

Department of Health and Human Services

**OFFICE OF
INSPECTOR GENERAL**

**INDIANA MEDICAID DURABLE
MEDICAL EQUIPMENT**

**INDIANA FAMILY AND SOCIAL
SERVICES ADMINISTRATION**

INDIANAPOLIS, INDIANA



JANET REHNQUIST
Inspector General

OCTOBER 2001
A-05-01-00052



DEPARTMENT OF HEALTH AND HUMAN SERVICES

OFFICE OF AUDIT SERVICES
233 NORTH MICHIGAN AVENUE
CHICAGO, ILLINOIS 60601

REGION V
OFFICE OF
INSPECTOR GENERAL

October 25, 2001

Common Identification No. A-05-01 -00052

Ms. Melanie Bella
Asst. Secretary, Office of Medicaid Policy and Planning (OMPP)
Indiana Family and Social Services Administration
Indiana Government Center Room W-382
402 West Washington Street, Indianapolis, IN 46204

Dear Ms. Bella:

Enclosed for your information and use are two copies of an Office of Inspector General (OIG) audit report entitled "Indiana Medicaid Durable Medical Equipment (DME) Reimbursement Levels".

Final determination as to actions taken on all matters reported will be made by the CMS action official. 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.

In accordance with the principles of the Freedom of Information Act (public law 90-23), OIG reports issued to the Department's grantees and contractors are made available, if requested, to members of the press and the general public to the extent information contained therein is not subject to exemptions in the Act which the Department chooses to exercise. (See 45 CFR Part 5). Also, within ten business days after the final report is issued, it will be posted on the world wide web at <http://www.hhs.gov/proorg/oig>.

To facilitate identification, please refer to the above Common Identification Number in all correspondence relating to this report.

Sincerely,

A handwritten signature in cursive script that reads "Paul Swanson".

Paul Swanson
Regional Inspector General
for Audit Services

Enclosures

Direct Reply to Action Official:
Cheryl Harris, Associate Regional Administrator
CMS, Division of Medicaid and Children Health
233 North Michigan Avenue, 5th Floor
Chicago, Illinois 60601



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October 26, 2001

Common Identification No. A-05-01 -00052

Ms. Melanie Bella
Asst. Secretary, Office of Medicaid Policy and Planning
Indiana Family and Social Services Administration
Indiana Government Center Room W-3 82
402 West Washington Street
Indianapolis, IN 46204

This report provides you with the results of our audit of Indiana Medicaid reimbursement levels for durable medical equipment (DME) administered by the Indiana Family and Social Services Administration, Office of Medicaid Policy and Planning (OMPP). The objective of our audit was to determine whether the Indiana Medicaid program is adhering to its State Plan policy of paying DME suppliers based on the current Medicare payment ceilings for DME items.

We identified payments made to 31 providers with the highest amounts of Medicaid reimbursement above Medicare payment levels, for the period October 1, 1997 through September 30, 2000, and found that they were overpaid \$2,667,790. The overpayments occurred because OMPP did not annually review and update its DME payment rates to conform with current Medicare prices. If OMPP had followed its State Plan provision to adjust Medicaid payments to Medicare payment levels, annual savings would have amounted to \$889,000, or \$4.4 million over a five-year budget cycle.

We are recommending that the OMPP: (i) reimburse CMS \$1,637,756 (Federal share) for DME costs claimed that exceeded the Medicare payment ceiling, (ii) consider recovering the DME overpayment from unduly enriched providers, and (iii) adjust its DME payment rates to insure that Medicare payment ceiling levels are not exceeded in the future. The OMPP does not believe that its State Plan provisions require it to limit Medicaid payments for DME to Medicare payment ceilings.

BACKGROUND

The Medicaid program is jointly administered by the Federal government, through the Centers for Medicare and Medicaid Services (CMS) and, by the states, through their designated state agency. The designated state agency in Indiana is the OMPP, a division of the Indiana Family and Social Services Administration. During our audit period, the CMS share for most of the Medicaid service costs claimed in Indiana ranged between 61.01 and 61.74 per cent of the total.

The Indiana Medicaid program defines durable medical equipment as items that can withstand repeated use, examples include, oxygen, oxygen equipment, hospital beds, wheelchairs, and other equipment physicians prescribe for home use.

OBJECTIVES AND SCOPE

We conducted our audit in accordance with generally accepted government auditing standards. The objective of our audit was to determine if the Indiana Medicaid program is adhering to its State Plan policy of paying DME suppliers based on the current Medicare payment ceilings for DME codes. To accomplish our audit objective, OMPP assisted us in gathering our data. We first compared a list of Medicare authorized payment levels for the period October 1, 1997 through September 30, 2000 to a listing of Indiana's Medicaid payment rates. For the DME items with OMPP payment rates exceeding Medicare's payment rates, OMPP provided us with a computerized data base, detailing each paid claim from the 31 largest providers previously identified during survey work.

To supplement this analysis, we assessed whether these 31 providers were also reimbursed under Medicare for similar DME services and were, therefore, aware of the limitation of the Medicare payment level.

We conducted our fieldwork at OMPP offices in Indianapolis, Indiana. Fieldwork was completed in May 2001.

RESULTS OF AUDIT

During the audit period, OMPP had established prices for 1,169 DME codes. Payment levels for 204 of the codes exceeded the State Plan designated Medicare payment ceilings. Only 124 of the 204 codes actually resulted in Medicaid overpayments. We calculated total Medicaid overpayments of \$2,667,790 (Federal share \$1,637,756).

OMPP's State Plan policy is to reimburse DME providers at the current Medicare payment levels for DME products and services. Current OMPP DME reimbursement policies were established in 1993. The policies are contained in Indiana Code at 405 IAC 5-19-3 (c), which has been incorporated into Indiana's CMS approved Medicaid State Plan, as follows:

...Reimbursement of DME is based upon Medicare's fee schedule for fiscal year 1993 and classes of DME. The established Medicaid rates will be reviewed annually and adjusted as necessary...

Although the Medicare program provides an annual tape of the current Medicare DME payment ceilings to each state, OMPP did not use this tape to update their DME pricing schedules. OMPP officials advised us that they do not annually review or adjust their 1993 DME payment levels. This became significant when the Federal "Balanced Budget Act of 1997" substantially reduced the payment levels for numerous Medicare items. Oxygen, for instance, was reduced, as follows:

...Payments for Oxygen — For 1998, the national payment limit for oxygen and oxygen equipment is the 1997 limit reduced by 25 per cent. For 1999 and each subsequent year, the national payment limit is the 1997 limit reduced by 30 percent...

We found that three of the codes with the largest overpayments were related to oxygen and amounted to \$1,316,705 of the total overpayments, or 49 per cent of the total:

E1403	Oxygen Concentrator	\$592,943
EO439	Liquid Oxygen System	551,130
E1401	Oxygen Concentrator	<u>172,632</u>
	Total	\$1,316,705

The 1997 Medicare payment rate for all three items was \$326.87. The “Balanced Budget Act” reduced this by \$81.71 in 1998 and an additional \$16.36 for subsequent years (\$228.80 became the new payment rate).

Since most of the overpaid providers were overpaid relatively small sums, we asked OMPP to provide paid claim data on only the highest paid providers. OMPP provided us with a database for the 31 highest paid providers. The top five providers from this database comprised \$1,870,336 or 70 percent of the total \$2,667,790 overpayment:

Provider 1	\$ 750,267
Provider 2	480,034
Provider 3	266,089
Provider 4	214,104
Provider 5	<u>159,842</u>
Total	\$1,870,336

We determined that 27 of the 31 providers were also Medicare providers and should have known what the current Medicare rates were for their DME items. Therefore, they should have known that they were being overpaid for their DME items. Since OMPP’s “Provider Manual” (Chapter 8 and Appendix A) states that DME items are to be reimbursed at the current Medicare scheduled rate, recovery of the disparity between Medicaid and Medicare payment levels is appropriate.

The OMPP should consider recovering the DME overpayments from its providers that have been unduly enriched. By reducing the Medicaid payment levels to Medicare payment ceilings, the Medicaid program could save approximately \$889,000 annually, or \$4.4 million over a five-year budget cycle. We will provide separate computer disks of our analysis to aid OMPP in its collection efforts.

RECOMMENDATIONS

We are recommending that the OMPP:

- Reimburse CMS \$1,637,756 (Federal share) for DME overpayments that exceeded the Medicare ceiling levels incorporated in OMPP’s approved State Plan,
- Consider recovering the \$2,667,790 of DME overpayments from its providers that have been unduly enriched, and

- Adjust DME payment levels to insure that Medicare payment ceiling levels are not exceeded in the future (estimated annual savings \$889,000).

OMPP COMMENTS

In a written response, dated September 21, 2001, the OMPP provided reasons for not agreeing with our recommendations. The OMPP contends that the State Plan does not specifically address DME reimbursement methodology. Therefore, OMPP questions whether there is a basis for limiting payments to DME suppliers to current Medicare payment ceilings. Although the Indiana Administrative Code provides that “The established Medicaid rates will be reviewed annually and adjusted as necessary”, OMPP interprets this to mean that OMPP must make the annual review but that adjusting the prices is not required. The OMPP also states that in the aggregate their payments for DME items are lower than Medicare’s payments for the same items.

OAS RESPONSE

The OMPP State Plan consists of copies of pertinent Indiana Administrative Code or Federal Code of Regulations that are loosely assembled into a folder, and are available for review by interested parties. These materials identified the criteria cited in the report, which we believe establishes the intent to keep Medicaid prices current with Medicare prices. It states “. . .Medicaid rates will be reviewed annually and adjusted as necessary”. Since OMPP did not provide evidence of annual reviews of DME prices, it did not support compliance with the cited provision and Medicaid payments for DME exceeds Medicare payment ceilings.

Although OMPP had established prices for 905 of 1,169 DME codes, which were lower than Medicare payment ceilings, we do not agree that OMPP’s aggregate payment for DME items are lower than Medicare payments in total. The codes with Medicaid prices higher than Medicare amounts far exceeded the amounts for codes with lower Medicaid prices. Further, it is totally appropriate for OMPP to set Medicaid prices lower than Medicare. Our report recognizes the state’s authority to establish its own payment levels for the Medicaid DME, as long as they do not exceed the reasonable Medicare payment limits established by the State Plan. In the future, OMPP may consider increasing the payment levels of Medicaid DME codes that were lower than the Medicare payment ceilings.



Paul Swanson
Regional Inspector General
for Audit Services

Attachment

Frank O'Bannon, Governor
State of Indiana



"People
helping people
help
themselves"

Office of Medicaid Policy and Planning

402 W. WASHINGTON STREET, ROOM W382
INDIANAPOLIS, IN 46204-2739

John Hamilton, Secretary

September 21, 2001

Mr. Rick Pound, Senior Auditor
DHHS/OIG/Office of Audit Services
101 West Ohio Street, Suite 750
Indianapolis, IN 46204

Re: Indiana Medicaid Durable Medical Equipment (DME) Reimbursement Levels - Draft Report dated July 2001 (received September 14, 2001) CIA A-05-01-00052

Dear Mr. Pound:

This correspondence is in response to Paul Swanson's July 31, 2001 cover letter transmitting a draft report entitled, "Indiana Medicaid Durable Medical Equipment (DME) Reimbursement Levels." The draft report was received by our office on September 14, 2001. We appreciate the opportunity to provide your office with our formal response to this report. As requested, we submit our comments about your findings and recommendations as follows.

The Office of Medicaid Policy Planning (OMPP) does not agree with the recommendations set out in the draft audit report, for the reasons set out below:

- 1) The stated objective of the audit was to determine if the Indiana Medicaid program is adhering to its State Plan policy of paying DME suppliers based on the current Medicare payment ceilings for DME codes. As you know, the Indiana Medicaid State Plan does not specifically address the reimbursement methodology for DME, and therefore we question the underlying basis of the report findings.
- 2) The reimbursement methodology used for durable medical equipment is described in Title 405 of the Indiana Administrative Code (405 IAC 5-19-3). This title states that "Reimbursement of DME is based upon Medicare's fee schedule for fiscal year 1993 and classes of DME. The established Medicaid rates will be reviewed annually and adjusted as necessary.

OMPP is not required by the Indiana Administrative Code or the State Plan to annually adjust the DME rates. The rule simply provides for an annual review.

- 3) We acknowledge that Indiana Medicaid reimbursement rates for some DME items are higher than what would have been paid by the Medicare program. This is due to the fact that rates for some DME items have decreased under the Medicare program since the state adopted the

of the 1993 Medicare fee schedule. However, in the aggregate our payments for DME are lower than what would have been paid under the Medicare program. Had Indiana Medicaid adopted all DME rate changes from the Medicare program, aggregate payments would have increased substantially.

The aggregate payment tests as described in 42 CFR 447 apply solely to payments to institutional providers (i.e., hospitals, nursing homes). The upper limit requirements as described in 42 CFR 447 are applied as an “aggregate” test, meaning Medicaid payments to individual facilities may be higher or lower than what Medicare would pay for the same service, so long as Medicaid payments in the aggregate are less than what Medicare would have paid. Although we do not believe that these payment limitations apply to payments for durable medical equipment, we believe that an aggregate test of payments, whereby Medicaid payments are lower, would satisfy any aggregate Medicare upper limit.

The provisions of the Balanced Budget Act of 1997 that relate to national payment limits for oxygen and oxygen equipment do not apply to state Medicaid programs. These provisions apply only to the Medicare program and thus should not be cited as a basis for reducing reimbursement rates paid by Indiana Medicaid.

Since the passage of the Balanced Budget Bill of 1997, the Secretary of Health and Human Services has issued over 50 letters to State Medicaid Directors relating to changes to State Medicaid programs necessitated by this federal legislation. We have not located any CMS communication that addresses Medicaid reimbursement rates for DME, oxygen, or oxygen equipment. It is our understanding that the approved State Plan, the State Medicaid Manual, the Code of Federal Regulation and the United States Code do not require Medicaid fees for durable medical equipment (including oxygen and oxygen equipment) to be less than what would be paid by the Medicare program. It is our belief therefore, that the OMPP is compliant with both the State Plan and Indiana Administrative code, which we understand are the applicable authorities for DME reimbursement rates.

We respectfully request that your office reconsider the audit findings contained in the draft report, and that CMS refrain from finalizing the report or taking further action until these issues can be resolved. Should you have any questions or wish to discuss this matter further, please contact Pat Nolting, Director of Program Operations, at (317) 232-4318.

Respectfully,



Kathleen Gifford, Assistant Secretary

