section 2136. Examples of the type of expenditures questioned include:

- advertisement in a national healthcare publication promoting NRW--$6,216;
- public service announcements on a local television station--$5,000;
- Lucite paper weights for an executive dinner--$3,530;
- advertisements in theater and baseball programs--$900; and
- radio advertisements for the AS Easter egg hunt--$315.

In our opinion, the advertising costs identified in this review were neither directly nor indirectly related to patient care and, therefore, do not meet the criteria set forth in the PRM. These costs, in our opinion, should not be included in the FY 1991 Medicare cost reports.

Travel

We identified $28,447 of G&A costs included in the FY 1991 cost reports expended on inappropriate or undocumented travel. Of this amount, $11,515 related to AS' sponsorship of NRW. As discussed previously in this report, it is our opinion that the costs associated with NRW are unallowable for Medicare reimbursement.

The remaining $16,932 in questioned costs related to inappropriate charges on the president's American Express account and reimbursed by AS. The AS maintains a corporate American Express card for the president of AS. The charges on this account are routinely processed for payment without justification or identification of a business purpose. Our analysis of the American Express charges identified $16,932 of unallowable charges. These charges included first class air fare, meals at local restaurants, and miscellaneous travel not related to patient care.

Contributions

We identified $23,741 of G&A costs included in the FY 1991 Medicare cost reports related to contributions. These costs represent donations to various local charities and are not related to the provision of patient care. Examples of the contributions that we questioned included:

- Easter Seal Society--$3,240;
- Arthritis Foundation--$3,050; and
- tickets to the Governor's banquet--$400.

Although these types of costs are not specifically addressed in the PRM, the PRRB has released some relevant decisions on the reimbursement of these costs. In PRRB Decision Number 80-D88, dated October 10, 1980, the PRRB stated that payments made to specific civic and charitable organizations did not constitute Medicare reimbursable costs, as they were not related to patient care. The PRRB also stated that such contributions did not meet the qualification that reasonable cost includes all necessary and proper costs incurred in rendering the services

(Reference PRM, section 2100). Therefore, these costs should not be included in the FY 1991 Medicare cost reports.

Miscellaneous Costs

We identified $49,469 of G&A costs in the FY 1991 Medicare cost reports that was spent on miscellaneous items not related to patient care, in our opinion. These miscellaneous expenditures were for such things as photography and video services, luncheons and dinners, publication of AS' annual report, and other items not related to patient care. It should be noted that the annual report in question is not the annual financial report but a public relations document. Examples of the type of expenditures questioned include:

- photography and video work at AS--$24,501;
- food services related to executive luncheons--$9,240;
- conferences, luncheons, and dinners--$5,837;
- preparation of AS' annual publications--$4,630;
- "Grant An Apple" day--$3,400; and
- numerous other lesser examples--$1,860.

In our opinion, these costs are not related to patient care for Medicare beneficiaries and should not be included in the FY 1991 Medicare cost reports.

Conclusions and Recommendations

Our selected analysis of $1,240,813 of G&A costs included in AS' FY 1991 Medicare cost reports showed that $207,352 or approximately 17 percent of the costs, should not have been included in the cost reports.

As stated previously, our analysis was selective in that we deliberately chose those types of costs that on the basis of their titles were most likely to be unrelated to patient care. Therefore, the results of our analysis cannot be considered representative of all of the G&A costs included in the FY 1991 cost reports. It is also possible, however, that because our analysis was selective, there may have been other costs

included in the FY 1991 Medicare cost reports that were not related to patient care but were not selected for inclusion in our analysis.

We, therefore, recommend that AS:

1. Delete the $207,352 identified in this report from the FY 1991 Medicare cost reports.

2. Review its FY 1991 Medicare cost reports in detail and delete from them all costs similar to the costs that we have identified.

The AS Response and OIG Comments

On March 17, 1992, AS responded to a draft of this report. In its response, AS disagreed with our findings and recommendations that the identified costs were unallowable and should be excluded from the cost reports. The AS stated that it is allowed to claim all incurred costs that are ordinary business expenses resulting from providing patient care and related services to Medicare beneficiaries. The regulations permit providers to seek reimbursement for any costs not clearly precluded, even if such costs subsequently may be determined to be nonreimbursable under the Medicare program. The AS further stated that it claims reimbursement for costs that it believes, in good faith, are properly reimbursable by the Medicare program.

The comments on each of the specific areas of costs are summarized below.

Marketing

The AS disagreed with our conclusions that the identified marketing and public relations costs were unallowable. The AS stated that these costs were allowable under section 2136.1 of the PRM. This section states that public relations costs are allowable if the costs are primarily concerned with the presentation of a good public image and directly or indirectly related to patient care. The AS specifically emphasized the importance of NRW and stressed that the costs were allowable.

In our opinion, the advertisements on radio, television, and in theater and baseball program booklets are directed at the general public and aim to increase patient utilization of AS facilities.

We recognize the value of NRW and the fact that it likely presents a good public image. We do not believe, however, that the NRW activities have either a direct or indirect relationship to the provision of patient care at AS. Therefore, these costs, in our opinion, are unallowable for allocation to the Medicare program.

Travel

The AS disagreed that the identified travel was not related to patient care and provided additional information on questioned travel costs, including the purpose of questioned trips and reimbursement for personal travel. The AS did not comment on the travel costs related to NRW.

Based on the documentation provided by AS, we have revised our finding on travel costs. The travel costs questioned in this final report relate only to NRW, and costs associated with first class travel, meals at local restaurants, and miscellaneous trips that, in our opinion, were not related to patient care.

Contributions

The AS stated that charitable contributions were allowable under section 2136 (Advertising) and section 2138.2 (Civic Organizations) of the PRM.

Section 2100 of the PRM states that reasonable costs included costs that are necessary for the provision of patient care. In our opinion, these were charitable contributions made to specific organizations, and were not necessary for the provision of patient care. As mentioned in this report, charitable contributions were determined to be unallowable by the PRRB in Decision Number 80-D88, dated October 10, 1980.

Miscellaneous Costs

The AS stated that the questioned photography and video costs were incurred for employee activities and, therefore, should be treated as an allowable FB. The AS did not comment on the remaining miscellaneous cost items.

Our review of the photography and video expenditures revealed that these costs were incurred for the promotion of AS facilities. Therefore, these costs are not allowable for allocation to the Medicare program.

OTHER MATTERS

Costs for Concern

In addition to the clearly unallowable, we have identified $99,260 in costs which we have concerns regarding the nature of the expenditure. While we believe that these costs do not relate to patient care, they have historically been allowed by the FI or the PRRB. As such, we are unable to render an opinion on these amounts.

Employee-Related Activities

We identified $99,260 included on the FY 1991 cost reports that were incurred for various social and employee related activities. While costs that appear to improve employee moral have historically been allowed, these expenses must be reasonable and be related to patient care. We recognize that these activities may improve staff moral and general working conditions. However, there is no way to measure whether the furnishing of these activities or the lack thereof has any bearing on the level of patient care provided. Examples of such expenses include:

- various employee social activities including parties, picnics, bus trips, Broadway show tickets, concert tickets, and other similar items--$46,551.
- gifts for employees including $18,709 for Thanksgiving turkeys and $5,749 for candy for employees--$28,186.
- golf shirts, sweatshirts, watches, and mugs with AS' logo provided to employees, board members, and friends of AS--$17,709.
- for balloons and flowers for employees and friends of AS--$6,814.

The AS responded that the PRM explicitly permits these types of costs as employee FBs, and that similar type costs have been accepted in the past.

We do not believe that the PRM explicitly permits these types of costs. We agree, however, that past interpretations of the PRM by FIs and the PRRB have allowed such costs. We believe that there is a need to study these costs more closely to determine their true relationship and value to patient care. Costs that appear to improve employee morale have been

historically accepted as stated by AS, and one can argue that the higher the employee morale, the better the services rendered by the employees. The Subcommittee's concern, which we share, is that these employee morale-boosting activities drive up the cost of health care.

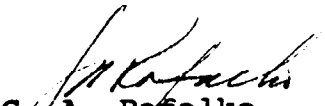
**** **** ****

Final determination as to actions to be taken on all matters will be made by the Department of Health and Human Services (HHS) official named below. We request that you respond to the recommendations in this report within 30 days from the date of this letter to the HHS official named below, presenting any comments or additional information that you believe may have a bearing on this final decision.

In accordance with the principles of the Freedom of Information Act (Public Law 90-23), OIG, Office of Audit Services reports issued to the Department's grantees and contractors are made 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 42 CFR Part 5.)

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

Sincerely yours,



G. A. Rafalko
Regional Inspector General
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HHS Official

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Associate Regional Administrator
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March 17, 1992

VIA FEDERAL EXPRESS

G.A. Rafalko
Regional Inspector General for Audit Services
Department of Health and Human Services
Region III
3535 Market Street
Philadelphia, PA 19104

Re: Response of Allied Services, Inc. to OIG Draft Statement of Facts (March 1992); HHS Reference: Common Identification No. No. A-03-92-00008

Dear Mr. Rafalko:

This letter responds to your March 6, 1992 letter to James Brady, President, Allied Services ("Allied"). Attached to your letter was the March 1992 Office of Inspector General ("OIG") Draft Statement of Facts entitled "Analysis of General and Administrative Costs, for Allied Services Inc., Scranton, Pennsylvania" ("OIG Report").[1]

The OIG Report questions certain cost submissions listed on Allied's FY 1991 Medicare Cost Report. It also questions certain consulting cost reimbursements for the six year period FY 1986-91.

We welcome this opportunity to respond to information in the OIG Report, and to provide additional pertinent information. We also wish to assure you of our continuing efforts to provide promptly all pertinent information to the OIG and the Congressional Oversight and Investigations Committee as may be necessary. Below, we make four general observations regarding the OIG Report, and then address specific cost items identified by the OIG Report.

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[1] As your letter noted, the OIG Report "relates to General and Administrative costs included in the Fiscal Year 1991 Medicare cost report by Allied Services Management, Incorporated, Allied Services Institute for Rehabilitative Medicine and the John Heinz Institute for Rehabilitative Medicine."

A. GENERAL OBSERVATIONS

(1) The Medicare Statute and Regulations Do Not Require or Encourage Cost-Based Providers to "Self-Disallow" Costs

By its conclusions, the OIG Report implies that providers such as Allied must "self-disallow" i.e., never submit certain incurred costs. This view completely disregards the statute and regulations governing Medicare reimbursement to providers such as Allied, which are reimbursed on a reasonable cost basis. The test is not whether a cost should ever have been submitted because it is ultimately denied, but rather whether it was reasonable for the provider to have submitted the cost. Allied only claims those items it considers are properly allowable under the Medicare Program.

Although it is reasonable to have submitted the items, there are a number of factors that could result in an ultimate decision to allow or disallow the cost. For example, the Medicare regulations could change by legislation or by administrative rulings.

The cost-based reimbursement program is designed to enable Allied-type rehabilitation providers to claim all incurred costs that are ordinary business expenses resulting from providing patient care and related services to Medicare beneficiaries. Under the regulations, providers may seek reimbursement for any cost not clearly precluded, even though such costs subsequently may be determined to be non-reimbursable under the Medicare Program.[2]

The Medicare regulations (e.g., Section 115 of the PRM, Part II, Section 2144.1, Provider Reimbursement Manual (HIM-15)) and Medicare's own cost-reimbursement adjudication structure contemplate that there will be disagreements about the allowability of certain costs. The recognition that these disagreements should be worked out between the provider and the government-appointed intermediary makes self-disallowance unwise and impracticable. The OIG Report, in fact, notes that the Provider Reimbursement Review Board ("PRRB") has overturned intermediary disallowances and, in turn, has had its own decisions overturned by the Administrator of Health Care Finance Administration ("HCFA") in the delicate area of costs related to improving staff morale. (See OIG Report at 10-11).

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[2] As noted below, however, Allied only claims reimbursement for costs that it believes, in good faith, are properly reimbursable by the Medicare Program.

The relevant statutes and regulations do not encourage providers to "self-disallow" incurred costs. If costs are "self-disallowed" i.e., never submitted, it would be extremely rare for them ever to be reimbursed, even if later they would, in fact, be considered allowable.

(2) The OIG's Criticism of Allied's Unaudited, Unsettled FY 1991 Costs Is Inconsistent With Standard Medicare Audit Practices

Not only is the OIG Report incorrect to imply there should have been "self-disallowances," but it is also procedurally incorrect. The OIG Report places the cart before the horse by criticizing costs prior to the standard process of review -- an annual audit by a HCFA contractor.

After the provider submits costs for reimbursement, the standard procedure for reimbursement is that the HCFA contractor ("government-appointed intermediary") reviews all cost items. If there are questions about any item, or if the rules as to what is allowable have changed, then the government-appointed intermediary discusses these matters with the provider. Final reimbursement is made after all these issues are settled.

For FY 1991, no government-appointed intermediary has settled or audited Allied's Cost Report. This in-depth audit is critical to the honesty of the process so that any questions, mistakes or rule changes can be clarified.

AS COMMENTS NOT PERTINENT TO FINDINGS CONTAINED IN THE FINAL REPORT

**AS COMMENTS NOT PERTINENT
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again, thereby inflating the actual costs at issue.

B. RESPONSE TO SPECIFIC COST ITEMS

In discussing the specific cost items, it is important to point out that the relevant issue here is whether there was a good faith reasonable basis for Allied to have submitted the item for reimbursement, not whether the final decision is to disallow it.

OIG DRAFT ISSUE No. 1:

The OIG questions $105,695 of General and Administrative ("G&A") costs in Allied Services FY 1991 Cost Report for public relations-advertising and miscellaneous items.

ALLIED RESPONSE:

Public relations-advertising costs are explicitly permitted by Medicare regulations. Section 2136.1 of the Medicare Provider Reimbursement Manual (HIM-15), which sets forth the regulations governing Medicare reimbursement, provides:

> **Advertising costs incurred in connection with [a] provider's public relations activities are allowable if the advertising is primarily concerned with the presentation of a good public image and directly or indirectly related to patient care.**
>
> * * *
>
> **Costs of activities involving professional contacts with physicians, hospitals, public health agencies, nurses' associations, state and county medical societies, and similar groups and institutions, to apprise them of the availability of the provider's covered services are allowable. Such contacts make known what facilities and programs are available to persons who require such information in providing for patient care, and serve other purposes related to patient care, e.g., exchange of medical information on patients in the provider's facility, administrative and medical policy, utilization review, etc.**

(Emphasis added).

Allied incurred the costs at issue in connection with its public relations activities, consistent with these Medicare regulations. Significant among the costs that the OIG Report

recommends for "self-disallowance" are the costs covering Allied's sponsorship of National Rehabilitation Week, which is established annually by Resolution of the U.S. Congress, and Proclamation of the President.

Allied sponsors National Rehabilitation Week by educating the public about rehabilitative medical successes, for those who have undergone rehabilitation, saluting rehabilitative health care professionals, and publicizing the unmet needs of people with disabilities. During Rehabilitation Week, Allied sponsors a community-wide festival where it exhibits rehabilitation equipment, and sponsors educational conferences for rehabilitation professionals and tours of Allied's health care facilities.[4]

The importance to the public of Allied's sponsorship of National Rehabilitation Week has been recognized by such members of Congress as the Honorable Paul E. Kanjorski:

> Many disabled Americans are not aware of the quality and capabilities of rehabilitative services throughout the country. This week of observance serves as a catalyst for the growing awareness and rising expectations.
>
> In addition, National Rehabilitation Week provides a chance for caregivers to exchange ideas and focus on new forms of care. Since 1978, Rehabilitation Week has enabled physicians to interact with other specialists, exchange ideas, and draw attention to new studies, research or technologies that may meet their patients' individual needs.

137 Congressional Record No. 121 at E2908 (Aug. 2, 1991).

Among the recent chairmen and honorary chairmen of Allied's National Rehabilitation Week Awards Committee are former White House Press Secretary James S. Brady and Senator Robert Dole. The Awards Committee selects as awardees organizations and individuals who have contributed significantly to the lives of people with disabilities.

One of the tests for reimbursement under the public relations regulation is whether the costs were used to apprise persons in the

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[4] We are pleased that the OIG, in its draft Report, has recognized National Rehabilitation Week as "noteworthy." (OIG Report at 9).

health care field about the facilities available. As Congressman Kanjorski stated, the Week provides an "exchange of ideas" on new forms of care.

Significantly, the costs incurred in Allied's sponsorship of National Rehabilitation Week are similar to those recognized as allowable by the Medicare ("PRRB") in Decision No. 82-D94 (Medicare 2102.2.75). There, the PRRB determined that a provider properly included in allowable costs expenses incurred for a picnic-health fair for its employees and their families and the local medical community. The PRRB determined that these costs[5] were reasonable, necessary and proper, and indirectly related to patient care. Moreover, these costs have been reimbursed to Allied in the past by the Medicare Program.

Therefore, since these items either meet the regulatory test, or are similar to costs reimbursed in an administrative opinion, or have been previously allowed, it was reasonable for Allied to have submitted them for reimbursement.

OIG DRAFT ISSUE No. 2:

The OIG Report recommends "self-disallowance" of approximately $98,002 of G&A employee morale costs in Allied's FY 1991 Medicare Cost Report such as employee social activities, photography and video work for employee activities and recognition at Allied Services facilities, and mementos for Allied employees.

ALLIED RESPONSE:

The Medicare Provider Reimbursement Manual explicitly permits submitting and reimbursement for employee fringe benefits such as these cost items. The OIG Report, however, recommends "self-disallowance." (OIG Report at 10). Allowable employee fringe benefits are defined in Section 2144.1, Provider Reimbursement Manual (HIM-15) as:

> [A]mounts paid to, or on behalf of, an employee, in addition to direct salary or wages, and from which the employee, his dependent (as defined by IRS), or his beneficiary derives a personal benefit before or after

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[5] In addition to supplying food and recreation, the hospital provided general information concerning health care and medical matters.

> the employee's retirement or death. In order to be allowable, such amounts must be properly classified on the Medicare cost report -- that is, included in the costs of the cost center(s) in which the employee renders services to which the fringe benefit relates --and, when applicable, have been reported to IRS for tax purposes. Where claimed items are in dispute, the provisions of § 115 of the Provider Reimbursement Manual, Part II, apply.

(Emphasis added).

The regulations are clear in discussing the rationale for this type of reimbursement:

> [T]here may also be some intrinsic benefit to the provider, such as increasing employee work efficiency and productivity, reducing personnel turnover, or increasing employee morale.

Section 2144.2

Ironically, the OIG Report cites two PRRB decisions, one of which specifically permits reimbursement of costs for activities similar to those of Allied. (See OIG Report at 10, citing PRRB Decision No. 85-D62, which overturns an intermediary's disallowance of $2,334 for a provider's Christmas party).[6]

The costs cited by the OIG Report as non-reimbursable "social events" are explicitly recognized in the Medicare Program Manual instructions as reimbursable fringe benefit costs. Moreover, a number of these cost items are also reimbursable as public relations-advertising costs, as discussed above. The OIG Report recommends self-disallowance of a number of employee fringe benefits, including those pertaining to various food services. All of the claimed food services costs related to Allied's business activities which in turn were related to patient care. Documentation concerning these expenses are set forth herewith in Exhibit A.

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[6] There appears to be much uncertainty over the allowability of various employee fringe benefits. For example, PRRB Decision 91-D60, allowed the costs of football tickets provided to employees; subsequently it was reversed by the HCFA administrator. This inconsistency is an excellent example of why it is reasonable to submit such an item for reimbursement.

OIG DRAFT ISSUE No. 3:

The OIG Report questions, as inappropriate or undocumented, total travel expenses of $62,741 which were claimed in Allied's FY 1991 Cost Reports.

ALLIED RESPONSE:

Allied is perplexed why total travel expenses were so mischaracterized, and why, in particular, the cost of a trip for Mr. Brady to attend a health care conference of the National Association of Rehabilitation Facilities was questioned. All of Allied's travel expenses were incurred for purposes related to Allied's normal business activities, which in turn were related to patient care. With respect to those travel expenses charged on the President's American Express account, the OIG specifically recommended self-disallowance of these expenses claiming lack of documentation. Documentation supporting these travel expenses is provided herewith in Exhibit C[7]. Additionally, all personal expenses with respect to Mr. Brady's travel were paid for by Mr. Brady; no such personal expenses were paid by Allied or by Medicare.

The OIG Report's characterization of James Brady's June 8, 1990 trip to San Diego in one instance as "air tickets to Las Vegas for Mr. and Mrs. Brady" (Reference #318 in Schedule attached to OIG Report) and, in another, as "a trip to Las Vegas, Nevada" "for the President and his wife" (OIG Report at 12), is particularly inappropriate and misleading. The purpose of the trip was to attend a conference of the National Association of Rehabilitation Facilities in San Diego, California.

Allied properly covered only the costs associated with Mr. Brady's travel to the conference. The Bradys personally paid for all of Mrs. Brady's costs. At no additional cost to Allied or to the Medicare Program, Mr. and Mrs. Brady made a one night stop-over in Las Vegas en route to San Diego. The Bradys personally paid for all expenses they incurred in their stop-over. Although

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[7] As confirmed in a recent telephone conversation with the OIG auditor, additional documentation relating to questioned travel expenses in both the John Heinz Institute and the Allied Services Institute has been determined to be adequate. This documentation is similar to the materials included in this letter as part of Exhibit C.

these facts were apparent from the documentation provided to the OIG's investigator, for whatever reason the facts were disregarded, and the trip was mischaracterized in an inaccurate and inflammatory manner.

Allied fully complied with the OIG representative's request for documentation. Apart from requesting a copy of Allied's annual check register, which includes travel expenditures, the OIG representative did not request any further documentation regarding Allied travel. Any lack of documentation was due, not to any lack of effort or desire on the part of Allied to comply with the request, but rather, to the OIG representative's failure to request it. For your convenience, the relevant documentation pertaining to the subject costs incurred are attached. See Exhibit C.

OIG DRAFT ISSUE No. 4:

The OIG Report questions Allied's inclusion of $50,727 of G&A costs in its FY 1991 Medicare Cost Report for various miscellaneous items such as gifts for employees, bouquets sent to employees, conference, and publication costs.

ALLIED RESPONSE:

- Employee Fringe Benefits

The Provider Reimbursement Manual (HIM-15) explicitly permits submission of and reimbursement for costs incurred for activities benefitting employees. (Section 2144.2). As discussed above (Issue 2, pp. 8-9), the rationale for Medicare paying for this type of cost is that such activities increase employee morale, work efficiency and productivity, and reduce personnel turnover. (Section 2144.2). The items submitted by Allied contribute to a culture and environment that promotes the delivery of compassionate, high-quality care and are the very kind of costs allowed by the PRRB in similar circumstances.[8] (See PRRB Decision Nos. 85-D62, 91-D60, cited in OIG Report at 10).

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[8] Allied relies on its hard working dedicated employees and volunteers. The small but thoughtful acts of sending flowers for the funeral of a spouse or birth of a child helps establish a positive rapport between the "institution" and the employee or volunteer, reaping benefits far beyond the cost of the "bouquet." In addition, the cost of providing the minimal annual gift of a Thanksgiving turkey to each employee has been historically approved by the government-appointed intermediary.

- Conference and Publication Costs

The OIG Report also asserts that certain costs Allied claimed for executive conferences and the publication of annual health care reports are not properly reimbursable (OIG Report at 12). However, both conference and publication costs are reimbursable as ordinary costs business related to patient care under Section 2102, Provider Reimbursement Manual, which provides for the reimbursement of:

> all necessary and proper costs that are appropriate and helpful in developing and maintaining the operation of patient care facilities and activities. Necessary and proper costs related to patient care are usually costs which are common and accepted occurrences in the field of the provider's activity. They include personnel costs, administrative costs, costs of employee pension plans, normal standby costs, and others.

Allied's executive conferences, which are organized and sponsored for the purpose of improving patient care, are certainly common and accepted occurrences within the health care field and are strongly supported and encouraged within the health care industry. The publication costs cited by the OIG Report refer to Allied's annual report, which report is required for accreditation by the Joint Commission on Accreditation of Healthcare Organizations ("JCAHO"). JCAHO accreditation is a recognized standard for Medicare reimbursement certification. Such costs are also reimbursable according to Section 2136.1, Medicare Provider Reimbursement Manual (HIM-15), as public relations-advertising costs, as discussed above.

OIG DRAFT ISSUE No. 5:

The OIG Report questions Allied's inclusion in its FY 1991 Medicare Cost Report of $23,741 of G&A costs and payments to various local charitable and civic organizations. The grounds cited by the OIG Report are that payments to various local charitable and civic organizations are not related to the provision of patient care.

ALLIED RESPONSE:

These costs may be reimbursed under two separate categories: (1) advertising and public relations activities (Section 2136), or

(2) various costs related to the promotion of civic objectives (Section 2138).

These costs constitute allowable advertising costs that are "incurred in connection with [a] provider's public relations activities [that] . . . [are] primarily concerned with the presentation of a good public image . . . ." Section 2136.1, Provider Reimbursement Manual (HIM-15). Costs related to attendance at these functions promote civic objectives and are reimbursable as such.

Furthermore, Section 2138.2 of the Provider Reimbursement Manual provides for the reimbursement of:

> [r]easonable costs of . . . fees, dues, special assessments, and subscriptions to periodicals of civic organizations, . . . meetings and conferences, such as meals, transportation, registration fees, and other costs incidental to these functions when the primary purpose of such meetings and conferences is the promotion of civic objectives.

AS COMMENTS NOT PERTINENT TO FINDINGS CONTAINED IN THE FINAL REPORT

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C. **CONCLUSION**

All the costs for which Allied has sought reimbursement were properly submitted on a good faith basis. It was reasonable to have requested reimbursement for these items because they fit under the applicable regulation and, in some cases, had been repeatedly approved year after year. Allied does not claim costs on its filed Medicare cost reports that had ever been previously disallowed.

We suggest that the fundamental principle guiding the OIG, namely, "that all payments to providers must be based on 'the reasonable cost of services covered under Title XVIII of the Social

Security Act and related to the care of beneficiaries . . .'" (emphasis added) should not be overlooked here. Allied seeks nothing more than the reimbursement to which it is entitled under this principle.

As always, we stand ready to provide additional materials as are necessary for a full and complete OIG review prior to the issuance of a final OIG report. Inasmuch as the OIG Report is a draft report, we trust that the OIG will take advantage of the opportunity.

We have expended great effort to respond to the OIG's request as expeditiously as possible. It is imperative -- and we respectfully request -- that the OIG make every reasonable effort to respond to this information prior to the preparation and issuance of a final OIG report.

Sincerely,

James Brady
President
Chief Executive Officer

Attachments (as noted)

cc: Members
Subcommittee on Oversight and Investigations
Committee on Energy and Commerce
House of Representatives

Alan B. Graf
Chairman
Allied Services Foundation