DEPARTMENT OF HEALTH & HUMAN SERVICES Office of Inspector General

Memorandum

Date MAY 29 2002

From Thomas D. Roslewicz
Deputy Inspector General
for Audit Services

Subject Results of Survey and Certification Review (A-05-00-00020)

To Neil Donovan
Director, Audit Liaison Staff
Centers for Medicare & Medicaid Services

We are alerting you to the issuance within 5 business days from the date of this memorandum of our final report entitled, "Results of Survey and Certification Review." A copy of the report is attached. We suggest you share this report with the Centers for Medicare & Medicaid Services (CMS) involved in State survey and certification activities. We audited the allocation of State survey and certification costs. The CMS requested that we determine whether costs were properly allocated between Medicare, Medicaid, and State licensing programs. In addition, CMS requested that we research differences in the States' cost per survey to determine if differences were attributable to variations in cost or efficiency.

We found that, rather than establishing an equitable basis for allocating costs among benefitting programs, the allocation of survey and certification costs was based on predetermined historical percentages. During the budgetary process for each State, the percentages were developed by CMS staff based on their knowledge and expertise of Federal and State program requirements. Since these allocation percentages were established years ago, there was no supporting documentation to substantiate these percentages.

Our analysis of variations in cost per survey from State to State determined that many factors--including salary differences, scope of survey, and survey time required--contributed significantly to variations in the cost per survey. We could not find a correlation between the cost per survey and the efficiency of the State survey agency.

We recommended that CMS consider requiring States to develop and implement a system which will provide assurances that survey and certification costs are equitably allocated among benefiting programs.

In response to our draft report, regional CMS officials expressed concern that the overall impression made in the report was that no system existed for the proper allocation of survey and certification funds across the Medicare, Medicaid, and State licensure programs. Accordingly, we revised the report to give consideration to the knowledge and expertise of CMS staff.

In addition to this audit, reviews were also conducted in Virginia and Delaware. In Virginia, we found that a reasonable methodology was used to allocate survey and certification costs to the Medicare and Medicaid certification, and State licensing programs. However, the allocation percentages were based on unsupported historical percentages developed by CMS in the budgetary process. For Delaware, we found that the State Survey and Certification Agency did not have a cost allocation plan until December 1, 1999. The plan called for the Licensing and Certification Unit to use actual time charged for licensing and certification activities. However, the Agency allocated time based on bed distribution in the facilities surveyed, which is specifically unallowable according to Federal standards.

Any questions or comments on any aspect of this memorandum are welcome. Please address them to George M. Reeb, Assistant Inspector General for Centers for Medicare and Medicaid Division, at (410) 786-7104 or Paul Swanson, Regional Inspector General for Audit Services, Region V, at (312) 353-2618.

Attachment

Department of Health and Human Services

OFFICE OF INSPECTOR GENERAL

RESULTS OF SURVEY AND CERTIFICATION REVIEW

JANET REHNQUIST
Inspector General

MAY 2002
A-05-00-00020

DEPARTMENT OF HEALTH & HUMAN SERVICES Office of Inspector General

Memorandum

Date MAY 31 2002

From Regional Inspector General
for Audit Services, Region V

Subject Results of Survey and Certification Review (A-05-00-00020)

To Dorothy Burk Collins
Regional Administrator
Centers for Medicare & Medicaid Services

Attached are two copies of the Department of Health and Human Services, Office of Inspector General, Office of Audit Services' report entitled, "Results of Survey and Certification Review." We audited the allocation of State survey and certification costs. The objective of our review was to determine whether costs were properly allocated between Medicare, Medicaid, and State licensing programs. In addition, the Centers for Medicare & Medicaid Services (CMS) requested that we research differences in the States' cost per survey to determine if differences were attributable to variations in cost or efficiency.

We are recommending that CMS consider requiring States to develop and implement a system that will provide assurances that survey and certification costs are equitably allocated among benefiting programs. Representatives from your office expressed concern that the overall impression made in the report was that no system existed for the proper allocation of survey and certification funds across the Medicare, Medicaid, and State licensure programs. Accordingly, wording was added to the text of the report to give consideration to the knowledge and expertise of CMS staff. We appreciate the cooperation given us in this audit.

We would appreciate your views and information on the status of any action taken or contemplated on our recommendation within the next 60 days. If you have any questions, please contact me or have your staff contact Leon Siverhus, Audit Manager, Region V, at (312) 353-2618.

To facilitate identification, please refer to Common Identification Number A-05-00-00020 in all correspondence relating to this report.

Paul Swanson

Paul Swanson

Attachments – as stated

Memorandum

Date MAY 31 2002

From Regional Inspector General
for Audit Services, Region V

Subject Results of Survey and Certification Review (A-05-00-00020)

To Dorothy Burk Collins
Regional Administrator
Centers for Medicare & Medicaid Services

This report provides you with the results of our audit on the allocation of State survey and certification costs. The primary objective of our review was to determine whether costs were properly allocated between Medicare, Medicaid, and State licensing programs. In addition, the Centers for Medicare & Medicaid Services (CMS) requested that we research differences in the States' cost per survey to determine if differences were attributable to variations in cost or efficiency.

We found that, rather than establishing an equitable basis for allocating costs among benefitting programs, the allocation of survey and certification costs was based on predetermined historical percentages. During the budgetary process for each State, the percentages were developed by CMS staff based on their knowledge and expertise of Federal and State program requirements. Since these allocation percentages were established years ago, there was no supporting documentation to substantiate these percentages. The CMS apparently considered the percentages to be reasonable because it did not require the States to maintain documentation to assure that the allocation percentages resulted in an equitable allocation of survey and certification costs among benefitting Federal and State programs. We are recommending that CMS consider requiring States to develop and implement a system which will provide assurances that survey and certification costs are equitably allocated among benefitting programs.

We also analyzed variations in cost per survey from State to State and determined that many factors--including salary differences, scope of survey, and survey time required--contributed significantly to variations in the cost per survey. We could not find a correlation between the cost per survey and the efficiency of the State survey agency. The move by CMS toward a price-based methodology, using national standard measures of workload and costs, should result in more efficiency and uniformity in the States' cost per survey and quality of survey work performed.

Background

Medical services under the Medicare and Medicaid programs are authorized by the Social Security Act (the Act). The Act mandates the establishment of minimum health and safety

standards for providers and suppliers participating in these programs. These standards are the basis for certification surveys, which are performed by a State survey agency. The surveys are used to advise CMS and the State Medicaid agency whether providers are qualified to participate in the Medicare and Medicaid programs.

The Act authorizes funding to the States to measure the ability of health care providers to render safe and adequate care in accordance with these certification requirements. The State provides funding to address State specific licensure requirements for the same providers and for providers not participating in the Medicare and Medicaid programs. Surveys are usually performed simultaneously for Medicare, Medicaid, and State licensure. Therefore, costs must be allocated equitably among benefitting programs. The State survey agency submits annual budgets and expenditure reports to CMS. In 1998, Illinois received Federal funding of about $14 million (Medicare - $6.8 million; Medicaid - $7.2 million). Nationwide, the Federal funding for the program amounted to about $282 million (Medicare - $146 million; Medicaid - $136 million).

Objectives, Scope, and Methodology

The primary objective of our review was to determine whether costs were properly allocated to Medicare, Medicaid, and State licensing programs. In addition, the CMS requested that we research differences in the States' cost per survey to determine whether differences were attributable to variations in cost or efficiency.

To accomplish our objective, we:

- obtained an understanding of CMS's budget and cost reporting requirements under the survey and certification program,
- reviewed Illinois' policy and procedures for identifying and allocating survey and certification costs,
- obtained information on the allocation methodology used by the five other States in Region V,
- contacted CMS staff in Regions I, V, VI, VII, and IX to determine methods used to allocate survey costs in their respective States, and
- utilized schedules and reports prepared by CMS regional staff to analyze variations in cost per survey from State to State.

Our review of management controls focused on obtaining an understanding of controls that were relevant to the allocation of survey and certification costs. Our audit was performed in accordance with generally accepted government auditing standards. Field work was

performed at the Illinois Department of Public Health (State survey agency in Illinois), CMS Region V office, and the State survey agencies for Indiana, Michigan, Minnesota, Ohio, and Wisconsin.

RESULTS OF REVIEW

ALLOCATION PERCENTAGES

We found that the percentages for allocating costs among the benefitting programs were generally predetermined historical percentages used by CMS during the budgetary process. During the budgetary process for each State, the percentages were developed by CMS staff based on their knowledge and expertise of Federal and State program requirements. Since these allocation percentages were established years ago, documentation was not available to determine the propriety of the allocation percentages, and States were not required to establish allocations based on benefits derived, as required by Attachment A of OMB Circular No. A-87. The CMS apparently considered the percentages to be reasonable because it did not require States to maintain documentation to assure that the allocation percentages resulted in an equitable allocation of survey and certification costs among benefitting Federal and State programs. Our review showed the following:

Illinois. Historically, survey and certification costs were allocated one-third each to Medicare, Medicaid, and State licensing. However, in the early 1990s, CMS and the State recognized that the effort devoted to Medicare had increased significantly. As a result, they mutually agreed to a reduction in the percentage of costs allocated to the State's licensing program by decreasing the allocation for State licensing of nursing facilities to 20 percent. The remaining 80 percent was split between the Medicare and Medicaid programs. Neither the CMS regional office nor the State survey agency was able to provide documentation to support the reasonableness of these allocation percentages.

We noted that the Federal allocation of funds was inadequate to pay the costs of the survey and certification activities performed by the State survey agency in prior years. Since the Medicare and Medicaid budget allocations did not cover the State's costs to perform the Federal activities, the State used its own funds to pay for its own licensing and a higher than expected portion of the Federal survey activities.

Illinois officials stated that all certification and licensing requirements were performed simultaneously during surveyor visits. The State survey agency maintained a detailed time keeping system of accounting for employee time. This system adequately identified the time spent by the surveyors at each facility. While the reporting system identified the time at each type of facility, the time reporting documents prepared by the surveyors did not detail the time devoted to each of the various Federal and State requirements. Because the survey steps relating to Medicare, Medicaid, and/or licensing standards overlap and no

allocation system was established to identify benefits derived, we could not determine that the survey costs were equitably allocated among the benefitting programs.

Region V. We found that the other States' survey and certification units in Region V also based their allocations on historical, but unsubstantiated, percentages approved by CMS. During Fiscal Year (FY) 1999, each State budgeted a percentage of its Medicare survey and certification activity for State licensing of nursing facilities. These percentages varied based on the State's organizational structure and individual State licensing requirements. (Illinois - 20 percent; Indiana - 17 percent; Michigan - 17 percent; Minnesota - 19 percent; Ohio – 10 percent; and Wisconsin - 20 percent). Because percentages were negotiated and approved by CMS in the past and CMS did not require a system to identify and allocate costs based on benefits derived, the States proceeded with their survey and licensing activities without implementing an allocation system. As a result, documentation was unavailable to support the propriety of the allocations.

Other Regions. We also contacted CMS officials in four other regions to determine the allocation methodologies used by the States in those regions. States in Regions I, VII, and IX allocated survey and certification costs on predetermined historical percentages used in the CMS budget process. Since the allocation percentages were developed years ago, supporting documentation was, again, unavailable to substantiate the percentages. In spite of the lack of documentation, there was a general belief among the States and CMS regional offices that the rates were equitable for Medicare, Medicaid, and State licensing. In Region VI, there was no need to develop percentages to allocate the survey and certification costs because different personnel performed the licensing surveys in those States.

Summary. The CMS regional officials were aware of the unsubstantiated allocation percentages used by the States but believed that the percentages were reasonably fair and equitable. If CMS now believes that an objective time and effort reporting system is needed, it should act to assure that such a system encompasses the complexity of the different types of surveys, standards, and review steps that apply. Based on variations in licensing requirements among States and the manner in which licensing surveys are performed in each State, it is unlikely that any two States will have uniform allocation percentages. Therefore, any system implemented would require complex allocation of activities.

Recommendation. The CMS staff indicated to us they had previously considered having the States report their licensure costs as part of the Medicaid Expenditure Reporting Form, but were not successful in adding this reporting requirement because of legal impediments. However, we are recommending that CMS consider requiring States to develop and implement a system which will provide assurances that survey and certification costs are equitably allocated among benefitting programs.

CMS'S COMMENTS

Regional CMS officials were concerned that the overall impression in the report was that no system existed for the proper allocation of survey and certification funds across the Medicare, Medicaid, and State licensure programs. They agreed that CMS generally allocated costs among programs based on predetermined historical percentages used in the budget process, but they contend that these percentages were made following a review of the licensure programs operating in each State, including a comparison of licensure requirements versus Federal requirements and of the degree to which each program benefitted from the survey.

Since survey functions for Medicare, Medicaid, and State licensing are typically conducted simultaneously, CMS contends that there is generally not a specific point in time at which the Medicare and/or Medicaid survey ends and the State's licensure survey begins. As a result, they believe the current system, which sets program splits along pre-approved, agreed-upon allocations based on the type of facility being surveyed, is the most accurate and appropriate. Furthermore, they feel the current system for allocating costs among the programs is in accordance with OMB Circular A-87, which provides for other substitute systems approved by the cognizant Federal agency. The full text of CMS's response is included as an APPENDIX to this report.

OFFICE OF AUDIT SERVICES' RESPONSE

We acknowledge that CMS staff used their certification and licensing expertise and experience in overseeing State agency activity to establish the original allocation percentages. We are also aware of the current detailed system of tracking surveyor time by type of facility. The text of the report was revised to recognize the expertise of the CMS staff in the budgetary process and to reflect the existence of the time reporting system.

While CMS contends a system existed for the proper allocation of survey and certification costs to benefitting programs, documentation was not available for us to determine the propriety of the allocation percentages. We recognize in the report that any system implemented would require complex allocations of activities. As a result, we are recommending that CMS consider requiring States to develop and implement a system. If CMS feels that the current allocation system provides assurances that survey and certification costs are equitably allocated among benefitting programs, no additional time reporting requirements are necessary. However, CMS should attempt to substantiate and document the percentages used by the State survey agencies to allocate costs to their licensure programs.

OTHER MATTERS

COST PER SURVEY

The CMS requested that we research variations in survey and certification cost per survey from State to State to determine if differences were attributable to costs or efficiency. Using FY 1999 cost data for the six States in Region V, we estimated the cost per survey (cost to complete a general survey, excluding complaints and revisits). The average cost per survey among the States in Region V was $15,700 for Illinois, $11,500 for Indiana, $19,900 for Michigan, $15,100 for Minnesota, $18,300 for Ohio, and $19,100 for Wisconsin. Since our estimated cost per survey varied from $11,500 to $19,900, we analyzed several factors that contributed to variations. The primary factors were:

Salaries. According to FY 1999 expenditure reports, the average surveyor's salary ranged from $31,700 in Indiana to $53,900 in Michigan. The related fringe benefits charged to the survey and certification program would also have a similar range. In comparing the cost per survey for these two States, we found that the salary and fringe benefits costs accounted for more than 70 percent of the difference in their cost per survey. Since the salaries and fringe benefits nationally account for about 59 percent of the total long-term care survey and certification costs, differences in the salary scales of each State were a significant factor in cost per survey computations.

Scope of Survey. The scope of survey activity varied depending on how a State allowed its surveyors to perform the various surveys. In addition to the initial visits required for certification and licensing, surveyors are also responsible for revisits and complaint reviews. In some States, the surveyors can combine revisits and complaint reviews with the general licensing and certification review. In other States, like Illinois, time constraints imposed by State law requires investigation of all complaints within 24 hours, 7 days or 30 days, depending on the seriousness of the allegation. The time frame requirement for the complaint may not coincide with the next scheduled visit. Therefore, a separate visit to the facility would be required. During 1999, this requirement had a significant impact on Illinois' surveyors who responded to more than 4,000 complaints, usually making visits separately from the certification and licensing process. According to Illinois' FY 1999 budget, surveyors were expected to spend about 18 percent of their time on complaints.

Survey Time. Many factors have an impact on the time it takes to perform a survey. Factors include surveyor experience, facility size, staff turnover, deficiencies cited, and difference in travel distances. Although our comparison of the number of hours required to perform a "standard survey" at a Medicare/Medicaid licensed facility varied from a high of 189 hours in Illinois to a low of 127 hours in Minnesota, we have no reason to believe that any one State is more efficient at performing surveys than another. The additional time may simply be attributable to a State having a combination of the above mentioned factors or more stringent requirements that require more time for its surveyors to complete the process.

Other Variables. State survey costs may also be affected by variables outside of the actual survey process, such as indirect cost rates, the States' organizational structure, and the extent of State licensing requirements. Because of the multiple variables affecting the cost per survey, an analysis of cost per survey from State to State is not a meaningful measure of cost efficiency. We believe that salaries and other factors contributed significantly to variations in cost per survey from State to State and have little or no correlation to the efficiency of the State survey agency.

CMS's Performance Goal. To improve the management of the survey and certification budget in the development and execution process, CMS is moving from the cost-based budget to a price-based budget. The current cost-based approach leads to a budget request and State funding allocations that are based upon past State practices and costs. Alternatively, a price-based methodology would use national standard measures of workload and costs to project individual State workloads and budgets to move States towards uniformity and efficiency. Implementation of a price-based system will enable CMS to research the variations noted above, determine which have the strongest relationship to variations in costs and survey agency performance, establish standard measures of cost and workload, and allow CMS to develop and execute the budget based upon the standard price of the survey work required.

Conclusion. The move by CMS towards a price-based methodology, using national standards of workload and costs, should result in more efficiency and uniformity in the States' cost per survey and quality of survey work performed.

CMS'S COMMENTS

The CMS staff were in agreement with the audit findings that the cost per survey is a result of varying salaries and other variables and that an analysis of cost per survey from State to State is not a meaningful measure of cost efficiency.

Paul Swanson

Paul Swanson

APPENDIX

Region V
Centers for Medicare & Medicaid Services

CENTERS for MEDICARE & MEDICAID SERVICES

Memorandum

Date April 5, 2002

From Regional Administrator

Subject Results of Survey and Certification Review (A-05-00-00020)

To Regional Inspector General for Audit Services, Region V

Refer to SI1

This is in response to the March 6, 2002 memorandum, in which you requested that we provide a formal response to the draft report entitled "Results of Survey and Certification Review."

Program Cost Allocation

We are concerned that the overall impression made in this section of the report is that no system existed for the proper allocation of survey and certification funds across the Medicare, Medicaid and State licensure programs. We respectfully disagree with that implication. Some of the language in the report which concerns us is:

- Page 3, first paragraph: "...States were not required to establish allocations based on benefits derived, as required by Attachment A of OMB Circular No. A-87."
- Page 3, fourth paragraph: "...no allocation system was established to identify benefits derived..."
- Page 3, fifth paragraph: "...CMS did not require a system to identify and allocate costs based on benefits derived, the States proceeded with their survey and licensing activities without implementing an allocation system."
- Page 4, 3rd full paragraph: "...we are recommending that CMS consider requiring States to develop and implement a system which will provide assurances that survey and certification costs are equitably allocated among benefiting programs."

You are correct that CMS has generally allocated costs among the programs based on previously determined percentages used in the CMS budget process. However, these "predetermined historical percentages" were made following a review of the licensure programs operating in each State, including a comparison of licensure requirements versus Federal requirements and of the degree to which each program benefits from the survey. These allocations are reviewed yearly as part of the budget process. For example, the program allocation percentages were adjusted beginning in the early 90's to account for the increased effort needed to conduct Medicare/Medicaid surveys of nursing homes, home health agencies, hospices, and other programs.

We believe this method of allocating costs among the programs is in accordance with OMB Circular NO. A-87. Please note that Section 11.h of Attachment B to OMB Circular A-87 states: "Where employees work on multiple activities or cost objectives, a distribution of their salaries or wages will be supported by personnel activity reports or equivalent documentation which meets the standards in subsection (5) unless a statistical sampling system (see subsection (6)) or **other substitute system has been approved by the cognizant Federal agency**." (Emphasis ours.) We believe that the method CMS has utilized for many years in arriving at the cost allocation of the survey and certification program qualifies as an "other substitute system."

The State Operations Manual (SOM) is CMS's official procedure manual for Medicare/Medicaid survey and certification. As stated in subsection 4514.E of the SOM: "Where some or all of the State survey activities are shared with other on-going agency programs so that a common function, e.g. survey of a hospital, will serve for State survey and certification as well as for licensure or other State programs and the work involved cannot be separated into program elements, time records may not be an appropriate basis for determining cost to the State agency program." We believe we have implemented a system in accordance with OMB Circular No. A-87 and the SOM.

The report also recommends that if CMS believes that an objective time and effort reporting system is implemented, that it should assure that such a system encompass the complexity of the different types of surveys, standards, and review steps that apply. You acknowledge that any such system would "...require complex allocation activities." We believe that the current system used by the States accurately accounts for such complexity and that an attempt to log program-specific activities would be futile due to the shared nature of most of these activities.

Survey functions for Medicare, Medicaid and licensing are typically conducted simultaneously. Thus, there is generally not a specific point in time at which the Medicare and/or Medicaid survey ends and the State's licensure survey begins. It is for these reasons that we believe the current system, which sets program splits along pre-approved, agreed-upon allocations based on the type of facility being surveyed, is the most accurate and appropriate. We can envision no system which would account for and allocate survey time among the programs in a more accurate fashion.

Also, we wish to point out that every State survey agency in Region V has a very detailed system of accounting for employee time. These time keeping systems very carefully track the hours of work of State employees. In Illinois, the system divides the hours at the end of the pay period based on the program participation of the facility being surveyed using the agreed-upon allocations. Further, for every Medicare and Medicaid survey conducted by a State survey agency, the Federal survey and certification database, the Online Survey, Certification And Reporting (OSCAR) System, contains the hours spent on each survey. As a part of the State Performance Standard Reviews, CMS audits records each year to ensure that the data in both systems is accurate. Thus, we request that your report reflect the existence and use of this detailed system of tracking surveyor time and allocating that time among the programs.

The draft report correctly notes that "..there was a general belief among the States and CMS Regional Offices that the rates were equitable for Medicaid, Medicare and licensing." This high level of agreement and satisfaction reflects the fact that either party can initiate a review of the allocation splits whenever that party believes new conditions warrant a revision. This can occur, e.g., when a State adds or removes a licensure law, or when CMS introduces a significant revision to the survey process. In such cases, both parties share information and jointly make a judgment as to a fair and equitable split.

We agree with the recommendation that CMS require the States to report their licensure costs as part of the Medicare-Medicaid Expenditure Reporting Form; this would provide a full picture of total costs and all program shares. However, as our Central Office previously advised you, a 1994 OGC opinion advised that we may not require States to report State licensure expenditures to CMS. It may be that your recommendation will offer us an opportunity to revisit this issue.

Cost Per Survey

We are in agreement with the audit findings that the cost per survey is a result of varying salaries and other similar variables, and your conclusion that "Because of the multiple variables affecting the cost per survey, an analysis of cost per survey from State to State is not a meaningful measure of cost efficiency." We appreciate your acknowledgement that CMS is moving from a cost-based budget to a price-based budget methodology.

Finally, the audit notes that Illinois has time constraints for the conduct of complaint investigations imposed by State law and indicated that this raised costs for the State. This is an accurate description for the time period covered by the audit, Fiscal Year 1999 and prior. However, beginning in March 1999, Federal policy began requiring that all State survey agencies conduct complaint investigations within the timeframes noted below. This policy has the effect of equalizing the time demand on all States in this regard.

- Complaints that allege immediate jeopardy within two days;
- Complaints that allege EMTALA violations (patient dumping by hospitals) within five days;
- Complaints that allege actual harm in nursing homes within ten days.

Thank you for arranging the recent exit conference and for allowing us an extension to respond to your audit findings. If you have any questions regarding our comments, please contact Walter Kummer, Associate Regional Administrator, at (312) 353-9805.

Dorothy Burk Collins