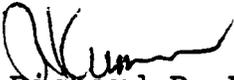


**Memorandum****DEC 19 1991**

Date

From


Richard P. Kusserow
Inspector General

Subject

Review of Medicaid Payments to Five Free-Standing
Inpatient Alcoholism Providers Within New York State
(A-02-91-01030)

To

Gail R. Wilensky, Ph.D.
Administrator
Health Care Financing Administration

This memorandum alerts you to the issuance on December 20, 1991, of our final audit report. A copy is attached. The purpose of our audit was to determine if New York State (NYS) ceased claiming Federal financial participation (FFP) on Medicaid payments made to five free-standing inpatient alcoholism providers after a federally-sponsored demonstration project in which they participated had ended.

On November 7, 1980, the Health Care Financing Administration and the National Institute on Alcohol Abuse and Alcoholism jointly sponsored a demonstration project to study the effectiveness of providing inpatient and outpatient alcoholism services in free-standing facilities under the Medicare and Medicaid programs. Applicable waivers of Federal regulations were granted to permit participation of these types of providers under both Federal programs. Five States, including NYS, chose to participate in the demonstration project. New York's project included five free-standing inpatient alcoholism providers. The project ran from September 30, 1981 to November 29, 1985. As of this latter date, FFP on the Medicaid claims from the five demonstration grant providers was no longer available.

Our review noted that after the demonstration project period ended, NYS improperly continued to claim FFP on Medicaid payments made to all five providers. In our opinion, this occurred because the State did not establish appropriate edits or mechanisms within its Medicaid Management Information System (MMIS) to prevent FFP from being claimed after the demonstration project had concluded. As a result, the Federal Government was overcharged \$1,877,849 during the period December 1, 1985 to October 31, 1990.

Page 2 - Gail R. Wilensky, Ph.D.

We are recommending recovery of the \$1,877,849 and that the State discontinue claiming FFP for inpatient alcoholism services in free-standing alcoholism facilities.. Additionally, we are recommending that the State establish appropriate edits or mechanisms within its MMIS to prevent the improper claiming from occurring in the future.

In their comments to our report, State officials concurred that they improperly claimed FFP during our audit period and indicated that they will process the necessary audit adjustment once our report is finalized.

For further information, contact:
John Tournour
Regional Inspector General
for Audit Services, Region II
FTS 264-4620

Attachment

Department of Health and Human Services

OFFICE OF INSPECTOR GENERAL

**REVIEW OF MEDICAL ASSISTANCE PAYMENTS
MADE BY THE NEW YORK STATE
DEPARTMENT OF SOCIAL SERVICES
TO FIVE FREE-STANDING INPATIENT
ALCOHOLISM PROVIDERS AFTER A
FEDERALLY-SPONSORED DEMONSTRATION PROJECT
IN WHICH THEY PARTICIPATED HAD ENDED**

**NEW YORK STATE DEPARTMENT OF SOCIAL SERVICES
ALBANY, NEW YORK**

**FOR THE PERIOD
DECEMBER 1, 1985 TO OCTOBER 31, 1990**

The designation of the 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 Office of Audit Services. Final determination on these matters will be made by authorized officials of the HHS operating divisions.



**Richard P. Kusserow
INSPECTOR GENERAL**

CIN A-02-91-01030

OFFICE OF INSPECTOR GENERAL

The mission of the Office of Inspector General (OIG), as mandated by Public Law 95-452, as amended, is to protect the integrity of the Department of Health and Human Services' (HHS) programs as well as the health and welfare of beneficiaries served by those programs. This statutory mission is carried out through a nationwide network of audits, investigations, and inspections conducted by three OIG operating components: the Office of Audit Services, the Office of Investigations, and the Office of Evaluation and Inspections. The OIG also informs the Secretary of HHS of program and management problems, and recommends courses to correct them.

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DEPARTMENT OF HEALTH & HUMAN SERVICES

Office of Inspector General
Office of Audit Services

Region II
Jacob K. Javits Federal Building
26 Federal Plaza
New York, NY 10278

Our Reference: Common Identification Number A-02-91-01030

Mr. Cesar A. Perales
Commissioner
New York State Department
of Social Services
40 North Pearl Street
Albany, New York 12243

Dear Mr. Perales:

This is to advise you of the results of our REVIEW OF MEDICAL ASSISTANCE PAYMENTS MADE BY THE NEW YORK STATE DEPARTMENT OF SOCIAL SERVICES TO FIVE FREE-STANDING INPATIENT ALCOHOLISM PROVIDERS AFTER A FEDERALLY SPONSORED DEMONSTRATION PROJECT IN WHICH THEY PARTICIPATED HAD ENDED. The purpose of our review was to determine if New York State (NYS) improperly claimed Federal financial participation (FFP) for Medicaid payments made to the five providers during our audit period.

Our review determined that the NYS Department of Social Services (DSS) improperly claimed FFP on payments to all five providers for periods after the demonstration project had ended. In our opinion, this occurred because the State did not establish appropriate edits or mechanisms within its Medicaid Management Information System (MMIS) to prevent FFP from being claimed after the project concluded. As a result, the Federal Government was overcharged \$1,877,849 during the period December 1, 1985 to October 31, 1990.

We are recommending recovery of the \$1,877,849 Federal share amount and that the State discontinue its practice of claiming FFP for inpatient services provided in these five free-standing alcoholism facilities. Additionally, we are recommending that the State establish appropriate edits or mechanisms within its MMIS to prevent the improper claiming from occurring in the future.

INTRODUCTION

Backaround

Medicaid, authorized by Title XIX of the Social Security Act, as amended, provides grants to States for furnishing medical assistance to eligible low-income persons. The States arrange with medical service providers such as physicians, pharmacies, hospitals, nursing homes, and other organizations to provide the needed medical assistance.

New York initiated its Medicaid program on May 1, 1966. The NYS DSS is the Single State Agency for Medicaid. The DSS delegates certain of its responsibilities to other State agencies. One such agency is the Division of Alcoholism and Alcohol Abuse (DAAA). In general, the DAAA is responsible for the overall administration of inpatient and outpatient alcoholism detoxification, rehabilitation, and treatment services. Within NYS, inpatient alcoholism services are offered at private free-standing alcoholism facilities, **State-**operated alcohol treatment centers, alcoholism units of general acute care hospitals, and in institutions for mental diseases. Generally, these inpatient services can be divided into two categories: rehabilitation and detoxification. Rehabilitation includes treatment, counseling and related services, while detoxification usually encompasses short term stays to reduce or eliminate the alcohol in the blood and to treat the alcohol withdrawal symptoms.

The statutory requirements with respect to the services covered under the Medicaid program are found at Section 1905 (a) of the Act. Section 1905 (a) defines the term medical assistance. The Federal regulations implementing this section of the Act are found at 42 Code of Federal Regulations (42 CFR), Part 440. This part delineates the services for which FFP is available. Among the Medicaid eligible inpatient service providers identified in Part 440 are hospitals, skilled nursing facilities, and intermediate care facilities. Part 440 makes no provision for inpatient services which are furnished in free-standing alcoholism facilities.

Section 931 of the Omnibus Budget Reconciliation Act (OBRA) of 1980 amended the Social Security Act to permit Medicare (but not Medicaid) participation of free-standing alcoholism facilities which would provide detoxification services. These facilities would have been eligible to participate in the Medicare program effective April 1, 1981. However, this amendment did not address the rehabilitation services provided in these facilities, nor did it provide for the inclusion of free-standing alcoholism facility services in the Medicaid program for either detoxification or rehabilitation.

In response to Section 931 of OBRA 1980, three facilities located within NYS applied for admission to the Medicare program as free-standing alcohol detoxification facilities. These facilities were **Rockland** Alcoholism Treatment Center, St. Lawrence Alcoholism Treatment Center, and Sleepy Valley Center. Prior to these three providers (and other free-standing alcoholism facilities within NYS) receiving their Medicare certification, Section 212 of OBRA 1981 rescinded Section 931 of OBRA 1980. As such, free-standing facilities providing alcohol detoxification services never became Medicare eligible providers in NYS.

On November 7, 1980, the Health Care Financing Administration (**HCFA**), in conjunction with the National Institute on Alcohol Abuse and Alcoholism (NIAAA), announced a special solicitation regarding alcoholism services. The purpose of this solicitation, published in the Federal Register, Vol. 45, No. 218, was to fund a demonstration project to study the effectiveness of providing both inpatient and outpatient alcoholism services under the Medicare and Medicaid program in free-standing settings. Five States, including NYS, chose to participate in the demonstration project. Federal waivers were granted during the demonstration period that allowed free-standing inpatient providers of alcoholism services to make claims to both Medicaid and Medicare. The alcoholism demonstration project in NYS began on September 30, 1981 and concluded on November 29, 1985. As of this latter **date**, FFP for these freestanding alcoholism providers was no longer available.

At the conclusion of the demonstration project, NYS opted to continue the Medicaid funding of these facilities utilizing State funds. Chapter 743 of the NYS Laws of 1986 was enacted which made free-standing inpatient alcoholism facilities eligible providers in the **State's** Medicaid program. This led to the passage of Part 376 within Title 14 of the New York Code of Rules and Regulations (14 NYCRR) which allowed these facilities to continue to **claim** Medicaid under the State's Medicaid program after the Federally sponsored demonstration project had ended.

In their Five Year **Comprehensive** Plan for Alcoholism Services in New York State (Five Year Plan), dated November 19, 1990, the DAAA provides an explanation regarding the unavailability of FFP for inpatient services provided in free-standing alcoholism facilities under the Federal Medicaid program. Specifically, an excerpt from page 72 of the Plan states that:

"The New York State Medicaid program is financed through a combination of federal, state and local dollars. Availability of federal funding for alcoholism services is determined by both the facility's and individual

recipient's Medicaid eligibility status. There are federally eligible Medicaid recipients and federally eligible Medicaid providers of service. Figure 7.1 illustrates the individual and provider eligibility criteria for the New York State Medicaid program as it relates to federal, state and local funding shares for alcoholism services."

Page 72 of the Five Year Plan goes on to state that:

"Freestanding inpatient alcoholism facilities, except for special discrete units of psychiatric hospitals, are not eligible for federal funding participation."

In the aforementioned Figure 7.1, on page 73 of the Five Year Plan, the DAAA illustrates the fact that adult inpatient rehabilitation facilities and residential chemical dependency programs for youth are not eligible to participate in the Federal Medicaid program. Additionally, on page 74 of the Plan, the DAAA states that:

". . . there is no federal funding share for federally eligible Medicaid recipients, i.e. an SSI Medicaid recipient, who receive services in a non-federally eligible facility such as a freestanding inpatient alcoholism facility."

Additionally, on page 74 of the Plan, under the heading of Medicaid reimbursement methodologies for inpatient programs, the DAAA states that:

"Thirteen of these agencies are approved to participate in the New York State-only Medicaid program, while one is a federally Medicaid eligible special discrete unit of a psychiatric hospital."

We confirmed with a DAAA official that the 13 agencies not allowed to receive FFP included the five free-standing alcoholism facilities that participated in the demonstration project.

Finally, on page 76 of the Five Year Plan, the DAAA states that:

"In order to maximize federal Medicaid dollars, the Division will continue to lobby at the federal level for permanent inclusion of free-standing inpatient facilities in the federal Medicaid and Medicare **programs.**"

Other State agencies besides the DAAA have also recognized that FFP is **unavailable** for clients in free-standing inpatient

alcoholism facilities. In correspondence dated April 4, 1990 from a DSS official to us, he states that:

"The federal government does not recognize alcoholism facilities as a distinct classification of covered services."

Additionally, in correspondence dated November 16, 1989 from an Office of Mental Health official to us, he states that:

"Specialized alcoholism facilities have been shown to be needed, effective and cost effective. However, federal law still does not provide for Medicare and Medicaid eligibility directly."

Our review included the five alcoholism facilities within NYS that participated in the inpatient Medicaid portion of the HCFA and the NIAAA demonstration project. Each of the five providers operated one inpatient alcoholism rehabilitation program. Additionally, two of the providers each operated a detoxification unit during the demonstration project period. Clients receiving inpatient detoxification and rehabilitation services at the five alcoholism facilities were claimed for Medicaid reimbursement through the State's Medicaid Management Information System (MMIS). Below are the five alcoholism facilities included in our review and their MMIS numbers.

<u>Alcoholism Facility</u>	<u>MMIS Number</u>
Alcoholism Services of Erie County	00689703
Syracuse Brick House	00689712
Health Association of Rochester and Monroe County	00689721
Nassau County Department of Drug and Alcohol Addiction	00689730
St. Joseph's Rehabilitation Center	00689758

Scope of Review

The purpose of our audit was to determine if NYS improperly claimed FFP for Medicaid payments made to the five alcoholism facilities for inpatient services after the conclusion of the demonstration project. Our audit covered services rendered during the period December 1, 1985 to October 31, 1990. For our audit period, we performed various computer programming applications at the MMIS fiscal agent using the paid claims inpatient files (tapes). Our applications determined that the NYS DSS made FFP claims to Medicaid for inpatient services provided by the five free-standing alcoholism facilities. These applications identified 1,306 clients with inpatient Medicaid claims totaling \$3,755,724 (Federal share \$1,877,849) for the five providers.

Our review was conducted in accordance with governmental auditing standards. It included such tests and other auditing procedures that we considered necessary in the circumstances. During our review of internal controls, we asked State officials what edits or procedures they had in place in their MMIS to prevent FFP claims to Medicaid for inpatient services provided in free-standing alcoholism facilities for periods after the conclusion of the demonstration project. In an April 1, 1991 letter to us, the State responded that:

"After the Federal demonstration under Grant #99-PO97979/2-04, which initially provided Medicare and Medicaid funding, ended, it was assumed by both HCFA and the State that under Federal guidelines FFP was not available for these programs as hospitals or nursing homes. This assumption is reflected in 14 NYCRR 376.1(b). MMIS shares funding procedures were, however, inadvertently not revised to prevent claiming FFP for the services as hospital care."

It should be noted that 14 NYCRR Part 376.1 (b) states in part that:

"The medical assistance program is a Federal and State program to finance the costs of health care for the poor. The Federal program has not yet recognized the specialized alcoholism service delivery system. Thus, the eligibility of alcoholism facilities as alcoholism facilities is available only in the State program."

It is apparent from the State's response that no internal controls existed to prohibit the State from claiming FFP for inpatient services furnished in free-standing alcoholism facilities. As a result, we assessed control risk at the maximum level and decided to identify and perform substantive testing of all claims to Medicaid for inpatient services rendered at the five free-standing alcoholism facilities after the conclusion of the demonstration project. As part of our audit, we did not perform a facility-wide review of EDP general and application controls within the MMIS.

Audit field work was performed at the DSS, the DAAA, and the MMIS fiscal agent in Albany, New York, and at each of the five free-standing alcoholism facilities during the period March 1991 to July 1991.

RESULTS OF REVIEW

Our review determined that the NYS DSS improperly claimed **FFP** for inpatient alcoholism rehabilitation and detoxification services provided at the five free-standing alcoholism facilities after the conclusion of the HCFA and the **NIAAA**

demonstration project. The claims were ineligible for FFP because inpatient free-standing alcoholism facilities are not covered under the Federal Medicaid program. As a result, the Medicaid program was overcharged \$3,755,724 (Federal share \$1,877,849). Appendix A of our report provides a summary of the Federal share amounts questioned for each of the five providers.

In the early 1980's, the HCFA and the NIAAA sponsored demonstration grants to five States and one non-State grantee for their participation in a four year demonstration project to test the cost effectiveness of including free-standing alcoholism providers in both the Medicare and Medicaid programs. The six participants included the States of Connecticut, Illinois, Michigan, New Jersey, and New York, and the University of Oklahoma. Of these six, only Illinois, Michigan, New Jersey, and New York chose to participate in the Medicaid portion of the Project. The NYS demonstration grant was from September 30, 1981 to November 29, 1985. During this period, applicable Federal waivers were granted which allowed free-standing inpatient providers of alcoholism services to make claims to both Medicare and Medicaid.

After the conclusion of the demonstration grant, the DSS and the DAAA prepared a written report entitled Alcoholism Services in Medicare and Medicaid in New York State. This report was dated March 1986. The report addresses both inpatient and outpatient services for Medicare and Medicaid. Our current review was limited to only inpatient Medicaid services. Sections of the report discuss the unavailability of FFP for clients in free-standing inpatient alcoholism facilities. For example, an excerpt from the Executive Summary of the report states in part that:

"Under the auspices of this demonstration, appropriate federal and state waivers were granted to allow payment to freestanding providers in the project which would otherwise have been ineligible for reimbursement under either Title XVIII or XIX or both."

In the **Predemonstration** Status section of the DAAA report, it states that:

"The federal Medicaid program does not provide specific coverage for alcoholism treatment services. . . . Nonetheless, the program's service definitions exclude freestanding inpatient alcoholism rehabilitation and detoxification programs. . . ."

Additionally, the DAAA report makes the following recommendation:

"Title XIX of the Social Security Act should be amended by adding to the definition of 'medical assistance' language to include alcoholism facility services as additional covered services."

As noted above, the NYS demonstration project concluded on November 29, 1985. NYS requested an extension of the Medicaid waivers until November 29, 1986. The HCFA rejected this extension request. We believe that because of this rejection and the recognition that inpatient alcoholism services provided in free-standing alcoholism facilities were not eligible for FFP under the Federal Medicaid program, NYS extended the **State-**only Medicaid coverage of these services to July 1986. It was shortly after this time that NYS enacted 14 NYCRR Part 376, entitled Standards for Free-Standing Alcoholism Facilities in the Medicaid Program. This law continued the State-only Medicaid coverage of these facilities.

Officials at both Alcoholism Services of Erie County and St. Joseph's Rehabilitation Center (two of the five providers we visited) furnished us with copies of the DAAA notification of the demonstration project's termination. This correspondence evidences the State's understanding of the discontinuation of FFP at the conclusion of the project. In its April 18, 1985 letter, the DAAA states in part that:

"May 29, 1985 will be the last date that new participants can be admitted for treatment to your program and be reimbursed by Medicare or Medicaid."

The April 18, 1985 letter goes on to state that:

"For Medicaid clients, you may bill Medicaid for services rendered through November 29, 1985."

Our review determined that the DSS improperly continued to claim FFP beyond the November 29, 1985 date. In our opinion, this occurred because the State did not establish the necessary edits or mechanisms within its MMIS to prevent the FFP claims from occurring. As a result, the Federal Government was overcharged \$1,877,849.

Recommendations

We recommend that New York State:

1. Refund \$ 1,877,849 to the Federal Government.
2. Discontinue claiming FFP for inpatient services provided in free-standing alcoholism facilities.

3. Develop appropriate edits or mechanisms within its MMIS to prevent the improper claiming of FFP from occurring in the future.
4. Identify the unallowable claims to Medicaid made for periods subsequent to our October 31, 1990 audit cut-off date and return the Federal share of these claims.

STATE AGENCY COMMENTS

In their comments dated November 4, 1991, the State agreed that they improperly claimed FFP during our audit period. The State indicated that it will process the necessary audit adjustment once our report is finalized. However, they stated that the availability of FFP subsequent to our audit period has yet to be determined. In their comments, the State indicated that it has submitted a State Plan amendment to the HCFA which apparently requests that FFP be made available for inpatient services provided in free-standing alcoholism treatment facilities. The State's comments are **provied** in their entirety in Appendix B of this report.

OIG RESPONSE

We are pleased to note that the State agrees that FFP should not have been claimed during our audit period and that they will process an audit adjustment. Regarding the availability of FFP subsequent to our audit period, we continue to believe that inpatient services in free-standing alcoholism facilities would not be covered under the Federal Medicaid program. Our belief is supported by the various documents prepared by and obtained from the State, which are quoted throughout the body of our report. However, we agree with the State that the final resolution and disposition of FFP claims subsequent to our audit period would be the responsibility of the HCFA.

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Final determination as to actions to be taken on all matters reported will be made by the Health Care Financing Administration official named below. The HHS action official will contact you to resolve the issues in this audit report. Any additional comments or information that you believe may have a bearing on the resolution of this audit may be presented at that time.

In accordance with the principles of the Freedom of Information Act (Public Law 90-23), HHS/OIG Office of Audit Services reports issued to the Department's grantees and contractors are available, if requested, to members of the press and general public to the extent information contained therein is not

Page 10 - Cesar A. Perales

subject to exemptions in the Act, which the Department chooses to exercise. (See 45 CFR Part 5.)

To facilitate identification, please refer to the referenced common identification number in **all correspondence** relating to this report.

Sincerely yours,

A handwritten signature in cursive script, appearing to read "John Tournour".

John Tournour
Regional Inspector General
For Audit Services

APPENDICES

REVIEW OF FIVE FREE-STANDING
INPATIENT ALCOHOLISM PROVIDERS

For the Period
December 1, 1985 to October 31, 1990

Common Identification No. A-02-91-01030

Summary of FFP Amounts
Questioned by our Audit

<u>Provider Name</u>	<u>FFP Amount Questioned</u>
Alcoholism Services of Erie County	\$ 570,493
Syracuse Brick House	242,440
Health Association of Rochester and Monroe County	351,906
Nassau County Department of Drug and Alcohol Addiction	238,226
St. Joseph's Rehabilitation Center	<u>474,784</u>
Total Questioned	<u>\$1,877,849</u>

NEW YORK STATE
 DEPARTMENT OF SOCIAL SERVICES
 40 NORTH PEARL STREET, ALBANY, NEW YORK 12243-0001

CESAR A. PERALES
Commissioner



NELSON M. WEINSTOCK
*Deputy Commissioner
 for Administration*

November 4, 1991

Mr. John Tournour
 Regional Inspector General
 for Audit Services
 Department of Health & Human Services
 Region II
 Jacob K. Javits Federal Building
 26 Federal Plaza
 New York, NY 10278

Re: Your Draft Report: Review of
 MA Payments Made by NYS DSS to
 Five Free-Standing Inpatient
 Alcoholism Providers (A-02-91-
 01030) 91-050

Dear Mr. Tournour:

This is our response to the subject report.

The auditors are correct that no Federal participation was available during the audit period December 1, 1985 through October 31, 1990 for the Federally-sponsored demonstration project for five free-standing inpatient providers as the demonstration ended on November 29, 1985. Once the final report is issued we will process the necessary adjustment to correct these errors. The final resolution of the availability of Federal financial participation (FFP) for the subsequent period has yet to be determined.

We disagree with the auditors' position that Federal participation is not available a priori for inpatient services provided in free-standing alcoholism treatment facilities. The availability of Federal funding has to be resolved through the State Plan amendment review process. Such an amendment has been submitted to the BBS Health Care Financing Administration and its provisions are being discussed with that agency's staff. For that reason, the report should not draw any conclusion until final resolution of this matter.

Sincerely,


 Nelson M. Weinstock