DEPARTMENT OF HEALTH & HUMAN SERVICES

Office of Inspector General

Washington, D.C. 20201

FEB 9 2005

TO: Mark B. McClellan, M.D., Ph.D.
Administrator
Centers for Medicare & Medicaid Services

FROM: Daniel R. Levinson Daniel R. Levinson
Acting Inspector General

SUBJECT: Review of Medicaid Upper-Payment-Limit Requirements for Kansas Nursing Facility Reimbursement (A-07-03-02672)

Attached is an advance copy of our final report on Kansas's Medicaid upper payment limits (UPLs) for non-State government nursing facilities. We will issue this report to the Kansas Medicaid agency within 5 business days. We conducted the audit as part of a multistate initiative requested by the Centers for Medicare & Medicaid Services (CMS).

The UPL is an estimate of the amount that would be paid for Medicaid services under Medicare payment principles. Several years ago, CMS revised Medicaid regulations to require that States calculate a separate UPL for each of the following categories of providers: private facilities, State facilities, and non-State government facilities. The regulations also created transition periods in which eligible States were allowed to make payments up to the category-specific UPL plus an excess amount (the portion of Medicaid payments that exceeded the UPL in the applicable base period). This excess amount must not increase during the transition period. Federal funds are not available for Medicaid payments that exceed these limits. Kansas qualified for a transition period from April 1, 2001, through September 30, 2002.

Our objective was to determine whether Kansas calculated the UPL for non-State government nursing homes in accordance with Federal regulations and the approved State plan amendment.

Kansas followed Federal regulations and its State plan amendment when calculating the category-specific UPL for non-State government nursing homes. Contrary to Federal regulations, however, Kansas increased the excess amount during its transition period. Because State officials did not believe that the usual transition rules applied to their situation, they did not track the excess amount or the subsequent increases. As a result, Kansas overclaimed expenses by $58,303,091 ($35,004,284 Federal share) for the period April 1, 2001, through September 30, 2002.

We recommend that Kansas reduce claimed expenses on its CMS-64 quarterly expenditure reports by $58,303,091 ($35,004,284 Federal share) for the period April 1, 2001, through September 30, 2002.

In commenting on our draft report, Kansas concurred with the recommendation.

If you have any questions or comments about this report, please do not hesitate to call me, or your staff may contact George M. Reeb, Assistant Inspector General for the Centers for Medicare & Medicaid Audits, at (410) 786-7104 or James P. Aasmundstad, Regional Inspector General for Audit Services, Region VII, at (816) 426-3591. Please refer to report number A-07-03-02672 in all correspondence.

Attachment

DEPARTMENT OF HEALTH & HUMAN SERVICES

Office of Inspector General
Offices of Audit Services

Region VII
601 East 12th Street
Room 284A
Kansas City, Missouri 64106

FEB 14 2005

Report Number A-07-03-02672

Mr. Gary J. Daniels
Acting Secretary
Department of Social and Rehabilitation Services
Docking State Office Building
915 SW Harrison Street, Room 603-N
Topeka, Kansas 66612-1570

Dear Mr. Daniels:

Enclosed are two copies of the Department of Health and Human Services (HHS), Office of Inspector General (OIG) final report entitled "Review of Medicaid Upper-Payment-Limit Requirements for Kansas Nursing Facility Reimbursement." A copy of this report will be forwarded to the action official noted below for review and any action deemed necessary.

The HHS action official named below will make final determination as to actions taken on all matters reported. We request that you respond to the HHS action official within 30 days. 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, as amended by Public Law 104-231), OIG reports issued to the Department's grantees and contractors are made available to members of the press and general public to the extent the information is not subject to exemptions in the Act that the Department chooses to exercise (see 45 CFR Part 5).

Please refer to report number A-07-03-02672 in all correspondence.

Sincerely,

James P. Aasmundstad
Regional Inspector General
for Audit Services, Region VII

Enclosures

Direct Reply to HHS Action Official:

Mr. Thomas W. Lenz
Associate Regional Administrator for Medicaid and State Operations
Centers for Medicare & Medicaid Services
601 East 12th Street, Room 235
Kansas City, Missouri 64106-2808

Department of Health and Human Services

**OFFICE OF
INSPECTOR GENERAL**

REVIEW OF MEDICAID UPPER-PAYMENT-LIMIT REQUIREMENTS FOR KANSAS NURSING FACILITY REIMBURSEMENT

**FEBRUARY 2005
A-07-03-02672**

Office of Inspector General

http://oig.hhs.gov

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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 HHS divisions will make final determination on these matters.

EXECUTIVE SUMMARY

BACKGROUND

The upper payment limit (UPL) is an estimate of the amount that would be paid for Medicaid services under Medicare payment principles. Several years ago, the Centers for Medicare & Medicaid Services (CMS) revised Medicaid's UPL regulations for nursing facilities and certain other types of providers.

The revised regulations changed the manner in which States calculate the UPL for various categories of providers. Under the former rule, States were required to calculate a UPL for all facilities and another UPL for State-owned facilities. The revised regulations instead require States to calculate a separate UPL for each of the following categories of providers: private facilities, State facilities, and non-State government facilities. The regulations also created transition periods in which eligible States were allowed to make payments up to the category-specific UPL plus an excess amount (the portion of Medicaid payments that exceeded the UPL in the applicable base period). This excess amount must not increase during the transition period. Federal funds are not available for Medicaid payments that exceed these limits.

In Kansas, payments to non-State government nursing facilities qualified for a transition period from April 1, 2001, through September 30, 2002, under State plan amendment 00-01.

OBJECTIVE

Our objective was to determine whether Kansas calculated the UPL for non-State government nursing homes in accordance with Federal regulations and the approved State plan amendment.

SUMMARY OF FINDING

Kansas followed Federal regulations and its State plan amendment when calculating the category-specific UPL for non-State government nursing homes. Contrary to Federal regulations, however, Kansas increased the excess amount during its transition period. Because State officials did not believe that the usual transition rules applied to their situation, they did not track the excess amount or the subsequent increases. As a result, Kansas overclaimed expenses by $58,303,091 ($35,004,284 Federal share) for the period April 1, 2001, through September 30, 2002.

RECOMMENDATION

We recommend that Kansas reduce claimed expenses on its CMS-64 quarterly expenditure reports by $58,303,091 ($35,004,284 Federal share) for the period April 1, 2001, through September 30, 2002.

STATE COMMENTS

Kansas concurred with our recommendation.

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INTRODUCTION

BACKGROUND

Our audit was part of a multistate review of UPL calculations conducted at the request of CMS.

Medicaid Program

Title XIX of the Social Security Act (the Act) authorizes Federal grants to States for Medicaid programs that provide medical assistance to needy persons. Each State Medicaid program is jointly financed by the Federal and State Governments and administered by the State in accordance with a State plan approved by CMS. While the State has considerable flexibility in designing its plan and operating its Medicaid program, it must comply with Federal requirements. The Federal Government pays its share of Medicaid expenditures to a State according to a formula shown in section 1905(b) of the Act.

In Kansas, the Department of Social and Rehabilitation Services is responsible for administering the Medicaid program. Within the Federal Government, CMS administers the program.

Upper Payment Limits

State Medicaid programs have flexibility in determining payment rates for Medicaid providers. CMS allows States to pay nursing facilities at different rates as long as the payments, in total, do not exceed the UPL. The UPL is an estimate of the amount that would be paid for Medicaid services under Medicare payment principles.

To limit abuses in the application of UPL requirements, CMS revised its regulations (42 CFR § 447.272). The revised regulations required States to calculate a separate UPL for each category of provider.[1] The regulations also created transition periods in which eligible States were allowed to make payments up to the category-specific UPL plus an excess amount (the portion of Medicaid payments that exceeded the UPL in the applicable base period).

The regulations contained two transition schedules, one for States with plans effective after October 1, 1992, and before October 1, 1999, and another for States with plans effective on or before October 1, 1992 (42 CFR § 447.272(e)(2)(B)). Both of the schedules relied on a State fiscal year (FY) 2000 base year and required decreasing excess amount payments beginning in State FY 2003 or 2004.

For State plans effective after September 30, 1999, and approved before January 22, 2001, which applies to Kansas, the regulations provided that "payments may exceed the upper payment limit in paragraph (b) of this section until September 30, 2002" (42 CFR § 447.272(e)(ii)(A)). This interim transition period, unlike the two schedules for the plans effective before October 1, 1999, does not rely on a particular base year under the regulations.

[1]The three categories are privately owned and operated, State government owned or operated, and non-State government owned or operated facilities.

However, according to 42 CFR § 447.272(e)(2)(i), this period still is subject to the following "general rule" that applies to all transition periods: "The amount that a State's payment exceeded the upper payment limit described in paragraph (b) of this section must not increase."

While the regulations themselves did not prescribe a particular base period for the transition period before September 30, 2002, some baseline standard was necessary to determine whether Kansas's excess amount increased. After consulting with CMS, we applied a base period of the third quarter of State FY 2001.

Kansas's UPL Program for Nursing Facilities

Kansas's State plan amendment 00-01, effective February 18, 2000, established the methodology for calculating the UPL and enhanced payments to non-State government nursing facilities. The submission and effective dates of the State plan amendment qualified Kansas for a transition period beginning April 1, 2001, and ending September 30, 2002.

Kansas uses established per diem rates to make Medicaid payments to nursing facilities for care and services and adjusts the rates quarterly. Kansas also makes quarterly enhanced payments to non-State government nursing facilities. The enhanced payments are the difference between the aggregate UPL and the aggregate per diem payments. See Appendix C for adjustment details and the specific State methodologies for calculating per diem rates and the UPL.

OBJECTIVE, SCOPE, AND METHODOLOGY

Objective

Our objective was to determine whether Kansas calculated the UPL for non-State government nursing homes in accordance with Federal regulations and the approved State plan amendment.

Scope

Our audit covered the period April 1, 2001, through September 30, 2002. We reviewed the UPL calculations for non-State government nursing facilities under Kansas's plan amendment 00-01. In coordination with CMS headquarters and regional staff, we calculated the excess amount using the third quarter of State FY 2001 as the base period. We also reviewed Medicaid per diem and enhanced payments totaling $358,366,161 to non-State government nursing homes from April 1, 2001, through September 30, 2002.

We did not review the overall internal control structure of the State Department of Social and Rehabilitation Services or the State's consultant because we accomplished the objectives of our audit through substantive testing.[2] However, we documented pertinent controls related to the calculation of UPL payments.

We performed fieldwork at the State Department of Social and Rehabilitation Services in Topeka, KS.

[2]The State's consultant calculates the UPL for the State.

Methodology

To accomplish our objective, we:

- reviewed Federal laws and regulations pertaining to UPLs;

- interviewed CMS headquarters and regional officials, including a National Institutional Reimbursement Team member, and Kansas officials and their consultant;

- compared Federal regulatory requirements with the methodology for calculating UPLs established in State plan amendment 00-01 for non-State government nursing homes;

- examined directories of nursing homes to verify that only non-State government nursing homes were included in the UPL calculations;

- tested the accuracy of underlying Medicaid and Medicare data that Kansas used to calculate UPLs;

- calculated the excess amount using the quarter ended March 31, 2001, because Kansas calculates its UPLs quarterly; and

- traced the UPL payments calculated under State plan amendment 00-01 to the CMS-64 quarterly expenditure reports to determine whether the payments were claimed for Federal reimbursement.

We performed our audit in accordance with generally accepted government auditing standards.

FINDING AND RECOMMENDATION

Kansas followed Federal regulations and its State plan amendment when calculating the category-specific UPL for non-State government nursing homes. Contrary to Federal regulations, however, Kansas increased the excess amount during the transition period and made UPL payments to the nursing homes that exceeded applicable limits. Because State officials did not believe that the usual transition rules applied to their situation, they did not track the excess amount or the subsequent increases. As a result, Kansas overclaimed expenses by $58,303,091 ($35,004,284 Federal share) for the period April 1, 2001, through September 30, 2002.

FEDERAL AND STATE REQUIREMENTS

Effective March 13, 2001, revised Federal regulations required States to calculate a separate UPL for each provider category (42 CFR § 447.272). The Medicare, Medicaid, and State Children’s Health Insurance Program Benefits Improvement and Protection Act of 2000 provided transition periods for eligible States. These periods provided a phase-in of the new category-specific UPLs based on the timing of State plan amendments. Kansas’s UPL program for nursing homes qualified for a transition period beginning on April 1, 2001, and ending on September 30, 2002.

During this period, Kansas's Medicaid payments were limited to the category-specific UPL amount plus an excess amount (the portion of Medicaid payments that exceeded the UPL in the applicable base period). The regulations required that the excess amount not increase during the transition period. Federal funds are not available for Medicaid payments that exceed these limits (42 CFR § 447.257).[3]

INCREASE IN EXCESS AMOUNT

Contrary to 42 CFR § 447.272, Kansas increased the excess amount during the transition period. Kansas should have identified the difference between actual payments and the category-specific UPL during its base period and then should have used this difference in determining future payments eligible for Federal funding. However, Kansas did not believe that the calculation of the excess amount applied to its situation and did not track the subsequent increases in the excess amount.

Using available data, the Office of Inspector General (OIG), in coordination with CMS headquarters and regional staff, calculated a $39,666,234 excess amount for the third quarter of State FY 2001, Kansas's base period. (See Appendix A.) This amount should not have increased during the period April 1, 2001, through September 30, 2002. For each quarter, we subtracted the sum of the UPL and the excess amount from the actual aggregate payments to compute unallowable costs. As shown in Appendix B, Kansas overclaimed expenses by $58,303,091 ($35,004,284 Federal share). During the same period, CMS deferred $37,275,800 in Federal payments to Kansas for the same reason.[4]

RECOMMENDATION

We recommend that Kansas reduce claimed expenses on its CMS-64 quarterly expenditure reports by $58,303,091 ($35,004,284 Federal share) for the period April 1, 2001, through September 30, 2002.

STATE COMMENTS

In written comments on our draft report, Kansas agreed with our recommendation and stated that it had made adjustments to reduce claimed expenses on the CMS-64 reports. Kansas's comments are included in their entirety as Appendix D.

[3]After the transition period, the category-specific UPLs serve as the maximums for State expenditures that qualify for Federal matching.

[4]The CMS regional office used an estimate of the excess amount in determining the Federal amount deferred.

APPENDIXES

APPENDIX A

OIG/CMS CALCULATION OF EXCESS AMOUNT
Quarter Ended March 31, 2001 (Kansas's Base Period)

A.	Medicaid Per Diem Payments	$6,556,304
B.	Enhanced Payments	42,609,289
C.	Total Actual Payments (A+B)	$49,165,593
D.	Upper Payment Limit	9,499,359
E.	**Excess Amount (C-D)**	**$39,666,234**

Note: Pursuant to 42 CFR § 447.272, the State was to use the $39,666,234 excess amount in each future quarter to determine the maximum amount of Medicaid payments to non-State government nursing facilities eligible for Federal funding.

APPENDIX B

OIG CALCULATION OF PAYMENTS TO NON-STATE GOVERNMENT NURSING FACILITIES IN EXCESS OF THE LIMITS

	Payment Quarter Ended						
	6/30/01	**9/30/01**	**12/31/01**	**3/31/02**	**6/30/02**	**9/30/02**	**Total**
A. Medicaid Per Diem Payments	$6,444,326	$6,503,813	$6,809,729	$6,483,473	$6,537,738	$6,486,799	$39,265,878
B. Enhanced Payments	58,126,167	55,764,854	60,677,681	57,922,333	43,411,209	43,198,039	319,100,283
C. Total Actual Payments (A+B)	$64,570,493	$62,268,667	$67,487,410	$64,405,806	$49,948,947	$49,684,838	$358,366,161
D. UPL	$10,335,858	$10,262,905	$10,769,777	$10,583,446	$10,140,220	$9,973,460	$62,065,666
E. Excess Amount (See Appendix A)	39,666,234	39,666,234	39,666,234	39,666,234	39,666,234	39,666,234	237,997,403
F. Maximum Limit (D+E)	$50,002,092	$49,929,139	$50,436,011	$50,249,680	$49,806,454	$49,639,694	$300,063,069
G. Actual Payments Exceeding Maximum Limit (C-F)	$14,568,401	$12,339,528	$17,051,399	$14,156,126	$142,493	$45,144	$58,303,091
H. Federal Matching Rate	59.85%	59.85%	60.20%	60.20%	60.20%	60.20%	
I. **Unallowable Federal Claim (G×H)**	**$8,719,188**	**$7,385,208**	**$10,264,942**	**$8,521,988**	**$85,781**	**$27,177**	**$35,004,284**

APPENDIX C

STATE METHODOLOGIES

STATE PLAN PER DIEM ADJUSTMENTS

The quarterly per diem adjustments include (1) changes in the residents' health assessments made by the facility that change the facility's average case-mix index, (2) audit adjustments, (3) capital rebasing, (4) home office adjustments, (5) facility-amended cost reports, and (6) changes in the private pay rates.

MEDICAID PAYMENTS

Kansas's basic methodology for Medicaid payments uses a per diem rate. Each nursing facility's per diem is based on the lower of the inflated per diem costs as found on the Medicaid cost report or the health care upper limit. The facility-specific upper limit for health care is a lengthy calculation starting with the nursing facility's assessments of its patients using the uniform assessment instrument, also known as the minimum data set. The minimum data set assigns each patient to a resource utilization group. Each group has a predetermined Medicaid numeric value, also known as the case-mix index. Through various additional calculations, the State arrives at an average per diem for each nursing facility.

In addition, the State methodology provides for enhanced Medicaid payments to non-State government nursing facilities. Kansas determines the amount of the enhanced payments using the aggregate UPL. To receive the enhanced payments, the nursing facilities must enter into a participation agreement with Kansas. Not all non-State government nursing facilities entered into the agreement.

UPL CALCULATION

Kansas calculated what the Medicare payments would have been for Medicaid services on a quarterly basis using the completed minimum data set to identify the Medicare resource utilization group for each patient. The Medicare resource utilization group has a predetermined per diem rate, which is adjusted by the Medicare labor wage index. When calculating the UPL, Kansas's methodology also accounts for differences between the Medicare and Medicaid programs by adjusting for (1) the amount Medicare would pay for pharmacy services, (2) the amount Medicare would pay for laboratory/x-ray services, and (3) Medicaid paid reserve days. The sum of these estimates is the UPL as defined by Federal regulation.

K A N S A S

GARY J. DANIELS, ACTING SECRETARY

KATHLEEN SEBELIUS, GOVERNOR

SOCIAL AND REHABILITATION SERVICES

January 3, 2005

James P. Aasmundstad
Regional Inspector General for Audit Services
Region VII
601 East 12th Street, Room 284A
Kansas City, MO 64106

RE: Report Number A-07-03-02672

Dear Mr. Aasmundstad:

We received your letter dated December 6, 2004 and the accompanying U.S. Department of Health and Human Services, Office of Inspector General draft report entitled: *"Review of Medicaid Upper Payment Limit Requirements for Kansas Nursing Facility Reimbursement."* In your letter, you request that we provide you with written comments within 30 days from the date of said letter, including the status of any actions taken or contemplated on your recommendations.

The Kansas Department of Social and Rehabilitation Services (SRS) has, in fact, followed the recommendations included in your audit and have made adjustments to reduce claimed expenses on the CMS-64 quarterly expenditure reports, based on a request received from Centers for Medicare and Medicaid Services (CMS). We have accepted CMS's calculations for the adjustment based on its interpretation of 42 CFR § 447.272.

If you have any questions about the adjustments, please contact Bill McDaniel, Director of the NF/CARE Division, Kansas Department on Aging at (785) 296-0700 or by e-mail at BillMcDaniel@aging.state.ks.us.

Sincerely,

Gary J. Daniels
Acting Secretary

GJD:ps

cc: Pamela Johnson-Betts, Secretary of the KDOA
Janis DeBoer, Deputy Secretary of the KDOA
Bill McDaniel, Director of the KDOA NF/CARE Division

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