Department of Health and Human Services

OFFICE OF INSPECTOR GENERAL

REVIEW OF NORTH DAKOTA MEDICAID PROGRAM – NURSING HOMES AS INSTITUTIONS FOR MENTAL DISEASES

DECEMBER 2004
A-07-04-02017

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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

December 8, 2004

Report Number: A-07-04-02017

Mr. David Zentner, Director
North Dakota Department of Human Services
600 East Boulevard Avenue
Department 325
Bismarck, North Dakota 58505

Dear Mr. Zentner:

This report provides the results of an Office of Inspector General review of the North Dakota Medicaid program relating to nursing homes as institutions for mental diseases during Federal fiscal year 2003. The review was conducted at the request of the Centers for Medicare & Medicaid Services (CMS).

INTRODUCTION

BACKGROUND

Medicaid Program

The Medicaid program, established by Title XIX of the Social Security Act, was enacted in 1965. The program is jointly funded by the Federal and State government and is administered by each individual State to assist in the provision of medical care to needy individuals who are aged, blind or disabled, and to children and pregnant women.

Medicaid regulations prohibit Federal financial participation (FFP) for any services to residents under age 65 in an institution for mental diseases (IMD) except for inpatient psychiatric services provided to individuals who are under the age of 22 and receiving inpatient psychiatric treatment. None of the nursing homes in North Dakota have been designated as an IMD.

OBJECTIVES, SCOPE, AND METHODOLOGY

Objectives

The objectives of our review were to determine whether: 1) North Dakota was monitoring nursing homes to ensure compliance with IMD criteria; and 2) nursing homes participating in the North Dakota Medicaid program were IMDs.

Scope

We reviewed nursing homes participating in the Medicaid program during Federal fiscal year 2003. During that period, the North Dakota Medicaid program paid 84 nursing homes $163 million.

We reviewed internal controls to the extent necessary to accomplish the review objectives. Fieldwork was performed at the North Dakota Department of Human Services office in Bismarck, North Dakota.

Methodology

To accomplish our objectives, we reviewed applicable laws and regulations, specifically, Federal regulations at 42 CFR §435.1008 and 435.1009; and the State Medicaid Manual guidelines for determining whether an institution is an IMD at part 4, section 4390.

We interviewed State Medicaid officials to aid in determining Medicaid program compliance with requirements pertaining to IMDs and to determine if North Dakota was monitoring nursing homes for compliance with IMD criteria.

We obtained data from the State agency pertaining to nursing homes participating in the Medicaid program. That data included the identity of Medicaid nursing home providers, Medicaid claim payments, licensed capacity, number of Medicaid residents, identity of Medicaid residents, diagnoses of the residents, and age of residents. We also obtained Medicaid prescription drug data from the Medicaid Statistical Information System. Using that data,
we determined the percentage of Medicaid patients diagnosed with a mental illness, the array of patient ages, and the percentage of patients receiving antipsychotic drugs in each nursing home.

We also inquired as to whether the nursing homes were:

- licensed as a psychiatric facility
- accredited as a psychiatric facility
- under the jurisdiction of the State's mental health authority

Our review was conducted in accordance with generally accepted government auditing standards.

FINDINGS AND RECOMMENDATIONS

There were no specific controls in place to monitor North Dakota nursing homes for compliance with IMD criteria. We identified four nursing homes that may be IMDs. The four IMDs may have been overpaid $1.1 million by the North Dakota Medicaid program during the period of our review.

A review of the patients' records by qualified medical personnel would need to be conducted at the four nursing homes to determine whether they were, in fact, IMDs. However, this determination was outside the scope of our review.

Criteria

Medicaid regulations preclude FFP for certain patients in IMDs. The applicable regulations are at 42 CFR §435.1008:

> "(a) FFP is not available in expenditures for services provided to—
>
> "(2) Individuals under age 65 who are patients in an institution for mental diseases unless they are under age 22 and are receiving inpatient psychiatric services…"

Institutions for mental diseases are defined at 42 CFR §435.1009:

> "Institution for mental diseases means a hospital, nursing facility, or other institution of more than 16 beds that is primarily engaged in providing diagnosis, treatment or care of persons with mental diseases, including medical attention, nursing care and related services. Whether an institution is an institution for mental diseases is determined by its overall character as that of a facility established and maintained primarily for the care and treatment of individuals with mental diseases, whether or not it is licensed as such. An institution for the mentally retarded is not an institution for mental disease."

According to the State Medicaid Manual, part 4, section 4390, there are five guidelines to help determine if a facility is an IMD. They are:

- the facility is licensed as a psychiatric facility
- the facility is accredited as a psychiatric facility
- the facility is under the jurisdiction of the State's mental health authority
- the facility specializes in providing psychiatric/psychological care and treatment
- the current need for institutionalization for more than 50 percent of all the patients in the facility results from mental diseases

According to the CMS' State Medicaid Manual, if any of these guidelines are met, a thorough IMD assessment must be made by a team that includes qualified medical personnel. A final determination of a facility's IMD status depends on whether an evaluation of the information

pertaining to the facility establishes that its overall character is that of a facility established and/or maintained primarily for the care and treatment of individuals with mental diseases.

Condition

North Dakota had no specific controls in place to monitor nursing homes for compliance with IMD criteria.

By using the IMD guidelines and performing our data analysis, we identified four nursing homes receiving payments from the North Dakota Medicaid program that may be IMDs because more than 50 percent of the Medicaid patients had a mental illness diagnosis (Guideline #5). The four nursing homes and results of their analyses are included in Appendix A.

Cause and Effect

As a result of no controls to monitor compliance with the IMD criteria, Medicaid may have overpaid the four nursing homes $1,105,047. A review of the patients' records by qualified medical personnel would need to be conducted at the four nursing homes to determine whether they were, in fact, IMDs. However, this determination was outside the scope of our review.

Recommendations

We recommend North Dakota establish specific controls to monitor nursing homes for compliance with IMD criteria. We also recommend North Dakota further monitor and evaluate, with qualified medical personnel, the four nursing homes that may be IMDs.

*****

Auditee Response:

North Dakota did not agree with our recommendation to establish specific controls to monitor nursing homes for compliance with IMD criteria. They did, however, further evaluate the nursing facilities identified in our draft report.

Their response states in part:

> ". . . . we disagree with your conclusions that the four nursing facilities you identified in the report had more than 50% of their residents classified with a diagnosis of mental disease."
>
> ". . . . we disagree with your conclusions that these facilities could be classified as IMDs."
>
> "We also do not believe it is necessary to establish a specific monitoring process to ensure that nursing facilities in North Dakota do not become IMD's . . . ."

The complete text of North Dakota's response is included at Appendix B.

OIG Response:

Our draft report did not state that the four facilities could be classified as IMD's. Rather, it stated that the facilities may be IMD's, but that a definitive conclusion could not be reached without further review by qualified medical personnel.

We accept North Dakota's further review and subsequent conclusion that the facilities are not IMD's at this time. However, given the regulatory prohibition against claiming FFP for residents in an IMD and the amount of Medicaid funds involved, we continue to believe North Dakota should establish systematic controls to ensure ongoing compliance with the regulation.

* * * * *

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

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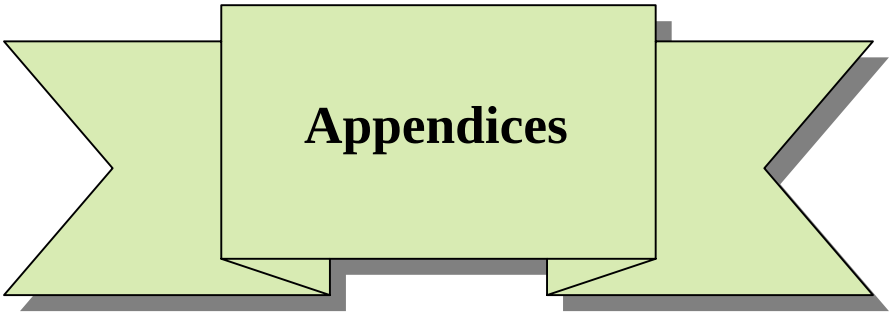
To facilitate identification, please refer to Report Number A-07-04-02017 in all correspondence relating to this report. Questions on any aspect of the report are welcome. Please contact Terry Eddleman, Audit Manager, at (816) 426-3591.

Sincerely,

for James P. Aasmundstad
Regional Inspector General
for Audit Services

HHS Action Official:

Mr. Alex E. Trujillo
Regional Administrator
Centers for Medicare and Medicaid Services
1600 Broadway, Suite 700
Denver, CO 80202


Appendices

APPENDIX A

REVIEW OF NORTH DAKOTA
NURSING HOMES AS
INSITUTIONS FOR MENTAL DISEASES

FEDERAL FISCAL YEAR 2003

Provider Number	Percent of Medicaid Patients with Diagnosis of Mental Illness	Percent of Medicaid Patients with Antipsychotic Drugs	Percent of Medicaid Patients Between the Ages of 21 and 65	Amount Medicaid Paid	Amount Medicaid may have Overpaid*
30418	61%	50%	14%	$3,525,386	$493,554
30053	55%	63%	23%	1,567,534	360,533
30271	53%	53%	17%	1,259,225	214,068
30293	57%	61%	7%	527,033	36,892
Totals				**$6,879,178**	**$1,105,047**

*Amount Medicaid may have Overpaid was calculated by multiplying the Percentage of Medicaid Patients Between the Ages of 21 and 65 and the Amount Medicaid Paid.

north dakota department of human services

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John Hoeven, Governor
Carol K. Olson, Executive Director

November 2, 2004

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

Re: Audit Report Number A-07-04-02017

Dear Mr. Aasmundstad:

I offer the following comments regarding the above referenced audit report.

Your office recommended that North Dakota establish specific controls to monitor nursing homes for compliance with Institution for Mental Disease (IMD) criteria. You also recommended that North Dakota further monitor and evaluate, with qualified medical personnel, the four nursing homes that may be IMD's

First, to our knowledge no exit conference was held to discuss the findings nor was there any contact made to discuss audit concerns. I believe that misunderstandings on the part of your office could have been avoided if you had made the effort to contact our office.

Second, we disagree with your conclusions that the four nursing facilities you identified in the report had more than 50% of their residents classified with a diagnosis of mental disease.

Your auditors did not consider the fact that many of the residents identified as having a mental condition diagnosis also had diagnoses of Alzheimer's disease or related dementia when calculating the number of residents with a mental illness.

Requirements contained in 42 CFR 483.102 (b) state that "mental disorder is ...[n]ot a primary diagnosis of dementia, including Alzheimer's disease or a related disorder, or a non-primary diagnosis of dementia unless the primary diagnosis is a major mental disorder."

Our review of the Minimum Data Set for individuals currently residing in the four facilities disclosed that if the Alzheimer's and dementia diagnoses were taken into consideration, none of the facilities had more than 50% of their residents with a mental disease diagnosis. We reviewed the diagnosis codes for the last quarter of 2003 for all residents of the four identified nursing facilities. The following demonstrates our conclusions.

1. Prairieview Nursing Home – If residents with a diagnosis of Alzheimer's or dementia were not included as having a mental illness condition only 36% (or 27) of the residents actually had a mental disease diagnosis. Of the 27, three had ten or more additional physical related diagnoses, and 14 had between five and nine other physically related diagnoses in addition to their mental disease diagnosis.
2. Veterans Home – If residents with a diagnosis of Alzheimer's or dementia were not included as having a mental illness condition only 41.6% (or 15) of the residents had a mental disease diagnosis. Of the 15, four had ten or more additional physical related diagnoses, and the remaining 11 had between six and nine physical related diagnoses in addition to their mental disease diagnosis.
3. Hilltop Home of Comfort - If residents with a diagnosis of Alzheimer's or dementia were not included as having a mental illness condition only 48% (or 24) of the residents had a mental disease diagnosis. Of the 24, four had 10 or more additional physical related diagnoses and 14 had between six and nine physical related diagnoses in addition to their mental disease diagnosis.
4. Sheyenne Care Center – If residents with a diagnosis of Alzheimer's or dementia are not included as having a mental illness condition, only 22% (or 33) residents had a mental disease diagnosis. Of the 33, two had 10 or more additional physical related diagnoses, and the other 20 had between six and nine physical related diagnoses in addition to their mental disease diagnosis.

In all four facilities many of the residents classified as having a mental illness were also diagnosed with Alzheimer's or dementia. As noted above, Alzheimer's disease or a related disorder trumps other mental disease diagnosis unless the other mental diagnosis is the primary diagnosis for the resident. The vast majority of other mental illness diagnosis consists of depression and anxiety. It is not unusual and in fact it is common for residents to experience depression and anxiety when they are confronted with a new living situation that is often stressful. While these diagnoses are common, they are not the primary reason for admission to a nursing facility. As noted above the mental disease diagnosis is often just one of a host of other diagnoses that are the most likely reason for the admission to the nursing facility.

The information available from the MDS does not identify primary diagnosis and therefore is not conclusive. The Department does contract with Dual Diagnosis Management to perform Preadmission Screening and Resident Review (PASRR) for all individuals, regardless of payer status, that enter a nursing facility. The purpose of the review is to determine if anyone admitted to a nursing facility has a mental illness that requires treatment that could not ordinarily be delivered in a nursing facility setting. An initial review is completed and if there is any indication of a serious mental illness a level two screening is conducted. A total of eleven level-two reviews were conducted in the four facilities identified in the audit. These results indicate that the vast majority of individuals admitted to nursing facilities do not have serious mental illness and those that are identified either receive needed care including mental health services as appropriate or are discharged from the facility because the placement was not appropriate.

We have concluded that none of the four facilities reviewed met the requirements to be classified as an IMD. None of these facilities are licensed as a psychiatric facility nor are they accredited as a psychiatric facility and none are under the jurisdiction of the North Dakota mental health authority. None of these nursing facilities hold themselves out as a specialized nursing facility for mental illness nor do they have staff that are specifically trained or specialize in mental illness. Lastly none of the facilities have more than 50 percent of their residents whose primary diagnosis relates to mental illness. The primary reason for admission to these facilities for individuals with a mental illness diagnosis was based on other diagnoses relating to physical conditions as was demonstrated by the many other physical condition diagnosis associated with those with a mental illness diagnosis and the fact that many of the individuals identified had a diagnosis of Alzheimer's or dementia.

For the above reasons we disagree with your conclusions that these facilities could be classified as IMD's.

We believe the PASRR process that is used to ensure that Medicaid recipients are admitted based on the need for nursing facility care and not specialized facility care is adequate to ensure that none of the nursing facilities in North Dakota will ever reach the IMD threshold of 50 percent. In point of fact, few if any individuals are admitted to nursing facilities in North Dakota where the primary need for care relates to their mental illness. We see no reason to spend additional resources to verify that these facilities do not qualify as IMD's given the documentation noted above. We also do not believe it is necessary to establish a specific monitoring process to ensure that nursing facilities in North Dakota do not become IMD's given the lack of Level two screenings that occur throughout the state.

If you have additional questions, please contact Ms. Barbara Fischer, a member of my staff, at any time. Her phone number is 701-328-4578.

Sincerely,

David J. Zentner
Director, Medical Services

cc: Lawrence Hopkins ✓
Barbara Fischer ✓