APR - 9 2009

TO: Charlene Frizzera
Acting Administrator
Centers for Medicare & Medicaid Services

FROM: Joseph E. Vengrin
Deputy Inspector General for Audit Services

SUBJECT: Review of Timeliness of West Virginia's Retroactive Claims for Medicaid School-Based Services (A-03-06-00201)

Attached is an advance copy of our final report on the timeliness of West Virginia's retroactive claims for Medicaid school-based services. We will issue this report to the West Virginia Department of Health and Human Resources' Bureau for Medical Services (the State agency) within 5 business days.

Section 1132(a) of the Social Security Act limits Federal Medicaid payment to claims for expenditures (or payments to providers) that are filed "within the two-year period which begins on the first day of the calendar quarter immediately following such calendar quarter [in which the expenditure was made]." However, Federal regulations make an exception when a claim for expenditures older than 2 years represents an adjustment to prior-year costs. In adjudicating disputes of claims that are older than 2 years, the Departmental Appeals Board has denied claims it determined were requests for new and separate Federal funds and not adjustments to previously understated cost items.

In West Virginia, the State agency administers the Medicaid program. The State agency created rates for seven Medicaid school-based health and related services (school-based services) claimed by local education agencies. In September 2003, with the assistance of a consultant, the State agency increased the rates and submitted a retroactive claim. In June 2005, the State agency submitted a second retroactive claim reducing the September 2003 claim. The retroactive claims included $4.1 million (Federal share) submitted after the 2-year filing limit for services paid during the quarters ending December 31, 2000, through June 30, 2001. The Centers for Medicare & Medicaid Services (CMS) requested that we determine the allowability and allocability of the cost components in the seven rates used to claim school-based services. We will address that request in a separate report.

Our objective was to determine whether the State agency complied with Federal requirements for an exemption to the 2-year limit for its retroactive claims for school-based services for the quarters ending December 31, 2000, through June 30, 2001.

The State agency did not fully comply with Federal requirements for an exemption to the 2-year limit for filing retroactive claims. A portion of the State agency's retroactive claim, $4.1 million (Federal share), fell outside the required 2-year filing period because it related to expenditures made by the State in quarters ending December 31, 2000, through June 30, 2001. Of this amount, $2.3 million (Federal share) related to new cost components that were not in the original rates used to calculate the claims for school-based services and did not reflect the settlement of previously identified costs. As a result, the $2.3 million (Federal share) was not exempt from the 2-year time limit and is therefore unallowable. The remaining $1.8 million (Federal share) met the requirements for an exemption because it reflected the settlement of previously identified salary and fringe benefit costs.

We recommend that the State agency refund $2,298,329 (Federal share) for costs claimed after the 2-year filing limit that were not exempt and ensure that future claims comply with the 2-year filing limit.

In written comments on our draft report, the State agency did not concur with our finding and recommendation. State officials said the September 2003 adjustment represented the retrospective settlement of school-based services, not a retroactive claim for additional services.

In our report, we agreed that a portion of the September 2003 retroactive claim represented settlement of interim rates, and we did not question the portion of the claim that adjusted the cost components of the rates submitted to CMS during the quarters ending December 31, 2000, through June 30, 2001. We also agree that the September retroactive claim did not represent costs for new services. However, nothing in the State agency's comments has given us cause to modify our 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 through e-mail at George.Reeb@oig.hhs.gov or Stephen Virbitsky, Regional Inspector General, Region III, at (215) 861-4470 or through e-mail at Stephen.Virbitsky@oig.hhs.gov. Please refer to report number A-03-06-00201.

Attachment

DEPARTMENT OF HEALTH & HUMAN SERVICES **OFFICE OF INSPECTOR GENERAL**

Office of Audit Services, Region III
Public Ledger Building, Suite 316
150 S. Independence Mall West
Philadelphia, PA 19106-3499

APR 14 2009

Report Number: A-03-06-00201

Mr. Warren D. Keefer
Deputy Secretary for Administration
Department of Health and Human Resources
State Capitol Complex, Building 3, Room 451
1900 Kanawha Boulevard East
Charleston, West Virginia 25305

Dear Mr. Keefer:

Enclosed is the U.S. Department of Health and Human Services (HHS), Office of Inspector General (OIG), final report entitled "Review of Timeliness of West Virginia's Retroactive Claims for Medicaid School-Based Services." We will forward a copy of this report to the HHS action official noted on the following page for review and any action deemed necessary.

The HHS action official will make final determination as to actions taken on all matters reported. We request that you respond to this 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.

Pursuant to the Freedom of Information Act, 5 U.S.C. § 552, OIG reports generally are made available to the public to the extent that information in the report is not subject to exemptions in the Act. Accordingly, this report will be posted on the Internet at http://oig.hhs.gov.

If you have any questions or comments about this report, please do not hesitate to call me, or contact Robert Baiocco, Audit Manager, at (215) 861-4486 or through e-mail at Robert.Baiocco@oig.hhs.gov. Please refer to report number A-03-06-00201 in all correspondence.

Sincerely,

Stephen Virbitsky
Regional Inspector General
for Audit Services

Enclosure

Direct Reply to HHS Action Official:

Ms. Jackie Garner
Consortium Administrator
Consortium for Medicaid and Children's Health Operations
Centers for Medicare & Medicaid Services
233 North Michigan Avenue, Suite 600
Chicago, Illinois 60601

Department of Health and Human Services

OFFICE OF INSPECTOR GENERAL

REVIEW OF TIMELINESS OF WEST VIRGINIA'S RETROACTIVE CLAIMS FOR MEDICAID SCHOOL-BASED SERVICES

Daniel R. Levinson
Inspector General

April 2009
A-03-06-00201

Office of Inspector General

http://oig.hhs.gov

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OFFICE OF AUDIT SERVICES FINDINGS AND OPINIONS

The designation of financial or management practices as questionable, a recommendation for the disallowance of costs incurred or claimed, and any other conclusions and recommendations in this report represent the findings and opinions of OAS. Authorized officials of the HHS operating divisions will make final determination on these matters.

EXECUTIVE SUMMARY

BACKGROUND

Pursuant to Title XIX of the Social Security Act (the Act), the Medicaid program provides medical assistance to low-income individuals and individuals with disabilities. The Federal and State Governments jointly fund and administer the Medicaid program. At the Federal level, the Centers for Medicare & Medicaid Services (CMS) administers the program. Each State administers its Medicaid program in accordance with a CMS-approved State plan. Although the State has considerable flexibility in designing and operating its Medicaid program, it must comply with applicable Federal requirements, including requirements for timely submission of claims.

Section 1132(a) of the Act limits Federal payment to claims for expenditures (or payments to providers) that are filed "within the two-year period which begins on the first day of the calendar quarter immediately following such calendar quarter [in which the expenditure was made]." However, Federal regulations make an exception when a claim for expenditures older than 2 years represents an adjustment to prior-year costs. In adjudicating disputes of claims that are older than 2 years, the Departmental Appeals Board has denied claims it determined were requests for new and separate Federal funds and not adjustments to previously understated cost items.

In West Virginia, the Department of Health and Human Resources' Bureau for Medical Services (the State agency) administers the Medicaid program. The State agency created rates for seven Medicaid school-based health and related services (school-based services) claimed by local education agencies. In September 2003, with the assistance of a consultant, the State agency increased the rates and submitted a retroactive claim. In June 2005, the State agency submitted a second retroactive claim reducing the September 2003 claim. The retroactive claims included $4.1 million (Federal share) submitted after the 2-year filing limit for services paid during the quarters ending December 31, 2000, through June 30, 2001.

CMS requested that we determine the allowability of the cost components in the seven rates for school-based services. We will address that request in a separate report.

OBJECTIVE

Our objective was to determine whether the State agency complied with Federal requirements for an exemption to the 2-year limit for its retroactive claims for school-based services for the quarters ending December 31, 2000, through June 30, 2001.

SUMMARY OF FINDING

The State agency did not fully comply with Federal requirements for an exemption to the 2-year limit for filing retroactive claims. We examined the portion of the State agency's retroactive claim, $4.1 million (Federal share), that fell outside the required 2-year filing period because it related to expenditures made by the State in quarters ending December 31, 2000, through June 30, 2001. Of this amount, $2.3 million (Federal share) related to new cost components that were

not in the original rates used to calculate the claims for school-based services and did not reflect the settlement of previously identified costs. As a result, the $2.3 million (Federal share) was not exempt from the 2-year time limit and is therefore unallowable.

The remaining $1.8 million (Federal share) met the requirements for an exemption because it reflected the settlement of previously identified salary and fringe benefit costs.

RECOMMENDATION

We recommend that the State agency refund $2,298,329 (Federal share) for costs claimed after the 2-year filing limit that were not exempt and ensure that future claims comply with the 2-year filing limit.

STATE AGENCY COMMENTS

In written comments on our draft report, the State agency did not concur with our finding and recommendation. State officials said the September 2003 adjustment represented the retrospective settlement of school-based services, not a retroactive claim for additional services. The State agency's comments are presented in their entirety as the Appendix.

OFFICE OF INSPECTOR GENERAL RESPONSE

In our report we agreed that a portion of the September 2003 retroactive claim represented settlement of interim rates, and we did not question the portion of the claim that adjusted the cost components of the rates submitted to CMS during the quarters ending December 31, 2000, through June 30, 2001. We also agree that the September retroactive claim did not represent costs for new services. However, nothing in the State agency's comments has given us cause to modify our recommendation.

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INTRODUCTION

BACKGROUND

The Medicaid Program and Applicable Federal Requirements

Pursuant to Title XIX of the Social Security Act (the Act), the Medicaid program provides medical assistance to low-income individuals and individuals with disabilities. The Federal and State Governments jointly fund and administer the Medicaid program. At the Federal level, the Centers for Medicare & Medicaid Services (CMS) administers the program. Each State administers its Medicaid program in accordance with a CMS-approved State plan. Although the State has considerable flexibility in designing and operating its Medicaid program, it must comply with applicable Federal requirements, including requirements for timely submission of claims.

Section 1132(a) of the Act limits Federal payment to those claims reported within 2 years of the calendar quarter in which the expenditure (or payment to the provider) occurred: "[Claims] shall be filed . . . within the two-year period which begins on the first day of the calendar quarter immediately following such calendar quarter; and payment shall not be made under this Act on account of any such expenditure if claim therefor is not made within such two-year period; except that this subsection shall not be applied so as to deny payment with respect to any expenditure involving . . . adjustments to prior year costs." Federal regulations (45 CFR § 95.7) implemented the statute by limiting claims to ". . . within 2 years after the calendar quarter in which the State agency made the expenditure." Expenditures are "made in the quarter in which any State agency made a payment to the service provider" (45 CFR § 95.13(b)).

Medicaid Coverage of School-Based Services

Section 411(k)(13) of the Medicare Catastrophic Coverage Act of 1988 (P.L. No. 100-360) amended section 1903(c) of the Act to permit Medicaid payment for medical services provided to children under the Individuals with Disabilities Education Act (originally enacted as P.L. No. 91-230 in 1970) through a child's individualized education plan. Under the Act, States are permitted to claim Federal Medicaid reimbursement for health-related services and administrative costs for school-based activities. CMS's "Medicaid and School Health: A Technical Assistance Guide" (August 1997) states that school health-related services included in a child's individualized education plan may be covered if all relevant statutory and regulatory requirements are met. In establishing payment rates, States may use the rates already established (Medicaid fee for service) or develop unique payment rates for school-based providers using statistically accurate and valid data to justify the rate amounts.

West Virginia's School-Based Program

In West Virginia, the Department of Health and Human Resources' Bureau for Medical Services (the State agency) administers the Medicaid program. West Virginia's Federal medical assistance percentage is approximately 75 percent. Based on its memorandum of understanding with the State agency, the State Department of Education (Department of Education) provides

school-based health services through each of its 57 local education agencies, which are primarily county boards of education.

The State plan generally distinguishes between therapy services, including speech, occupational, and physical therapy, which are provided by individual practitioners, and school-based health and related services (school-based services), including the preparation and review of a plan of care, care coordination, transportation services, and the services of personal care and transportation aides, which are provided by the local education agencies. Effective January 2000, the State agency created six rates for school-based services provided by the local education agencies. In September 2001, the State agency added a seventh rate.

The State Agency's Use of a Consultant

In 2002, to identify new sources of Federal revenue, the State agency contracted with a consulting firm, Public Consulting Group, Inc. (PCG), on a contingency fee basis. PCG proposed to update the seven rates for school-based services by adding two new cost components: operating and indirect expenses. These costs did not represent salary and fringe benefit costs previously used to calculate rates for school-based services. PCG recommended that the State agency submit a retroactive claim to recoup these costs for fiscal years (FY) 2001 through 2003 (July 1, 2000, through June 30, 2003). The State agency accepted the consultant's proposal and submitted it to CMS to support a retroactive claim effective September 2003. In June 2005, the State agency submitted a second retroactive claim reducing the September 2003 claim. The retroactive claims included $4.1 million (Federal share) submitted after the 2-year filing limit for services paid during the quarters ending December 31, 2000, through June 30, 2001. The State agency paid PCG a contingency fee of $2.1 million. The State did not claim a Federal share of that contingency fee.

CMS requested that we determine the allowability of the cost components of the seven rates for school-based services. We will address that request in a separate report.[1]

OBJECTIVE, SCOPE, AND METHODOLOGY

Objective

Our objective was to determine whether the State agency complied with Federal requirements for an exemption to the 2-year limit for its retroactive claims for school-based services for the quarters ending December 31, 2000, through June 30, 2001.

Scope

We analyzed $4,055,229 (Federal share), which is the portion of the retroactive claims claimed after the 2-year filing limit for quarters ending December 31, 2000, through June 30, 2001. We limited our review to the entries in the Medicaid paid claims database supporting the State

[1] "Review of Medicaid Reimbursement Rates for School-Based Health Services in West Virginia" (A-03-05-00203).

agency's original claims for school-based services and the two retroactive claims that adjusted the rates used to claim them.

We did not review the overall internal control structure of the State agency or the Medicaid program. We limited our review to those controls related to the State agency's methodology for calculating the adjustment and determining the subsequent retroactive claim.

We performed our fieldwork at the State agency offices in Charleston, West Virginia.

Methodology

To accomplish our objective, we:

- reviewed the applicable Federal and State Medicaid laws, regulations, and guidance; relevant sections of the Medicaid State plan; PCG's Federal revenue maximization contract; the State agency's memorandum of understanding with the Department of Education; grant and provider agreements; and policies and procedures for school-based services;

- reviewed PCG's rate proposal for school-based services, submitted in support of the State agency's retroactive claim, to determine the basis for the rate calculations;

- interviewed State agency and Department of Education officials to gain an understanding of the State's school-based program and how the State agency processed Medicaid claims for school-based services;

- obtained and analyzed the Medicaid paid claims database consisting of 1,309,307 claims for school-based services paid in quarters ending December 31, 2000, through September 30, 2003;

- calculated the amount of the State agency's retroactive claims submitted for expenditures paid in quarters ending December 31, 2000, through June 30, 2001; and

- calculated the Federal share of the portion of the September 2003 retroactive claim that violated the filing requirements.

We conducted this performance audit in accordance with generally accepted government auditing standards. Those standards require that we plan and perform the audit to obtain sufficient, appropriate evidence to provide a reasonable basis for our findings and conclusions based on our audit objectives. We believe that the evidence obtained provides a reasonable basis for our finding and conclusions based on our audit objective.

FINDING AND RECOMMENDATION

The State agency did not fully comply with Federal requirements for exemption to the 2-year limit for filing retroactive claims. We examined the portion of the State agency's retroactive

claim, $4.1 million (Federal share), that fell outside the 2-year filing requirement because it related to expenditures made by the State in quarters ending December 31, 2000, through June 30, 2001. Of this amount, $2.3 million (Federal share) related to new cost components that were not in the original rates used to calculate the claims for school-based services and did not reflect the settlement of previously identified costs. As a result, $2.3 million (Federal share) of the amount claimed after the 2-year time limit was not exempt and was therefore unallowable.

The remaining $1.8 million (Federal share) met the requirements for an exemption because it reflected the settlement of previously identified salary and fringe benefit costs.

CLAIM FILING TIME LIMIT EXCEEDED

Federal Requirements and Guidance

Section 1132(a) of the Act limits Federal payment to those claims reported within 2 years of the calendar quarter in which the expenditure occurred: "[Claims] shall be filed . . . within the two-year period which begins on the first day of the calendar quarter immediately following such calendar quarter; and payment shall not be made under this Act on account of any such expenditure if claim therefor is not made within such two-year period; except that this subsection shall not be applied so as to deny payment with respect to any expenditure involving . . . adjustments to prior year costs."

Regulations (45 CFR § 95.13(b)) state expenditures are "made in the quarter in which any State agency made a payment to the service provider." Regulations (45 CFR § 95.19) allow for specific exceptions to the 2-year requirement, including an exception for an adjustment to prior-year costs. Regulations (45 CFR § 95.4) define the term "adjustment to prior year costs" as ". . . an adjustment in the amount of a particular cost item that was previously claimed under an interim rate concept and for which it is later determined that the cost is greater or less than that originally claimed."

The Departmental Appeals Board (DAB) distinguishes between retroactive claims submitted as adjustments to previously understated cost items and new and separate requests for Federal funds. It has stated that the latter would not meet the definition of "adjustment to prior year costs" in 45 CFR § 95.4 and would thus be barred if made outside of the 2-year filing limit. In Massachusetts Department of Public Welfare, DAB No. 796 (1986), the DAB determined that claims for additional bed days in an intermediate care facility for the mentally retarded were time barred because they were new claims "wholly independent of previous claims." Similarly, the DAB held in New Jersey Department of Human Services, DAB No. 1655 (1998), that a claim for enhanced Federal share was time barred because it was "new and separate" from the prior timely claim for the same costs at the normal Federal matching rate. More recently, the DAB ruled that a retroactive adjustment to disproportionate share hospital payments was a new and separate claim because it was based on making new payments to newly identified disproportionate share hospitals rather than adjusting prior-year costs (New York State Department of Health, DAB No. 1867 (2003)).

CMS provided additional guidance in a July 2001 letter to State Medicaid Directors (SMDL #01-020) that reminded States of the regulatory limits on filing retroactive claims and clarified the implications of an earlier DAB decision (DAB No. 1655 (1998), cited above) that addressed claims filed at amended Federal matching rates. In its letter, CMS reiterated that new claims must be filed within 2 years.

State Requirement

Attachment-4.19B of the State plan, "Payments for Medical and Remedial Care and Services," allows for the use of interim rates based on statewide historical costs. The State plan attachment requires that "Costs [are] not to exceed actual, reasonable costs and must be settled on an annual basis."

New Costs Included in Rates

In September 2003, the State agency submitted a retroactive claim for expenditures made on or before the quarter ending June 30, 2001, that included $2.3 million (Federal share) related to expenditures for new cost components. The $2.3 million (Federal share) fell outside the 2-year filing limit and did not meet the regulatory exception for adjustments to prior-year claims because it was a new and separate claim for Federal reimbursement. The State agency's proposal said that the retroactive claim was a prior-year adjustment to previously understated cost items in the rates. The proposal stated that this was allowable under the interim rate concept as defined by Federal regulations, was consistent with the State plan, and, therefore, was not subject to the 2-year limit. However, not all of the adjustments the State agency made to the claim reflected settlement of interim rates on an annual basis or adjusted previously identified costs that were later determined to be greater than originally claimed.

The rates originally claimed included salary and fringe benefit costs of local education agencies' employees. We accepted the portion of the retroactive claim for the settlement of these costs because it met the requirement for an exemption from the 2-year limit. However, the retroactive claim also included a request for two new cost components: operating and indirect costs. Specifically, these costs included local education agency expenditures for administration and data processing, supplies and rental costs, maintenance and repair costs, and capital and debt service costs. The State agency did not include these costs when it calculated the rates used in the original claim. Because the State agency adjusted for the addition of new cost components to the rates, the retroactive claim also represented a new and separate request for Federal funding of previously unclaimed cost items. Accordingly, the State improperly received $2.3 million (Federal share) for those expenditures made on or before the quarter ending June 30, 2001, that did not meet the requirements for an exemption from the 2-year limit.

RECOMMENDATION

We recommend that the State agency refund $2,298,329 (Federal share) for costs claimed after the 2-year filing limit that were not exempt and ensure that future claims comply with the 2-year filing limit.

STATE AGENCY COMMENTS

In written comments on our draft report, the State agency did not concur with our finding and recommendation. State officials said the September 2003 adjustment represented the retrospective settlement of school-based services as required by the "Provider Reimbursement Manual," HIM-15, and not a claim for additional services. The State agency's comments are presented in their entirety as the Appendix.

OFFICE OF INSPECTOR GENERAL RESPONSE

In our report we agreed that a portion of the September 2003 retroactive claim represented settlement of interim rates as required by the State plan. (The "Medicare Provider Reimbursement Manual," HIM-15, does not provide guidance regarding the Medicaid claims in this report.) Accordingly, we did not question the portion of the claim that adjusted the cost components included in the rates submitted to CMS during the quarters ending December 31, 2000, through June 30, 2001. We also agree that the claims did not represent costs for new services.

However, the State agency's "Final Retroactive Rate Proposal," dated October 1, 2003, revised its rates to include some cost components that were not a part of the original rates and thus were subject to the 2-year filing limitation. The portion of the claim for revised rates was time barred because the cost components were new and separate from the prior timely claim. Similarly, the DAB held in New Jersey Department of Human Services, DAB No. 1655 (1998), that a claim for enhanced Federal share was time barred because it was "new and separate" from the prior timely claim at the normal Federal matching rate. Nothing in the State agency's comments has given us cause to modify our recommendation.

APPENDIX

STATE OF WEST VIRGINIA
DEPARTMENT OF HEALTH AND HUMAN RESOURCES

Joe Manchin III
Governor

Deputy Secretary for Administration
State Capitol Complex, Building 3, Room 451
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Telephone: (304) 558-5208 Fax: (304) 558-1003

Martha Yeager Walker
Secretary

RECEIVED
FEB 12 2009

February 11, 2009

Mr. Stephen Virbitsky
Regional Inspector General for Audit Services
Department of Health & Human Services
Office of Inspector General
150 S. Independence Mall West, Suite 316
Philadelphia, PA 19106-3499

Report Number: A-03-06-00201

Dear Mr. Virbitsky:

The West Virginia Department of Health and Human Resources (WVDHHR) has reviewed the Draft Report of the U.S. Department of Health and Human Services (DHHS), Office of Inspector General (OIG), entitled "Review of Timeliness of West Virginia's Retroactive Claims for Medicaid School-Based Services", dated January 2009. Based on our analysis of the Draft, we do not concur with the findings and recommendations, and must conclude that the OIG has erred in its analysis of the West Virginia School-Based Services Program.

West Virginia has not submitted "retroactive claims" for school-based services. We have submitted the required retrospective settlement of those same claims, consistent with governing federal regulation for approved cost-based reimbursement programs. **All** individual claims for the identified individual school-based services, as covered under the approved State Plan, were appropriately submitted within the 2-year window, and the OIG draft report appears to acknowledge this.

We do concur with the statement that 45 CFR 95.7 states, as a general rule:

"Under the programs listed in 95.1, we will pay a State for a State agency expenditure made after September 30, 1979, only if the State files a claim with us for that expenditure within 2 years after the calendar quarter in which the State agency made the expenditure."

However, Section 95.19 lists the exceptions to this rule. They are as follows:

"The time limits in Sec. 95.7 ... do not apply to any of the following:
(a) Any claim for adjustment to prior year costs.

(b) Any claim for an audit exception.
(c) Any claim resulting from a court-ordered retroactive payment.
(d) Any claim for which the Secretary decides there was good cause for the State's not filing it within the time limit."

Under 45 CFR 95.4, the definition of "adjustment to prior year costs" is given as: "Adjustment to prior year costs means an adjustment in the amount of a particular cost item that was previously claimed under an interim rate concept and for which it is later determined that the cost is greater or less than that originally claimed."

The only "cost items" for which West Virginia has submitted claims to CMS for federal funds under our approved State Plan are the billable units of services, identified as: **W3080** (IEP Initial/Triennial Development); **W3081** (IEP Annual Update); **W3084** (Individual Aide – Half Day); **W3085** (Individual Aide – Full Day); **W3086** (Transportation); **W3087** (Transportation Aide); and **W3089** (Care Coordination). As this is a cost-based program under the approved State Plan, these were paid on an interim rate (as per 45 CFR 95.4), distributed as a fee, pending the required settlement of costs. All individual service claims billed to Medicaid by the providers under the interim rates, were appropriately filed within the mandated two year period.

The OIG draft report inappropriately references a "retroactive claim effective September 2003." This was in fact a retrospective adjustment to the interim rates for the exact same services noted above, at the exact same (i.e., unchanged) utilization. This is the required process, as specified under the Provider Reimbursement Manual (HIM-15). There were no retroactive claims for additional services, as stated in the OIG draft report.

Furthermore, the OIG has implicitly agreed with the State's position. The OIG draft report indicates that the claims made to CMS by West Virginia in September 2003 and June 2005 were differentiated, for OIG review purposes, between those services billed for the periods (Quarters) prior to and those after June 30, 2001. By the fact they only took issue with those that fell outside the two years and only indicated that the reason had to do with the required 2-year filing period, implies the other periods were in conformance with the State Plan. However, all claims by WV to CMS for all periods were for one of the approved billable services, i.e., W0380, W0381, W0384, W0385, W0386, W0387 or W0389. If those claims had been for "additional services", rather than retrospective adjustments to interim rates, then a new State Plan would have been required, as they would not therefore be approved services. By recognizing the appropriateness of claiming for those items, the OIG is acknowledging that they were covered by the approved State Plan, and the consistency of the methodology employed by the State is appropriate. Further, since they are retrospective adjustments to interim rates, then the timeliness issue is not relevant, as per 42 CFR 95.19 and 42 CFR 95.4.

The Department is familiar with the referenced Department Appeals Board (DAB) decisions regarding the applicability of 45 CFR 95.4, and agree that they were appropriate in the specifics of the indicated cases. However, we strongly feel they are **not** relevant to the West Virginia School-Based Services claiming situation. As noted, DAB No. 798 dealt with claims for additional bed days in an ICF/MR, while DAB No.

1655 dealt with retroactive claims for Disproportionate Share Payments to additional hospitals. Both of those claim situations were for new claims, demonstrated by increased utilization and units of service beyond the initial claiming. The West Virginia School-Based situation is **not** a "retroactive claiming for additional services" (units of service or utilization), but rather a retrospective adjustment to the interim rates for the very same billable services claimed, without **any** increase in claimed utilization.

The fact that some costs of the approved services may not have been captured in the initial interim rates for those services is not surprising – actual costs incurred in service delivery can only be determined after the fact. It is our understanding that this is the reason 45 CFR 95.4 defines "adjustments to prior year costs" in the manner it does. All costs determined to have been incurred in service delivery were in accordance with federal Regulation and guidelines, including HIM-15 and OMB Circular A-87. How close interim rates come to the ultimate, settled (retrospective) costs is largely a function of the information available in advance, and ongoing experience with the service program. Frequently, as with the West Virginia School-Based Services program, interim rates will require significant adjustment and settlement during the start-up periods. However, the process is the same, and is handled consistently, in conformance with Federal Regulation.

We appreciate the opportunity to review and respond to this Draft Report. If you have any comments or questions, please feel free to contact Tara Buckner, Chief Financial Officer for the WV Department of Health and Human Resources, at (304) 558-9138, or by e-mail at Tara.L.Buckner@wv.gov.

Sincerely,

Warren D. Keefer
Deputy Secretary for Administration

WDK/jal

cc: Martha Yeager Walker, Secretary