



Office of Audit Services
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APR 8 2004

Report Number: A-01-03-00008

Ms. Beth Waldman, Acting Commissioner
Division of Medical Assistance
Commonwealth of Massachusetts
600 Washington Street
Boston, Massachusetts 02111

Dear Ms. Waldman:

Enclosed are two copies of the U.S. Department of Health and Human Services (HHS), Office of Inspector General (OIG) report entitled, "Review of Medicaid Nursing Home Denial of Payment Remedies in the Commonwealth of Massachusetts." A copy of this report will be forwarded to the action official noted below for her review and any action deemed necessary.

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

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To facilitate identification, please refer to Report Number A-01-03-00008 in all correspondence relating to this report.

Sincerely yours,

A handwritten signature in cursive script that reads "Michael J. Armstrong".

Michael J. Armstrong
Regional Inspector General
for Audit Services

Enclosures – as stated

Direct Reply to HHS Action Official:

Charlotte Yeh, M.D.
Regional Administrator
Centers for Medicare and Medicaid Services – Region I
Department of Health and Human Services
Room 2325, JFK Federal Building
Boston, Massachusetts 00203

Department of Health and Human Services

**OFFICE OF
INSPECTOR GENERAL**

**REVIEW OF
MEDICAID NURSING HOME
DENIAL OF PAYMENT REMEDIES IN
THE COMMONWEALTH OF
MASSACHUSETTS**



**APRIL 2004
A-01-03-00008**

Office of Inspector General

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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 Omnibus Budget Reconciliation Act of 1987 included the Nursing Home Reform Act, which ensured residents received quality care in nursing homes through the establishment of a Residents' Bill of Rights and the provision of certain services to each resident. It also required nursing homes participating in the Medicaid and Medicare programs to comply with the requirements for standards of care as prescribed by Title XIX, section 1919 of the Social Security Act. As part of these requirements, nursing facilities undergo an annual State survey and certification process to reveal whether a nursing facility is in substantial compliance with the Federal requirements.

OBJECTIVE

The objective of our audit was to determine if the Massachusetts Division of Medical Assistance's (State agency) controls were adequate to ensure that the mandatory denial of payment remedy for substandard quality of care was applied in nursing homes that were not in substantial compliance with the prescribed Medicaid participation requirements. The audit included denial of payment sanctions that were in effect or should have been in effect from October 1, 1999 through September 30, 2001.

SUMMARY OF FINDINGS

Title XIX, section 1919 of the Social Security Act and 42 CFR § 488 requires States to deny Medicaid payments to nursing homes for all new Medicaid admissions when the facilities are not in substantial compliance 3 months after the last day of the survey identifying the noncompliance. We found 9 nursing homes billed for and received Medicaid payments for new admissions during periods when they were identified on State agency records as subject to the mandatory denial of payment sanction for new admissions. As a result, the State agency improperly claimed Medicaid payments totaling \$64,202 (\$32,101 Federal share). Although the State agency has procedures to identify and recover on a post payment basis those Medicaid payments to nursing homes subject to denial of payment sanctions, the procedures were not always effectively implemented.

RECOMMENDATIONS

We recommend that the State agency:

- refund to Centers for Medicare & Medicaid Services (CMS) \$32,101 representing the Federal share of improper Medicaid payments made to sanctioned nursing homes, and
- improve its policies and procedures to ensure that denial of payment sanctions are applied to all deficient nursing homes in accordance with Medicaid requirements.

AUDITEE COMMENTS

In its response to our draft report, the State agency generally agreed with our report recommendations. In its response, however, the State agency said that one nursing home was erroneously included in the sanction listing. We confirmed this with CMS regional office personnel and adjusted our findings accordingly. The State agency has initiated corrective action to address the monetary finding for these 9 homes and will refund the Federal share via an adjustment to its CMS-64 quarterly Medicaid expenditure report. In addition, the State agency has implemented improvements in policies and procedures to ensure that denial of payment sanctions are applied to all deficient nursing homes in accordance with Medicaid requirements.

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INTRODUCTION

BACKGROUND

NURSING HOME REFORM ACT REQUIREMENTS

Due to widespread need for nursing home reform, Congress passed the Omnibus Budget Reconciliation Act of 1987. This legislation included the Nursing Home Reform Act, which ensured residents received quality care in nursing homes through the establishment of a Residents' Bill of Rights and the provision of certain services to each resident. It also required nursing homes participating in the Medicaid and Medicare programs to comply with the requirements for standards of care as prescribed by Title XIX, section 1919 of the Social Security Act.

As part of these requirements, nursing facilities undergo an annual State survey and certification process to determine whether a nursing facility is in substantial compliance with the Federal requirements. Substantial compliance means a level of compliance such that any identified deficiencies pose no greater risk to resident health or safety than the potential for causing minimal harm. Deficiencies result from noncompliance or substandard quality of care in the nursing home. Facilities not in substantial compliance with these Federal standards of care are deficient and may have enforcement remedies imposed on them. Denial of payment sanctions may be imposed alone or in combination with other remedies when certification standards of care are not met.

DENIAL OF PAYMENT SANCTIONS

42 CFR § 488, subpart F, sets forth the regulations governing the enforcement for compliance of nursing homes with deficiencies. The remedies imposed on a nursing home result from the seriousness of the deficiency measured by the severity and scope of the deficiency. Certification of noncompliance means that the nursing home is not eligible to participate in the Medicaid program. The State survey agency must re-certify the nursing home for substantial compliance before the enforcement remedies are lifted. The denial of payment remedies are used for nursing facilities not in substantial compliance with one or more of the Medicaid participation requirements. There are two types of denial of payment sanctions, denial of payment for a new admission of new Medicaid residents and denial of all payments for all Medicaid residents.

The first type can be an optional or mandatory sanction depending on the seriousness of the deficiency. Under the optional remedy, CMS or the State agency may deny payment for all new Medicaid admissions when a facility is not in substantial compliance with the Medicaid participation requirements. The mandatory remedy must be imposed when the facility is not in substantial compliance 3 months after the last day of the survey identifying the deficiency, or when a facility has been found to have furnished substandard quality of care on the last three consecutive standard surveys. Under the mandatory remedy, the State Medicaid agency must deny payment to the facility, and CMS must deny Federal financial participation to the State Medicaid agency for all new Medicaid admissions to the facility (State Operations Manual, section 7506 C. 2.).

The second type of denial of payment sanction requires the denial of all payments for all Medicaid residents. This remedy can be imposed only with Department of Health and Human Services Secretarial approval and only when the deficiencies are extremely serious. For example, when other remedies are not effective or when CMS believes the remedies imposed by the State are an insufficient response to particularly egregious deficiencies (State Operations Manual, section 7508).

In the Commonwealth of Massachusetts, the State agency is responsible for the overall administration of the State Medicaid program, including payment of claims, while the State Department of Public Health is responsible for the survey and certification of the State's nursing facilities. For the period October 1, 1999 through September 30, 2001, 32 nursing homes in Massachusetts were identified by the State agency as subject to the denial of payment for new admissions sanction. The State agency did not have any facilities that were subject to the denial of all payments to all Medicaid residents during this period.

OBJECTIVE, SCOPE, AND METHODOLOGY

OBJECTIVE

The objective of our audit was to determine if State agency controls were adequate to ensure that the mandatory denial of payment remedy for substandard quality of care was applied to nursing homes that were not in substantial compliance with the prescribed Medicaid participation requirements.

SCOPE

This review included denial of payment sanctions, which were in effect or should have been in effect, from October 1, 1999 through September 30, 2001. We obtained information from the CMS regional office, State agency, and selected nursing homes as applicable, including:

- Medicaid paid claims information;
- Nursing home admission census report;
- denial of payment letters;
- list of noncompliant nursing facilities;
- State nursing home surveys; and
- other support documentation as applicable.

Our review was conducted in accordance with generally accepted government auditing standards. Our review was limited in scope. It was not intended to be a full-scale internal

control assessment of the State agency's operations. The objective of our audit did not require an understanding or assessment of the overall internal control structure of the State agency.

METHODOLOGY

To achieve our objective, we:

- identified from State agency records those sanctioned nursing facilities under the denial of payment remedies;
- reconciled these to CMS reports of nursing homes under denial of payment sanction;
- accessed the Medicaid Statistical Information System (MSIS) paid claims files, maintained by CMS, to identify any improper Medicaid payments made to sanctioned nursing homes during our audit period;
- verified improper payments to State records with the assistance of State personnel; and
- visited seven nursing homes with the majority of the overpayments identified and verified resident's admission dates.

We performed our audit fieldwork during the period August through December 2003 at the State agency and CMS regional offices in Boston, Massachusetts and at various sanctioned nursing homes in Massachusetts.

The State agency's comments to our draft report are appended to this report (See Appendix).

RESULTS OF REVIEW

We found that the State agency needs to improve its procedures to ensure that the mandatory denial of payment remedy is properly applied to preclude improper Medicaid payments to all nursing homes that were subject to mandatory denial of payment sanctions for new admissions. For the period of our audit, we determined that 9 nursing homes received improper Medicaid payments totaling \$64,202 (\$32,101 Federal share) during periods in which they were subject to the mandatory denial of payment sanctions. The results of our review are described in detail below.

FEDERAL REGULATIONS

The mandatory denial of payment sanction is enumerated in 42 CFR § 488.417(b) as follows:

*... the State must deny payment for all new admissions when --
(1) The facility is not in substantial compliance, as defined in § 488.401, 3
months after the last day of the survey identifying the noncompliance. . .*

A new admission is defined in 42 CFR § 488.401 as:

... a resident who is admitted to the facility on or after the effective date of a denial of payment remedy and, if previously admitted, has been discharged before that effective date. Residents admitted before the effective date of the denial of payment, and taking temporary leave, are not considered new admissions, nor subject to the denial of payment.

NURSING HOMES RECEIVED MEDICAID PAYMENTS DURING SANCTION PERIOD

We determined that 32 nursing homes were identified on State agency records as subject to the mandatory denial of payment for new admissions sanctions during our audit period. However, we found that 9 of these homes continued to bill and receive Medicaid payments for new admissions during their sanction periods.

In discussions with State officials, we found that the State agency does not have any prepayment edits to preclude these types of improper payments. Instead, the State agency relies on post payment reviews to identify and recover such payments. However, as noted by our review, these procedures were not always effective in recovering all improper payments made to nursing homes under denial of payment sanctions.

Based on our computer matching of the Medicaid Statistical Information System payment files and verification work performed at seven nursing homes, we identified \$64,202 (\$32,101 Federal share) in improperly paid claims to these homes.

CONCLUSION

As noted in the CMS regulations, sanctions are imposed to safeguard beneficiaries. The denial of payment is an enforcement remedy for nursing facilities not in substantial compliance with one or more of the Medicaid participation requirements. We believe that it is imperative that the State agency suspends nursing home providers timely from the Medicaid program when there is risk to residents' health and/or safety.

RECOMMENDATIONS

We recommend that the State agency:

- refund to CMS \$32,101 representing the Federal share of improper Medicaid payments made to sanctioned nursing homes, and
- improve its policies and procedures to ensure that denial of payment sanctions are applied to all deficient nursing homes in accordance with Medicaid requirements.

AUDITEE COMMENTS

In its March 30, 2004 comments to our draft report (see Appendix), the State agency was in general agreement with our report recommendations. In its response, however, the State agency said that one nursing home was erroneously included in the sanction listing. We confirmed this with CMS regional office personnel and adjusted our findings accordingly. The State agency has initiated corrective action to address the monetary finding for these 9 homes and will refund the Federal share via an adjustment to its CMS-64 quarterly Medicaid expenditure report. In addition, the State agency has implemented improvements in policies and procedures to ensure that denial of payment sanctions are applied to all deficient nursing homes in accordance with Medicaid requirements.

APPENDIX

The Commonwealth of Massachusetts
Executive Office of Health and Human Services
Office of Medicaid



MITT ROMNEY
Governor

KERRY HEALEY
Lt. Governor

RONALD PRESTON
Secretary

BETH WALDMAN
Director

March 30, 2004

Michael J. Armstrong
Regional Inspector General for Audit Services
Office of Inspector General
Office of Audit Services
Region I
JFK Federal Building
Boston, MA 02203

RE: Audit Report A-01-03-00008 Drat Report

Dear Mr. Armstrong,

Thank you for the opportunity to respond to the draft report on your "Review of Medicaid Nursing Home Denial of Payment Remedies in the Commonwealth of Massachusetts" for sanctioned facilities.

We are in substantial agreement with the report findings. Because of recent events, the monetary findings would be reduced from \$ 53,123 to \$32,101. Our follow up actions are outlined below.

We have contacted the Center for Medicare and Medicaid Services and the Commonwealth's Department of Public Health to effect more timely notification and coordination of sanction notices and implement improvements in policies and procedures to ensure that denial of payment sanctions are applied to all deficient nursing homes in accordance with Medicaid requirements.

All policies and procedures that we discussed during the audit have been formalized within MassHealth Operations. We believe these policies and procedures, although not all prepayment in nature, to be adequate.

The Division has already taken action to address the monetary findings and will refund the federal share on the CMS-64 quarterly report as each case is reviewed and resolved and for any other cases that are identified as we implement our follow up procedures.

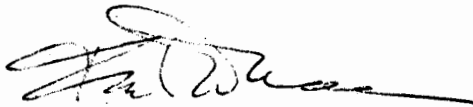
The following is a summary of our actions to date.

MassHealth Response to Listing of Nursing Homes Receiving Unallowable Medicaid Payments During DOPNA Sanction Period Respo March 15, 2004						
Facility Name	Medicaid Provider #	DOPNA Start	DOPNA End	Medicaid Paid	Medicaid Paid During Sanction/ Void Amount	
Beverly Nursing and Rehabilitation Center*	0924261	3/1/2000	5/11/2000	\$11,428	\$5,038	
Brittany Healthcare Center	0924695	10/13/1999	11/30/1999	\$5,348	\$5,348	
Danvers Nursing and Rehabilitation Center*	0924326	12/14/1999	3/5/2000	\$9,421	\$11,594	
Eastpointe Nursing Home*	0920541	3/20/2000	5/25/2000	\$43,746	\$35,649	Collection
Goddard Rehabilitation and Nursing Center	0926086	11/30/2000	12/5/2000	\$10,287	\$992	
HighGate Manor*	0924296	8/1/2000	10/13/2000	\$57,276	\$42,043	CMS Reversa
Life Care Center of Raynham*	0921971	8/18/2000	9/7/2000	\$220	\$693	
Milton Health Care	0925861	6/8/2001	7/1/2001	\$5,930	\$191	
Sunbridge C&R for Quincy (Newton Healthcare)	0921343	11/18/1999	12/7/1999	\$6,909	\$2,556	
Willowood Health Care Center (Hillcrest Commons)*	0922293	12/13/1999	1/3/2000	\$6,022	\$2,140	Collection
Totals				\$150,565	\$106,245	
MassHealth Actions Taken	We have reviewed the cases and completed action on the following.					Status
HighGate Manor*	0924296	8/1/2000	10/13/2000	\$57,276	\$42,043	CMS Overtu
Eastpointe Nursing Home*	0920541	3/20/2000	5/25/2000	\$43,746	\$35,649	34,523
Willowood Health Care Center (Hillcrest Commons)*	0922293	12/13/1999	1/3/2000	\$6,022	\$2,140	2,241
Remaining Balance Under Investigation					\$26,413	

We thank you for your recommendations to improve policies and procedures.

If you have any questions, please call me at 617-210-5170.

Sincerely,



Frank McNamara
Director,
Internal Control and Audit Unit
MassHealth

CC Michael Wiley
Fax to 860-240-4268
Robert Champagne
Distribution

ACKNOWLEDGMENTS

This report was prepared under the direction of Michael Armstrong, Regional Inspector General for Audit Services. Other principal Office of Audit Services staff who contributed include:

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John Bergeron, *Auditor*

Michael Willey, *Auditor*

For information or copies of this report, please contact the Office of Inspector General's Public Affairs office at (202) 619-1343.