

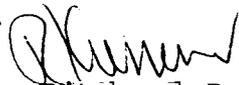


Memorandum

JUN 1 1992

Date

From


Richard P. Kusserow
Inspector General

Subject

Summary Report on Institutions for Mental Diseases
(A-05-92-00024)

To

William **Toby**
Acting Administrator
Health Care Financing Administration

The attached Office of Inspector General report summarizes the results of recent audits conducted to determine compliance with Federal law and regulations applicable to institutions for mental diseases (IMD). The Social Security Act generally precludes Federal financial participation in the cost of care and treatment provided to individuals in IMD who are between 22 and 64 years of age.

Our reviews in several States identified unallowable Medicaid payments totaling over \$33 million (Federal share). Partly as a result of these audits, regional offices of the Health Care Financing Administration (HCFA) identified and recovered an additional \$40 million from the States. We estimate that the Federal Government will realize annual cost savings under the Medicaid program of \$35 million.

Internal control weaknesses at the State level permitted payments to ineligible institutions and payments for services provided to ineligible patients. We are recommending that HCFA direct the States to establish tighter controls and monitor State efforts to ensure that controls are implemented. In their response to our draft report, HCFA concurred with our findings and recommendations but expressed some reservations regarding limited State and Federal resources available for monitoring.

Please advise us of any actions taken with respect to the recommendations in this report within 60 days. If you have any questions, please call me or have your staff contact

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George M. Reeb, Assistant Inspector General for Health Care Financing Audits, at (410) 966-7104. Copies of this report are being sent to other interested top Department officials.

Attachment

Department of Health and Human Services

**OFFICE OF
INSPECTOR GENERAL**

**SUMMARY REPORT ON INSTITUTIONS
FOR MENTAL DISEASES**



**Richard P. Kusserow
INSPECTOR GENERAL**

A-05-92-00024

OFFICE OF INSPECTOR GENERAL

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

OFFICE OF AUDIT SERVICES

The **OIG's** Office of Audit Services (OAS) provides all auditing services for I-II-IS, 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 in order to reduce waste, abuse and mismanagement and to promote economy and efficiency throughout the Department.

OFFICE OF INVESTIGATIONS

The OIG's Office of Investigations (**OI**) conducts criminal, civil, and administrative investigations of allegations of wrongdoing in HHS programs or to HHS beneficiaries and of unjust enrichment by providers. The investigative efforts of OI lead to criminal convictions, administrative sanctions, or civil money penalties. The OI also oversees State Medicaid fraud control units which investigate and prosecute fraud and patient abuse in the Medicaid program.

OFFICE OF EVALUATION AND INSPECTIONS

The OIG's Office of Evaluation and Inspections (OEI) conducts short-term management and program evaluations (called inspections) that focus on issues of concern to the Department, the Congress, and the public. The findings and recommendations contained in the inspections reports generate rapid, accurate, and up-to-date information on the efficiency, vulnerability, and effectiveness of departmental programs.



JUN 1 1992

Memorandum

Date . *R. P. Kusserow*

From Richard P. Kusserow
Inspector General

Subject Summary Report on Institutions for Mental Diseases
(A-05-92-00024)

To William **Toby**
Acting Administrator
Health Care Financing **Administration**

This Office of Inspector General (OIG) report summarizes the results of recent audits conducted to determine compliance with Federal law and regulations applicable to institutions for mental diseases (IMD). State agencies have not established satisfactory internal controls to identify nursing homes, hospitals, and other facilities having the overall character of an IMD. As a result, Medicaid was charged for the cost of care provided to many patients in ineligible institutions. We also found instances where claims were made for patients in ineligible age groups in institutions that were already classified as IMD. Significant weaknesses in internal controls at the State agencies permitted such claims.

The Social Security Act (the Act) generally precludes Federal financial participation (FFP) in the cost of care and treatment provided to individuals in IMD who are between 22 and 64 years of age. Under certain circumstances, FFP is available for psychiatric inpatient services provided to persons under 22 years of age. An IMD may be a skilled nursing or intermediate care facility, a hospital, or an alcohol and drug abuse facility.

Audits conducted at State agencies identified unallowable payments totaling over \$33 million (Federal share) that were made for services provided to Medicaid recipients residing in IMD. The Health Care Financing Administration (HCFA) also negotiated additional cost settlements totaling \$40 million (Federal share) for IMD. Based on these adjustments, we estimate annual Federal cost savings of \$35 million to the Medicaid program.

We are recommending that HCFA issue a directive advising State agencies of their responsibility to establish

satisfactory internal controls to identify IMD and to claim only allowable costs for reimbursement. The HCFA regional offices should conduct reviews to determine which States have still not implemented satisfactory controls and should take action to identify IMD in these States. The HCFA should also periodically monitor States to ensure that controls are properly implemented.

In addition, we found that some State agencies ceased claiming FFP for facilities that were identified as IMD. However, a financial adjustment was not always made for the full period of time between October 1, 1986, the effective date of applicable HCFA criteria, and the date the State agency ceased claiming FFP for such facilities. We are recommending that HCFA identify States where this condition exists and seek recovery of inappropriate amounts paid.

In their response to our draft report, HCFA officials concurred with our findings and recommendations but expressed some reservations regarding limited State and Federal resources available for monitoring.

BACKGROUND

Section **1905(a)(14)** of the Act defines medical assistance as including payment of part or all of "...inpatient hospital services and nursing facility services for individuals 65 years of age or over in an institution for mental diseases...." Section **1905(a)(21)(B)** specifically precludes "...any such payments with respect to care or services for any individual who has not attained 65 years of age who is a patient in an institution for mental diseases...." However, section 1905(h)(1) does allow FFP for inpatient psychiatric services for individuals under age 22 who are receiving treatment in a psychiatric hospital. In either instance, the State agency must elect to cover payment for services at IMD in the State plan. The State agency also provides assurances that the State plan will be administered in conformity with the specific requirements of the Act, Federal regulations, and other applicable official issuances by the Department of Health and Human Services (HHS). An IMD is defined in Federal regulation 42 CFR 435.1009(b)(2) as follows:

... "Institution for mental diseases" means an institution that is primarily engaged in providing diagnosis, treatment or care of persons

with mental diseases, including medical attention, nursing care and related services. Whether an institution is an institution for mental diseases is determined by its overall character as that of a facility established and maintained primarily for the care and treatment of individuals with mental diseases, whether or not it is licensed as such...

The HHS has been concerned for many years that some facilities primarily engaged in the care and treatment of persons with mental diseases have not been identified by States as IMD. In the past 10 years, the HHS Departmental Appeals Board (DAB), formerly the Grant Appeals Board, and the courts have issued several decisions supporting and clarifying these concerns. As a result of these decisions, HCFA made significant revisions to the criteria to be followed in identifying IMD.

Prior to December 1982, HCFA set forth the criteria for determining whether facilities were IMD in a series of documents entitled **Field Staff Information and Instruction Series.** In December 1982, and again in September 1986, HCFA revised its guidelines for making an IMD determination in order to conform with recent DAB and court decisions. The revised guidelines were issued as section 4390 of the State Medicaid Manual (SMM) and were effective October 1, 1986. Section 4390 of the SMM set forth 10 criteria for determining if the overall character of a facility is that of an IMD. The HCFA also issued a comprehensive guide in April 1987 which provided detailed information for assisting in the identification of IMD in each State. The publication was made available to both the State agencies and HCFA regional offices.

SCOPE OF AUDIT

Our audit was conducted in accordance with generally accepted government auditing standards.

Its objective was to summarize the results of recent IMD audits and to formulate recommendations to HCFA based on identified weaknesses in the program.

Our audit field work involved the review of 15 OIG final or draft audit reports and 1 State auditor's report. Generally, the reports applied to costs of care provided to Medicaid recipients subsequent to September 30, 1986. Also, we obtained information from other OIG and HCFA

regional offices regarding HCFA/State negotiated financial adjustments made for IMD under the Medicaid program. The audit field work was conducted between December 1990 and June 1991.

RESULTS OF REVIEW

Our review of the audit reports disclosed significant weaknesses at State agencies regarding the identification of IMD and the claiming of unallowable costs for reimbursement. The results of these audits and recommendations to help correct problems disclosed are summarized in the following sections of this report.

INDIVIDUAL AUDIT RESULTS During the period May 4, 1987 through April 29, 1991, 16 audit reports were issued (11 final and 5 draft) covering IMD **issues** in 11 States. Fifteen of the reports were issued by us and one single audit report was issued by a State audit organization. Twelve reports involved audits related to nursing homes and four to hospitals (see Appendix A for a complete list of the reports).

We found that 14 of the 16 reports disclosed weaknesses in the internal controls at State agencies in identifying IMD or in claiming only appropriate costs for reimbursement. Twelve reports stated that satisfactory internal controls had not been established to identify nursing home or hospital IMD. Two reports disclosed that adequate controls generally had not been established to preclude payments for recipients between ages 22 and 64 at facilities that were classified as IMD by the respective State agencies. The remaining two reports included a review that determined the reasonableness of a State agency's proposed financial adjustment for inappropriate payments made to IMD and a review concluding that internal controls were adequate to identify private nursing homes that may be IMD.

The audit reports recommended that State agencies make financial adjustments totaling over \$33 million. Also, the reports included procedural recommendations that were designed to correct the conditions found in the audits. The Act, Federal regulations, and HCFA guidelines have

provided an abundance of information to State agencies regarding the allowability of costs for Medicaid recipients residing at IMD. Yet, the results of recent audits clearly indicate that State agencies have not established adequate internal controls to preclude inappropriate payments to such facilities.

HCFA'S INVOLVEMENT

The HCFA regional offices have generally taken prompt action to resolve IMD issues identified in OIG audits and to negotiate cost settlements with States where IMD have been identified. This positive involvement by HCFA officials has resulted in significant financial adjustments and cost savings under the Medicaid program.

In Region V, HCFA negotiated, or was involved in, financial adjustments for IMD that were identified in four States (Illinois, Minnesota, Ohio, and Wisconsin). The actual financial adjustments will total over \$38 million for the four States. In three of these instances, the States ceased claiming FFP, as of a given date, for facilities that the State agency had identified as IMD. However, the State agencies had not made a financial adjustment for the period between October 1, 1986 and the date they ceased claiming FFP. Accordingly, HCFA negotiated a financial settlement for the period between October 1, 1986 and the date FFP was no longer claimed. In Region IV, we noted that HCFA negotiated a financial settlement of \$2 million for two IMD identified in the State of Kentucky.

In the examples cited, HCFA regional offices became involved in resolving IMD issues as a result of audit reports issued by us or a State auditor's office. We believe, however, that HCFA's effectiveness would be enhanced if it became involved on a prospective basis in identifying and resolving IMD issues rather than waiting for the audit process to identify such problems.

--FINANCIAL EFFECT ON MEDICAID PROGRAM **The identification**
of IMD through
audits and related

HCFA/State negotiations will result in recoveries totaling about \$73 million. Of the 16 audits, 14 identified unallowable payments totaling over \$33 million that had been made for **services** provided to Medicaid recipients residing in nursing home and hospital IMD. All of the

amount, except for \$.2 million, was for various audit periods between October 1, 1986 and September 30, 1989. As mentioned above, HCFA offices in Regions IV and V also negotiated or were involved in additional cost settlements totaling \$40 million for IMD.

We estimate that the Federal Government will realize annual cost savings of \$35 million under the Medicaid program. This amount is a conservative estimate of the average unallowable payments (See Appendix B) since we found that costs at IMD were generally increasing each year.

RECOMMENDATIONS

We recommend that HCFA:

1. Issue a directive advising State agencies of their responsibility to establish satisfactory internal controls in order to identify all types of IMD within the State and to claim only allowable costs for reimbursement. These controls should ensure that FFP is not claimed for services provided to individuals under age 65 residing in IMD, except for individuals under age 22 receiving inpatient psychiatric hospital services.
2. Determine which States have still not implemented satisfactory internal controls and take action to identify IMD in States that have not established such controls.
3. Periodically monitor all State agencies to ensure that satisfactory internal controls have been properly implemented.
4. Identify and seek recovery of Federal funds, where appropriate, for periods between October 1, 1986 and the date any State agency ceased claiming FFP for facilities identified as IMD.

HCFA'S RESPONSE

In their response to our draft report, HCFA officials concurred with our findings and recommendations. They expressed some concern, however, over State and Federal

Page 7 - William **Toby**

budget constraints which could limit resources devoted to implementing and monitoring satisfactory internal controls. The full text of **HCFA's** comments is included in Appendix C.

OIG'S COMMENTS

We recognize the constraints referred to by HCFA, but believe that the potential for future unallowable payments justifies a high priority for monitoring IMD.

APPENDICES

**AUDIT REPORTS ISSUED BY THE OFFICE
OF INSPECTOR GENERAL PERTAINING TO
INSTITUTIONS FOR MENTAL DISEASES**

COMMON IDENTIFICATION NUMBER	STATE	TYPE OF FACILITY [1]	AUDIT PERIOD	DATE REPORT WAS ISSUED
A-02-88-01029	NEW JERSEY	NH	10/1/86-12/31/88	10/18/89
A-02-90-01006	NEW YORK	PHs	10/01/86-9/30/89	09/07/90
A-02-91-01014	NEW YORK	PHs	1/1/83-9/30/89	01/22/91
AM-91 -01008	NEW YORK	PHs	1/1/86-6/30/89	03/11/91
A-03-89-00153	PENNSYLVANIA	NH	10/1/86-9/30/88	12/07/90
A-03-89-00152	PENNSYLVANIA	NH	10/1/86-9/30/88	11/15/90
A-04-88-05037 [2]	KENTUCKY	NHs	10/1/86-6/1/88	05/04/87
A-05-89-00086	ILLINOIS	NHs	10/1/86-12/31/88	05/03/90
A-0589-00091	INDIANA	PH	10/1/86-5/31/89	08/14/90
A-05-89-00025	INDIANA	NHs	10/1/86-3/31/89	06/22/89
A-06-91 -00003	MINNESOTA	NH	10/1/86-12/31/88	10/29/90
A-05-91-00008	OHIO	NH	10/1/86-12/31/88	12/12/90
A-05-90-00107	OHIO	NH	10/1/86-3/31/89	04/29/91
A-05-88-00004	WISCONSIN	NH	1 of 1/86-9/30/87	04/27/89
A-07-89-00165	IOWA	NH	10/1/86-9/30/87	08/08/89
A-1089-00166	WASHINGTON	NH	10/1/86-9/30/88	03/28/90

NOTES:

[1] NH REPRESENTS NURSING HOME AND PH REPRESENTS PSYCHIATRIC HOSPITAL

[2] REPRESENTS THE COMMON IDENTIFICATION NUMBER ASSIGNED TO A REPORT PREPARED BY THE KENTUCKY STATE AUDITOR'S OFFICE.

CALCULATION OF ESTIMATED COST SAVINGS (FEDERAL SHARE)

	(A)	(B)	(C)	(D)
Costs Questioned by Common Identification Number	Amount Questioned or Settled	Number of Months in Audit or Settlement Period	Average Cost Per Month (Column A divided by Column B)	Estimated One Year Cost Savings (Column c x 12)
A-02-88-01029	\$ 4,034,681	27	\$ 149,433	\$ 1,793,196
A-02-90-01006	17,762,539	36	493,404	5,920,848
A-02-91-01014	40,885	81	505	6,060
A-02-91-01008	921,324	42	21,936	263,232
A-03-89-00153	4,097,991	24	170,750	2,049,000
A-03-89-00152	310,879	24	12,953	155,436
A-04-88-05037	[1]			
A-05-89-00086	[2]			
A-05-89-00091	1,019,701	32	31,866	382,392
A-05-89-00025	- 0 -			- 0 -
A-05-91-00003	1,319,733	27	48,879	586,548
A-05-91-00008	455,124	27	16,856	202,272
A-05-90-00107	392,539	30	13,085	157,020
A-05-88-00004	2,109,574	12	175,798	2,109,574
A-07-89-00165	279,975	12	23,331	279,975
A-10-89-00166	696,472	24	29,020	348,240
Subtotal	\$ 33,441,417			\$ 14,253,793
Additional HCFA/State Cost Settlements by State				
Kentucky	\$ 1,422,718	20	71,136	\$ 853,632
Illinois	17,003,522	27	629,760	7,557,120
Illinois	7,771,791	33	235,509	2,826,108
Minnesota	2,199,579	27	81,466	977,592
Ohio	2,373,783	13	182,599	2,191,188
Wisconsin	1,317,683	9	146,409	1,756,908
Wisconsin	7,563,902	21	360,186	4,322,232
Subtotal	\$ 39,652,978			\$ 20,484,780
Total	\$ 73,094,395			\$ 34,738,573

NOTES:

[1] The audit report issued by the Kentucky State Auditor's Office identified a weakness in internal controls. Subsequent review by HCFA resulted in the cost settlement of \$1,422,718 shown above.

[2] The objective of the audit was to review the propriety of a proposed financial adjustment for IMDs. The resulting cost settlement of \$17,003,522 is shown above.



DEPARTMENT OF HEALTH & HUMAN SERVICES

Health Care
Financing Administration**Memorandum**

M A R 6 1992

Date

Gail R. Wilensky, Ph.D. *GW*

From

Administrator

Subject

OIG Draft Report - "Summary Report on Institutions for Mental Diseases"
(A-05-92-00024)

TO

Inspector General
Office of the Secretary

We have reviewed the subject draft report which summarizes the results of several Office of Inspector General (OIG) audits conducted to determine compliance with Medicaid law and implementing regulations applicable to Institutions for Mental Diseases (IMDs).

OIG's audits conducted at State agencies identified unallowable payments totalling over \$33 million (Federal share) that were made for services provided to Medicaid recipients residing in IMDs. HCFA also negotiated additional cost settlements totalling \$40 million (Federal share) for IMDs. Based on these adjustments, OIG estimated an "annual" cost savings of \$35 million (Federal share) to the Medicaid program.

OIG maintains that these overpayments occurred because of significant internal control weaknesses in the State Medicaid agencies' claims processing systems. To address these findings, OIG recommends that HCFA monitor and issue directives to State agencies to inform them of their responsibility to control and to review the use of funds by IMDs. OIG also recommends that HCFA seek recovery of funds inappropriately allowed for IMD services.

HCFA is largely in agreement with OIG's recommendations. However, we are concerned that OIG has not fully considered resource constraints confronting State and Federal governments in their efforts to fulfill these recommendations. Our specific comments on the report's recommendations are attached for your consideration.

Thank you for the opportunity to review and comment on this draft report. Please advise us whether you are in agreement with our position on the report's recommendations at your earliest convenience.

Attachment

Comments of the Health Care Financing Administration
(HCFA) on the OIG Draft Report: "Summary Report on
Institutions for Mental Disease" (A-05-92-00024)

Recommendation 1

That HCFA issue a directive advising State agencies of their responsibility to establish and identify all types of Institutions for Mental Diseases (IMDs) within the State and to claim only allowable costs for reimbursement. These controls should ensure that Federal Financial Participation (FFP) is not claimed for services provided to individuals under age 65 residing in IMDs, except for individuals under age 22 receiving inpatient psychiatric hospital services.

HCFA Response

We agree and have already taken action to implement this recommendation. On January 15, 1992, we issued a memorandum to each Regional Office (RO) to emphasize the need for vigilance, both in evaluating States' actions in determining which facilities are IMDs, and in ensuring that only allowable costs will be reimbursed to institutions eligible for such reimbursement. We also requested that ROs send a letter to each State clearly restating HCFA's policy with respect to IMDs.

Recommendation 2

That HCFA determine which States have still not implemented satisfactory internal controls and take action to identify IMDs in States that have not established such controls.

HCFA Response

We agree with this recommendation, but may be constrained in its implementation by budgetary limitations and pre-scheduled review requirements. We wish to point out that our FY 1992 Medicaid Financial Management and State Performance Evaluation and Comprehensive Test of Reimbursement Under Medicaid (SPECTRUM) Review Schedule includes a review of ancillary services provided to patients under the age of 65 in IMDs. To the extent that resources permit and as circumstances warrant, the ROs will conduct additional reviews to assess the adequacy of State internal controls aimed at preventing erroneous payments to IMDs.

Recommendation 3

That HCFA periodically monitor all State agencies to ensure that satisfactory internal controls have been properly implemented.

Page 2

HCFA Response

We also agree with this recommendation in principle. However, we again express the concerns raised in reference to the second recommendation relative to its implementation.

Recommendation 4

That HCFA identify and seek recovery of Federal funds, where appropriate, for periods between October 1, 1986 and the date any State agency ceased claiming FFP for facilities identified as IMDs.

HCFA Response

While we largely agree with this recommendation, we must point out that the recoveries cited by OIG in this report either have already been collected, are in the process of being collected, or, in certain instances, have been adjusted downward for various reasons. Also, as previously mentioned, current resource constraints could limit the number of future reviews of States' internal controls directed at preventing their claiming Federal reimbursement for IMD services.

Technical Comment

On Page 2 of its report, OIG references Section 1905(a)(14) of the Social Security Act. HCFA notes the text appearing in the Act differs from that quoted by OIG. The reference should be amended to reflect the law as currently written:

(a)(14) inpatient hospital services and nursing facility services for individual 65 years of age or over in an institution for mental diseases;

The next reference made by OIG on the same page should be corrected to cite Section 1905(a)(21)(B), rather than just Section 1905(a)(B).