



MAY -8 2007

TO: Leslie V. Norwalk, Esq.
Acting Administrator
Centers for Medicare & Medicaid Services

FROM: Daniel R. Levinson *Daniel R. Levinson*
Inspector General

SUBJECT: Review of Medicaid Reimbursement Rate for School-Based Health Services in Maryland (A-03-05-00206)

Attached is an advance copy of our final report on Maryland's Medicaid reimbursement rate for school-based health services. In Maryland, the Department of Health and Mental Hygiene (the State agency) administers the Medicaid program. We will issue this report to the State agency within 5 business days.

Our objective was to determine whether Maryland's claims for Medicaid reimbursement of school-based health services complied with the approved State plan and Federal requirements.

Maryland did not comply with its approved State plan, which required that the State claim reimbursement for school-based health services based on cost. The State agency used a reimbursement rate of \$82 per service, which the Maryland State Department of Education (the Department of Education) developed in 1995. However, the State agency could not provide the required documentation to show that the \$82 rate was based on the cost of services. Because we could not review the data used to calculate the rate, we reviewed data for State fiscal years (FY) 2002 through 2004. We deducted unallowable basic education costs from those data and developed rates, based on allowable school-based health service costs, using the Department of Education's methodology. We calculated a rate for each year in our audit period: \$42.40 for State FY 2002, \$45.23 for State FY 2003, and \$48.64 for State FY 2004.

By claiming payment for services at its rate of \$82, Maryland received reimbursement totaling \$146,536,378 (\$73,268,189 Federal share). Using the recalculated rates, we allowed \$81,014,559 (\$40,507,280 Federal share) of the \$146,536,378. The \$65,521,819 (\$32,760,910 Federal share) difference represents an overpayment.

We recommend that the State agency:

- refund \$32,760,910 to the Federal Government for unallowable basic education costs included in reimbursement for school-based health services in State FYs 2002 through 2004,
- determine the unallowable basic education costs included in reimbursement for State FY 2005 and make the appropriate refund, and
- continue to work with the Centers for Medicare & Medicaid Services and the Department of Education in developing more accurate school-based health service rates and make the necessary revisions to the State plan.

In response to our draft report, the State agency agreed with our finding that the audited rate for school-based Medicaid services reflected education costs that are not allowable and that the applicable rates should therefore be reduced. At the State agency's request, we have provided additional audit information about the calculation of the adjusted rates.

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 for Audit Services, Region III, at (215) 861-4470 or through e-mail at Stephen.Virbitsky@oig.hhs.gov. Please refer to report number A-03-05-00206.

Attachment



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

MAY 10 2007

Report Number: A-03-05-00206

Mr. John M. Colmers
Secretary
Maryland Department of Health and Mental Hygiene
201 West Preston Street
Baltimore, Maryland 21201-2399

Dear Mr. Colmers:

Enclosed are two copies of the Department of Health and Human Services (HHS), Office of Inspector General (OIG) final report entitled "Review of Medicaid Reimbursement Rate for School-Based Health Services in Maryland." A copy of this report will be forwarded to the HHS action official noted on the next 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 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.

In accordance with the principles of the Freedom of Information Act, 5 U.S.C. § 552, as amended by Public Law 104-231, OIG reports issued to the Department's grantees and contractors are made available to the public to the extent the information is not subject to exemptions in the Act that the Department chooses to exercise (see 45 CFR part 5).

If you have any questions or comments about this report, please do not hesitate to call Eugene Berti, Audit Manager, at (215) 861-4474. Please refer to report number A-03-05-00206 in all correspondence.

Sincerely,

Stephen Virbitsky
Regional Inspector General
for Audit Services

Enclosures

Direct Reply to HHS Action Official:

Ms. Nancy O'Connor
Regional Administrator
Centers for Medicare & Medicaid Services, Region III
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Department of Health and Human Services

**OFFICE OF
INSPECTOR GENERAL**

**REVIEW OF MEDICAID
REIMBURSEMENT RATE FOR
SCHOOL-BASED HEALTH
SERVICES IN MARYLAND**



Daniel R. Levinson
Inspector General

May 2007
A-03-05-00206

Office of Inspector General

<http://oig.hhs.gov>

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 the following operating components:

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The Office of Audit Services (OAS) provides all auditing services for HHS, either by conducting audits with its own audit resources or by overseeing audit work done by others. Audits examine the performance of HHS programs and/or its grantees and contractors in carrying out their respective responsibilities and are intended to provide independent assessments of HHS programs and operations. These assessments help reduce waste, abuse, and mismanagement and promote economy and efficiency throughout HHS.

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The Office of Evaluation and Inspections (OEI) conducts national evaluations to provide HHS, Congress, and the public with timely, useful, and reliable information on significant issues. Specifically, these evaluations focus on preventing fraud, waste, or abuse and promoting economy, efficiency, and effectiveness in departmental programs. To promote impact, the reports also present practical recommendations for improving program operations.

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In accordance with the principles of the Freedom of Information Act (5 U.S.C. 552, as amended by Public Law 104-231), Office of Inspector General, Office of Audit Services reports are made available to members of the public to the extent the information is not subject to exemptions in the act. (See 45 CFR part 5.)

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 Medicaid Program

Pursuant to Title XIX of the Social Security Act (the Act), the Medicaid program pays the health care costs of people who qualify because of medical condition, economic condition, or other qualifying factors. Within the Federal Government, the Centers for Medicare & Medicaid Services (CMS) administers the Medicaid program. To participate in Medicaid, a State must submit and receive CMS approval of a State plan. The State plan is a comprehensive document describing the nature and scope of the State's Medicaid program and the State's obligations to the Federal Government. Medicaid pays for medically necessary services that are specified in Medicaid law when included in the State plan and when provided to individuals eligible under the State plan.

Medicaid Coverage of School Health Services

Section 411(k)(13) of the Medicare Catastrophic Coverage Act of 1988 (Public Law 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 Public Law 91-230 in 1970) through a child's individualized education plan.

Maryland's Medicaid Program

In Maryland, the Department of Health and Mental Hygiene (the State agency) is responsible for administering the Medicaid program. Based on its agreement with the State agency, the Maryland State Department of Education (Department of Education) provides school-based health services through its local education agencies. The State share of Medicaid costs for school-based health services is provided to the local education agencies through public funds from the Department of Education. The Department of Education distributes the Federal share to the local education agencies as well.

On September 28, 1994, the State agency informed the local education agencies that the Maryland General Assembly had approved a new school-based health service reimbursement rate of \$82 per service provided on or after September 2, 1994. The \$82 rate remained in effect during our audit period (State fiscal years (FY) 2002 through 2004).

OBJECTIVE

Our objective was to determine whether Maryland's claims for Medicaid reimbursement of school-based health services complied with the approved State plan and Federal requirements.

SUMMARY OF FINDINGS

Maryland did not comply with its approved State plan, which required that the State claim reimbursement for school-based health services based on cost. The State agency used a reimbursement rate of \$82 per service, which the Department of Education developed in 1995. However, the State agency could not provide the required documentation to show that the \$82 rate was based on the cost of services. Because we could not review the data used to calculate the rate, we reviewed data for State FYs 2002 through 2004. We deducted unallowable basic education costs from those data and developed rates, based on allowable school-based health service costs, using the Department of Education's methodology. We calculated a rate for each year in our audit period: \$42.40 for State FY 2002, \$45.23 for State FY 2003, and \$48.64 for State FY 2004.

By claiming payment for services at its rate of \$82, Maryland received reimbursement totaling \$146,536,378 (\$73,268,189 Federal share). Using the recalculated rates, we allowed \$81,014,559 (\$40,507,280 Federal share) of the \$146,536,378. The \$65,521,819 (\$32,760,910 Federal share) difference represents an overpayment.

RECOMMENDATIONS

We recommend that the State agency:

- refund \$32,760,910 to the Federal Government for unallowable basic education costs included in reimbursement for school-based health services in State FYs 2002 through 2004,
- determine the unallowable basic education costs included in reimbursement for State FY 2005 and make the appropriate refund, and
- continue to work with CMS and the Department of Education in developing more accurate school-based health service rates and make the necessary revisions to the State plan.

MARYLAND COMMENTS

On March 12, 2007, Maryland responded to our draft report. Maryland agreed with our finding that its rate for the school-based Medicaid services reflected education costs that are not allowable and that the \$82 rate should be reduced but did not agree to a specific refund amount. Maryland requested additional information about how we developed the adjusted rates in our report and asked for our opinion on an alternative methodology developed by the University of Maryland-Baltimore County.

Maryland's comments are included as Appendix D.

OFFICE OF INSPECTOR GENERAL RESPONSE

As Maryland requested, we provided information about how we calculated the adjusted rates in our report. Specifically, in calculating our rates, we applied Maryland's methodology for developing the \$82 rate to the actual allowable costs for the audit period.

We did not audit the proposed methodology. Generally accepted governmental auditing standards preclude us from expressing an opinion on a methodology that we did not audit. We continue to recommend that the State agency refund \$32,760,910 to the Federal Government.

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INTRODUCTION

BACKGROUND

The Medicaid Program

Pursuant to Title XIX of the Social Security Act (the Act), the Medicaid program pays the health care costs of people who qualify because of medical condition, economic condition, or other qualifying factors. The Federal Government and the States share Medicaid costs. Within the Federal Government, the Centers for Medicare & Medicaid Services (CMS) administers the program.

To participate in Medicaid, a State must submit and receive CMS approval of a State plan. The State plan is a comprehensive document describing the nature and scope of the State's Medicaid program and the State's obligations to the Federal Government. Medicaid pays for medically necessary services that are specified in Medicaid law when the services are included in the State plan and provided to individuals eligible under the State plan.

While the State has considerable flexibility in designing its State plan and operating its Medicaid program, it must comply with broad Federal requirements administered by CMS. States incur costs for medical assistance payments to medical providers who furnish care and services to Medicaid-eligible individuals. The Federal Government pays its share of medical assistance expenditures to a State based on the Federal medical assistance percentage, which varies depending on each State's relative per capita income. The Federal share in Maryland is 50 percent.

Medicaid Coverage of School Health Services

Section 411(k)(13) of the Medicare Catastrophic Coverage Act of 1988 (Public Law 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 (IDEA) (originally enacted as Public Law 91-230 in 1970) through a child's individualized education plan (child's plan).

In August 1997, CMS issued a school-based guide entitled "Medicaid and School Health: A Technical Assistance Guide" (the technical guide). According to the technical guide, school health-related services included in a child's plan may be covered if all relevant statutory and regulatory requirements are met. In addition, the technical guide provides that a State may cover services included in a child's plan as long as (1) the services are listed in section 1905(a) of the Act and are medically necessary; (2) all Federal and State regulations are followed; and (3) the services are included in the State plan or available under the Early and Periodic Screening, Diagnosis, and Treatment Medicaid benefit. Covered services may include, but are not limited to, physical therapy, occupational therapy, speech pathology/therapy services, psychological counseling, nursing, and transportation services.

Maryland's Medicaid Program

In Maryland, the Department of Health and Mental Hygiene (the State agency) is responsible for administering and operating the Medicaid program. Maryland's Medicaid State plan provides for payment based on costs for school-based health services delivered by or through its 24 local education agencies, primarily local school systems, to students with special needs as specified in a child's plan. Based on its agreement with the State agency, the Maryland State Department of Education (Department of Education) provides school-based health services through its local education agencies. The State share of Medicaid payments for school-based health services is provided to the local education agencies through public funds from the Department of Education. The Department of Education distributes the Federal share to the local education agencies as well.

Prior Audit of School-Based Services

On March 31, 2003, the Office of Inspector General (OIG) issued a report entitled "Review of Medicaid School-Based Services Claimed During State Fiscal Year 2000 by Maryland's Medicaid Program" (A-03-01-00224). The review identified internal control weaknesses that required correction to ensure that Maryland's school-based payment rates would be based on actual costs of providing medical services.

The review also showed that eight local education agencies billed the Medicaid program for services that were provided by unqualified providers, not approved in the State plan, not provided, not authorized, and insufficiently documented. As a result, OIG estimated overpayments to be approximately \$40 million (\$20 million Federal share).

State Department of Education Methodology

Prior to 1995, Maryland's Medicaid program reimbursed school-based health services at a rate of \$66 per service. In a memorandum dated May 25, 1994, the Department of Education requested an update to the reimbursement rate.

We were informed that to develop its rate, the Department of Education used all costs for special education students for State fiscal years (FY) 1989 through 1993. The costs increased from \$455,032,292 in State FY 1989 to \$667,034,543 in State FY 1993, from which the Department of Education calculated an average increase of 10.025 percent per year. The Department of Education then applied this average annual increase to the State FY 1993 costs to estimate the special education costs for State FYs 1994 and 1995. The estimated State FY 1995 costs established the base used to develop the reimbursement rate. Using those estimated special education costs and the projected number of services provided to the total number of children enrolled in special education in 1993, the Department of Education calculated a new rate of \$82.44. (See Appendix A for details.)

In a memorandum dated September 28, 1994, the State agency informed the local education agencies that the Maryland General Assembly had approved a new school-based health service reimbursement rate of \$82. The memorandum stated that the local education agencies should

charge the Medical Assistance Program \$82 for each service provided on or after September 2, 1994, including speech therapy, audiology, physical therapy, occupational therapy, counseling or other services provided by psychologists or social workers, and nutrition services. The \$82 rate remained in effect during our audit period (State FYs 2002 through 2004).

OBJECTIVE, SCOPE, AND METHODOLOGY

Objective

Our objective was to determine whether Maryland's claims for Medicaid reimbursement of school-based health services complied with the approved State plan and Federal requirements.

Scope and Methodology

We could not obtain the cost data for State FYs 1989 through 1993, which the Department of Education used to calculate the State's \$82 rate. The State agency requires that the Department of Education maintain documentation for a minimum of only 6 years. Furthermore, officials at the Department of Education stated that they do not collect the data now, nor did they collect data at the cost-per-service level during State FYs 1989 through 1993. According to the Department of Education, "The local school systems, the local lead agencies, and MSDE [the Department of Education] have attempted to comply with the request for the years 1989 to 1993, but have not been able despite multiple strategies to obtain the data requested by the OIG."

Although the Department of Education could not provide the supporting data to audit the \$82 base rate, we elected not to question all the charges calculated using the unsupported rate. Rather, we applied the State agency's methodology to the special education cost data for the audit period, State FYs 2002 through 2004, to calculate Maryland's reimbursement rate.

During the audit period, costs related to statewide special education expenditures at the 24 local education agencies totaled approximately \$4.4 billion, of which \$3 billion represented direct costs. We limited our review to three direct cost categories—salaries and wages, transfers to or from other institutions, and contracted services—because they represented approximately 97 percent of the total direct costs. We allowed costs in the other three direct cost categories—supplies and materials, other charges, and equipment—because they accounted for only 3 percent of the total direct costs. We did not review indirect costs of approximately \$1.4 billion. Rather, we allowed a percentage of indirect costs based on the percentage of allowable health-related direct costs.

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 Department of Education's methodology for calculating the rate and determining subsequent reimbursement.

To accomplish our objective, we:

- reviewed the approved State plan and applicable Federal and State laws, regulations, and guidelines;

- held discussions with CMS officials about Federal requirements and any concerns they had with the rate the State agency used to claim Medicaid reimbursement;
- interviewed State agency and Department of Education officials to gain an understanding of the State's school-based program;
- analyzed the methodology used by the Department of Education to establish the \$82 rate used to bill Medicaid for school-based health services;
- interviewed local education agency officials to obtain an understanding of how they administer their school-based health services program;
- obtained Medicaid paid claims to verify school-based health services costs during State FYs 2002, 2003, and 2004;
- examined source documents, such as payroll records, personnel files, receipts, invoices, and contracts, to determine whether local education agency employees or contractors provided school-based health services;
- reviewed salary and wage accounts and identified employees at the 24 local education agencies that provided school-based health services;
- reviewed 550 payments for contracted services that we judgmentally selected to capture a broad range of vendors and services; and
- reviewed 362 payments from the transfers to or from other institution accounts that we judgmentally selected to capture a broad range of vendors.

We performed fieldwork at the State agency and Department of Education offices in Baltimore, Maryland, and the 24 local education agency offices located throughout Maryland from August 2005 through April 2006.

We conducted our review in accordance with generally accepted government auditing standards.

FINDINGS AND RECOMMENDATIONS

Maryland did not comply with its approved State plan, which required that the State claim reimbursement for school-based health services based on cost. The State agency used a reimbursement rate of \$82 per service, which the Department of Education developed in 1995. However, the State agency could not provide the required documentation to show that the \$82 rate was based on the cost of services. Because we could not review the data used to calculate the rate, we reviewed data for State FYs 2002 through 2004. We deducted unallowable basic education costs from those data and developed rates, based on allowable school-based health service costs, using the Department of Education's methodology. We calculated a rate for each year in our audit period: \$42.40 for State FY 2002, \$45.23 for State FY 2003, and \$48.64 for State FY 2004.

By claiming payment for services at its rate of \$82, Maryland received reimbursement totaling \$146,536,378 (\$73,268,189 Federal share). Using the recalculated rates, we allowed \$81,014,559 (\$40,507,280 Federal share) of the \$146,536,378. The \$65,521,819 (\$32,760,910¹ Federal share) difference represents an overpayment.

REQUIREMENTS AND GUIDANCE

Federal Requirements

Section 411(k)(13) of the Medicare Catastrophic Coverage Act of 1988 (Public Law 100-360) amended section 1903(c) of the Act to permit Medicaid payment for medical services provided to children under IDEA (originally enacted as Public Law 91-230 in 1970) through a child's plan. In general, school "health related services" included in a child's plan may be covered if all relevant requirements are met.

Centers for Medicare & Medicaid Services Guidance

CMS's August 1997 technical guide provides information and technical assistance to school health service programs seeking Medicaid funding. The technical guide states:

The Medicaid program can pay for some of the "health related services" required by Part B of IDEA in an IEP [individualized education plan], if they are among the services specified in Medicaid law. In addition, the services must be included in the state's Medicaid plan or available through the EPSDT [Early and Periodic Screening, Diagnosis, and Treatment] benefit. Examples of such services include physical therapy, speech pathology services, occupational therapy, psychological services and medical screening and assessment services. Within Federal and state Medicaid program requirements regarding allowable services and providers, the Medicaid program can pay for some or all of the costs of these health-related services when provided to children eligible for Medicaid.

State Plan Requirements

In October 1994, CMS approved Maryland's State plan amendment 95-5 for school health-related services effective July 1, 1994. The State plan provides: "The reimbursement for services delivered by school providers or local lead agencies in school-based or early intervention settings will be based on cost." Maryland amended its State plan (amendment 03-01) effective July 1, 2002, but the plan still requires reimbursement for school-based health services based on cost.

UNALLOWABLE BASIC EDUCATION COSTS

Each year, the local education agencies report all costs for special education students to the Department of Education. The basic cost to educate a child, as well as costs associated with school-based health services, is included in these reports. The Department of Education

¹Does not subtract to this amount due to rounding.

informed us that it used all costs including the costs of basic education, the primary function of schools and not a reimbursable cost under the Medicaid program, in developing its reimbursement rate of \$82 per service. Medicaid only pays for school-based health services such as speech and physical therapy.

As shown in Appendix B, the local education agencies incurred approximately \$4.4 billion of special education costs in State FYs 2002 through 2004. We audited these costs to determine what portion qualified as school-based health services. In calculating the rates, we deducted the unallowable costs incurred.

Salaries and Wages

For our audit period of State FY 2002 through State FY 2004, salaries and wages for special education personnel totaled \$2,188,544,267. This amount included \$2,069,687,086 for salaries and wages reported in the Special Education Expenditure report and \$118,857,181 for salaries and wages in non-Special Education Expenditure reports submitted by the local education agencies.

At each local education agency, we identified the occupations and salaries included in the Special Education Expenditure report. We categorized all health services related occupations, such as speech therapists and physical therapists, as allowable. We allowed \$373,660,649 in costs associated with health-related services and included them in our calculated rate. However, the Department of Education included salaries and wages for non-health-related occupations, such as school administrators, special education teachers, substitutes, and assistants. We excluded salaries and wages totaling \$1,814,883,618 from our rate calculations.

Transfers To or From Other Institutions

Transfers to or from other institutions occur when one local education agency pays tuition and other related costs to another local education agency or private institution to educate a child. The receiving local education agency or other institution enrolls the student and pays for the services provided. Both parties will have revenue and expenditures related to the same student. Recognizing and recording the transactions as transfers prevents the overstatement of State and national costs for education. For our audit period, transfers to or from other institutions for special education children in Maryland totaled \$578,793,304.

We allowed \$543,845,748 in costs for transfers to or from other institutions for health-related services. The remaining \$34,947,556 in costs was not health related. These costs included, but were not limited to, tuition, room and board, educational billing, and instructional services. We excluded the \$34,947,556 in unallowable costs from our rate calculations.

Contracted Services

Contracted services are performed by people who are not employees of a local education agency. For our audit period, special education contracted service costs totaled \$143,013,298.

Many of the contracted school-based health services cost less than the \$82 rate charged to the Medicaid program. For example, costs for physical therapy services ranged from \$48 to \$70 per service, costs for occupational therapy services ranged from \$40 to \$70 per service, and costs for nursing services ranged from \$37 to \$42 per service. Although the State plan requires that reimbursement for services be based on costs, the Department of Education instructed the local education agencies to bill Medicaid \$82.

We allowed \$128,526,339 in contracted service costs for health-related services. However, the remaining \$14,486,959 in contracted service costs were not health related. These services included, but were not limited to, training for teachers, short-term substitute teachers, legal fees, and medical claims processing. We excluded the \$14,486,959 in unallowable costs from our rate calculations.

Indirect Costs

For the 3-year audit period, indirect costs, such as costs related to administration, student personnel services, and facility operations, totaled \$1,406,850,862. We allowed \$529,265,700 based on the percentage of allowable health-related direct costs to total direct costs. We excluded the remaining \$877,585,162, which related to basic education costs, from our rate calculations.

OFFICE OF INSPECTOR GENERAL CALCULATED RATES

Because the Department of Education could not provide us with the data it used to calculate the \$82 rate, we applied the State’s methodology to the special education costs for State FYs 2002 through 2004. Using the allowable costs described in this report and presented in Appendix B, we recalculated the rate for each year. (See Appendix C.) Based on our recalculated rates, Maryland received overpayments totaling \$65,521,819 (\$32,760,910 Federal share), as shown in the following table.

Overpayments for School-Based Health Services

	A	B	C	D (A x C)	E (B - D)	Federal Share of Overpayment
State FY	Paid Services	Reimbursed at \$82 Rate	OIG Rate	Allowable	Overpayment	
2002	623,307	\$51,111,174	\$42.40	\$26,428,217	\$24,682,957	\$12,341,478
2003	591,524	48,504,968	45.23	26,754,631	21,750,337	10,875,169
2004	572,198	46,920,236	48.64	27,831,711	19,088,525	9,544,263
Total		\$146,536,378		\$81,014,559	\$65,521,819	\$32,760,910

MARYLAND’S REVISED RATES

On January 11, 2006, the State agency and the Department of Education issued a memorandum to the local education agencies informing them that “the [OIG] auditors have shared some preliminary findings with us and their findings indicate that the actual cost of providing school health services is significantly below the rate of \$82 currently in regulation. In light of this finding and the possible fiscal impact of a large scale disallowance . . . it has been determined that reduction in the rate billed for services is a prudent action.”

Accordingly, the letter listed the rates for services, effective January 1, 2006, as follows:

Psychiatric Evaluation	\$82
Speech, Individual	\$76
Speech, Group	\$67
Audiology	\$70
Psychological Testing	\$82
Therapeutic Behavioral Aides	\$8 (per 15 minutes)
Physical Therapy	\$61
Occupational Therapy	\$52
Nursing	\$82
Mental Health Services	\$82
Nutrition	\$82

Maryland’s \$82 rate had been in effect for 12 years. During our fieldwork, Department of Education officials acknowledged that the \$82 rate included unallowable basic education costs.

RECOMMENDATIONS

We recommend that the State agency:

- refund \$32,760,910 to the Federal Government for unallowable basic education costs included in reimbursement for school-based health services in State FYs 2002 through 2004,
- determine the unallowable basic education costs included in reimbursement for State FY 2005 and make the appropriate refund, and
- continue to work with CMS and the Department of Education in developing more accurate school-based health service rates and make the necessary revisions to the State plan.

MARYLAND COMMENTS

On March 12, 2007, Maryland responded to our draft report. Maryland agreed with our finding that its rate for the school-based Medicaid services reflected education costs that are not allowable and that the \$82 rate should be reduced but did not agree to a specific refund amount.

Maryland requested additional information about how we developed the adjusted rates in our report. Maryland also asked for our opinion on an alternative methodology developed for Maryland by the University of Maryland-Baltimore County. Maryland stated that the alternative methodology had been provided to us on January 31, 2006. Maryland asked for an explanation of the differences between our rate calculation and the alternative methodology.

Maryland's comments are included as Appendix D.

OFFICE OF INSPECTOR GENERAL RESPONSE

As Maryland requested, we provided information about how we calculated the adjusted rates in our report. Specifically, in calculating our rates, we applied Maryland's methodology for developing the \$82 rate to the actual allowable costs for the audit period.

We did not audit Maryland's proposed methodology and therefore we cannot express an opinion as Maryland requested in its response. On January 31, 2006, Maryland asked us to consider its proposed methodology for establishing new rates. We declined to do so because no reimbursements had been claimed based on the proposed rates. Further, CMS informed us that it had provided Maryland with an example of a more current methodology for consideration.

Maryland implemented new rates, effective January 1, 2006, which are described in our report. Those rates were prospective, however, and neither adjusted the claims for our review period nor agreed with the rates in Maryland's proposed methodology that it discussed with us on January 31, 2006. Generally accepted governmental auditing standards preclude us from expressing an opinion on the proposed methodology because we did not audit it. We continue to recommend that the State agency refund \$32,760,910 to the Federal Government.

APPENDIXES

EXCERPT FROM A DEPARTMENT OF EDUCATION MEMORANDUM
TO THE STATE AGENCY (MAY 25, 1994)

Attachment 1

5/19/94
Update

Medicaid Reimbursement
for
Children With Disabilities'
Health Related Services
In IEPs and IFSPs¹

I. Total Actual Expenditures

1989	455,032,292	
1990	511,251,251	12.3% ²
1991	571,925,633	11.7%
1992	602,141,593	5.3%
1993	667,034,543	10.8%

II. Process to Determine Proposed FY 1995 Rate

- A. Average % Increase for FY 94 and FY 95 = 10.025%
- B. \$ 667,034,543 x 10.025% = 735,405,584 (FY 94 projected)
- C. \$ 735,405,584 x 10.025% = 810,784,656 (FY 95 projected)
- D. \$ 810,784,656 ÷ 93,662 (12/1/93 child count³) = \$ 8,656.50
- E. \$ 8,656.50 ÷ 3 (Average Services per Week) = \$ 2,885.50
- F. \$ 2,885.50 ÷ 35 (Average Weeks per School Provided) = \$ 82.44
- G. \$ 82.44 ÷ 2 = 41.22 Reimbursement Rate (FFP)⁴

III. Request Increase to \$ 82.44 based on cost factors indicated above.

¹IEP = individualized education plan. IFSP = individualized family service plan.

²This column represents the increases in costs for 1989 through 1993, stated as a percentage of annual costs. The State used these percentages to calculate the average percentage of increase for State fiscal years 1994 and 1995. These percentages were not precise measures of each year's increase.

³The child count used by the Department of Education in the calculation of its \$82 rate included all children who were enrolled in special education.

⁴FFP = Federal financial participation.

APPENDIX B

MARYLAND'S SCHOOL-BASED HEALTH SERVICE COSTS

STATE FISCAL YEAR 2002

<u>Account</u>	<u>Allowable</u>	<u>Unallowable</u>	<u>Total Costs</u>
Salaries	\$122,016,838	\$565,948,149	\$687,964,987
Transfers	166,968,410	6,896,921	173,865,331
Contracted Services	39,248,320	6,270,282	45,518,602
Other Direct Costs	21,712,469	0	21,712,469
Indirect Costs	<u>159,864,598</u>	<u>264,212,333</u>	<u>424,076,931</u>
Total	<u>\$509,810,635</u>	<u>\$843,327,685</u>	<u>\$1,353,138,320</u>

STATE FISCAL YEAR 2003

<u>Account</u>	<u>Allowable</u>	<u>Unallowable</u>	<u>Total Costs</u>
Salaries	\$124,780,806	\$611,920,150	\$736,700,956
Transfers	181,450,533	14,350,318	195,800,851
Contracted Services	48,579,176	5,267,787	53,846,963
Other Direct Costs	18,524,154	0	18,524,154
Indirect Costs	<u>174,636,007</u>	<u>293,698,134</u>	<u>468,334,141</u>
Total	<u>\$547,970,676</u>	<u>\$925,236,389</u>	<u>\$1,473,207,065</u>

STATE FISCAL YEAR 2004

<u>Account</u>	<u>Allowable</u>	<u>Unallowable</u>	<u>Total Costs</u>
Salaries	\$126,863,005	\$637,015,319	\$763,878,324
Transfers	195,426,805	13,700,317	209,127,122
Contracted Services	40,698,843	2,948,890	43,647,733
Other Direct Costs	35,086,777	0	35,086,777
Indirect Costs	<u>194,765,095</u>	<u>319,674,695</u>	<u>514,439,790</u>
Total	<u>\$592,840,525</u>	<u>\$973,339,221</u>	<u>\$1,566,179,746</u>

STATE FISCAL YEARS 2002 THROUGH 2004

<u>Account</u>	<u>Allowable</u>	<u>Unallowable</u>	<u>Total Costs</u>
Salaries	\$373,660,649	\$1,814,883,618	\$2,188,544,267
Transfers	543,845,748	34,947,556	578,793,304
Contracted Services	128,526,339	14,486,959	143,013,298
Other Direct Costs	75,323,400	0	75,323,400
Indirect Costs	<u>529,265,700</u>	<u>877,585,162</u>	<u>1,406,850,862</u>
Total	<u>\$1,650,621,836</u>	<u>\$2,741,903,295</u>	<u>\$4,392,525,131</u>

**OFFICE OF INSPECTOR GENERAL CALCULATION
OF MARYLAND'S REIMBURSEMENT RATE**

STATE FISCAL YEAR 2002

Allowable expenditures:	\$509,810,635
Allowable expenditures/ child count: ¹	$\$509,810,635 / 111,342 = \$4,578.78$
Cost per week:	$\$4,578.78 / 3 \text{ services per week} = \$1,526.26$
Cost per service: ²	$\$1,526.26 / 36 \text{ weeks per school year} = \42.40

STATE FISCAL YEAR 2003

Allowable expenditures:	\$547,970,676
Allowable expenditures/ child count:	$\$547,970,676 / 112,181 = \$4,884.70$
Cost per week:	$\$4,884.70 / 3 \text{ services per week} = \$1,628.23$
Cost per service:	$\$1,628.23 / 36 \text{ weeks per school year} = \45.23

STATE FISCAL YEAR 2004

Allowable expenditures:	\$592,840,525
Allowable expenditures/ child count:	$\$592,840,525 / 112,859 = \$5,252.93$
Cost per week:	$\$5,252.93 / 3 \text{ services per week} = \$1,750.98$
Cost per service:	$\$1,750.98 / 36 \text{ weeks per school year} = \48.64

¹Consistent with the Department of Education's methodology, the child count used in our calculation includes all children enrolled in special education.

²The State Department of Education used 35 weeks in its calculation. However, the current Code of Maryland Annotated Regulations, Title 13A, Subtitle 02, Chapter 01, Regulation 04 states that "schools shall be open a minimum of 180 days per year," or 36 weeks. Therefore, we used 36 weeks to develop the Office of Inspector General calculated rate.



STATE OF MARYLAND

DHMH

Maryland Department of Health and Mental Hygiene
201 W. Preston Street • Baltimore, Maryland 21201

Martin O'Malley, Governor – Anthony G. Brown, Lt. Governor – John M. Colmers, Secretary

March 12, 2007

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

Re: Response of Maryland Department of Health and Mental Hygiene to Draft
Audit Report Concerning Maryland Medicaid Reimbursement Rate for School-
Based Health Services (2002-2005).

Dear Mr. Virbitsky:

On January 30, 2007, your office ("DHHS-OIG") transmitted the above-referenced draft audit report to the Maryland Department of Health and Mental Hygiene ("Department"). The Department appreciates the professionalism and thoroughness with which you approached this audit. The Department agrees with your office's finding that the audited rate for school-based Medicaid services reflected education costs that are not allowable and that the applicable rates should therefore be reduced.

However, we would like to gain a better understanding of the approach DHHS-OIG took toward the development of the adjusted rates set forth in the draft audit report. To that end, we appreciate the offer you made at today's exit conference to share with the Department further information concerning the audit. We have one additional issue about which we would appreciate your opinion.

On December 12, 2005, DHHS-OIG auditors met with Department staff to discuss the DHHS-OIG approach to the audit. At the meeting, Susan Tucker, Executive Director of the Maryland Medical Assistance Program's Office of Health Services, asked if you would consider using an alternative methodology to calculate an appropriate cost-

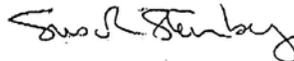
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Mr. Stephen Virbitsky
March 12, 2007
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based rate for the years you audited. Specifically, Ms. Tucker noted that the Maryland State Department of Education ("MSDE") had hired the University of Maryland-Baltimore County ("UMBC") to do an actual cost-based methodology, which is based on a time study. That methodology results in rates that lie somewhere between the rates you developed in your audit and the \$82 rate that you audited. See the attached materials outlining the methodology.

On January 31, 2006, the Department and MSDE again met with DHHS-OIG auditors. At the meeting, UMBC gave a presentation on the time study methodology that it had developed. The Department explained that the UMBC methodology was based on a methodology that the Centers for Medicare and Medicaid Services had approved for the state of Oregon and that Oregon had actually used this methodology during the years that are the subject of the DHHS-OIG audit of Maryland's rate methodology. At that time, the Department asked if your office would consider using the UMBC time study findings on cost for 2004 and then using a deflation factor to calculate rates for the prior years that you audited. In addition, the Department would like to use the UMBC study to address the issue of the FY '05 and FY '06 overpayments. Accordingly, the Department would appreciate your comments on this alternative methodology, an explanation of the salient differences between your methodology and the UMBC methodology and your rationale for deciding not to employ the approach suggested by the Department. Thank you for your cooperation.

Sincerely,



Susan R. Steinberg
Chief Operating Officer
Health Care Financing

Attachments

Maryland Rate Setting Methodology for Medicaid School-Based Services

1. A statewide survey of school systems and local lead agencies was conducted to measure the amount of provider time spent on each Medicaid school-based service (the specific services are identified in the attached sheet). The sample design gives a 95% confidence level with 5% margin of error for most services. The exceptions are one new service for which no sample size could be determined and two very lightly utilized services for which the confidence level is only 85%.
2. A second survey determined the average hourly wage or contractual hourly rate paid to the providers by the schools. This rate, times the average hours from (1) above, gives the raw wage dollars needed to provide each service.
3. The School Expenditure Reports from several years were examined. The most current were used to determine a mark-up factor for direct costs. Direct expenses such as materials and supplies were built in to the factor for both employees and contractors. Employee benefits are only built in to the employee direct factor. The direct factor, times the raw wage dollars from (2) above, gives the direct dollars needed to provide each service.
4. The most current School Expenditure Reports were used to determine a mark-up factor for indirect costs. Indirect costs (administrative, plant operations, debt service, mid-level and maintenance) were allocated to direct costs according to the rules explained in the detailed report. The indirect factor, times the results from (3) above, gives the fully loaded cost for each provider hour.
5. The wage survey also reported sick days, in-service days, and any other days when the providers were paid but were not available for providing services. The total days paid, divided by days available for providing service, gives a time factor. The time factor, times the result from (4) above, gives the fully loaded cost for each service hour for the base year, SFY 2004.

The process described above follows the cost principles established under OMB Circular A-87. The attached sheet shows an example of the results of this rate-setting methodology.

Comparison of Current and Proposed Rates (2004 Base)

	DOS 03/04-01/05 # of Procedures	Current		Proposed		MSDE 1/1/2006		MSDE Deflated 2003
		Rate	Payment	Rate	Payment	Rate	Payment	
90801 (Psy. Evaluation)	39	\$	\$ 3,198	\$ 271.71	\$ 10,597	\$ 82.00	\$ 3,198	
92507 (Speech - Ind)	114,114	\$	\$ 9,357,348	\$ 76.64	\$ 8,745,697	\$ 76.00	\$ 8,672,664	
92508 (Speech - Grp)	124,270	\$	\$ 10,190,140	\$ 67.83	\$ 8,429,234	\$ 67.00	\$ 8,326,090	
92557 (Audiology)	1,964	\$	\$ 161,048	\$ 70.60	\$ 138,658	\$ 70.00	\$ 137,480	
96100 (Psych Testing)	2,736	\$	\$ 224,352	\$ 277.35	\$ 758,930	\$ 82.00	\$ 224,352	
97001 (Phys. Therapy)	23,823	\$	\$ 1,953,486	\$ 61.30	\$ 1,460,350	\$ 61.00	\$ 1,453,203	
97003 (Occ. Therapy)	53,358	\$	\$ 4,375,356	\$ 52.17	\$ 2,783,687	\$ 52.00	\$ 2,774,616	
99499 (Nursing)	17,111	\$	\$ 1,403,102	\$ 83.39	\$ 1,426,886	\$ 82.00	\$ 1,403,102	
H0046 (Mental Health As.)	76,652	\$	\$ 6,285,464	\$ 99.33	\$ 7,613,843	\$ 82.00	\$ 6,285,464	
S9470 (Nutrition)	51	\$	\$ 4,182	\$ 82.00	\$ 4,182	\$ 82.00	\$ 4,182	
Total/Average	414,118	\$	\$ 33,957,681	\$ 75.76	\$ 31,371,964	\$ 70.71	\$ 29,284,351	\$ 65.76
% Change			0.0%		-7.6%		-13.8%	

OIG Rate

\$	48.64	\$	45.23	\$	42.40
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