



MAY - 9 2008

TO: Kerry Weems
Acting Administrator
Centers for Medicare & Medicaid Services

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

SUBJECT: Review of Indiana Medicaid Disproportionate Share Hospital Eligibility for July 1, 2000, Through June 30, 2003 (A-05-06-00045)

Attached is an advance copy of our final report on the eligibility of Indiana Medicaid disproportionate share hospitals (DSH). We will issue this report to the Indiana Family and Social Services Administration (the State agency) within 5 business days.

Our objective was to determine whether the State agency made Medicaid DSH payments according to Federal eligibility requirements for hospitals.

The Omnibus Budget Reconciliation Act of 1981 established the Medicaid DSH program by adding section 1923 to Title XIX of the Social Security Act (the Act). This section requires States to make additional payments to hospitals that serve disproportionate numbers of low-income patients. Hospitals must meet certain Federal and State eligibility requirements to qualify for Medicaid DSH payments. Federal regulation 42 CFR § 440.140(a) and sections 1905(a)(6), 1905(h), and 1861(f) of the Act require psychiatric hospitals to meet Medicare program participation requirements to receive Medicaid funding. These requirements include hospital compliance with Medicare Conditions of Participation (CoP) and entry into Medicare provider agreements.

The State agency paid \$142,270,633 (\$88,236,417 Federal share) to three State-owned psychiatric hospitals that were not eligible to receive Medicaid DSH payments. The hospitals did not meet Federal Medicaid eligibility requirements because they did not comply with Medicare CoP requirements.

We recommend that the State agency:

- refund \$88,236,417 to the Federal Government for the Medicaid DSH payments made to the three ineligible State-owned psychiatric hospitals for the period July 1, 2000, through June 30, 2003, and
- ensure that Medicaid DSH payments are made only to eligible hospitals.

In written comments on the draft report, the State agency disagreed with our finding and recommendations. The State agency stated that it reasonably believed that Medicare and Medicaid CoP had been met for the facilities through a combination of Joint Commission on Accreditation of Healthcare Organizations accreditation and the Medicaid survey and certification process.

After reviewing the State agency's comments, we maintain that our finding and recommendations are valid.

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 Marc Gustafson, Regional Inspector General for Audit Services, Region V, at (312) 353-2621 or through e-mail at Marc.Gustafson@oig.hhs.gov. Please refer to report number A-05-06-00045 in all correspondence.

Attachment



DEPARTMENT OF HEALTH AND HUMAN SERVICES
OFFICE OF AUDIT SERVICES
233 NORTH MICHIGAN AVENUE
CHICAGO, ILLINOIS 60601

REGION V
OFFICE OF
INSPECTOR GENERAL

MAY 13 2008

Report Number: A-05-06-00045

Mr. Jeffery M. Wells
Director, Office of Medicaid Policy and Planning
Indiana Family and Social Services Administration
402 West Washington Street, MS07
Indianapolis, Indiana 46204-2739

Dear Mr. Wells:

Enclosed is the U.S. Department of Health and Human Services (HHS), Office of Inspector General (OIG), final report entitled "Review of Indiana Medicaid Disproportionate Share Hospital Eligibility for July 1, 2000, Through June 30, 2003." We will forward a copy of this report to the HHS action official noted on the following page for review and any action deemed necessary.

The HHS action official will make final determination as to actions taken on all matters reported. We request that you respond to this official within 30 days from the date of this letter. Your response should present any comments or additional information that you believe may have a bearing on the final determination.

Pursuant to the principles of the Freedom of Information Act, 5 U.S.C. § 552, as amended by Public Law 104-231, OIG reports generally are made available to the public to the extent the information is not subject to exemptions in the Act (45 CFR part 5). Accordingly, within 10 business days after the final report is issued, it will be posted on the Internet at <http://oig.hhs.gov>.

If you have any questions or comments about this report, please do not hesitate to call me, or contact David Markulin, Audit Manager, at (312) 353-1644 or through e-mail at David.Markulin@oig.hhs.gov. Please refer to report number A-05-06-00045 in all correspondence.

Sincerely,

Marc Gustafson
Regional Inspector General
for Audit Services

Enclosure

Direct Reply to HHS Action Official:

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

Department of Health and Human Services

**OFFICE OF
INSPECTOR GENERAL**

**REVIEW OF INDIANA MEDICAID
DISPROPORTIONATE SHARE
HOSPITAL ELIGIBILITY
FOR JULY 1, 2000, THROUGH
JUNE 30, 2003**



Daniel R. Levinson
Inspector General

May 2008
A-05-06-00045

Office of Inspector General

<http://oig.hhs.gov>

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Pursuant to the principles of the Freedom of Information Act, 5 U.S.C. § 552, as amended by Public Law 104-231, Office of Inspector General reports generally are made available to the public to the extent the information is not subject to exemptions in the Act (45 CFR part 5).

OFFICE OF AUDIT SERVICES FINDINGS AND OPINIONS

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

EXECUTIVE SUMMARY

BACKGROUND

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

The Omnibus Budget Reconciliation Act of 1981 established the Medicaid Disproportionate Share Hospital (DSH) program by adding section 1923 to Title XIX of the Act. This section requires State agencies to make additional payments to hospitals that serve disproportionate numbers of low-income patients.

Hospitals must meet certain Federal and State eligibility requirements to qualify for the Medicaid DSH payments. Federal regulation 42 CFR § 440.140(a) and sections 1905(a)(6), 1905(h), and 1861(f) of the Act require psychiatric hospitals to meet Medicare program participation requirements to receive Medicaid funding. These requirements include the hospitals' compliance with Medicare Conditions of Participation (CoP) and entry into Medicare provider agreements. Generally, hospitals demonstrate compliance with basic Medicare CoP through an accreditation process performed by the Joint Commission on Accreditation of Healthcare Organizations (JCAHO). However, JCAHO accreditation of psychiatric hospitals does not demonstrate compliance with special Medicare CoP because Federal regulations require these hospitals to meet additional, more stringent staffing and medical records requirements.

The Indiana Family and Social Services Administration (the State agency) administers Indiana's Medicaid program. Pursuant to the CMS-approved State plan, the State agency provides federally matched Medicaid DSH funding to eligible hospitals.

The State agency operates psychiatric hospitals under the administrative control of the Division of Mental Health. These hospitals are responsible for the inpatient care, treatment, or detention of children, adolescents, and adults with severe mental disorders. For the period July 1, 2000, through June 30, 2003, the State agency made Medicaid DSH payments totaling \$142,270,633 (\$88,236,417 Federal share) to three psychiatric hospitals that did not participate in the Medicare program. We will review and report on the non-DSH portion of the Medicaid payments to these hospitals separately.

OBJECTIVE

The objective was to determine whether the State agency made Medicaid DSH payments according to Federal eligibility requirements for hospitals.

SUMMARY OF FINDING

The State agency paid \$142,270,633 (\$88,236,417 Federal share) to three State-owned psychiatric hospitals that were not eligible to receive Medicaid DSH payments. These hospitals did not meet Federal Medicaid eligibility requirements because they did not comply with Medicare CoP requirements. The State agency believed the hospitals demonstrated their compliance with the Federal Medicaid hospital eligibility requirements through their accreditation by JCAHO. However, 42 CFR § 488.5(a)(2) states that JCAHO accreditation by itself does not demonstrate compliance with Medicare program participation requirements for psychiatric hospitals.

RECOMMENDATIONS

We recommend that the State agency:

- refund \$88,236,417 to the Federal Government for the Medicaid DSH payments made to the three ineligible State-owned psychiatric hospitals for the period July 1, 2000, through June 30, 2003, and
- ensure that Medicaid DSH payments are made only to eligible hospitals.

STATE AGENCY COMMENTS AND OFFICE OF INSPECTOR GENERAL RESPONSE

In written comments to our draft report, the State agency did not agree with the finding and recommendations. The State agency “believed that Medicare and Medicaid conditions of participation had been met for the facilities” through a combination of JCAHO accreditation and the Medicaid survey and certification process, including the special CoP for psychiatric hospitals. The State agency said that it was unable to demonstrate full compliance with Medicare CoP for one of the hospitals (hospital A) but that CMS “administratively acquiesced” that the three hospitals were eligible to receive DSH payments by making the payments.

After reviewing the State agency’s comments, we maintain that our finding and recommendations are valid.

The State agency’s comments are included in their entirety as the appendix.

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INTRODUCTION

BACKGROUND

Medicaid Program

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

Medicaid Disproportionate Share Hospitals

The Omnibus Budget Reconciliation Act of 1981 established the Medicaid Disproportionate Share Hospital (DSH) program by adding section 1923 to the Act. This section requires States to make additional payments to hospitals that serve disproportionate numbers of low-income patients. For Indiana, the Federal share of these payments was approximately 62 percent. Hospitals must meet specific requirements to qualify for the Medicaid DSH program.

Hospital Requirements To Receive Medicaid Payments

Federal regulation 42 CFR § 440.140(a) and sections 1905(a)(6), 1905(h), and 1861(f) of the Act require psychiatric hospitals to meet Medicare program participation requirements to receive federally matched Medicaid funding. These requirements include compliance with Medicare Conditions of Participation (CoP) and entry into a Medicare provider agreement. Generally, hospitals demonstrate compliance with basic Medicare CoP through an accreditation process performed by the Joint Commission on Accreditation of Healthcare Organizations (JCAHO). However, psychiatric hospitals must also meet two additional and more stringent special staffing and medical records CoP requirements. Compliance with these requirements is not measured by JCAHO accreditation and can only be established through a specialized survey process.

Indiana Disproportionate Share Hospital Eligibility

The Indiana Family and Social Services Administration (the State agency) administers Indiana's Medicaid program. Pursuant to State plan Attachment 4.19A and the Act, the State agency provides DSH funding to qualified hospitals that have Medicaid inpatient utilization rates of at least 1 percent and, when applicable, have two staff obstetricians available to provide services to persons covered under the State plan.

The State agency used a contractor to calculate Medicaid DSH eligibility for individual hospitals for the period July 1, 2000, through June 30, 2003. The calculations were performed to ensure that Medicaid DSH funding was provided only to those hospitals that met the DSH eligibility requirements in the Act and the State plan. The contractor was responsible for calculating

Medicaid DSH eligibility for hospitals that received Medicaid payments but was not responsible for determining overall Medicaid eligibility for these hospitals.

Indiana Psychiatric Hospitals

The State agency operates psychiatric hospitals that are under the administrative control of the Division of Mental Health. Pursuant to the State plan, these hospitals are responsible for the inpatient care, treatment, or detention of children, adolescents, and adults with severe mental disorders. For the period July 1, 2000, through June 30, 2003, the State agency made Medicaid DSH payments totaling \$142,270,633 (\$88,236,417 Federal share) to three psychiatric hospitals that did not participate in the Medicare program. We will review and report on the non-DSH portion of the Medicaid payments to these hospitals separately.

OBJECTIVE, SCOPE, AND METHODOLOGY

Objective

The objective was to determine whether the State agency made Medicaid DSH payments according to Federal eligibility requirements for hospitals.

Scope

We limited this review to validating only the DSH eligibility determinations for three State-owned psychiatric hospitals for the period July 1, 2000, through June 30, 2003. We did not review the State agency's hospital-specific DSH payment calculations or its payment disbursement methods. We did not review the non-DSH portion of the Medicaid payments made to the hospitals.

We performed fieldwork at the office of the State agency's contractor in Indianapolis, Indiana.

Methodology

To accomplish the objective we:

- identified the number of hospitals receiving DSH payments and the amount they received,
- reviewed the State plan to determine its consistency with Federal DSH eligibility requirements in section 1923 of the Act,
- assessed the contractor's methodology for calculating DSH eligibility for the review period to ensure consistency with the approved State plan,
- verified that Medicaid-funded DSH facilities complied with Medicare program participation requirements as required by Federal regulations,

- discussed Medicaid DSH payments made to ineligible hospitals with CMS and the State agency, and
- quantified DSH payments made to ineligible hospitals.

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

FINDING AND RECOMMENDATIONS

The State agency paid \$142,270,633 (\$88,236,417 Federal share) to three State-owned psychiatric hospitals that were not eligible to receive Medicaid DSH payments. These hospitals did not meet Federal Medicaid eligibility requirements because they did not demonstrate compliance with Medicare CoP requirements. The State agency believed the hospitals demonstrated their compliance with the Federal Medicaid hospital eligibility requirements through the hospitals' accreditation by JCAHO.

MEDICAID DISPROPORTIONATE SHARE HOSPITAL PAYMENTS TO INELIGIBLE HOSPITALS

Federal Requirements

Federal regulation 42 CFR § 440.140(a) and sections 1905(a)(6), 1905(h), and 1861(f) of the Act require psychiatric hospitals to meet Medicare program participation requirements to receive federally matched Medicaid funding.

The Federal regulations require hospitals that participate in the Medicaid program to establish compliance with the basic Medicare CoP requirements that address issues such as licensing, quality of care, safety, patient rights, self assessment and performance improvement, service availability, utilization and review, and other requirements that apply to all hospitals as stated at 42 CFR §§ 482.1 through 482.57. They must also have in place a Medicare provider agreement, which allows CMS to survey for and certify compliance with the CoP.

In addition, 42 CFR § 482.60 (c) and (d) require psychiatric hospitals to comply with special staffing and medical record CoP requirements. A survey to determine whether these requirements are met must be “performed by board-certified psychiatrists and Masters-prepared psychiatric nurses, and, if necessary, Masters-prepared psychiatric social workers,” according to the “State Operations Manual,” section 2718A. All of the Federal requirements must be met before psychiatric hospitals can receive federally matched Medicaid funding, including Medicaid DSH payments.

Hospitals Ineligible for Disproportionate Share Hospital Payments

For the period July 1, 2000, through June 30, 2003, the State agency made Medicaid DSH payments totaling \$142,270,633 (\$88,236,417 Federal share) to three State-owned psychiatric hospitals that did not meet Medicaid eligibility requirements.

Disproportionate Share Hospital Payments to Ineligible Hospitals

Hospital	Total Payment	Federal Share
Hospital A	\$86,143,271	\$53,425,448
Hospital B	54,833,683	34,008,371
Hospital C	1,293,679	802,598
Total	\$142,270,633	\$88,236,417

Unmet Federal Requirements

These three State-owned psychiatric hospitals were ineligible for Medicaid DSH payments because they did not meet Medicare program participation requirements. Hospital A did not establish compliance with the special staffing and medical record requirements for psychiatric hospitals through the survey process.

CMS terminated two of the State hospitals from Medicare program participation under involuntary conditions in 1982 and 1991, respectively. The third hospital never participated in the Medicare program. Consequently, none of the three hospitals had in place a Medicare provider agreement during our audit period, as described by 42 CFR § 489.10. The Medicare provider agreement would have demonstrated compliance with Medicare requirements, including such non-CoP requirements as civil rights and antidiscrimination regulations.

Unmet Medicare Conditions of Participation Requirements

The State agency believed that the three hospitals were eligible to receive Medicaid DSH payments because the hospitals demonstrated CoP compliance through their accreditation by JCAHO. However, JCAHO accreditation by itself does not demonstrate compliance with Medicare program participation requirements for psychiatric hospitals, as stated in 42 CFR § 488.5(a)(2). A hospital must have JCAHO accreditation to demonstrate compliance with the basic Medicare CoP. However, psychiatric hospitals must also meet the special staffing and medical records Medicare CoP. Compliance with the special CoP is not established by the JCAHO survey and can only be demonstrated through a specific survey process. Hospitals must also have in place a Medicare provider agreement, which allows CMS to survey for and certify compliance with the CoP. The State agency did not contest the absence of the required Medicare provider agreements for the three hospitals; therefore, they did not meet the necessary Federal requirements. Following our review, the State agency provided additional surveys beyond the JCAHO accreditations for hospitals B and C. However, the State agency was unable to provide additional special CoP surveys for hospital A and, as a result, did not establish Medicare CoP compliance for hospital A.

During our review, the State agency applied to CMS to obtain Medicare provider agreements for the three hospitals. As of May 21, 2007, CMS had not approved any of the agreement applications. During May 2007, a CMS special CoP survey was completed for one hospital. The other two hospitals expected to submit survey requests soon.

RECOMMENDATIONS

We recommend that the State agency:

- refund \$88,236,417 to the Federal Government for the Medicaid DSH payments made to the three ineligible State-owned psychiatric hospitals for the period July 1, 2000, through June 30, 2003, and
- ensure that Medicaid DSH payments are made only to eligible hospitals.

STATE AGENCY COMMENTS

In written comments to our draft report, the State agency did not agree with the finding and recommendations. The State agency said that a psychiatric hospital may demonstrate its compliance with Medicare CoP by entering into a Medicare provider agreement. During the audit, it applied to CMS to obtain Medicare provider agreements for the three hospitals. The State agency indicated that the three hospitals were accredited by JCAHO and did have Medicaid provider agreements. The State agency commented that it had provided documentation of special CoP surveys, dated 1993 and 1995 for hospitals B and C respectively, separately. The State agency said that it was unable to demonstrate full compliance with Medicare CoP for hospital A because the State agency could not provide the special CoP survey. The State agency “believed that Medicare and Medicaid conditions of participation had been met for the facilities” through a combination of JCAHO accreditation and the Medicaid survey and certification process, which included the additional requirements concerning the special CoP for psychiatric hospitals. The State agency also said that CMS “administratively acquiesced” that the three hospitals were eligible to receive DSH payments by making the payments.

The State agency’s comments are included in their entirety as the appendix.

OFFICE OF INSPECTOR GENERAL RESPONSE

After reviewing the State agency’s comments, we maintain that our finding is valid. The three hospitals needed Medicare provider agreements, which they did not have during our audit period, to meet Medicare CoP requirements. The Medicare provider agreements allow CMS to survey for and certify compliance with the CoP. Additionally, the State agency acknowledged that it could not demonstrate full compliance with Medicare CoP for hospital A and did not provide a special CoP survey for this facility. We disagree that CMS “administratively acquiesced” by making the DSH payments based on the State agency’s claims and determinations that the hospitals were eligible to receive DSH payments. We continue to recommend that the State agency refund \$88,236,417 to the Federal Government and ensure that Medicaid DSH payments are made only to eligible hospitals.

APPENDIX



*"People
helping people
help
themselves"*

Mitchell E. Daniels, Jr., Governor
State of Indiana

Office of Medicaid Policy and Planning
MS07, 402 W. WASHINGTON STREET, ROOM W382
INDIANAPOLIS, IN 46204-2739

CERTIFIED MAIL: 7002 3150 0003 3311 2519

August 10, 2007

Marc Gustafson
Regional Inspector General
for Audit Services
Department of Health and Human Services
Office of Audit Services
233 North Michigan Avenue
Chicago, Illinois 60601

Re: Report Number: A-05-06-00045

Dear Mr. Gustafson:

This letter is in response to the Department of Health and Human Services, Office of the Inspector General's (OIG) draft audit report, dated July 11, 2007, entitled "Review of Indiana Medicaid Disproportionate Share Hospital Eligibility." The draft audit report covers the period from July 1, 2000 through June 30, 2003 ("audit period").

The draft report found that three State-owned psychiatric hospitals were not eligible to receive Medicaid Disproportionate Share Hospital (DSH) payments because the hospitals did not demonstrate compliance with Medicare conditions of participation. For the reasons explained below, we disagree with this finding and with the recommendations that accompany it.

1. In reviewing the draft audit report, we find errors regarding at least two of the facilities: to-wit, Hospitals B and C. Although we were unable to produce documentation while field work for the audit was being performed at the office of our contractor, we have subsequently located and forwarded the documentation to you. Both Hospital B and Hospital C are accredited by the Joint Commission on Accreditation of Healthcare Organizations ("Joint Commission") and meet the Special Conditions for Psychiatric Institutions as evidenced by their last surveys. While these surveys are not as current as we would have expected, it is the responsibility of the CMS, and not the hospitals, to schedule re-certification surveys. See CMS State Operations Manual (SOM), Sections 2022A and 2022B. The lack of later surveys is not



surprising, however, in light of SOM Section 2022A. This section provides that, after the survey agency (SA) verifies accreditation by JCAHO or AOA, the SA “removes the hospital from future resurvey schedules, and discontinues any follow-up on deficiencies.” Similarly, under SOM Section 2022B, the recertification process is to be triggered by the SA sending documents for completion to the hospital. It appears that the administrative process established by the CMS for recertification of these facilities was not followed.

Hospital A is also Joint Commission accredited. We have taken additional steps to attempt to locate the most recent survey and certification for that facility and hope to forward it to you as soon as possible. Hospital A is currently putting in place a corrective action plan based on its last survey on approximately July 9, 2007. In the past, Hospital A received Joint Commission accreditation with a commendation awarded only to the top five percent (5%) of hospitals in the nation. Accordingly, we believe that Hospital A has effectively been in compliance with Medicare conditions of participation.

2. During the audit period all three hospitals maintained accreditation by the Joint Commission. See Exhibit 1, Hospital A; Exhibit 2, Hospital B; and Exhibit 3, Hospital C. * Except in limited circumstances not applicable here, hospitals receiving payment under Medicaid must meet the requirements for participation in Medicare. 42 CFR 482.1(a)(5).¹ Pursuant to 42 C.F.R. § 488.5(a), institutions accredited as hospitals by the Joint Commission are deemed to meet all of the Medicare conditions of participation for hospitals; subject, however, to an exception that additional special staffing and medical records requirements are necessary for the provision of active treatment in psychiatric hospitals. 42 C.F.R. § 488.5(a)(2). In addition, deemed status for Medicaid participation can be established through Medicare deemed status for providers that are not required under Medicaid regulations to comply with any requirements other than Medicare participation requirements for that provider type. 42 C.F.R. 488.5(b). Therefore, for a psychiatric hospital to qualify for either Medicaid or Medicare, or both, the facility must meet all Medicare conditions of participation for hospitals, plus additional requirements concerning special staffing and medical records. 42 CFR 482.488.5(a)(2). 42 CFR 482.60(b), (c), and (d). A psychiatric hospital may also demonstrate its compliance with Medicare conditions of participation by entering into a Medicare provider agreement.

During the audit period, the three hospitals had Medicaid provider agreements. In previous surveys for Medicaid certification, the Indiana State Department of Health (“ISDH”), as CMS’s survey agency (SA), had surveyed the facilities for the additional requirements concerning special staffing and medical records required under 42 CFR 482.61 and 482.62 for psychiatric hospitals. At that time, the ISDH was the designated survey agency for both Medicare and Medicaid in Indiana. Therefore, the State Medicaid agency believed that Medicare

¹ The audit report cites this regulation and also CFR 440.10(a)(3)(iii) in support of this requirement. However, CFR 440.10(a)(3)(iii) applies to inpatient hospital services *other than* services in an institution for mental diseases (IMD). Emphasis added. An “institution for mental diseases” includes “a hospital . . . or other institution of more than 16 beds that is primarily engaged in providing diagnosis, treatment or care of persons with mental diseases, including medical attention, nursing care and related services.” 42 CFR 435.1010. Accordingly, it appears that the proper regulatory section is 42 CFR 440.140(a), pertaining to inpatient hospital services for individuals age 65 or older in an IMD. The result, however, is the same. The requirements specified in 42 CFR 482.60 (b) through (e), i.e. the additional requirements for psychiatric hospitals concerning special staffing and medical records, still must be met.

and Medicaid conditions of participation had been met for the facilities through the combination of (1) Joint Commission accreditation and (2) Medicaid survey and certification which included the additional requirements concerning special staffing and medical records for psychiatric hospitals under 42 CFR 482.61 and 482.62. Accordingly, the State reasonably believed that the requirements for participation in both Medicare and Medicaid had been met, including the additional requirements for psychiatric hospitals.

3. The State agency made Medicaid DSH payments totaling \$142,270,633 (including \$88,236,417 federal share) to the three psychiatric hospitals for the period July 1, 2000 through June 30, 2003. The CMS administratively acquiesced that the three facilities were qualified and eligible to receive DSH payments as manifested by the CMS's making the payments. The CMS paid the federal share to the State agency and raised no issue concerning the DSH payments to the three hospitals until the OIG issued the draft audit report on July 11, 2007, after performing field work at the office of the State agency's contractor in May through September 2006. The State agency was not alerted to any alleged problem with the facilities' compliance with the Medicare conditions of participation because CMS acquiesced in paying the federal share of the DSH payments and raised no issue concerning the propriety of the payments for over three years. The facilities are, therefore, placed in the untenable position of being required after-the-fact to prove that each facility met the additional, special Medicare conditions of participation for psychiatric hospitals for the period of July 1, 2000 through June 30, 2003.

The State agency had no intention of improperly claiming payments to which the three facilities were not entitled. As the draft report points out, during the OIG's review, the State agency applied to CMS to obtain Medicare provider agreements for the three hospitals. That the State did so, upon learning of the potential problem, shows the State's good faith in this matter and is not an indication that the State knew that the State was not entitled to DSH payments for the three hospitals during the audit period.

4. Of the three hospitals covered by the draft audit, Hospital A is the only hospital for which we are currently unable to demonstrate full compliance with the Medicare conditions of participation during the audit period. We are aware of other states that have relied on the fact that the CMS has always allowed them to receive DSH funding based on a hospital provider's Joint Commission accreditation. Thus, other states are in no different position than is Indiana in this matter in terms of the availability of documentation showing compliance with the two special conditions for psychiatric hospitals. In accepting Joint Commission accreditation and in failing to follow its own procedural policy regarding the surveying and recertification of psychiatric hospitals, the CMS has waived the recertification requirements with regard to the two special conditions for psychiatric hospitals. We would expect CMS to apply the same requirements and policies to all states. We would not expect to have an action taken against us to enforce requirements that are not equally applied to all states.

In summary, the recommendations contained in the draft report and our responses are provided, as follows:

1. Indiana does not agree that DSH payments in the amount of \$88,236,417 were improperly claimed as FFP.

2. The State agency has adhered to its State plan requirements and will adhere to CMS's policy clarification and guidance as contained in the draft audit report when the State agency submits DSH claims for Federal reimbursement in the future. It is the policy and practice of the State agency to submit accurate claims for services for which the State is entitled to payment. The State will take additional steps necessary to verify the propriety and accuracy of future claims.

The opportunity to review and comment on this audit report is appreciated. If you have any questions or require additional information, please contact me at 317-234-2407.

Sincerely,

A handwritten signature in black ink, appearing to read "Jeffery M. Wells". The signature is fluid and cursive, with a long horizontal stroke at the end.

Jeffery M. Wells
Director, Office of Medicaid Policy and Planning