DEPARTMENT OF HEALTH & HUMAN SERVICES Office of Inspector General

Washington, D.C. 20201

FEB 18 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: Audit of Oregon's Medicaid Upper Payment Limits for Non-State Government Nursing Facilities for State Fiscal Years 2002 and 2003 (A-09-03-00055)

Attached is an advance copy of our final report on Oregon's Medicaid upper payment limits (UPLs) for non-State government nursing facilities for State fiscal years (SFYs) 2002 and 2003. We will issue this report to the Oregon Medicaid agency within 5 business days. We conducted the audit as part of a multistate review of UPL calculations 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 year). This excess amount must not increase during the transition period. Federal funds are not available for Medicaid payments that exceed these limits. Oregon adopted the category-specific payment limits of the revised regulations in its CMS-approved State plan amendments.

Our objectives were to determine whether (1) Oregon calculated its SFYs 2002 and 2003 UPLs for non-State government nursing facilities in accordance with Federal regulations and the approved State plan amendments and (2) Oregon's estimated Medicaid payments for SFYs 2004 and 2005 were within the UPLs.

Oregon did not calculate the SFYs 2002 and 2003 UPLs for non-State government nursing facilities in accordance with Federal regulations and its approved State plan amendments. Instead, Oregon calculated UPLs that combined non-State government and private facilities. In addition, it changed its calculation method from a Medicare cost basis to a Medicare prospective payment rate basis. This change contributed to an increase in its excess amount that was not in accordance with Federal regulations. These actions resulted in an overstated UPL for non-State government nursing facilities.

Based on our calculations, Oregon's Medicaid payments to non-State government nursing facilities exceeded the UPLs per Federal regulations by a total of more than $230.5 million ($137.2 million Federal share) in SFYs 2002 and 2003. In addition, Oregon's estimated Medicaid payments for SFYs 2004 and 2005 could exceed our projected UPLs per Federal regulations by $76.3 million ($45.9 million Federal share).

We recommend that Oregon:

- reduce claimed expenses on its CMS-64 quarterly expenditure reports by $230,538,269 ($137,219,260 Federal share) for SFYs 2002 and 2003 and

- calculate UPLs in accordance with Federal regulations to prevent Federal overpayments of $45.9 million for SFYs 2004 and 2005.

In written comments on our draft report, Oregon agreed with our finding that payments exceeded the UPLs for SFYs 2002 and 2003; however, it disagreed with the Federal share to be returned. Oregon agreed to return $18,958,834 ($18,107,872 for SFY 2002 and $850,962 for SFY 2003). It did not agree to return the remaining $118,260,426 ($137,219,260 less $18,958,834). We reviewed Oregon's reasons for not returning the remaining amount and continue to believe that the remaining $118,260,426 must be returned to the Federal Government.

Oregon also agreed to lower its UPLs for SFYs 2004 and 2005 to comply with Federal regulations and prevent Federal overpayments of $45.9 million.

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 Lori A. Ahlstrand, Regional Inspector General for Audit Services, Region IX, at (415) 437-8360. Please refer to report number A-09-03-00055 in all correspondence.

Attachment

DEPARTMENT OF HEALTH & HUMAN SERVICES OFFICE OF INSPECTOR GENERAL

Region IX
Office of Audit Services
50 United Nations Plaza
San Francisco, CA 94102

FEB 25 2005

Report Number: A-09-03-00055

Ms. Lynn Read
Administrator
Office of Medical Assistance Programs
Oregon Department of Human Services
500 Summer Street NE., E49
Salem, Oregon 97301-1079

Dear Ms. Read:

Enclosed are two copies of the Department of Health and Human Services (HHS), Office of Inspector General (OIG) final report entitled "Audit of Oregon's Medicaid Upper Payment Limits for Non-State Government Nursing Facilities for State Fiscal Years 2002 and 2003." A copy of this report will be forwarded to the HHS 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 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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Please refer to report number A-09-03-00055 in all correspondence.

Sincerely,

Lori A. Ahlstrand
Regional Inspector General
for Audit Services

Enclosures

Direct Reply to HHS Action Official:

Mr. R. J. Ruff, Jr.
Regional Administrator, Region X
Centers for Medicare & Medicaid Services
Blanchard Plaza Building
2201 Sixth Avenue, MS 40
Seattle, Washington 98121

Department of Health and Human Services

OFFICE OF INSPECTOR GENERAL

AUDIT OF OREGON'S MEDICAID UPPER PAYMENT LIMITS FOR NON-STATE GOVERNMENT NURSING FACILITIES FOR STATE FISCAL YEARS 2002 AND 2003

FEBRUARY 2005
A-09-03-00055

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 year). This excess amount must not increase during the transition period. Federal funds are not available for Medicaid payments that exceed these limits. Oregon adopted the category-specific payment limits of the revised regulations in its CMS-approved State plan amendments.

OBJECTIVES

Our objectives were to determine whether:

- Oregon calculated its State fiscal years (SFYs) 2002 and 2003 UPLs for non-State government nursing facilities in accordance with Federal regulations and the approved State plan amendments and

- Oregon's estimated Medicaid payments for SFYs 2004 and 2005 were within the UPLs.

SUMMARY OF FINDINGS

Oregon did not calculate the SFYs 2002 and 2003 UPLs for non-State government nursing facilities in accordance with Federal regulations and its approved State plan amendments. Instead, Oregon calculated UPLs that combined non-State government and private facilities. In addition, it changed its calculation method from a Medicare cost basis to a Medicare prospective payment rate basis. This change contributed to an increase in its excess amount that was not in accordance with Federal regulations. These actions resulted in an overstated UPL for non-State government nursing facilities.

Based on our calculations, Oregon's Medicaid payments to non-State government nursing facilities exceeded the UPLs per Federal regulations by a total of more than $230.5 million ($137.2 million Federal share) in SFYs 2002 and 2003. In addition, Oregon's estimated Medicaid payments for SFYs 2004 and 2005 could exceed our projected UPLs per Federal regulations by $76.3 million ($45.9 million Federal share).

RECOMMENDATIONS

We recommend that Oregon:

- reduce claimed expenses on its CMS-64 quarterly expenditure reports by $230,538,269 ($137,219,260 Federal share) for SFYs 2002 and 2003 and

- calculate UPLs in accordance with Federal regulations to prevent Federal overpayments of $45.9 million for SFYs 2004 and 2005.

OREGON'S COMMENTS AND OFFICE OF INSPECTOR GENERAL'S RESPONSE

In its reply to our draft report, Oregon agreed with our finding that payments exceeded the UPLs for SFYs 2002 and 2003; however, it disagreed with the Federal share to be returned. Oregon agreed to return $18,958,834 ($18,107,872 for SFY 2002 and $850,962 for SFY 2003). It did not agree to return the remaining $118,260,426 ($137,219,260 less $18,958,834). We reviewed Oregon's reasons for not returning the remaining amount and continue to believe that the remaining $118,260,426 must be returned to the Federal Government.

Oregon also agreed to lower its UPLs for SFYs 2004 and 2005 to comply with Federal regulations and prevent Federal overpayments of $45.9 million.

The full text of Oregon's comments on our draft report is included as Appendix F to this report.

TABLE OF CONTENTS

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. CMS administers the program at the Federal level.

Upper Payment Limits

State Medicaid programs have flexibility in determining payment rates for Medicaid providers. CMS has allowed 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 year).

Oregon's Medicaid UPL Program for Nursing Facilities

Oregon's Department of Human Services is responsible for administering its Medicaid UPL program, the Proportionate Share Incentive Adjustment program for non-State government nursing facilities. This program began on June 15, 1999. From June 1999 through October 2002, Oregon made more than $583 million ($350 million Federal share) in UPL payments to non-State government nursing facilities. These payments supplemented Oregon's basic Medicaid payments. Refer to Appendix A for a schedule of UPL payments.

Payments to nursing facilities qualified for a transition period beginning March 13, 2001, and ending June 30, 2006, under State plan amendment 99-09.

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

OBJECTIVES, SCOPE, AND METHODOLOGY

Objectives

Our objectives were to determine whether:

- Oregon calculated its SFYs 2002 and 2003 UPLs for non-State government nursing facilities in accordance with Federal regulations and the approved State plan amendments and

- Oregon's estimated Medicaid payments for SFYs 2004 and 2005 were within the UPLs.

Scope

Our audit covered SFYs 2002 and 2003 UPL calculations for non-State government nursing facilities under State plan amendment 99-09. For SFYs 2002 and 2003, Oregon made UPL payments of more than $380.6 million to non-State government nursing facilities. For SFYs 2004 and 2005, Oregon estimated UPL payments of $124.5 million.

Because the objectives of our audit did not require an understanding or assessment of the overall internal control structure of Oregon or the nursing facilities, we did not perform such a review.

We performed fieldwork at State offices in Salem, OR. In response to Oregon's comments on our May 2004 draft report, we performed additional analysis and discussed the results with CMS officials.

Methodology

To accomplish our objectives, we:

- held discussions with CMS staff;

- reviewed records pertaining to the approval of Oregon's State plan amendments for the non-State government nursing facilities UPL program;

- interviewed Oregon's key personnel involved in the UPL calculations;

- reviewed available records supporting Oregon's UPL calculations, estimated basic Medicaid payments, and UPL payments;

- calculated the UPLs for SFYs 2000 and 2001 using data provided by Oregon to determine the excess amount for future periods;

- used data provided by Oregon in our calculation of the SFY 2002 UPL;

- analyzed Oregon's SFY 2003 UPL calculation and related data elements to determine compliance with Federal regulations and State plan amendments;

- reviewed the components of Oregon's SFY 2003 UPL calculation: Medicare Resource Utilization Group (RUG) III rates, Minimum Data Set data, and Medicaid days;

- estimated the UPLs for SFYs 2004 and 2005 and compared them with Oregon's schedule of estimated UPL payments for those years; and

- traced UPL payments to the CMS-64 quarterly expenditure reports to determine whether the payments were claimed for Federal reimbursement.[2]

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

FINDINGS AND RECOMMENDATIONS

Oregon did not calculate the SFYs 2002 and 2003 UPLs for non-State government nursing facilities in accordance with Federal regulations and its approved State plan amendments. Instead, Oregon calculated UPLs that combined non-State government and private facilities. In addition, it changed its calculation method from a Medicare cost basis to a Medicare prospective payment rate basis. This change effectively caused the State to violate the "general rule" of the UPL regulation that "the amount that a State's payment exceeded the upper payment limit . . . must not increase" (42 CFR § 447.272(e)(2)).

Based on our calculations, Oregon's Medicaid payments to non-State government nursing facilities exceeded the UPLs per Federal regulations by a total of more than $230.5 million ($137.2 million Federal share) in SFYs 2002 and 2003. In addition, Oregon's estimated Medicaid payments for SFYs 2004 and 2005 could exceed our projected UPLs per Federal regulations by $76.3 million ($45.9 million Federal share).

FEDERAL AND STATE REQUIREMENTS FOR NURSING FACILITIES

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 transition periods provided a phase-in of the new category-specific UPLs based on the timing of State plan amendments. Oregon's UPL program for nursing facilities qualified for a 5-year transition period beginning on March 13, 2001, and ending on June 30, 2006.

During the first part of the transition period—from March 13, 2001, until the start of SFY 2003—Oregon's Medicaid payments were allowed to exceed the category-specific UPL by an undefined amount. However, pursuant to 42 CFR § 447.272(e)(2), this period still was subject to

[2]Form CMS-64 is the certified Quarterly Medicaid Statement of Expenditures for the Medical Assistance Program.

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.” Starting in SFY 2003 through the end of the 5-year period on June 30, 2006, payments were limited to the category-specific UPL plus an excess amount (the portion of Medicaid payments that exceeded the UPL in the SFY 2000 base year). Federal funds are not available for Medicaid payments that exceed these limits (42 CFR § 447.257).[3] Oregon adopted the category-specific payment limits of 42 CFR § 447.272 in its State plan amendments.

UPL CALCULATIONS FOR SFYs 2002 AND 2003

Contrary to 42 CFR § 447.272(b)(1), Oregon calculated UPLs by combining data on non-State government and private facilities. Oregon should have used only non-State government nursing facilities data to calculate the category-specific UPL. In addition, Oregon changed its UPL calculation method, after the effective date of the revised regulations, from one based on historical costs under Medicare cost reimbursement principles to one based on Medicare prospective payment rates using RUGs. This change, although not specifically prohibited by regulations, contributed to an increase in its excess amount that was not in accordance with 42 CFR § 447.272(e)(2). As a result of these actions, Oregon overstated its SFYs 2002 and 2003 UPLs for non-State government nursing facilities.

For each SFY, Oregon officials told us that they compared the estimated UPL payment with the combined non-State government/private UPL calculation to ensure that the estimated payment did not exceed the combined UPL.[4] By using this method, Oregon believed it met the requirement for a category-specific UPL for non-State government nursing facilities. However, contrary to the regulations, this approach did not prevent payments from exceeding the UPL for non-State government nursing facilities.

As Table 1 reflects, Oregon’s Medicaid payments to non-State government nursing facilities for SFYs 2002 and 2003 exceeded the respective UPLs computed pursuant to Federal regulations by a total of more than $230.5 million ($137.2 million Federal share). For SFY 2003, CMS deferred $45.5 million (Federal share) in payments to Oregon for an unallowable increase in the UPL.[5]

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

[4]For SFY 2002, Oregon’s estimated UPL payment was what Oregon believed was the allowable portion of the SFY 2000 Medicaid payments in excess of its UPL for SFY 2000. For SFY 2003, Oregon’s estimated UPL payment was the sum of what it believed was available to non-State government nursing facilities for SFY 2003 and the allowable portion of the SFY 2000 Medicaid payments in excess of its UPL for SFY 2000.

[5]During our audit, CMS advised us that it had deferred $45,560,309 (Federal share) of the Medicaid grant award for the quarter beginning April 1, 2003. The deferral was related to the claim for nursing facilities’ UPL payments included on the December 2002 CMS-64. Final resolution of this deferral by CMS awaits the issuance of this final report.

Table 1: Medicaid Payments That Exceeded the UPLs for SFYs 2002 and 2003

SFY	Total Medicaid Payments	Less UPL and Excess Amount per Federal Regulations	Medicaid Payments That Exceeded UPL	
			Total	Federal Share
2002	$266,787,180	$113,395,304	$153,391,876	$90,807,990
2003	128,898,689	51,752,296	77,146,393	46,411,270
		Total	**$230,538,269**	**$137,219,260**

For a detailed schedule of the payments that exceeded the UPL, refer to Appendix B. In addition, for a detailed description of the Office of Inspector General (OIG) UPL calculations pursuant to Federal regulations and the total Medicaid payments for SFYs 2002 and 2003, refer to Appendixes C and D, respectively.

ESTIMATED MEDICAID PAYMENTS FOR SFYs 2004 AND 2005

Oregon's estimates of Medicaid payments exceeded the UPLs for SFYs 2004 and 2005 as well. At CMS's request, Oregon provided a schedule of estimated UPL payments from SFY 2003 through SFY 2006. Using the SFY 2003 UPL computed pursuant to Federal regulations as the basis, we estimated the UPLs for SFYs 2004 and 2005. To estimate total Medicaid payments for SFYs 2004 and 2005, we added SFY 2003 basic Medicaid payments to the estimated UPL payments. We then compared the estimated Medicaid payments with our estimated UPLs.

If Oregon made payments according to its schedule, Medicaid payments in both years would exceed their respective UPLs per Federal regulations by a total of $76.3 million ($45.9 million Federal share). Refer to Appendix E for Oregon's estimated Medicaid payments that could exceed the UPLs for SFYs 2004 and 2005.

RECOMMENDATIONS

We recommend that Oregon:

- reduce claimed expenses on its CMS-64 quarterly expenditure reports by $230,538,269 ($137,219,260 Federal share) for SFYs 2002 and 2003 and

- calculate UPLs in accordance with Federal regulations to prevent Federal overpayments of $45.9 million for SFYs 2004 and 2005.

OREGON'S COMMENTS AND OFFICE OF INSPECTOR GENERAL'S RESPONSE

We summarized and addressed Oregon's comments on our draft report below. We included the full text of Oregon's comments as Appendix F.

Oregon agreed with our finding that payments exceeded the UPLs for SFYs 2002 and 2003; however, it disagreed with the Federal share to be returned. Oregon agreed to return $18,958,834 ($18,107,872 for SFY 2002 and $850,962 for SFY 2003). It did not agree to return the remaining $118,260,426 ($137,219,260 less $18,958,834). We reviewed Oregon's reasons (described below) for not returning the remaining amount and continue to believe that the remaining $118,260,426 must be returned to the Federal Government.

Oregon also agreed to lower its UPLs for SFYs 2004 and 2005 to comply with Federal regulations and prevent Federal overpayments of $45.9 million.

Oregon's Comments and OIG's Response on SFY 2002 Calculation

Table 2 compares Oregon's calculation with our calculation of the SFY 2002 overpayment.

Table 2: SFY 2002 Calculation Differences

		(A) **Per Oregon**	**(B)** **Per OIG**	**(A - B)** **Difference**	**Notes**
a.	Total Medicaid Payments	$266,787,180	$266,787,180	$0	
b.	Payments Applicable to SFY 2001	76,546,490	0	76,546,490	1
c.	Net Payments (a - b)	190,240,690	266,787,180	(76,546,490)	
d.	UPL Plus Excess Amount	160,060,902	113,395,304	46,665,598	2
e.	Payments Exceeding the UPL Plus Excess Amount (c - d)	30,179,788	153,391,876		
f.	Federal Medical Assistance Percentage	0.6000	0.5920	0.0080	3
g.	**Federal Share (e x f)**	**$18,107,872**	**$90,807,990**	**($72,700,118)**	

Note 1: UPL Payment Attributable to SFY 2001

Oregon stated that $76,546,490 of the $258,858,380 UPL payment made on September 25, 2001, was attributable to SFY 2001, not SFY 2002.

We disagree that the $76,546,490 was attributable to SFY 2001 (July 1, 2000, through June 30, 2001). As noted in our report, we properly attributed the entire UPL payment of $258,858,380 made on September 25, 2001, to SFY 2002 (July 1, 2001, through June 30, 2002) based on documentation provided by Oregon. On its certified CMS-64, Oregon claimed the entire $258,858,380 as a UPL payment for the quarter ended September 30, 2001, and did not claim any portion of it as an adjustment for a prior period. In addition, Oregon's contracts with non-State government nursing facilities specified that this payment was for SFY 2002. Refer to Appendix A, footnote 1 for additional documentation reviewed.

Note 2: Excess Amount for SFY 2002

To calculate the excess amount for the SFY 2002 UPL, Oregon stated that it used a "more appropriate annualization approach" and included $12,519,112 of the $27,288,768 UPL payment made on April 25, 2001.

We disagree with Oregon's calculation because it resulted in an increase in the excess amount, which was prohibited under Federal regulations. As noted in Appendix C, footnote 2, we calculated the excess amount based on the annualized excess for the applicable period (July 1, 2000, through March 12, 2001). We properly annualized the excess payments made during that time period in accordance with Federal regulations. We also properly excluded UPL payments made after March 13, 2001, the effective date of the Federal regulations.

Note 3: Federal Medical Assistance Percentage

The Federal medical assistance percentage for the period July 1, 2001, through September 30, 2001, was 60 percent. The Federal medical assistance percentage for the period October 1, 2001, through June 30, 2002, was 59.20 percent. While Oregon used the 60-percent rate, we used the lower of the two rates, 59.20 percent.

Oregon's Comments and OIG's Response on SFY 2003 Calculation

Table 3 compares Oregon's calculation with our calculation of the SFY 2003 overpayment.

Table 3: SFY 2003 Calculation Differences

		(A) Per Oregon	(B) Per OIG	(A - B) Difference	Note
a.	Total Medicaid Payments	$128,898,689	$128,898,689	$0	
b.	UPL Plus Excess Amount	51,752,296	51,752,296	0	
c.	Payments Exceeding the UPL Plus Excess Amount (a - b)	77,146,393	77,146,393	0	
d.	Adjustment for CMS Deferral	75,731,895	0	75,731,895	4
e.	Net Payment Exceeding UPL Plus Excess Amount (c - d)	1,414,498	77,146,393	(75,731,895)	
f.	Federal Medical Assistance Percentage	0.6016	0.6016	0	
g.	**Federal Share (e x f)**	**$850,962**	**$46,411,270**	**($45,560,308)**	

Note 4: CMS Deferral

Oregon agreed with our finding that payments exceeded the SFY 2003 UPL by $77,146,393; however, it disagreed with the Federal share to be returned. Oregon stated that we had overlooked a CMS deferral of $75,731,895 in calculating the amount to be returned for SFY 2003.

We addressed CMS's deferral of $45,560,309 (Federal share) in Appendix A, footnote 3. In October 2002, Oregon drew down Federal funds for UPL payments. In a letter dated April 3, 2003, CMS deferred a portion of these payments. Since the deferral is not a disallowance but a deferral of payment requiring resolution by CMS, we did not reduce the recommended adjustment by the amount deferred.

Oregon's Comments and OIG's Response on Change in UPL Calculation Methodology

Oregon stated that its approved State plan authorized the change in the UPL calculation methodology. The use of the new methodology resulted in a higher UPL, which Oregon believed justified higher UPL payments.

We disagree with Oregon's statement. Oregon's State plan required Oregon to comply with Federal regulations. Although the regulations did not prevent States from changing the methodology for calculating the UPL, they prohibited any increase in the excess amount. Oregon's new methodology increased the excess amount and therefore did not comply with Federal regulations.

APPENDIXES

OREGON'S UPL PAYMENTS TO NON-STATE GOVERNMENT NURSING FACILITIES FOR SFYs 1999 THROUGH 2003

SFY[1]	Payment Date	CMS-64 Quarterly Report[2]		Payment
1999	June 22, 1999	June 1999		$48,732,939
			Subtotal	$48,732,939
2000	November 22, 1999	December 1999		$49,946,368
	April 24, 2000	June 2000		6,373,725
			Subtotal	$56,320,093
2001	November 27, 2000	December 2000		$70,941,636
	April 25, 2001	June 2001		27,288,768
			Subtotal	$98,230,404
2002	September 25, 2001	September 2001		$258,858,380
			Subtotal	$258,858,380
2003	October 17, 2002	December 2002		$121,815,549[3]
			Subtotal	$121,815,549
	Total			**$583,957,365**

[1]The period pertains to Oregon's SFY from July 1 through June 30 of each year. We identified the payments that applied to each SFY by reviewing the State plan amendments, Medicaid UPL program contracts between Oregon and non-State government nursing facilities, payment documentation, and Oregon's certified CMS-64.

[2]Form CMS-64 is the certified Quarterly Medicaid Statement of Expenditures for the Medical Assistance Program.

[3]During our audit, CMS advised us that it had deferred $45,560,309 (Federal share) of the Medicaid grant award for the quarter beginning April 1, 2003. The deferral was related to the claim for nursing facilities' UPL payments included on the December 2002 CMS-64. Final resolution of this deferral by CMS awaits the issuance of this final report.

MEDICAID PAYMENTS TO NON-STATE GOVERNMENT NURSING FACILITIES THAT EXCEEDED UPLs FOR SFYs 2002 AND 2003

	SFY 2002	SFY 2003
Medicaid Payments:		
Estimated Basic Medicaid Payments[1]	$7,928,800	$7,083,140
UPL Payments (See Appendix A)	258,858,380	121,815,549
Total Medicaid Payments	$266,787,180	$128,898,689
Less UPL Plus Excess Amount per Federal Regulations	(113,395,304)	(51,752,296)
Medicaid Payments That Exceeded UPL Plus Excess Amount	$153,391,876	$77,146,393
Federal Medical Assistance Percentage	× 0.5920	× 0.6016
Federal Share	$90,807,990	$46,411,270
Total Federal Share of Payments That Exceeded UPLs for SFYs 2002 and 2003		**$137,219,260**

[1]In its UPL calculations, Oregon estimated basic Medicaid payments for each fiscal year using 2-year-old Medicaid rates. However, our calculations used current Medicaid rates available to Oregon at the beginning of each fiscal year.

UPL PER FEDERAL REGULATIONS AND MEDICAID PAYMENTS FOR SFY 2002

UPL CALCULATED PER REVISED FEDERAL REGULATIONS

To calculate the SFY 2002 non-State government nursing facilities UPL, we relied on data provided by Oregon. However, we restricted the data to the non-State government nursing facilities category[1] ($13,496,980) and included the allowable portion of the SFY 2001 excess amount[2] ($99,898,324), for a total of $113,395,304.

For SFY 2002, the UPL consisted of the category-specific UPL plus an excess amount. While the regulations themselves did not prescribe a particular base period for SFY 2002, some baseline standard was necessary to determine whether Oregon's excess amount increased. After consulting with CMS, we applied a base period of July 1, 2000, through March 12, 2001.[2]

MEDICAID PAYMENTS

To calculate Medicaid payments to non-State government nursing facilities, we relied on data provided by Oregon. Because the UPL was calculated during the SFY, Oregon estimated the basic Medicaid payments for the year. Oregon used SFY 2000 Medicaid rates to estimate basic Medicaid payments for SFY 2002 even though rates for SFY 2002 were available at the beginning of that fiscal year.

We used the SFY 2002 Medicaid rates that were available to Oregon to estimate basic Medicaid payments to non-State government nursing facilities. As shown in the table below, we added the UPL payments for SFY 2002 to arrive at total Medicaid payments to non-State government nursing facilities.[3]

SFY 2002 Total Medicaid Payments

Estimated Basic Medicaid Payments	$7,928,800
UPL Payments	258,858,380
Total	**$266,787,180**

[1]In our calculation, we used 72,080 Medicaid resident days (the days attributable to non-State government nursing facilities). In its calculation, Oregon used 2,259,329 Medicaid resident days (the combined days attributable to non-State government and private nursing facilities).

[2]The excess amount was the portion of the SFY 2001 Medicaid payments that exceeded the SFY 2001 category-specific UPL. That excess amount was based on the annualized excess for the period July 1, 2000, through March 12, 2001.

[3]We identified the payments that applied to each SFY by reviewing the State plan amendments, Medicaid UPL program contracts between Oregon and the non-State government nursing facilities, payment documentation, and Oregon's certified CMS-64.

UPL PER FEDERAL REGULATIONS AND MEDICAID PAYMENTS FOR SFY 2003

UPL CALCULATED PER REVISED FEDERAL REGULATIONS

To calculate the SFY 2003 non-State government nursing facilities UPL, we relied on data provided by Oregon. However, we restricted the data to the non-State government nursing facilities category ($10,612,623) and included the allowable portion of the SFY 2000 excess amount ($41,139,673), for a total of $51,752,296.[1]

Pursuant to the regulations, for SFYs 2003 through 2006, the UPL for each year consisted of the category-specific UPL plus the SFY 2000 (base-year) excess amount, reduced in 25-percent increments each year starting in SFY 2003.

MEDICAID PAYMENTS

To calculate Medicaid payments to non-State government nursing facilities, we relied on data provided by Oregon. Because the UPL was calculated during the SFY, Oregon estimated the basic Medicaid payments for the year. Oregon used SFY 2001 Medicaid rates to estimate basic Medicaid payments for SFY 2003 even though rates for SFY 2003 were available at the beginning of that fiscal year.

We used the SFY 2003 Medicaid rates that were available to Oregon to estimate basic Medicaid payments to non-State government nursing facilities. As shown in the table below, we added the UPL payments for SFY 2003 to arrive at total Medicaid payments to non-State government nursing facilities.[2]

SFY 2003 Total Medicaid Payments

Estimated Basic Medicaid Payments	$7,083,140
UPL Payments	121,815,549
Total	**$128,898,689**

[1]In our calculation, we used 61,986 Medicaid resident days (the days attributable to non-State government nursing facilities). In its calculation, Oregon used 2,295,186 Medicaid resident days (the combined days attributable to non-State government and private nursing facilities).

[2]We identified the payments that applied to each SFY by reviewing the State plan amendments, Medicaid UPL program contracts between Oregon and the non-State government nursing facilities, payment documentation, and Oregon's certified CMS-64.

ESTIMATED MEDICAID PAYMENTS TO NON-STATE GOVERNMENT NURSING FACILITIES THAT COULD EXCEED UPLs FOR SFYs 2004 AND 2005

	SFY 2004	SFY 2005
Medicaid Payments:		
Estimated SFY 2003 Basic Medicaid Payments[1]	$7,083,140	$7,083,140
Estimated UPL Payments[2]	81,737,705	42,786,645
Total Estimated Medicaid Payments	$88,820,845	$49,869,785
Less Estimated UPL Plus Excess Amount per Federal Regulations[3]	(38,039,072)	(24,325,847)
Estimated Medicaid Payments That Could Exceed UPL Plus Excess Amount	$50,781,773	$25,543,938
Federal Medical Assistance Percentage[4]	× 0.6016	× 0.6016
Federal Share	$30,550,315	$15,367,233
Total Federal Share of Estimated Medicaid Payments That Could Exceed UPLs for SFYs 2004 and 2005		**$45,917,548**

[1]We used the SFY 2003 estimated basic Medicaid payments for projection purposes.

[2]We obtained these amounts from Oregon’s schedule of estimated UPL payments for the transition period.

[3]We summed the SFY 2003 UPL for non-State government nursing facilities ($10,612,623) and the allowable percentage of the SFY 2000 excess amount ($54,852,897). The allowable percentages are 50 percent for SFY 2004 and 25 percent for SFY 2005.

[4]We used the rate of 60.16 percent that was in effect during SFY 2003.

Oregon
Theodore R. Kulongoski, Governor

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June 16, 2004

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JUN 17 2004

Lori A. Ahlstrand
Regional Inspector General
for Audit Services
Office of Audit Services
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San Francisco, CA 94102

Re: Report No. A-09-03-00055

Dear Ms. Ahlstrand:

Thank you for providing us copies of the draft report entitled "Audit of Oregon's Medicaid Upper Payment Limits for Public* Nursing Facilities for State Fiscal Years 2002 and 2003" and for the opportunity to provide written comments. Your letter transmitting the draft report was dated May 19, 2004, and we are providing this response within 30 days of that date, as you requested.

Your draft report makes findings and recommendations divided into two parts: (1) the correctness of the federal funds received by Oregon as reimbursement for payments to public nursing facilities in state fiscal years 2002 and 2003; and (2) the correctness of the anticipated supplemental payments, and the federal funds to be sought in reimbursement of those anticipated payments, for state fiscal years 2004 and 2005. We will respond to these findings and recommendations separately.

State Fiscal Years 2002 and 2003

The draft report finds that Oregon overstated the Upper Payment Limit (UPL) for public nursing facilities by combining public and private facilities in making the calculation and in changing its calculation method.

As an initial matter, Oregon believes that its calculations were proper and within the bounds of the regulation that applied in SFYs 2002 and 2003 (42 CFR 447.272). Oregon interpreted that regulation to permit payments during the

* OIG's Note: In the final report, we used the term "non-State government" instead of "public."

transition year 2002 that combined private and public facilities in the UPL calculation so long as the payment made was consistent with the approved state plan and did not embody any change that necessitated a plan amendment. It interpreted the regulation to allow for 2003 an "excess" payment equal to 75% of the "excess" payment applicable to state fiscal year 2000.

However, Oregon has acknowledged that the Centers for Medicare and Medicaid Services (CMS) has utilized a more restrictive interpretation of the governing regulation. In the interest of resolving the issues concerning the supplemental payments to public nursing facilities, Oregon has been willing to accede to the CMS interpretation, which is that the transition year 2002 "excess" payment should not exceed the "excess" amount properly attributable to 2001. Oregon further acknowledges that CMS has calculated a somewhat lower level of "phase down" payments for the years 2003-2005 than the State had calculated.

Our comments on the draft report are based on the interpretations put forth by CMS.

1. The State did change the manner in which it calculated the UPL for 2001 by utilizing the then-current Medicare methodology for determining the UPL rather than the Medicare methodology it had previously used and which has been superseded in the Medicare program. That new methodology was authorized by the approved state plan; no amendment to the plan was necessary. Use of the current Medicare payment methodology did produce a higher UPL than had been calculated for prior years, and thus justified higher supplemental payments to the public nursing facilities.

While the audit did not cover the 2001 payment, reference to that year is important because of the CMS position that the "excess" payment for 2002 could not exceed the "excess" amount attributable to 2001.

The draft report (Appendix C, note 2) recognizes that the allowable "excess" amount for 2002 was dependent on the portion of the 2001 payments that was "excess" (that is, which exceeded the 2001 category-specific UPL). The draft audit predicated its calculation of the 2002 excess on the "annualized excess for the period July 1, 2000 through March 12, 2001," which it calculated as $99,898,324. Oregon does not disagree with the need to annualize the November 2000 payment, but believes that the more appropriate annualization approach is to regard the "excess" portion of that payment as representing a preliminary payment, and to double it to arrive at the annualized amount ($134,044,816).[1] To this should be added the adjusting payment of $12,519,112 made in April 2001 to account for amounts held back from the initial payment,[2] making the total allowable "excess" amount $146,563,922. This would still be less than the portion of the State's actual payments for 2001 attributable to the inclusion of private facilities in the calculation, but is consistent with the State's intention, arrived at before the effective date of the change in the federal regulation, to reconcile the supplemental payment for SFY 2001 against the UPL that was based on the then-applicable Medicare payment methodology.

Using this more appropriate "excess" figure for SFY 2001, and adding the UPL for the public nursing facilities as calculated by the draft report for SFY 2002 ($13,496,980), yields a UPL for SFY 2002 of $160,060,902. Subtraction of the regular payments made to the public facilities for 2002 ($7,419,666) results in a total permissible supplemental payment for SFY 2002 of $152,641,236.

2. A portion of the payment made in September 2001 ($76,546,490) was attributable to state fiscal year 2001, and represents the balance payable for that year based on the UPL calculation for SFY 2001 using the then-applicable Medicare rate methodology. This amount should be deducted from the calculation of the overpayment for SFY 2002.[3]

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[1] The November payment was $70,941,636. Of this, $3,919,228 was within the UPL for public facilities. The balance ($67,022,408) is attributable to inclusion of private facilities in the UPL calculation. This number should be doubled to arrive at a correct annualization of the "excess."

[2] This adjustment was part of a larger adjustment payment of $27,288,768. The balance covered similar adjustments to the SFY 2000 payment.

[3] The balance of the September 2001 payment ($182,311,890) represents the State's supplemental payment to the public nursing facilities for SFY 2002 based on the State's calculation of the UPL for that year. As indicated above, we acknowledge that under the CMS interpretation of the regulation, the permissible supplemental payment for SFY 2002 was limited to $153,285,849.

3. Concerning 2003 (the first year of the phase-down period), the draft report concludes that the UPL should have been calculated at $51,752,296, and that the payments made exceeded the UPL by $77,146,393. It recommends that the federal share of this amount be refunded by the State. (Appendix B). The draft report overlooks the fact that CMS had previously deferred $75,731,895*of the claim submitted in October 2002. So under the calculations of the draft report, the overpayment refund amount should only be $1,414,498.

4. In light of the foregoing, the correct calculation of the overpayment for SFY 2002 (based on the CMS interpretations of the regulation and the annualization method suggested above) and the federal share to be returned is as follows:

Total Payments-	$266,787,180-Appendix B
Less payment attributable to SFY 2001-	76,546,490-point 2 above
Less UPL-	160,060,902-point 1 above
Payment exceeding UPL-	$ 30,179,788
F.M.A.P.	x 0.6000
Federal Share	$ 18,107,872

For SFY 2003, the correct calculations are as follows:

Total Payments	$128,898,689-Appendix B
Less UPL	51,752,296-Appendix B
Payment exceeding UPL	$ 77,146,393
Less deferral	75,731,895
Net Overpayment	$ 1,414,498
F.M.A.P.	x 0.6016
Federal share	$ 850,962

State Fiscal Years 2004 and 2005

No supplemental payments to public nursing facilities have yet been made for state fiscal years 2004 and 2005. The draft report appears to rest on the premise that the "excess" amount paid in state fiscal year 2000 to public nursing facilities that is the "base" for purpose of calculating the phase down amounts is $54,852,898 (derived

* OIG's Note: Oregon stated that CMS deferred $75,731,895. However, this amount represents both the State and Federal share. In a letter dated April 3, 2003, CMS notified Oregon that it deferred $45,560,309 (Federal share).

from Appendix E, including note 3). Using this figure, applying the phase down percentage specified in the regulation, adding the State's estimate of payments attributable to the UPL for public facilities, and using the FMAP figures that have been published by CMS, the following would be the allowed supplemental payments for state fiscal years 2004 and 2005:

	SFY 2004	SFY 2005
Excess Amount-	$54,852,898	$54,852,898
Phase Down %	x .50	x .25
Excess Allowed	$27,426,449	$13,713,224
Public Facility UPL	3,693,700	3,764,642
Total Allowed	$31,120,149	$17,477,866
F.M.A.P.	x 0.6376	x 0.6112
Federal Share	$19,842,207	$10,682,472

In the interest of resolving the issues relating to these UPL payments, Oregon would accept the foregoing figures as the proper figures for the SFY 2004 and 2005 supplemental payments to public nursing facilities, as part of a resolution of the earlier year payments as set forth above.

Thank you for the opportunity to comment on the findings and recommendations of the draft audit report.

Sincerely,

Lynn Read

Lynn Read
Administrator

C: Charles Miller
Gary Weeks, Department of Human Services
Erinn Kelley-Siel, Governor's Office
Larry Young, Department of Justice
Vic Todd, Department of Human Services
Julia Huddleston, Department of Human Services
Gretchen Morley, Department of Human Services