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February 18, 2011

Report Number: A-01-10-00004

JudyAnn Bigby, MD
Secretary
Executive Office of Health and Human Services
One Ashburton Place
Boston, Massachusetts 02108

Dear Dr. Bigby:

Enclosed is the U.S. Department of Health & Human Services (HHS), Office of Inspector General (OIG), final report entitled *Review of Medicaid Hospice Payments Made by Massachusetts for State Fiscal Years 2007 and 2008*. 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.

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If you have any questions or comments about this report, please do not hesitate to call me, or contact Curtis Roy, Audit Manager, at (617) 565-9281 or through email at Curtis.Roy@oig.hhs.gov. Please refer to report number A-01-10-00004 in all correspondence.

Sincerely,

/Michael J. Armstrong/
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
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Department of Health & Human Services

**OFFICE OF
INSPECTOR GENERAL**

**REVIEW OF MEDICAID HOSPICE
PAYMENTS MADE BY
MASSACHUSETTS FOR STATE
FISCAL YEARS 2007 AND 2008**



Daniel R. Levinson
Inspector General

February 2011
A-01-10-00004

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

The Massachusetts Executive Office of Health and Human Services, Office of Medicaid (the State agency) is responsible for administering MassHealth, the Massachusetts Medicaid program, in compliance with Federal and State statutes and administrative policies. State agencies have the option of offering hospice care as a benefit to eligible Medicaid members.

A hospice is a public agency, private organization, or a subdivision of either that is primarily engaged in providing care to terminally ill individuals. When hospice care is furnished to a beneficiary residing in a nursing facility, the hospice and nursing facility enter into a written agreement under which the hospice takes full responsibility for the professional management of the beneficiary's hospice services and the nursing facility agrees to provide room and board.

The State agency reimburses hospices at 95 percent of the room and board per diem rate that the State agency would have paid to nursing facilities for beneficiaries not receiving hospice care. Federal regulations require the State agency to use certain additional financial resources that beneficiaries have to reduce Medicaid payments to hospices.

The State agency made hospice payments totaling \$193,433,284 for 100,993 claims during State fiscal years 2007 and 2008 (July 1, 2006, through June 30, 2008). We limited our review to 5,304 monthly hospice claims totaling \$21,948,950 that we identified as having a high risk of payment error during State FYs 2007 and 2008.

OBJECTIVE

Our objective was to determine whether the State agency made Medicaid payments to Massachusetts hospices in accordance with Federal and State requirements.

SUMMARY OF FINDING

The State agency did not always make Medicaid payments for hospice services in accordance with Federal and State requirements. Specifically, the State agency did not use the correct per diem rate, make the appropriate payment reduction, or reduce Medicaid payments to hospices by the amount of beneficiaries' financial contributions for 2,056 of the 5,304 claims we reviewed. As a result, the State agency's Federal claim was overstated by a total of \$1,652,868 (\$826,434 Federal share).

The overpayments occurred because the State agency's claims processing system was not designed to ensure that the appropriate per diem rate, payment reduction, and beneficiary financial contribution were used to calculate the correct claim payment amount.

RECOMMENDATIONS

We recommend that the State agency:

- refund \$826,434 to the Federal Government and
- implement internal controls, such as a computer edit, to ensure that payments for hospice claims are based on the correct per diem rate, payment reduction, and beneficiary financial contribution.

STATE AGENCY COMMENTS

In its written comments on our draft report, the State agency concurred with our findings and recommendations. The State agency's comments are included in their entirety as the Appendix.

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INTRODUCTION

BACKGROUND

Pursuant to Title XIX of the Social Security 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.

The Massachusetts Executive Office of Health and Human Services, Office of Medicaid (the State agency) is responsible for administering MassHealth, the Massachusetts Medicaid program.

Hospice Care

State agencies have the option of offering hospice care as a benefit to eligible Medicaid members. A hospice is a public agency, private organization, or a subdivision of either that is primarily engaged in providing palliation and management of terminal illnesses and related conditions. Medicaid payments for hospice care are made at one of four prospective rates for routine home care, continuous routine home care, inpatient respite care, or general inpatient care. In addition, hospices can also receive a partial payment for the room and board of hospice patients residing in nursing facilities.

Nursing Facilities' Role in Hospice

Hospices and nursing facilities enter into written agreements under which the hospice takes full responsibility for the professional management of a beneficiary's hospice services and the nursing facility agrees to provide room and board. Room and board includes the provision of a room and meals as well as activities such as the administration of medication, maintaining the cleanliness of the beneficiary's room, and supervision and assistance in the use of durable medical equipment. The nursing facility subsequently bills the hospice for the room and board provided to a beneficiary receiving hospice care.

Title 114.3 Code of Massachusetts Regulations (CMR), Chapter 43 provides hospices payments equal to 95 percent of the room and board per diem rate that it would have paid to nursing facilities for beneficiaries not receiving hospice care. Furthermore, the *Commonwealth of Massachusetts Division of Medical Assistance Nursing Facility Manual* (Manual) §456.420 provides that the State agency will pay for nursing facility services based on per diem rates. The State agency reviews and assigns per diem rates based on beneficiary questionnaires completed by nursing homes. In completing the questionnaires, nursing homes use information from beneficiaries' medical records including physicians' orders, nursing progress notes, and other pertinent documentation. The State agency assigns scores for the amount of nursing care needed for factors such as dispensing medications, dressing, and assisting with mobility and eating. The

questionnaires are completed for each beneficiary quarterly, and the per diem rates are adjusted as necessary.

Hospice Billing

The State agency, pursuant to Federal requirements, must use certain additional financial resources that beneficiaries have to reduce Medicaid payments to hospices. These resources include Social Security and health and casualty insurance payments. When the State agency uses an incorrect room and board per diem rate or does not reduce the Medicaid payment to a hospice by the amount of the beneficiary's contribution, the hospice could receive overpayments. The hospice must return the overpayments to the State Medicaid program, which in turn must refund the Federal share to CMS on its' Quarterly Statement of Expenditures for the Medical Assistance Program (Form CMS-64).

OBJECTIVE, SCOPE, AND METHODOLOGY

Objective

Our objective was to determine whether the State agency made Medicaid payments to Massachusetts hospices in accordance with Federal and State requirements.

Scope

We limited our review to Medicaid hospice paid claims that were subject to the State agency's payment requirements. The State agency made hospice payments totaling \$193,433,284 for 100,993 claims submitted by 49 hospices during State fiscal years (FYs) 2007 and 2008 (July 1, 2006, through June 30, 2008). We limited our review to 5,304 monthly hospice claims totaling \$21,948,950 that we identified as having a high risk of payment error during State FYs 2007 and 2008. Specifically, we limited our review to hospice claims which appeared not to have been reduced by beneficiaries' financial contributions.

In performing our review, we established reasonable assurance that the claims data was accurate. We did not, however, assess the completeness of the Massachusetts paid claims file from which we obtained the data. We limited our review of internal controls to obtain an understanding of the State agency's procedures for billing and refunding overpayments of nursing home room and board services provided to hospice beneficiaries.

We performed fieldwork in October 2009 through October 2010 at hospices located in Charlestown, Danvers, Lawrence, Malden, Waltham, and Worcester, Massachusetts; the State agency in Boston, Massachusetts; and the Centers for Medicare & Medicaid Services Regional Office in Boston, Massachusetts.

Methodology

To accomplish our objective, we:

- reviewed Federal and State hospice and nursing home requirements;
- held discussions with State agency officials to gain an understanding of the hospice program and the State agency's role in making hospice payments;
- evaluated State agency payment files to identify 100,993 beneficiary monthly claims totaling \$193,433,284 paid to 49 hospices for hospice services provided to Medicaid beneficiaries in State FYs 2007 and 2008;
- identified 5,304 claims totaling \$21,948,950 as having a high risk of payment error because these claims appear not to have been reduced by beneficiaries' financial contributions;
- reviewed hospice and nursing home billing invoices, remittance advices, and State agency claims data to validate payment information and determine whether the sampled claims were correctly billed to the State agency at all 49 hospices;
- conducted site visits at 6 hospices; and
- discussed the findings with the 49 individual hospices, the State agency, and CMS.

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 findings and conclusions based on our audit objective.

FINDINGS AND RECOMMENDATIONS

The State agency did not always make Medicaid payments for hospice services in accordance with Federal and State requirements. Specifically, the State agency did not use the correct per diem rate, make the appropriate payment reduction, or reduce its Medicaid payment to hospices by the amount of beneficiaries' financial contributions for 2,056 of the 5,304 claims we reviewed. As a result, the State agency's Federal claim was overstated by a total of \$1,652,868 (\$826,434 Federal share).

The overpayments occurred because the State agency's claims processing system was not designed to ensure that the appropriate per diem rate, payment reduction, and beneficiary financial contribution were used to calculate the correct claim payment amount.

PROGRAM REQUIREMENTS

Per Diem Rates

The Manual establishes the requirements for nursing facility services under MassHealth. Section 456.420 of the Manual provides that the State agency will pay for nursing facility services based on per diem rates that correspond to the nursing care needs of members of the facility. To determine the per diem for each member's nursing care needs, a nursing facility must complete a questionnaire when the beneficiary elects hospice care and quarterly thereafter.

Payment Reduction

Title 114.3 CMR 43.04(3)(b) states that the hospice per diem rate shall equal 95 percent of the rate that would have been paid by the State agency to a nursing facility if the beneficiary had not been receiving hospice care.

Beneficiary Contributions

Pursuant to 42 CFR § 435, the State agency must reduce its payment to an institution for services provided to a Medicaid-eligible individual by the amount that remains after adjusting the individual's total income for a personal needs allowance and other considerations that the regulation specifies.

INCORRECT PAYMENT CALCULATION

The State agency did not always use the correct per diem rate, make appropriate payment reductions, or reduce Medicaid payments to hospices by the amount of beneficiaries' financial contributions. Specifically:

- **Incorrect Per Diem Used:** The State agency did not always use the correct per diem rate when making payments for hospice claims. Instead, the State agency made payments to hospices based on a higher rate submitted by hospice providers rather than the current rate established by the State agency.
- **Payment Reduction Not Made:** The State agency did not always reduce the payment for hospice room and board claims to 95 percent of the per diem rate. Instead, the State agency paid 100 percent of the per diem rate to hospice providers.
- **Payments Not Reduced By Beneficiary Contributions:** The State agency did not always reduce payments for hospice services by the amount of beneficiaries' financial contributions. Instead, the State agency made payments to hospice providers at the full amount.

AMOUNT OWED TO FEDERAL GOVERNMENT

Due to incorrect payment calculations, the State agency's Federal claim for Medicaid payments made to 49 hospices for the period July 1, 2006, through June 30, 2008, was overstated by a total of \$1,652,868 (\$826,434 Federal share).

CAUSE OF UNREPORTED OVERPAYMENTS

The overpayments occurred because the State agency's claims processing system was not designed to ensure that the appropriate per diem rate, payment reduction, and beneficiary financial contribution were used to calculate the correct claim payment amount.

RECOMMENDATIONS

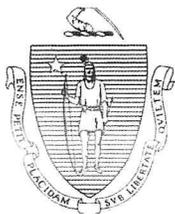
We recommend that the State Agency:

- refund \$826,434 to the Federal Government and
- implement internal controls, such as a computer edit, to ensure that payments for hospice claims are based on the correct per diem rate, payment reduction, and beneficiary financial contribution.

STATE AGENCY COMMENTS

In its written comments on our draft report, the State agency concurred with our findings and recommendations. The State agency's comments are included in their entirety as the Appendix.

APPENDIX



The Commonwealth of Massachusetts
Executive Office of Health and Human Services
Office of Medicaid
One Ashburton Place
Boston, MA 02108

DEVAL L. PATRICK
Governor

TIMOTHY P. MURRAY
Lieutenant Governor

JUDYANN BIGBY, M.D.
Secretary

February 8, 2011

Michael J. Armstrong
Regional Inspector General, Audit Services
HHS/OIG/OAS
Region I
JFK Federal Building
Boston, MA 02203

RE: Audit Report No: A-01-10-00004

Dear Mr. Armstrong,

Thank you for the opportunity to review and comment on Draft Audit Report No.: A-01-10- 00004
Review of Medicaid Hospice Payments made by Massachusetts for State Fiscal Years 2007 and 2008.

The Office of the Inspector General (OIG), Executive Office of Health and Human Services (EHS) and the MassHealth Provider Compliance Unit (PCU) have worked cooperatively for the last four years advancing our mutual goals and efforts to identify and prevent fraud, waste and abuse as well as recover overpayments. This hospice engagement is a good example of the concept and benefits of partnership audits.

Subsequent to OIGs November 18, 2009 engagement letter, the PCU met with OIG auditors during December, 2009 and January, 2010 to discuss the PCU hospice room and board recovery project initiated in October, 2009. At the initial meeting, OIG indicated that they were looking at hospice room and board claims where the PPA may not have been deducted from on the MassHealth claim, or when an incorrect PPA was deducted. Again, the PCU was already engaged in a recovery project for identified overpayments at 63 hospice providers for room and board claims. In addition to the PPA issue, other pricing components were identified that could result in potential overpayments to hospice providers. At three meetings with OIG, PCU described the pricing methodology applicable to room and board claims as well as two additional issues which would merit review during any hospice audit conducted by OIG or in future PCU projects. First, a hospice provider should only be billing a per diem of 95% of the nursing facility rate; and, second, the nursing facility rate should be correct as well as the level of care for the member should also be correct.

Finally, PCU shared their extensive database with OIG resulting from a well-defined algorithm for hospice room and board claims with dates of service from July 1, 2005 through April 30, 2009.

Our responses to the report's specific recommendations are as follows:

Recommendation 1): Refund \$826,434 Federal share to the federal government.

Response:

Upon receipt and review of the claims detail from OIG, MassHealth will pursue overpayments from the identified providers consistent with MassHealth regulations at 130 CMR 450.437, and will refund the federal share in accordance with Section 6506 of the Affordable Care Act and as described in State Medicaid Director letter #10-014, dated July 13, 2010.

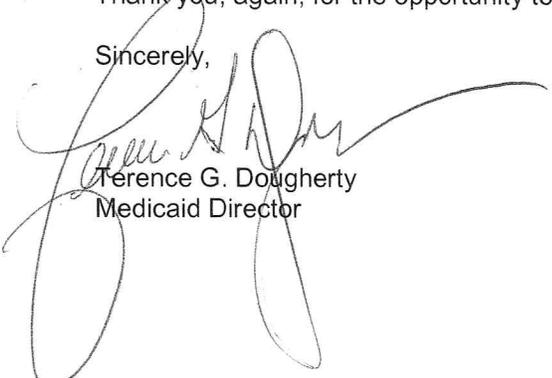
Recommendation 2): Implement internal controls, such as a computer edit, to ensure that payments for hospice claims are based on the correct per diem, payment reduction and beneficiary final contribution amounts.

Response:

- In May 2009, MassHealth implemented a computer edit for the beneficiary's contribution amount for hospice claims. MassHealth refers to the beneficiary contribution amount as the patient-paid amount (PPA). See, 130 CMR 456.423. When a hospice claim is processed for payment, MMIS searches its records for a PPA, and, if a PPA is found, MMIS deducts that amount from the hospice paid claim. If a hospice provider enters an incorrect PPA on the claim or does not include a PPA on the claim, MMIS will search for a PPA on every hospice claim and make the appropriate adjustment to the paid claim.
- MassHealth is working on a claims processing computer edit that will ensure all hospice claims are paid at the correct per diem amount and calculate 95% of the per diem amount. This systems edit is currently scheduled to be implemented in July, 2011.
- MassHealth's Provider Compliance Unit (PCU) conducts a post-payment review of hospice paid claims to ensure that the correct per diem amount was paid and the 95% calculation of the per diem amount was applied to the claim. In October 2009 the PCU sent initial notices of overpayments to 63 hospices for room and board claims with dates of service from July 1, 2004 through April 30, 2009. Subsequently, audit notices were sent to 75 hospices for room and board claims in October 2010, excluding those reviewed by the Office of Inspector General and by PCU in the previous recovery project. This audit covered dates of service January 1, 2005 through December 31, 2009. To date, approximately \$2,615,000.00 has been recovered. For identified overpayments, MassHealth recovers the overpayments from the hospice providers and refunds the Federal share to the federal government.
- MassHealth conducted training on MassHealth billing procedures for hospice providers in 2009; this training reinforced the provider's responsibility to bill the correct per diem rate, the 95% calculation, and the PPA. Along with the trainings, MassHealth revised the billing guidelines for hospice providers. MassHealth created hospice billing tips and job aids which contained detailed billing instructions to further address these hospice billing procedures. The billing guidelines, hospice tips and job aids are all posted on the MassHealth website.

Thank you, again, for the opportunity to respond to the draft report.

Sincerely,



Terence G. Dougherty
Medicaid Director