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November 24, 2008

Report Number: A-01-07-00011

Mr. Nicholas A. Toumpas
Commissioner
New Hampshire Department of Health and Human Services
129 Pleasant Street
Concord, New Hampshire 03301

Dear Mr. Toumpas:

Enclosed is the U.S. Department of Health and Human Services (HHS), Office of Inspector General (OIG), final report entitled "New Hampshire Medicaid Payments for Skilled Professional Medical Personnel at the Enhanced Rate From October 1, 2004, Through September 30, 2006." 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.

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If you have any questions or comments about this report, please do not hesitate to call me, or contact Curtis Roy, Audit Manager, at (617) 565-2684 or through e-mail at curtis.roy@oig.hhs.gov. Please refer to report number A-01-07-00011 in all correspondence.

Sincerely,

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

Michael J. Armstrong
Regional Inspector General
for Audit Services

Enclosure

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Direct Reply to HHS Action Official:

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**

**NEW HAMPSHIRE MEDICAID
PAYMENTS FOR SKILLED
PROFESSIONAL MEDICAL
PERSONNEL AT THE ENHANCED
RATE FROM OCTOBER 1, 2004,
THROUGH SEPTEMBER 30, 2006**



Daniel R. Levinson
Inspector General

November 2008
A-01-07-00011

Office of Inspector General

<http://oig.hhs.gov>

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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 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.

In general, the Federal Government reimburses States for Medicaid administrative costs at a matching rate of 50 percent. However, an enhanced funding rate of 75 percent is available for the compensation and training of skilled professional medical personnel (SPMP) and their supporting staff. SPMP are physicians, dentists, nurses, and other specialized personnel who have completed at least 2 years of professional education and training in the field of medical care or appropriate medical practice. To be eligible for reimbursement at the enhanced rate, the activities of SPMP must require them to use their professional training and experience and must be directly related to the administration of the Medicaid program. These activities cannot include direct medical assistance.

Additionally, directly supporting staff whose activities are claimed at the enhanced rate must provide clerical services that are directly necessary for the completion of the professional medical responsibilities. Skilled professional medical staff must directly supervise the supporting staff and the performance of the supporting staff's work.

In New Hampshire, the Department of Health and Human Services, Office of Medicaid Business and Policy (the State agency), administers the Medicaid program. For Federal fiscal years (FFY) 2005 and 2006, the State agency's Medicaid claim for enhanced reimbursement for SPMP totaled \$5,478,721 (\$4,109,041 Federal share).

OBJECTIVE

Our objective was to determine whether the Medicaid costs that the State agency claimed for SPMP at the enhanced Federal funding rate were in accordance with Federal and State requirements.

SUMMARY OF FINDINGS

The State agency did not always properly claim payments for SPMP for FFYs 2005 and 2006 in accordance with Federal requirements. Of the \$4,944,842 (\$3,708,632 Federal share) claimed at the enhanced 75-percent rate that we reviewed, \$2,617,289 was allowable. However, \$1,091,343 was unallowable. Specifically, the State agency claimed costs for:

- personnel functions and other expenses not reimbursable at the enhanced rate and
- personnel who did not meet the education requirements.

Because the State agency should have claimed these costs in compliance with Federal requirements for SPMP at the standard 50-percent rate rather than at the enhanced 75-percent

rate, the State agency received \$1,091,343 in overpayments. These errors occurred because the State agency did not have adequate policies and procedures to ensure that all costs claimed at the enhanced rate met Federal requirements. It also did not use a methodology to allocate costs for personnel whose time was split between different functions and ensure that it claimed only eligible Medicaid administrative activities at the enhanced rate.

RECOMMENDATIONS

We recommend that the State agency:

- refund to the Federal Government \$1,091,343 for the Federal share of personnel, travel and other operating costs that were improperly claimed at the enhanced rate,
- implement policies and procedures to ensure that future claims for costs related to SPMP are eligible for funding at the enhanced rate, and
- develop a CMS-approved methodology to allocate costs for personnel whose time and effort are split between different functions.

STATE AGENCY COMMENTS

In its comments on our draft report, the State agency generally disagreed with our findings and recommendations. The State agency maintained that it correctly sought SPMP reimbursement at the enhanced rate with the exception of four positions that did not qualify at the enhanced rate. Furthermore, the State agency generally asserted that the SPMP perform medically based job functions and administer medically based programs that require medical knowledge and skill. The State agency's comments are included in their entirety as Appendix B.

OFFICE OF INSPECTOR GENERAL RESPONSE

We maintain that the State agency did not always properly claim payments for SPMP for FFYs 2005 and 2006 in accordance with Federal requirements. Although we agree that some of the job functions that the State agency claimed may be allowable at the enhanced rate, not all of the activities claimed were allowable. Because the State agency did not allocate personnel costs for activities that did not meet Federal requirements for enhanced reimbursement, we continue to recommend that the State agency refund the personnel costs claimed at the enhanced rate.

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INTRODUCTION

BACKGROUND

Medicaid and the Skilled Professional Medical Personnel 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.

The Federal Government reimburses States for administrative costs necessary for the proper and efficient administration of the Medicaid State plan. In general, the Federal Government reimburses States for Medicaid administrative costs at a matching rate of 50 percent. However, an enhanced funding rate of 75 percent is available for the compensation and training of skilled professional medical personnel (SPMP) and their supporting staff. SPMP are physicians, dentists, nurses, and other specialized personnel who have completed at least 2 years of professional education and training in the field of medical care or appropriate medical practice. To be eligible for reimbursement at the enhanced rate, the activities of SPMP must require them to use their professional training and experience and must be directly related to the administration of the Medicaid program. These activities cannot include direct medical assistance.

Additionally, directly supporting staff whose activities are claimed at the enhanced rate must provide clerical services that are directly necessary for the completion of the professional medical responsibilities. SPMP must directly supervise the supporting staff and the performance of the supporting staff's work.

New Hampshire Skilled Professional Medical Personnel Program

In New Hampshire, the Department of Health and Human Services, Office of Medicaid Business and Policy (the State agency), administers the Medicaid program. Staff of departments within the State agency submit vouchers for reimbursement of personnel, travel, and other operating costs for SPMP. The State agency consolidates the vouchers and submits the information to CMS for reimbursement on its "Quarterly Medicaid Statement of Expenditures for the Medical Assistance Program" (CMS-64) form.

For Federal fiscal years (FFY) 2005 and 2006, the State agency's Medicaid claim for enhanced reimbursement for SPMP totaled \$5,478,721 (\$4,109,041 Federal share).

OBJECTIVE, SCOPE, AND METHODOLOGY

Objective

Our objective was to determine whether the Medicaid costs that the State agency claimed for SPMP at the enhanced Federal funding rate were in accordance with Federal and State requirements.

Scope

We reviewed \$4,944,842 (\$3,708,632 Federal share), or 90 percent, of the Medicaid costs that the State agency claimed at the enhanced rate for SPMP in FFYs 2005 and 2006. We did not review the total Medicaid costs claimed because not all job numbers constituted a high risk for material overpayments.

The objective of our review did not require an understanding or assessment of the State agency's complete internal control structure. Accordingly, we limited our consideration to obtaining an understanding of the State agency's policies and procedures used to claim SPMP costs.

We performed our fieldwork at the State agency in Concord, New Hampshire, from August to December 2007.

Methodology

To accomplish our objective, we:

- reviewed applicable Federal regulations and CMS guidance;
- interviewed officials from CMS and the State agency;
- reviewed the cost allocation methodologies that the State agency used to claim costs for SPMP;
- reconciled the State agency's Medicaid administrative claim for SPMP for the period October 1, 2004, through September 30, 2006, on the CMS-64 form to supporting documentation;
- reviewed the State agency's accounting and payroll records pertaining to SPMP; and
- reviewed medical licensure, certification information, and position descriptions for SPMP.

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 findings and conclusions based on our audit objectives.

FINDINGS AND RECOMMENDATIONS

The State agency did not always properly claim payments for SPMP for FFYs 2005 and 2006 in accordance with Federal requirements. Of the \$4,944,842 (\$3,708,632 Federal share) claimed at the enhanced 75-percent rate that we reviewed, \$2,617,289 was allowable. However, \$1,091,343 was unallowable. Specifically, the State agency claimed costs for:

- personnel functions and other expenses not reimbursable at the enhanced rate and
- personnel who did not meet the education requirements.

Because the State agency should have claimed these costs in compliance with Federal requirements for SPMP at the standard 50-percent rate rather than at the enhanced 75-percent rate, the State agency received \$1,091,343 in overpayments. These errors occurred because the State agency did not have adequate policies and procedures to ensure that all costs claimed at the enhanced rate met Federal requirements. It also did not use a methodology to allocate costs for personnel whose time was split between different functions and ensure that it claimed only eligible Medicaid administrative activities at the enhanced rate.

FEDERAL REGULATIONS

Skilled Professional Medical Personnel

Section 1903(a)(2) of the Act provides that States are entitled to an amount equal to 75 percent of sums expended for compensation or training of SPMP and staff supporting such personnel.

42 CFR 432.50(c)(3) states that the allocation of personnel and staff costs must be based on either the actual percentages of time spent carrying out duties in the specified areas or another methodology approved by CMS.

42 CFR 432.50(d)(1) states that the Federal enhanced rate is available for SPMP and directly supporting staff when the following criteria are met:

(ii) The skilled professional medical personnel have professional education and training in the field of medical care or appropriate medical practice. “Professional education and training” means the completion of a 2-year or longer program leading to an academic degree or certificate in a medically related profession. This is demonstrated by possession of a medical license, certificate, or other document issued by a recognized national or State medical licensure or certifying organization or a degree in a medical field issued by a college or university certified by a professional medical organization.

(iii) The skilled professional medical personnel are in positions that have duties and responsibilities that require those professional medical knowledge and skills.

(v) The directly supporting staff are secretarial, stenographic, and copying personnel and file and records clerks who provide clerical services that are directly necessary for the completion of the professional medical responsibilities and functions of the skilled professional medical staff. The skilled professional medical staff must directly supervise the supporting staff and the performance of the supporting staff's work.

In accordance with 50 Fed. Reg. 46652, 46657 (Nov. 12, 1985),

[Federal financial participation (FFP)] must be prorated for split functions of skilled professional medical personnel and directly supporting staff. If the skilled professional medical personnel or directly supporting staff time is split among different functions, some of which do not qualify for 75 percent FFP, the skilled professional medical personnel or directly supporting staff costs must be allocated among the various functions. The allocation must be based on either the actual percentage of time spent within each function or another methodology that is approved by [CMS].

Other Costs

42 CFR § 433.15(b)(7) states that the Federal Government will pay 50 percent of the costs of “all other activities the Secretary [of the U.S. Department of Health and Human Services] finds necessary for the proper and efficient administration of the State plan.”

UNALLOWABLE COSTS CLAIMED AT THE ENHANCED RATE

Personnel Functions and Other Expenses Not Reimbursable at the Enhanced Rate

Contrary to Federal requirements, the State agency claimed personnel costs totaling \$3,923,375 (\$2,942,531 Federal share) at the 75-percent enhanced rate for employees whose positions did not require medical knowledge or skills or whose responsibilities included functions unrelated to SPMP administrative activities. Examples of employees' duties that did not qualify at the enhanced rate included administering health care programs, managing decision-support systems, determining Medicaid eligibility, and overseeing general office functions. Rather than allocating employees' time among the different functions that they performed, the State agency claimed 100 percent of the employees' time as Medicaid administration. In addition, the position descriptions of many of these employees stated that nonmedical degrees, such as a bachelor's degree in liberal arts or a master's degree in business administration, public administration, or human services, could meet the positions' education requirements.

The State agency also improperly claimed personnel costs totaling \$49,740 (\$37,305 Federal share) at the enhanced rate for a directly supporting staff member who was not directly supervised by SPMP and termination benefits totaling \$4,182 (\$3,136) that were not allowable at the enhanced rate. Moreover, a portion of the \$181,182 (\$135,887 Federal share) in operating costs that the State agency claimed at the enhanced rate were for travel and training costs for staff who did not qualify as SPMP or for qualified staff who spent a portion of their time on

unallowable activities. Further, a portion of these costs were for other operating costs, such as office furniture, supplies, and cell phone costs, that do not qualify for reimbursement at the enhanced rate.

Accordingly, the State agency should have claimed these personnel, travel, and other expenses at the 50-percent Federal reimbursement rate and not the 75-percent enhanced rate. Because we could not determine the amount of time spent on allowable activities, we disallowed the enhanced portion of these expenses. Thus the Federal claim for these employees was overstated by \$1,039,620.

Personnel Who Did Not Meet Education Requirements

Contrary to Federal requirements, the State agency claimed personnel costs totaling \$206,894 (\$155,170 Federal share) at the enhanced rate for three employees who did not have any education or training that qualified them as SPMP. Accordingly, the State agency should have claimed the personnel costs for these three employees at the 50-percent Federal reimbursement rate. Therefore, the Federal claim for these employees was overstated by \$51,723.

INADEQUATE POLICIES AND PROCEDURES

The State agency did not properly claim payments for SPMP at the enhanced Federal funding rate for FFYs 2005 and 2006 because it did not have adequate policies and procedures to ensure that all personnel costs claimed at the enhanced rate met Federal regulations. It also did not use a methodology to allocate costs for personnel whose time was split between different functions and ensure that it claimed only eligible Medicaid administrative activities at the enhanced rate.

EFFECT OF CLAIMING UNALLOWABLE COSTS

Because the State agency claimed personnel, travel, and operating costs that did not comply with Federal requirements for SPMP at the enhanced 75-percent rate rather than at the 50-percent rate, the State agency received \$1,091,343 in overpayments. (See Appendix.)

RECOMMENDATIONS

We recommend that the State agency:

- refund to the Federal Government \$1,091,343 for the Federal share of personnel, travel, and other operating costs that were improperly claimed at the enhanced rate;
- implement policies and procedures to ensure that future claims for costs related to SPMP are eligible for funding at the enhanced rate; and
- develop a CMS-approved methodology to allocate costs for personnel whose time and effort are split between different functions.

STATE AGENCY COMMENTS AND OFFICE OF INSPECTOR GENERAL RESPONSE

In its comments on our draft report, the State agency agreed that four of the positions totaling \$78,846 that it had claimed at the enhanced 75-percent rate for SPMP were not eligible for enhanced reimbursement. The State agency also stated that it had reviewed and identified ineligible personnel-related expenses totaling \$10,753. The State agency said that it would review its financial protocols and correct the issue.

The State agency disagreed with the remainder of our findings and recommendations. It maintained that it had correctly sought reimbursement at the enhanced SPMP rate for the remaining 51 positions that we determined were not fully eligible for enhanced reimbursement. Specifically, the State agency asserted that the personnel that it claimed at the enhanced SPMP rate performed medically based job functions and administered medically based programs that required medical knowledge and skill. We summarize and respond below to the State agency's specific comments on the eligibility of different personnel functions within the State agency for enhanced reimbursement as SPMP.

Foster Care Health Program Staff

State Agency Comments

The State agency disagreed with our disallowance of personnel costs at the enhanced rate for several positions in the Foster Care Health Program (Psychiatric Social Worker, Nurse Coordinators, Nurse Supervisors, and Administrator). The State agency stated: "OIG has recommended 100% disallowance of NH's Medicaid Foster Health Program for the two year audit period, based upon a finding that the public health nurses handled a very small number of non-Medicaid children." The State agency maintained that the Foster Care Program directly served the Medicaid program and that it was not reasonable to disallow 100% of these costs because a full 98% of children in the Foster Care Program were also enrolled in Medicaid. The State agency gave several examples of why it considered each of these positions to be eligible for 100-percent reimbursement at the enhanced SPMP rate.

Office of Inspector General Response

We did not disallow the personnel costs based on the percentage of non-Medicaid children enrolled in the Foster Care Program. On the contrary, our disallowance was based primarily on the State agency's failure to allocate the nurses' personnel costs to the different activities that they performed rather than claiming all of their activities at the enhanced SPMP rate. Pursuant to 42 CFR § 432.50(c)(1), "FFP [must be] prorated for staff time that is split among functions reimbursed at different rates." Moreover, the Departmental Appeals Board (DAB) has held that the State has a heightened burden of proof when it claims Federal reimbursement at the enhanced rate and must clearly show that all claims at the enhanced rate meet applicable reimbursement requirements (Illinois Department of Children & Family Services, DAB 1530, at p. 43 (1995)). Although we agree that some of the tasks performed by the Psychiatric Social Worker, Nurse Coordinators, and Nurse Supervisors may be allowable at the enhanced rate, we do not agree that

all of the activities claimed were allowable at the enhanced SPMP rate or attributable to the Medicaid program.

Based on the information provided by the State agency, we maintain that the Administrator position generally did not require medical knowledge or skills. For example, the Administrator position could have been filled by someone with a nonmedical degree, such as a Master's degree in public administration, and most of the described job duties, such as budgeting, do not qualify for reimbursement at the enhanced rate. If some of the Administrator's duties qualified for reimbursement under SPMP, the State agency should have allocated these costs between the standard (50 percent) and enhanced (75 percent) payment rates.

Because the State agency did not keep track of the time that the employees spent on activities that did not meet Federal requirements for reimbursement at the enhanced rate, we continue to recommend that the State agency refund the difference between the enhanced rate and the standard rate for personnel costs claimed for these positions.

Bureau of Elderly & Adult Services Staff

State Agency Comments

The State agency maintained that personnel in the Long Term Care unit in the Bureau of Elderly & Adult Services were skilled medical professionals who carried out skilled medical functions and that these positions were thus fully reimbursable as SPMP. Specifically, the State agency disagreed with our disallowance of personnel costs claimed at the enhanced SPMP rate for Medical Service Consultants I, Nurse Supervisor, Program Specialist III and IV, Clerk IV, Secretary II and Case Technician.

The State agency gave several examples of why it considered these positions eligible for full reimbursement at the enhanced 75-percent rate for SPMP. For example, the State agency maintained that the Medical Service Consultants were registered nurses who medically assessed applicants for long term care services to determine whether the applicants required a nursing home level of care. The State agency asserted that medical expertise was a fundamental requirement of these positions. It also said that, although the job description for one of these positions referenced "using an electronic technology environment, develops management tools to ensure operational effectiveness," this description only meant that the nurse would be expected to use electronic software products to do the job. The State agency also maintained that the Medical Service Consultants' supervisor was eligible for full reimbursement at the enhanced SPMP rate because "The hiring and firing, training, and effective utilization of the long-term-care nurses by the Nurse Supervisor . . . appropriately calls for the skilled medical knowledge of this medical supervisor."

In addition, the State agency asserted that the Clerk IV, Secretary II, and Case Technician positions provided direct clerical support functions for the long-term-care nurses' medical eligibility determination process and were supervised by an SPMP. Thus the State agency maintained that the personnel costs for these positions were properly reimbursable at the enhanced SPMP rate.

Office of Inspector General Response

Although we agree that some of the tasks performed by the Medical Services Consultants, Program Specialists, and Supervisor may be allowable at the enhanced rate, not all of the activities claimed—such as evaluating the cost effectiveness of program operations—were allowable at the enhanced rate. We also do not dispute that the Secretary and Clerk may have been supervised by skilled professional staff. However, we determined that not all activities performed by the supervisors qualified for reimbursement at the enhanced rate. In addition, the Case Technician’s job functions did not meet the definition of SPMP support staff because they involved nonclerical functions such as certifying eligibility. Moreover, the State agency could not claim the person in this position as SPMP because he lacked the required educational qualifications.

We therefore continue to recommend that the State agency refund the enhanced portion of personnel costs associated with these positions in the Long Term Care unit.

Surveillance and Utilization Review Subsystem Staff

State Agency Comments

The State agency disagreed with our disallowance of personnel costs at the enhanced reimbursement rate for four employees who worked in the Surveillance and Utilization Review Subsystem. The State agency commented that we appeared to have determined that a significant portion of the job activities did not require medical knowledge or skills by reviewing supplemental job descriptions (SJD) without further inquiry. The State agency claimed that some accountabilities listed in the SJDs were simply not accurate and were not functions performed by a particular employee. According to the State agency, “The SJD is not necessarily reflective of what an individual employee does on a day-to-day basis.” The State agency maintained that we should focus on the actual job functions performed rather than the job descriptions in the SJDs.

Office of Inspector General Response

The State agency correctly stated that we primarily based our findings on our review of the job functions detailed in the SJDs. In accordance with 50 Fed. Reg. 46652, 46656 (Nov. 12, 1985), enhanced SPMP reimbursement is only available for those positions that require professional medical knowledge and skills, as evidenced by position descriptions, job announcements, or job classifications. The State agency maintained that the SJDs were inaccurate and vague and included functions not performed by the employee. However, the State agency bears the burden of proof for its assertion that the employees in these positions only performed qualifying SPMP activities (Illinois Department of Children & Family Services, DAB 1530, at p. 43 (1995)). Because the State agency did not track the time that employees spent on different activities, we continue to recommend that the State agency refund the portion of the personnel costs that it claimed at the enhanced rate for these positions.

Special Medical Services Staff

State Agency Comments

The State agency disagreed with our disallowance of personnel costs at the enhanced reimbursement rate for employees in the Special Medical Services unit. The State agency maintained that all job functions of the five Public Health Nurse Coordinators qualified for reimbursement at the enhanced rate because these job functions did not include direct medical services and required medical knowledge or skills. The State agency noted that we had determined that the Public Health Nurse Coordinators engaged in non-SPMP activities such as developing clinical policies and teaching seminars by reviewing the SJD for this position. However, it reiterated that “the language of the SJD is imprecise” and that we should not use it as a basis for determining the actual job functions of the position. The State agency also asserted that, although it could have properly claimed all five Public Health Nurse Coordinators and directly supporting staff at the enhanced rate, three of the five Public Health Nurse Coordinators were incorrectly charged at the 50 percent administrative rate. Thus, the State agency reserved the right to adjust its claim accordingly.

The State agency maintained that the day-to-day job functions of the Secretary II were supervised by the Public Health Nurse Coordinators and were directly necessary for the completion of the medical responsibilities of the SPMP.

Office of Inspector General Response

The State agency is correct in its assertion that the personnel costs for two Nurse Coordinators, and not five, were claimed at the enhanced rate. The State agency initially claimed all of these costs at the enhanced rate but subsequently claimed the costs for three employees at the 50 percent reimbursement rate through prior period adjustments. The State agency previously stated that it had made these adjustments in acknowledgement that not all of the job activities of the Nurse Coordinators were eligible for reimbursement at the enhanced rate. However, the State agency has since asserted in its written comments that all Public Health Nurse Coordinators are eligible for reimbursement at the enhanced rate. Regardless, because the State agency did not track which portion of these costs might be eligible for reimbursement at the enhanced rate, we continue to recommend that the State agency refund the enhanced portion of the personnel costs claimed for the remaining two Nurse Coordinators.

We do not dispute that the Secretary II may have performed some work for skilled professional staff. However, information provided by the State agency indicated that this employee also worked for non-SPMP staff, such as the Program Administrator, and not all of the job functions of this position were directly necessary for SPMP staff to complete their responsibilities. Because the State agency did not track the time that this employee spent on the different activities or provide evidence that SPMP directly supervised this position, we continue to recommend that the State agency refund the enhanced portion of personnel costs that it claimed for this position.

Disability Determination Professional Staff

State Agency Comments

The State agency disagreed with our disallowance of personnel costs at the enhanced reimbursement rate for the following four positions in the Disability Determination Unit:

- *Program Specialist III (1 position) and Medical Services Consultant I (1 position)*. The State agency contended that the SJD that it provided to us for the Program Specialist did not relate to the actual job functions performed and that this position's functions were similar to those of the Medical Services Consultant. The State agency maintained that these two employees conducted medical eligibility determinations for Medicaid disability programs and that all of their job functions required professional medical knowledge and skills. It also asserted that providing training on the medical eligibility process is an inherent function of these positions and is within the scope of proper SPMP activities.
- *Supervisor IV (1 position)*. The State agency maintained that this employee was a registered nurse who performed medical evaluations to determine medical eligibility and participated as an active member of the medical review team.
- *Clerk IV (1 position)*. The State agency asserted that the day-to-day clerical tasks of this position were supervised by SPMP and that the clerk performed all traditional clinical tasks that are directly necessary for the completion of the responsibilities and functions of the SPMP.

Office of Inspector General Response

Although we agree that some of the tasks performed by the Medical Services Consultants and Supervisor positions may be allowable at the enhanced rate, not all of the activities claimed, such as providing training, were allowable. Because the State agency did not allocate personnel costs for activities that did not meet Federal requirements for enhanced reimbursement, we continue to recommend that the State agency refund the personnel costs claimed at the enhanced rate for these positions.

We do not dispute that the Clerk IV may have been supervised by skilled professional staff. However, we determined that not all activities performed by the supervisors qualified for reimbursement at the enhanced rate. Because the State agency did not track the time spent by the support staff on qualifying SPMP functions, we continue to recommend that the State agency refund the enhanced portion of personnel costs associated with this position.

We have included the State agency comments in their entirety as Appendix B.

APPENDIX

RESULTS OF REVIEW
Summary of Allowable and Unallowable SPMP Costs for New Hampshire
FFY's 2005 and 2006

Job Number(s)	Title	Claimed Costs	Federal Share (75%)	Allowable Costs	Unallowable Costs		
					Personnel	Operating	Total
40026000	Foster Care Health Program	\$1,579,914	\$1,184,935	\$789,955	\$379,783	\$15,198	\$394,981
95600091	Medicaid Medical						
95200071	Professionals	\$688,572	\$516,429	\$344,313	\$164,714	\$7,402	\$172,116
95601100	Special Medical						
95601101	Services	\$200,667	\$150,500	\$100,334	\$49,665	\$501	\$50,166
48027000	Medical Services Consultants	\$1,439,758	\$1,079,819	\$719,879	\$341,184	\$18,755	\$359,939
95600020	Disability Determination						
95802100	Professional Staff	\$453,377	\$340,033	\$227,563	\$110,702	\$1,768	\$112,470
95600140	Dental Services Unit	\$322,593	\$241,945	\$240,806	\$0	\$1,139	\$1,139
95600170	Pharmacy Services Unit	\$259,961	\$194,971	\$194,439	\$0	\$532	\$532
TOTAL		\$4,944,842	\$3,708,632	\$2,617,289	\$1,046,048	\$45,295	\$1,091,343



State of New Hampshire

DEPARTMENT OF HEALTH AND HUMAN SERVICES

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NICHOLAS A. TOUMPAS
COMMISSIONER

September 24, 2008

Mr. Michael J. Armstrong
Regional Inspector General for Audit Services
Office of Audit Services
Region 1
John F. Kennedy Federal Building
Boston, MA 02203

Report Number: A-01-07-00011

Dear Mr. Armstrong:

I am writing in response to the Office of Inspector General (OIG) draft report entitled "New Hampshire Medicaid Payments for Skilled Professional Medical Personnel at the Enhanced Rate From October 1, 2004, Through September 30, 2006."¹

Brief Response

The New Hampshire Department of Health and Human Services (DHHS) respectfully objects to OIG findings that certain personnel did not meet the education requirements, that certain job functions are not qualifying Skilled Professional Medical Personnel (SPMP) functions, and that certain clerical did not meet SPMP criteria and were therefore not reimbursable at the enhanced 75% rate. OIG also questioned certain related personnel expenses and operating costs. The DHHS respectfully requests that the draft audit findings be amended in accordance with this response.

OIG auditors presented preliminary findings to DHHS on December 12, 2007 and subsequently held an Exit Conference with DHHS staff on May 2, 2008. At the Exit Conference, OIG identified \$251,398 in enhanced claims as not qualifying for the SPMP enhanced rate and labeled that amount as disallowed. At that time, OIG offered "no opinion" on an additional \$554,172 in enhanced claims. The OIG draft report recommends disallowance of enhanced 75% funding in the amount of \$1,091,343 as not meeting the requirements for SPMP, including the \$554,172 previously labeled "no opinion" by OIG.

The DHHS is prejudiced by the findings contained in the draft report as OIG did not give proper notice and DHHS did not have sufficient opportunity to respond to the significant additional disallowances now recommended by OIG. OIG did not request additional information or documentation relative to the newly disallowed claims and the DHHS had no reason to believe that such claims were at risk.

¹ This response supersedes NH DHHS's earlier preliminary responses, based upon our more complete review of the facts and law at issue. Further, we reserve our right to provide an additional response, as appropriate.

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Subsequent to OIG's inclusion of the additional disallowances in the draft report, DHHS requested and received additional information from OIG regarding the SPMP positions that were previously identified by OIG as "no opinion" now disallowed in the draft report. In this response, DHHS offers additional information regarding such enhanced claims supporting our position that the SPMP enhanced rate is appropriate. OIG may not have considered this information previously, given that the SPMP positions and the enhanced rate associated with them was not disallowed at the conclusion of the audit. Given this change in position by OIG and the relatively short response time afforded DHHS, we reserve our right to provide additional information and supplement this response.

New Hampshire claimed the enhanced rate of 75% appropriately and in accord with the intent of SPMP, which is to give incentive to State Medicaid agencies to employ individuals with the qualifications and expertise to administer Medicaid programs as required by law and in conformity with the Medicaid State Plan. The Medicaid Program is complex not only pertaining to compliance with federal and state law and regulation at the administrative level, but also as it impacts individual Medicaid applicants and recipients. In general, applicants and recipients are a vulnerable population with complex health care needs. As noted below, New Hampshire utilizes skilled medical professionals to perform medically based job functions and administer medically based programs that could not be adequately performed by individuals without such medical knowledge and skill. Presumably, that is why Congress and CMS established the SPMP rate to encourage States to employ those with the professional medical expertise necessary to develop and administer Medicaid programs that are medically sound as well as administratively efficient. Contrary to OIG's findings, this is what New Hampshire did and continues to do in its employment of skilled medical professionals.

The letter follows the outline of the supplemental audit provided to the NH DHHS as a result of inquires regarding the draft audit.

Legal Background

Section 1903(a)(2) of the Social Security Act provides for enhanced federal match for the compensation and training of skilled professional medical personnel and directly supporting clerical staff. The purpose of the enhanced rate of Medicaid funding for skilled professional medical personnel is "to ensure the integrity of the many diverse medical aspects of the Medicaid Program by providing an incentive to State agencies to employ skilled professional medical personnel with respect to those medically related functions." Preamble to the SPMP regulation, 50 Fed. Reg. 46655. The intent of the provisions was "to encourage state agencies to employ personnel who have the professional medical expertise necessary to develop and administer the Medicaid programs that are medically sound as well as administratively efficient." Preamble to the SPMP regulation, 50 Fed. Reg. 46655.

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To qualify, the skilled professional medical personnel must have a 2-year or longer degree in a medically related field. 42 CFR 432.50(d)(1)(ii). Also, the skilled professional medical personnel must be in positions that have duties and responsibilities that require those professional medical knowledge and skills. 42 CFR 432.50(d)(1)(iii).

In order to qualify for SPMP match, directly supporting staff must be secretarial, stenographic, and copying personnel and file and records clerks who provide clerical services that Mr. Michael

are directly necessary for the completion of the responsibilities and functions of the skilled professional medical personnel. The skilled professional medical personnel must directly supervise the supporting staff and the performance of the supporting staff's work. 42 CFR 432.50(d)(1)(v).

Whether a position requires medical expertise depends on the tasks performed. Illustrative examples of functions that meet the criteria were provided in the Preamble. In contrast, "application of administrative practices unrelated to the specialized field of medical care" is not entitled to SPMP match, as "for example, the costs of a physician in charge of an accounting operation." Preamble to the SPMP regulation, 50 Fed. Reg. 46655. In determining what functions are properly considered SPMP, official position titles, job functions, organizational placement, and listings in a handbook of occupational titles should be considered. See Pennsylvania Dept of Public Welfare, DAB 834 (1987)

Here, NH DHHS's use of skilled professional medical personnel and their directly supporting staff was consistent with the statutory intent and meets the requirements under 42 CFR 432.50(d)(1). Except for minor limited exceptions identified within, the activities were directly related to the Medicaid program; (1) the skilled professional medical personnel's expertise was necessary to fulfill the responsibilities of their positions effectively; (2) and the directly supporting staff provide clerical services that are directly necessary for carrying out the skilled professional medical personnel's responsibilities and functions.

Foster Care Health Program

Overview of Foster Health Program

The NH DHHS Foster Health program, with the advance approval of CMS, was designed and implemented to meet the critical health needs of foster children in a manner that facilitates and improves the proper and efficient administration of the Medicaid program.

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Foster children are among the most medically vulnerable of those served by the Medicaid program. As recognized by the General Accounting Office (GAO) in a seminal report on foster care, "as a group, they are sicker than homeless children and children living in the poorest sections of inner cities. Of particular concern is the health of young foster children since conditions left untreated during the first 3 years of life can influence functioning into adulthood and impede a child's ability to become self-sufficient later in life." GAO Report to the Ranking Minority Member, Subcommittee on Ways and Means, House of Representatives, Foster Care – Health Needs of Many Young Children are Unknown and Unmet, May 1995 at 1.

Most children are placed in foster care due to neglect and abuse that occurs within a setting of parental substance abuse, poverty, and mental illness. Given this, "[i]t is not surprising that children entering foster care are often in poor health. Compared with children from the same socioeconomic background, they have much higher rates of serious emotional and behavioral problems, chronic physical disabilities, birth defects, developmental delays, and poor school achievement." American Academy of Pediatrics, Committee on Early Childhood Adoption and Dependent Care, "Health Care of Young Children in Foster Care," Pediatrics Vol. 109, No. 3 (March 2002), pp. 536-541 at p. 536.

Moreover, a greater number of young children are being placed in foster care with increasingly complicated and serious physical, mental health, and developmental problems. Yet, national studies have indicated that often the health care foster children received while in placement was impaired by poor planning, lack of health care access, prolonged waits for medical and mental health services, lack of coordination of services, and poor communication among health and child welfare professionals. American Academy of Pediatrics, Committee on Early Childhood Adoption and Dependent Care, "Health Care of Young Children in Foster Care," Pediatrics Vol. 109, No. 3 (March 2002), pp. 536-541 at p. 536. See also GAO Report, *supra*, at pp 2, 6 and 15 (observing foster children's critical health needs including routine medical exams, immunizations, and specialized health care, went unmet to a great extent.)

In order to respond to the increasingly complex health needs of children in foster care, the NH DHHS developed its foster care health program, which is structured around the use of public health nurses located in the district offices. The CMS approved foster care health program was designed to support the safety, permanency and well-being of foster children as a result of appropriate medical oversight and medical coordination of the unique medical needs of this highly vulnerable population. See Attachment.

The Foster Health Program directly served the Medicaid Program; only a very *de minimis* number of non-Medicaid children, 2%, were served.

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OIG has recommended 100% disallowance of NH's Medicaid Foster Health Program for the two year audit period, based upon a finding that the public health nurses handled a very small number of non-Medicaid children. This is not a reasonable recommendation, given that for the two year audit period the Foster Health program served a clientele of 98% Medicaid covered children with only 2% of the children not being enrolled in Medicaid.² When NH DHHS sought CMS approval of SPMP coverage for its Foster health program, it disclosed the de minimis non-Medicaid portion of the population. "The Foster Care Health Specialist (generic job classification: Public Health Nurse Coordinator) will be serving Medicaid eligible children placed out of home (98% of all children are covered under Medicaid) for children receiving services after being determined to be either at risk of abuse or neglect. . ." Memo regarding "Request for 75% Medicaid Funding for Eight Foster Care Health Care Specialist, One Foster Care Health Specialist Coordinator and One Foster Care Health Care Supervisor" from [REDACTED] [NH DHHS] Program Specialist to [REDACTED] [CMS Region I] dated March 25, 1999.

The almost 100% Medicaid foster child eligibility rate is anticipated by foster children state Medicaid programs given that only the income and resources of the foster child are counted for purposes of determining the child's Medicaid eligibility and not that of the child's family.³ A de minimis non-Medicaid claim is reasonable under OMB A-87. In any case, it is certainly not a proper basis for complete SPMP disallowance of what is an otherwise entirely properly reimbursable SPMP Foster Health program.

At a certain point, it becomes more expensive and inefficient to identify, segregate, develop time studies and cost allocate the de minimis expense than it would be to pay the expense. The effort and related expense is disproportionate to the benefit received to the Medicaid program. Further, the provision of this de minimis medical oversight to the child who is not yet enrolled in the Medicaid program, through a brief and limited public health intervention, may avoid subsequent substantial Medicaid expenses. For example, if a public health nurse were, in a rare instance, to review and provided limited medical guidance for a high at risk child presently residing in the biological home and that intervention kept the family intact, this might avoid the foster placement with related Medicaid enrollment. In contrast, the provision of such a limited intervention would not increase the Medicaid expense, as the overhead of the Foster Health program would not be impacted; the nurse's salary and benefits would remain the same. Furthermore, under OMB A-87, the Foster Health program may properly be considered as a direct cost incurred specifically for the benefit of one cost objective, addressing the health care needs of Medicaid eligible children in foster care.

² Initially, NH DHHS staff produced figures to OIG staff that indicated that the Foster Health Program served 95% Medicaid covered and 5% non-Medicaid during the audit period. Upon more closely examining the children served, it was found that the percentage of Medicaid enrolled children was even higher, 98%, as there were misspelled names, etc. on the list that was being checked against Medicaid data. Additionally, it is very likely that others among the 2% were Medicaid eligible, but not enrolled, due to various processing and intake issues. NH reserves the right to provide further detail on this point.

³ In fact, some states employ presumptive Medicaid eligibility for foster children, given the desire to expedite care of this vulnerable population and in recognition of the fact that they are almost 100% Medicaid eligible.

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The public health nurses' job functions consisted entirely of skilled medical functions. Assessing the necessity and adequacy of care and performing related coordination of services is skilled medical functions.

The Foster Health Care coordinators and their supervisors rely upon specialized medical education, training and skills as RN's to perform their medically related jobs functions. Without these specialized medical skills, they would not be able to perform their responsibilities in a capable manner.

In particular, the public health nurses must use their medical expertise to ensure that information about foster children's health history is properly identified and the children's health care needs are correctly recognized at the time of initial foster placement. The nurses apply their medical knowledge to create accurate medical "passports" designed to improve continuity of health care for the children. Medical passports document critical health information of foster children in a centrally located repository. At times, the public health nurse must act like a medical detective, as the child may have gone untreated for years or received scattered and inconsistent medical care. The nurses facilitate improved health care communications using the children's health information. All children are required to have a medical and mental health assessment within 30 days of placement.

The information revealed from intake and the subsequent health assessments assists the nurse in creating health plan to address unmet medical needs. The nurse coordinates with other medical professionals to ensure that immunization gaps are brought up to date and other necessary routine and specialty care provided in a timely manner. Depending upon the children's health conditions, the nurses determine which children need to be seen by medical providers sooner than others and which ones may need to see a specialist. For example, a nurse might refer a child with a history of repetitive ear infections to an ENT, as an untreated chronic ear condition could lead to otherwise avoidable hearing loss.

The nurses use their medically trained skills of observations to form recommendations to identify possible health problems. For example, a nurse alert to signs of post traumatic stress disorder (PTSD) might identify the need for a mental health consult. Similarly, physical health issues can be spotted, as when a public health nurse's observations of a child's gait led to discovery of a broken bone in the foot.

The nurses, using specialized medical education and skills, develop a health care plan for the foster child and participate in a health care planning meetings to educate the foster family and DCYF staff regarding the child's medical needs. If the child is in the hospital, the public health nurse will attend the hospital discharge meeting in order to understand post discharge necessary medical treatment, translate information to the biological and foster parents and caseworkers and ensure delivery of the care.

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The public health nurses are pivotal to the appropriate medical management of the foster children and integral to the proper and efficient management of the State Plan as it relates to Foster Care Health.

OIG contends that the public health nurses "coordination of appointments and identifying community care health providers" is a non-SPMP function. However, as emphasized above, getting the child to the right provider at the right time in light of the child's health conditions is not some ministerial act that could be performed by a non-medically skilled person. Rather, it is a central aspect of the comprehensive medical oversight by the public health nurses. This focused health care coordination is key to ensuring that the appropriate medical care needs of the foster children are delivered in a timely and appropriate manner. "Coordination of available medical resources" is a proper SPMP function. Preamble to the SPMP regulation, 50 Fed. Reg. 46655. Care coordination is different from EPSDT outreach and informing activities pursuant to 42 CFR 441.56 and scheduling assistance pursuant to 42 CFR 441.62. Regarding "identifying community providers," the nurses must identify appropriate community medical providers in the course of making sure the child is seen by the appropriate medical professional. This function, too, involves SPMP skills, as it requires an ability to interact appropriately with medical providers in a medically informed manner.

Supervisory nurses and other medical professionals who supervise medical staff or medically related functions are properly claimed as SPMP, including public health nurse supervisors. The public health nurse supervisors' job specific functions integrally involve skilled medical functions.

OIG determined that the job functions of the public health nurse supervisor III's (position number 11758) involved non-SPMP functions of "completing individualized training plans, assigning workloads, staff meetings, interviewing applicants, and approving leave." With respect to the Public Health Nurse Supervisor V (position 19614), OIG made a similar observation that "supervising and training other supervisors, child protection social workers and other staff, assigning work to staff, approving request for leave, using software to prepare reports and statistics, and making contacts with medical providers" was non SPMP activity. OIG Transmittal dated 08/28/08. OIG concluded the positions should have allocated their time associated with these tasks, and not having done so, it recommends complete disallowance of SPMP reimbursement of the nurse supervisory positions for the entire audit period. OIG's conclusion is not well founded.

Medical professional supervising other medical professionals rely upon their medical education and training. Moreover, comparing these medical supervisory functions to the Dictionary of Occupational Titles, Medical section shows that medically related supervision is a recognized medical function. Finally, CMS provided recognition and approval of SPMP reimbursement for the Foster nurse supervisors.

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The Public Health Nurse Supervisor III's are all RN's who supervise only other RN's. Similarly, the Public Health Nurse Supervisor V also only directly supervises SPMP staff, the public health nurse supervisor III's. The Public Health Nurse Supervisor V provides training or information to others working with foster children to improve their understanding of the particularized health care needs of the foster children, but she is not actually their supervisor. To the extent that the SJD suggests otherwise, it was merely not well worded. See attached Affidavit of [REDACTED]

The RN supervisors routinely exercise specialized medical knowledge and skills in their supervision of other RN's performance of medically related responsibilities. To hire a qualified foster health RN, the supervisor must be able to evaluate the candidate nurse's medical competencies and background to determine whether the individual is properly suited to perform the specialized foster health medical responsibilities. In creating individualized training plan for nurses, the supervisor needs to assess the skill set of staff nurses and further develop those skills as necessary. Changes in the caseload might suggest further training in a specific area. For example, further background in mental health and PTSD and its impact on the young foster child might be advisable for one nurse. Another nurse whose geographical area showed increased numbers of children with lead paint poisoning might benefit from additional training in this area. The nurse supervisor's attendance at the staff meetings of the public health nurses also requires special medical knowledge as the RN's would be discussing the particularized job demands related to addressing the health needs of the foster children whom they serve.

Adjusting and regulating work loads of medical staff require understanding of complex and demanding medical matters that might require the temporary realignment of staffing. Although generally time and attendance is a de minimis task, it too requires medical understanding. Done in a manner oblivious to the particularized medical demands of a specific RN's caseload, it could cause avoidable problems. For example, in assigning backup coverage for a hospital discharge meeting concerning an adolescent with bi polar disorder who has been hearing voices, the nurse supervisor might consider who among the other foster nurses would be best able to understand the health nuances.

Regarding the Nurse Supervisor V, OIG also questions whether "using software to prepare reports and statistics" is an allowable SPMP activity. Using software to perform work tasks merely means that the supervisor is using the tools of today's modern office environment. Using software to gather information enables the nurse supervisor of this program to be aware of trends in caseloads, outcome, and medical care delivery in order to use medical knowledge to best administer the Foster Health Medicaid program. Efficiencies properly are sought and gained through the use of electronic information sources and are intended to ensure that the statewide health needs of foster children are met. Access by the SPMP supervisor to more advanced electronic tools to do a better job of administering the Medicaid program with appropriate medical expertise should not be a basis to disallow the SPMP reimbursement.

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With respect to OIG's finding that the Public Health Nurse Supervisor V's "mak[ing] important contacts with medical providers, hospitals and managed care entities involved with children in out-of-home placement," (OIG transmittal dated 8/28/08), this should not be a concern that a non-SPMP activity has occurred. In order for the SPMP supervisor's communications with medical providers to be fruitful, they need to be medically informed. See Preamble to the SPMP regulation, 50 Fed. Reg. 46656 at 46656, (acting as a liaison on the medical aspects of the program is a SPMP qualifying function). See also Washington State Department of Social and Health Services, DAB No. 1033 (1989) p 7 of 12 (recognizing this as appropriately SPMP qualifying activity).

In determining what functions are properly considered SPMP, one should consider listings in a handbook of occupational titles under medical classification, as well as official position titles, job functions and organizational placement. See Pennsylvania Dept of Public Welfare, DAB 834 (1987) at p 8 of 11. See also New Jersey Department of Human Services, DAB No 1434 (1993) at p 9 of 22 (concluding that functions of medical social care specialists I and II when compared to medical social worker definition in the Dictionary of Occupational Titles were SPMP).

Here, not only do the position titles, job descriptions and organizational placement overseeing medical programs and/or supervising medical staff demonstrate the supervisory functions are SPMP, but also the listings in a handbook of occupational titles supports this conclusion.

The Occupational Titles Dictionary, relied upon by DAB and CMS, has many of the same or similar medical supervisory functions of the NH DHHS nurse supervisors listed in the description of Nurse, Supervisor, Community Health Nursing:

Supervises and coordinates activities of nursing personnel in community health agency: Serves as liaison between staff and administrative personnel. Develops standards and procedures for providing nursing care and for evaluating service. Provides orientation, teaching, and guidance to staff to improve quality and quantity of service. Evaluates performance of personnel and interprets nursing standards to staff, advisory boards, nursing committees, and community groups. Recommends duty assignment of nursing personnel and coordinates services with other health and social agencies to render program more effective. Reviews, evaluates, and interprets nursing records, vital statistics, and other data affecting health service in order to assess community needs and to plan and implement programs to meet these needs. Assists in planning educational programs for nurses, related professional workers, and community groups to meet needs of personnel and practitioners. Assists in preparation of agency budget. May plan for and participate in field research related to community health nursing.

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Nurse, Supervisor, Community Health Nursing, Position description 075.127-026, US Department of Labor, Office of Administrative Law Judges law Library, Dictionary of Occupational Titles (4th Ed, Rev. 1991) (<http://www.oalj.dol.gov/libdot.htm> last accessed on 9/18/08). Section 075, Medical, Nursing, (emphasis added). See also position description 075.117-014, Director, Community-Health nursing ("Recruits, selects, and assigns personnel for nursing services"). See CMS Guidance document on SPMP.

Finally, in addition, NH DHHS specifically outlined to CMS its plan for a Foster Health program using such skilled medical personnel, including supervisors, to be supported with SPMP reimbursement and obtained advance approval for this initiative. See Attached Memo "Request for 75% Medicaid Funding for Eight Foster Care Health Care Specialist, One Foster Care Health Specialist Coordinator and One Foster Care Health Care Supervisor" from [REDACTED] [NH DHHS] Program Specialist to [REDACTED] [CMS Region I] dated March 25, 1999.

This is also true of other medical supervisory positions examined by OIG in this audit as described more fully below.

The Senior Psychiatric Social Worker (position 16963) performed specialized medical functions and is properly reimbursable at the SPMP rate.

OIG claims that one of the job functions of this position "external community involvement with community groups" was a non-SPMP function. However, as specifically recognized by CMS in adopting its rules on SPMP, "examples of functions that would meet [the SPMP] criteria" include "acting as a liaison on the medical aspects of the program with providers of services and other agencies that provide medical care." 50 Federal Register 46652 (Nov. 12, 1985). See also Washington State Department of Social and Health Services, DAB No. 1033 (1989) p 7 of 12 (the preamble to the revised regulation, 50 Fed. Reg. at 46656, appropriately considered acting as a liaison on the medical aspects of the program as an SPMP qualifying function).

The Senior Psychiatric Social Worker usually engages with external community groups in the course of case specific activities. For example, this medical professional might participate in a review and discussion with a child care team at a residential treatment center in order to assess why the child is not medically progressing as anticipated or desired. Additionally, this medical professional may act as a liaison with providers regarding the mental health needs of foster children to help encourage increased participation in evidence based therapeutic trainings programs, such as those designed around trauma treatment and PTSD. Engaging with external providers and the community around the specialized mental health need of these children is proper under SPMP criteria.

The Administrator of Clinical Services (position 11890) possessed a specialized medical degree in clinical and medically related social work and performed required SPMP activities.

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The Administrator of Clinical Services, MM (position 11890), possessed the required specialized medical degree as a clinical social worker with a Master degree in a medically related social work and performed job functions requiring medical expertise.⁴ Further, she worked in the Foster Health Program where her job was to provide clinical oversight, quality management, and implementation of various clinical treatment programs in the Foster Health program. See SJD.

OIG raises two objections to this position being qualified as SPMP. First, OIG states that her job duties of “administering the health care program and researching policies” did not require medical knowledge. OIG’s view is inconsistent with CMS’s regulatory guidance.

The intent of [the SPMP] provisions is to encourage State agencies to employ personnel who have the professional **medical expertise necessary to develop and administer Medicaid programs that are medically sound as well as administratively efficient.** Professional medical knowledge is needed to shape the medical aspects of the program including the determination of which medical services should be included in a well-balance medical benefit program, coordination of available medical resources, and establishment of working relationships with the professional medical community.”

Preamble to the SPMP rules, 50 Fed. Reg. 46656 (Nov.12, 1985) (emphasis added).

Administering a health program is SPMP appropriate activity and based on sound principles. Further, the researching of policies that pertain to the clinical oversight of the foster health program is also a relevant SPMP activity and helps inform the medical administration of the program. It also is like the activities of the Nurse, Supervisor, Community Health Nursing, Position description 075.127-026, US Department of Labor, described above, who “assess[es] community needs” and “plan[s]and implement[s] programs to meet those needs.”

OIG’s additional basis for disallowance is that the SJD for the Administrator of Clinical Services position permits a candidate to qualify who has a Master’s Degree in a non-medical field, when the individual has relevant experience. OIG Transmittal dated 8/28/08. OIG’s interpretation is contrary to law.

⁴ OIG has not challenged that the educational degree of this individual who had a Masters in Social Work with an educational track of health/mental health and was licensed to provide therapeutic care qualified as SPMP. If however, OIG wishes to obtain further information regarding the degree, NH DHHS will make it available.

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Medical expertise necessary to perform a job may be gained not only from medically related educational degrees but also from experience and trainings obtained outside of the educational degree process. As to SPMP reimbursement, regulations require examination of the degree and the functions of the job. Who a prior or subsequent holder of the position is not determinative of SPMP requirement of the position. 42 C.F.R. section 433.2 and 42 C.F.R. section 432.50(d) as well as DAB case law on point. See New Jersey Dept. Of Human Services, DAB No. 1434 (1993) at p. 7 and 8 of 22 (Agency could not disqualify positions for SPMP status merely because education degree was not listed as requirement for the position; medical social workers found to be qualified as SPMP even though the positions were not limited only to those who could meet the regulation's educational limitation). See also Washington State Department of Social and Health Services, DAB No. 1033 (1989) pp. 7-9 of 12 (mental health program administrator with masters in nursing science qualified under the educational limitation and also qualified for SPMP status even though the job was previously filled by person without the requisite degree.)

Here, consistent with SPMP requirements, the incumbent Administrator of Clinical Services exercised her medical knowledge gained through her qualifying educational degree in medically related job functions involving clinical oversight and quality management of clinical treatment programs in the foster health program. The fact that the SJD did not mandate a medically related degree does not make an otherwise qualifying SPMP position non-SPMP.

Medical Services Consultants for the Bureau of Elderly & Adult Services

The Long Term Care operation unit within the Bureau of Elderly and Adult Services relies upon skilled medical professionals to carry out skilled medical functions. Their duties are fully and properly reimbursable as SPMP.

By way of background, the Bureau of Elderly and Adult Services (BEAS), Long Term Care Unit at NH DHHS is responsible for reviewing and making determinations of medical eligibility for long term care services under Medicaid, including nursing home and community based care for the elderly and chronically ill.

Structurally, and for the purposes of this discussion, during the audit period, the long term care unit operated in the following manner. When an elderly or chronically ill person applies for long term care services from the Medicaid Program, a RN from the Long Term Care Unit would visit the applicant in the residential setting, to conduct a medical assessment and determine whether the person is clinically at a nursing home level of care. The long term care/HCBC-ECI nurses reported to a nurse supervisor (#16120), who also had her own case load. For a period of the audit, Position #12398 also supervised long term care nurses, had its own case load and authorized medical care before that position became vacant. Later and toward the end of

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the audit period, position #12398 became focused on oversight of the case management of long term care services provided to the HCBC-ECI clients.⁵

Quality assurance oversight of the health services furnished by providers to the elderly and chronically ill was overseen by the nurse who occupied Position #40393. This SPMP nurse also was the direct supervisor of clerical staff who supported the SPMP activity of long term care eligibility determinations. All of the skilled medical professional positions in this unit were filled by persons with the requisite medically related degrees whose job functions required the exercise of medical expertise. The positions did not carry out non-SPMP functions. The highly paper and record intensive SPMP clinical eligibility process, performed by the nurses was directly supported by clerical positions (#17411, 15737 and 16167), which activity is also properly SPMP reimbursable.

By statute, a person performing the medical eligibility determination (MED) of clinical or medical need must be a Registered Nurse who possesses training in the proper use of the MED. NH RSA 151-E:3, I (a). The MED is a comprehensive, objective clinical assessment instrument approved by the NH Legislative. The clinical assessment process is the same for both Nursing Facility and HCBC-ECI applications.

The long term care nurses' exercise of medical expertise is fundamental to the performance of their jobs. In conducting the medical eligibility determination assessment, they interpreted medical records. They used medically trained observations during the client eligibility meetings to gather information relevant to the medical determination. For example, a long term care nurse skilled in issues of gerontology and aware through training that elderly white men have the highest rate of suicide of all populations, might detect signs and symptoms of depression and inquire further regarding the elderly person's condition, while a medically untrained individual might be unaware the issue existed.⁶ The nurses at times might assist an applicant and family in assessing whether the individual's health care needs could be safely met in the community, perhaps with specialized health supports, or whether due to certain health risks factors a more supported residential setting should be considered.

⁵ Late in the audit period, around June 2006, position 12398 was reshaped to focus on oversight of case management. Oversight of the case management of long term care services furnished in the community also requires the exercises of skilled medical expertise, as it integrates quality assurance and applies clinical nursing guidelines. NH DHHS will provide further information on revised function of the job at OIG's request and reserves the right to further develop this area, to the extent it becomes relevant.

⁶ While the elderly made up 12.4% of the population in 2004; they accounted for almost 16.6% of all suicides. In 2005, the suicide rate for white men over age 85 was 45.23 per 100,000, which was 2.5 times the rate for men of all ages of 17.7 per 100,000. American Association of Suicidology, Elderly Suicide Fact Sheet January 28, 2008 (<http://www.suicidology.org/associations/1045/files/2005Elderly.pdf>, last accessed on 9/19/08)

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In making a determination of clinical eligibility for health services in the community, the long term care nurse would authorize types and duration of necessary services, based upon the individual's specific health conditions. For example in the area of wound care, a nurse might authorize different levels and duration of care for post surgical healing, than for the breakdown of the skin due to stage II decubitus ulcers, or for a foot wound with complications of diabetic neuropathy. Similarly, using medical judgment, a long term care nurse would authorize different levels of services for assistance with medications, depending upon the individual's cognitive and physical limitations: one person might need only a reminder call, while another might require full assistance. At redetermination and when additional health services were sought, the long term care nurse would consider whether changes in the service plan were medically necessary, depending upon the individual's then current health condition.

Assessing the necessity for and adequacy of medical care for purposes of medical eligibility and prior authorization of particular medical services is explicitly recognized as an approved SPMP function by CMS in the preamble to the SPMP rules. 50 Fed. Reg. 46656 (Nov. 12, 1985).

OIG has singled out one job function of the long term care nurses as not a valid SPMP activity: "participating in administrative appeals." OIG Transmittal dated 08/28/08. Based on this purported non-SPMP activity and a failure to allocate time spent doing it, OIG recommends complete disallowance of SPMP reimbursement for all long term care nurses during the entire audit period. OIG's determination is not supported by the law.

When a client or applicant appeals the denial of medical eligibility for services, the Medicaid Program must provide a medical basis for the decision. The nurse's role in such an appeal is to provide expert medical testimony to support the clinical determination. "Furnishing expert medical opinions for the adjudication of administrative appeals" is explicitly recognized by CMS as a valid SPMP job function. Preamble to the SPMP rules, 50 Fed. Reg. 46656 (Nov. 12, 1985).

OIG raises an additional basis of disallowance of the HCBC nurse position #12479.⁷ In particular, OIG states that "developing management tools, using an electronic technology environment, and to assure operational effectiveness" are not valid SPMP activities. OIG Transmittal dated 8/28/08.

The SJD #12479 states: "using an electronic technology environment develops management tools to ensure operational effectiveness." This provision simply means that the staff is operating within an electronic environment and is expected to use electronic software products to do the job. Operational effectiveness is greatly enhanced as NH DHHS increasingly relies on productivity enhancing software, like using an electronic MED form, instead of a paper forms, or perhaps using spreadsheets. This long term care/HCBH eligibility nurse is not

⁷ HCBC nurse position #12479 performs medical eligibility determinations (MEDs) like long term care nurses. Due to vagaries of the SJD system, there is a separate SJD with slightly different language than the long term care nurse positions.

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developing software tools; that is an IT function left to ancillary specialists in information technology. At most, one can say that the SJD was not written artfully. This is only a draftsmanship issue and does not reflect non-SPMP activity.

If OIG had discussed this finding with NH DHHS during its audit or exit interview, questions it might have about "using an electronic technology environment" would have been cleared up quickly. Moreover, it is likely that increasingly SJDs will articulate expectations that staff use electronic tools for gathering and reporting medically related information. By building upon such modern tools of doing business, NH DHHS, like most such organizations, hopes to increase efficiency of business processes, reduce time to make and communicate medical eligibility determinations, reduce the amount of paper generated, processed, filed, archived, retrieved from archive, and so on. Using an electronic tool in the medical determination process does not convert these skilled medical tasks to non-SPMP functions.

Regarding "nurse supervisor, long term care services" position #16120, OIG based upon a limited review of the SJD and without corroboration from NH DHHS staff, concluded that the nurse supervisor position was engaged in non-SPMP activities of:

"directing medical consultants and supervising professional and technical staff, including training, hiring, firing, as well as determines the efficient use of staff to assure compliance with policy and program requirements, and authorizes leave time and reimbursement expenses incurred by professional staff in the performance of their duties."

OIG Transmittal dated 8/28/08.

Position #16120 only supervises long term care nurses. See attached Affidavit of [REDACTED]. Perhaps, the interchangeable use of the long term care nurses' *job classification* "medical services consultant" with the sub category of the nurses' *position title* HCBC ECI or Long Term Care Nurse has caused confusion in the review. Perhaps, the SJD may not be perfectly worded and the revisions to the SJD that have occurred over the years may have left stray excess and irrelevant verbiage in the document. In any case, the Nurse Supervisor supervises medical consultants who are long term care nurses. The actual job function is what matters. See attached Affidavit of [REDACTED].

The hiring and firing, training, and effective utilization of the long term care nurses by the Nurse Supervisor, Long Term Care Services, appropriately calls for the skilled medical knowledge of this medical supervisor. As explained in the section above regarding Foster Health Medical Supervisors, the supervisor must use medical knowledge in the selection, supervision, evaluation, medically related training, and regulation of caseloads of the nurses supervised. See also, similar medical supervisory functions previously described from the Occupational Titles Dictionary.

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Position #40393, also occupied by a RN, performed a quality assurance function of oversight of the health services furnished by providers to the elderly and chronically ill. Medical expertise is necessary to perform these functions. Quality assurance (QA) of medical care delivery is recognized by CMS as an appropriate SPMP related function. "Participating in medical review or independent professional review team activities," an activity explicitly approved by CMS, is often understood to be a QA focused function. Approval of QA as an SPMP activity is also reflected in CMS's recognition of the functions of assessing "the necessity for and adequacy of medical care and services" prior to and after delivery of services as an SPMP approved activity. Preamble to the SPMP regulation, 50 Fed. Reg. 46656 at 46656. Training initiatives were necessary and related to ensuring that quality health care was provided to the elderly and chronically ill clientele.

As to Position #12398, which appears to have been vacant for periods of the audit, it carried out tasks like #16120 for earlier audit periods. Later when the position was refocused to provide case management oversight, it involved quality assurance functions of the case management of long term care clients. These functions involve the exercise of medical expertise. The NH DHHS invites OIG to follow up more particularly with the State, if a more a detailed exchange regarding the specific job functions overtime for this position and any other NH DHHS positions would be helpful to the audit review.

The clerical staff in the long term care unit directly supported the SPMP staff nurses and was supervised by SPMP, who participated in their performance evaluations.

Positions # 15737, 17411 and 16167, are clerical positions which provide direct support functions for the long term care nurses' medical eligibility determination process. They are SPMP reimbursable.

For clerical positions to qualify for SPMP enhanced match, they must satisfy the criteria of 42 CFR 432.50(d)(1)(v). This provision states:

The directly supporting staff are secretarial, stenographic, and copying personnel and file and records clerks who provide clerical services that are directly necessary for the completion of the professional medical responsibilities and functions of the skilled professional medical staff. The skilled professional medical staff must directly supervise the supporting staff and the performance of the supporting staff's work.

42 CFR section 432.50(d)(1)(v).

Directly supervising has been interpreted by DAB to permit supervision "in a personnel reporting sense by someone other than a SPMP . . . under the substantive direction of a SPMP which directly support SPMP function." Utah Department of Health, DAB No. 1032 (1989) p. 13 of 16. Allowing for a personnel reporting structure together with SPMP substantive direction

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takes into account the realities of office work, where nurses are frequently out in the field and a non-SPMP person such as a lead secretary, is able to monitor office attendance and ensure that work assigned by the SPMP is performed. Id. at page 12.

Here, an SPMP RN supervisor, position #40393 directly supervised clerical staff in positions # 15737, 17411 and 16167, as evidenced by organizational chart. The lead secretary provided an additional personnel reporting function for positions # 15737 and 17411. These clerical staff supported and received assignments from SPMP staff, as described below. An SPMP staff provided daily oversight as to work performance issues and SPMP participated in the performance evaluations. Finally, their work qualifies as clerical under the regulation.

In particular, these support staff would do the many tasks necessary to keep the nurses' clinical eligibility processes flowing smoothly. Their clerical activities included but are not limited to the following: checking the names on clinical eligibility applications against a data base to see if the applications were ready for the nurses to begin clinical review (Medicaid financial eligibility completed or in process); giving the nurses lists of applicants who were awaiting clinical review; faxing client information to the nurses as requested; taking the MED forms completed by the nurses and entering the nurses' decisions as to level of care eligibility and dates in the eligibility related data base; preparing and issuing letters of denial or approval regarding the nurses' clinical determinations; checking to see if the approval information had been correctly recorded in the system, when requested; processing, date stamping and distributing mail for the long term care unit; creating client folder labels; organizing and filing papers in the folders; pulling client files for the nurses' redetermination of clinical eligibility; gathering, transmitting and processing similar information for the nurses' approval of additional service request; archiving older files; retrieving files from archives, when necessary for further clinical review; and answering phones calls about the status of a medical eligibility determination.

Clerical Position # 15737 performed these functions for the HCBC clinical eligibility process. OIG has observed that the provision listed in the SJD – "to manage the tracking system for the Alzheimer's Disease and Related Disorders bibliography and video loan system" was not SPMP support. However, the position did not perform this function during the audit period. The SJD for this position was last revised in 1998 and is out of date. Further, OIG observes that "acting as a PC coach" is not a SPMP activity. Although the individual staff might answer nurses' questions about how to go to a data screen to look up necessary client information, such as client address, etc., staff did not act in a broader PC support function. Answering the nurses' questions about these aspects of the work was an appropriate clerical support function.

Position #16167 also provided critical clerical support for the HCBC medical eligibility process. As a clerical person, the individual does not need to have a medically related degree. The individual in position #16167 ensures that the opening of clinical eligibility for HCBC is supported. While position #15737 supports the ongoing medical review process, such as requests to revise the health services authorized under the plans of care once the cases are found clinically eligible.

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Finally, clerical position #17411 performed these essential support services on the nursing home medical eligibility determination side. Position #17411 would order certain requested supplies for the nurses, as at their request, to enable the nurses to do their job, items such as the medical eligibility forms or pamphlets that the nurses would give out to applicants. This staff would also collect the SPMP leave and attendance slips, a de minimis but essential task that SPMP staff need to perform.

While these clerical staff would use the computers to look up and record information in the computers for the nurses, they were nevertheless performing an important SPMP clerical support function. The use of computer software to gather, record and transmit information is simply the way modern offices operate.

Without this important clerical support, the long term care nurses would have drowned in paperwork and process. Their clerical services supporting the SPMP medical eligibility determination process is properly SPMP reimbursable. Again, NH DHHS invites OIG, if it has further questions, to engage in a meaningful exchange, as OIG did not discuss these issues with the State during the audit process.

Medicaid Medical Professionals

Overview of Surveillance Utilization and Review Subsystem (SURS)

Federal regulations require that each state Medicaid agency maintain a Medicaid Management Information System (MMIS). The MMIS is a claims processing and information retrieval system. A vital part of each state's MMIS is the Surveillance and Utilization Review Subsystem (SURS). SURS is a mandatory component of MMIS. The principal purpose of the SURS unit is to safeguard against inappropriate payments for Medicaid services. This is done by analyzing and evaluating provider service utilization to identify patterns of fraudulent, abusive, unnecessary and/or inappropriate utilization.

42 CFR 456.3 requires that state Medicaid agencies must have a statewide surveillance and utilization program to safeguard against unnecessary or inappropriate use of Medicaid services and against excess payments. NH Code of Administrative Rules PART He-W 520.04, Surveillance and Utilization Review and Control, requires DHHS to assess the quality of the care, services, and supplies received by recipients and for which a Title XIX program has reimbursed providers; detect, correct and prevent occurrences of unnecessary or inappropriate medical care, service, or supply usage by recipients, or provision by providers, for which a Title XIX program has reimbursed providers; and ensure that accurate and proper reimbursement has been made for the care, services, or supplies provided.

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The DHHS SURS Unit fulfills that role for the State of New Hampshire. SURS staff for whom DHHS claims SPMP reimbursement perform analysis of Medicaid claims in accordance with federal requirements in order to determine the necessity and adequacy of utilization reviews by reviewing complex physician other Medicaid service providers billings. SURS staff also provides technical assistance and oversight of drug abuse screenings on pharmacy billings in the context of the DHHS pharmacy Lock-in program.

“Reviewing complex physician billings,” “providing technical assistance and drug abuse screenings of pharmacy billings,” and “assessing the necessity for and adequacy of medical care and services provided as in utilization review” are core SURS activities. They are also described as appropriate SPMP activities in the preamble to the Final SPMP regulations. 50 Fed. Reg. 46656 at page 46656 (Nov. 12, 1985).

In its draft audit, OIG recommends disallowance for two Medical Service Consultant II positions who worked in SURS (position # 43002 and position # 16221). OIG contends that a significant portion of the job activities of these two employees did not require medical knowledge or skills. As examples, OIG lists activities it maintains do not qualify as SPMP such as “...maintaining knowledge of the State’s MMIS systems, analyzing statistical data, responding to inquires regarding policy, recruiting providers, supervising office functions, and ensuring that providers submit claims that adhere to billing requirements.” It appears that OIG reached its decision to disallow the 75% funding rate for these two positions solely from review of supplemental job descriptions (SJD) without further inquiry.

In some instances, further inquiry relative to the SJD would have alleviated OIG’s concerns because the accountabilities listed in the SJD are, in fact, proper SPMP activities, albeit not clearly described. For example, working with the MMIS and analyzing statistical data is at the core of the SURS function of reviewing complex physician billings and of identifying excessive and medically unnecessary billings. This clearly meets the criteria for appropriate SPMP activities pursuant to 42 CFR 432.50(d)(1)(iii). See also 50 Fed. Reg. 46656 at page 46656 (Nov. 12, 1985) (utilization review activities specifically mentioned as meeting the SPMP criteria).⁸

Utilizing the MMIS to review complex physician or other medical provider billings is a job responsibility that requires professional medical knowledge and skills. By having skilled medical professionals performing this function New Hampshire is utilizing medical expertise to administer a critical function of the Medicaid program to ensure that such administration is medically sound as well as administratively efficient.

⁸ Reviewing complex physician billings is also specifically mentioned as an example meeting SPMP criteria in the Title XIX Financial Management Review Guide, #1: Skilled Professional Medical Personnel, CMS February 2002.

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Moreover, individuals without sufficient medical skill and knowledge simply could not perform the SURS function of reviewing medical claims information to detect fraudulent or abusive billing patterns or determine whether appropriate medical care is being provided. For example, the Medical Services Consultants II (MSC) may use their medical skill and knowledge to validate that a home health service is appropriate and whether it meets DHHS rules (either fee for service or waiver) by reviewing the medical record. To do this, the MSC will determine if the Medicaid recipient has a medical necessity for the service. They will consider factors such as whether the recipient is unable to perform their own injections of insulin, whether the recipient has decreased vision, peripheral neuropathy or whether the recipient has an infected foot sore and requires daily specialty dressing changes more than once daily. Clearly, the MSC requires medical skill and knowledge to review medical records to determine the medical necessity of the service that appears as a Medicaid claim in the MMIS.

Perhaps, NH DHHS should have been clearer and more precise in drafting bullet point accountabilities in the SJD for the MSC positions. For example, rather than risking inaccurate interpretation of a phrase such as "analyzing statistical data," New Hampshire could have inserted the word "medical" so as to leave no doubt regarding the type of data being analyzed. However, the actual job functions performed control over the draftsmanship of the SJD. See attached Affidavit of [REDACTED]

Some accountabilities listed on the SJD are simply not accurate and are not functions performed by the particular employee. The SJD is not necessarily reflective of what an individual employee does on a day-to-day basis. Moreover, SJDs have absolutely no relation to funding streams and issues such as federal matching funds are not considered when SJDs are written, which partially accounts for the imprecise nature of these documents. SJDs are written for the benefit of Human Resources and management purposes. The SJD is used to define the duties and work assignments for each position or group of positions in the New Hampshire state classified service. The SJD is used to support where a particular position or group of positions fits within state classified service. For example, when an employee seeks to have their position reclassified, a proposed SJD is submitted designed to support the upgrade within the state classification system. SJDs are part of the required "paperwork" associated with filling a state position. The SJD is signed by the employee and by the supervisor when the employee is hired into the position and is filed with the Human Resources Bureau along with several other documents used in the hiring process. The SJD may sometimes go years without amendment even though an amendment would be appropriate due to changes in the job functions or the structure of the organization over time.

OIG also recommends disallowance of the SPMP portion of the personnel costs claimed by New Hampshire for the Administrator of SURS (position #17410). The disallowance is based upon OIG's view that the position qualifications did not require medical knowledge or skills since the job description stated that the minimum requirement for the position was a bachelor's degree and did not specifically call for medical licensing or certification. OIG also found that certain job duties of the Administrator did not require medical knowledge or skills.

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The SJD reviewed by OIG requires "clinical experience in the field of nursing." A minimum qualification of clinical experience in the field of nursing requires a degree in nursing. The individual in the position presently and at the period of time in question held a nursing degree and is a licensed RN. Subsequent to the audit period, DHHS has revised the SJD to clarify that the position requires a nursing degree and a current nursing license. The job functions clearly require professional medical knowledge and skill in accordance with SPMP criteria despite a vague SJD. As previously noted, it is the job function that controls. See e.g., Washington State Department of Social and Health Services, DAB No. 1033 (1989) pp 7-8 of 12 (mere fact state may have filled position with non-SPMP cannot determine whether incumbent currently in position qualifies).

The Administrator of SURS must have medical expertise, skill and training to perform all of the duties and responsibilities of the position. As mentioned above, SURS is a federally required subsystem of the MMIS designed to safeguard against unnecessary or inappropriate use of Medicaid services and against excessive payments. Accordingly, all of the work of the Administrator of SURS, including all work involving the MMIS is directly and necessarily related to the medically based review of complex Medicaid claims in order to detect fraud and abuse.

It is essential that the Administrator of SURS have a nursing degree and specialized medical knowledge and skill in order to develop and administer SURS as a Medicaid State Plan requirement in a manner that is medically sound and administratively efficient. The Administrator utilizes specialized medical skill and knowledge to shape all aspects of the program including the design of Medicaid claims fraud and abuse detection tools that interact with the MMIS including fraud filters and "Bloodhound" claims guard, a software used by SURS to detect inappropriate Medicaid claims. That does not mean that the Administrator of SURS is "...evaluating the MMIS system [and] managing the claims processing system..." as someone with information technology skills would do in performing an IT job. The Administrator is working with MMIS and associated system tools only in the context of performing the core work of SURS, which is to review complex physician billings.

Again, this illustrates the deficiency inherent in relying heavily on the language of the SJD to reach conclusions regarding what individual employees do on a day-to-day basis. The context is critical. For example, the SJD of a Systems Analyst working for the Office of Information Technology may list the same accountability of "...evaluating the MMIS system [and] managing the claims processing system..." However, the identically listed accountabilities have entirely different meanings and describe entirely different jobs. While it surely would be improper to claim SPMP for the Systems Analyst, it is completely appropriate for New Hampshire to claim SPMP for the Administrator of SURS.

As discussed in the earlier section on supervision of medical staff and medical processes, SPMP skills are required and exercised for this function. To evaluate whether a particular client is appropriate for the pharmacy Lock-In program based on questionable use of certain drugs, as reflected in pharmacy billings, requires medical understanding. To determine whether the nurse

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SURS Medical Service Consultants II have considered the appropriate factors in a medical necessity over billing case, the Administrator must have an adequate medical background. See Preamble to the SPMP rules, 50 Fed. Reg. 46656 (Nov. 12, 1985) (intent of SPMP reimbursement is to encourage State agencies to employ SPMP personnel with medical expertise necessary to administer Medicaid program). See also previous discussion relative to Occupational Titles Dictionary recognition of medical supervisory role.

Medical Nurse Witness

OIG recommended disallowance of the personnel expenses associated with the medical nurse witness for Medicaid Legal Services, position #43004. OIG's finding was that although the position required a nursing license, the employee did not require such knowledge and skills to fulfill the duties and responsibilities of the position. The DHHS objects to the recommended disallowance.⁹

During the audit period, this position served as the DHHS medical witness who furnished expert medical opinions for the adjudication of administrative appeals from DHHS Medicaid medical eligibility denials under the Aid to the Permanently and Totally Disabled (APTD) and Medicaid for Employed Adults with Disability (MEAD) programs. In performing the job duties the person in this position utilized her medical expertise, knowledge and skill to prepare and testify on behalf of DHHS in administrative appeals from APTD and MEAD medically based denials. In order to perform this function, the Medical Services Consultant II reviewed and analyzed the medical records of Medicaid applicants to determine whether the medical eligibility denial was based upon a fully complete and fully developed medical record and whether it met or did not sufficiently meet the medical criteria for eligibility as applied to the Medicaid federally prescribed medical sequential evaluation.

The individual in this position served as the medical witness in approximately 30 administrative appeals per month during the period in question. In order to prepare to serve as expert witness, the Medical Consultant II had to review medical records to determine whether the medical eligibility decision under appeal was supported by the medical record. This often required review of new medical records and evidence submitted shortly prior to and sometimes at the hearing. See attached Affidavit of [REDACTED]

⁹ In a preliminary discussion in correspondence dated January 18, 2008, the NH DHHS stated that this employee was assigned to an incorrect job number. As previously indicated the State has reviewed the matter more fully and revised a number of its preliminary observations. Accordingly, the Department hereby withdraws its prior concession that the Policy Specialist (Medical Services Consultant II, position #43004) did not qualify for SPMP and hereby submits that the enhanced rate of 75% was appropriate because the position and the function met the criteria for SPMP.

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An individual without such specialized medical knowledge and skills could not serve in this position as medical witness. "Furnishing expert medical opinions for the adjudication of administrative appeals" is specifically approved as meeting the SPMP criteria in the Final Regulations at 50 Fed. Reg. 46656 and also in the February 2002 CMS SPMP guidance document.

Special Medical Services (SMS)

The OIG Draft audit makes a recommended disallowance attributable to personnel costs relative to job numbers 95601100 and 95601101, Special Medical Services (SMS). The DHHS objects to the recommended disallowance based upon the following.

The OIG maintains that the job activities of the 5 Public Health Nurse Coordinators (positions # 19624, 42998, 40327, 14807 and 14706) included direct medical services or that they did not require medical knowledge or skills. OIG is mistaken in its assertion that the Public Health Nurse Coordinators provided "direct on-site specialty care" and this was direct medical services. 42 CFR 432.50(d)(1)(i) is clear that the enhanced 75% rate is for activities that are directly related to the administration of the Medicaid program and do not include expenditures for medical assistance. However, the Public Health Nurse Coordinators are not providing medical assistance. See Affidavit of [REDACTED].

It appears that OIG concluded that the Public Health Nurse Coordinators' job activities included providing medical assistance from language contained in the SJD. The accountability listed on the Public Health Nurse Coordinator SJD that likely gave OIG this impression reads as follows:

- *Provides direct, on-site specialty nursing care through assessment, planning, implementation and evaluation of treatment/education plans at clinics and/or home visits as a member of the medical team.*

Contrary to OIG's finding, the Public Health Nurse Coordinators do not provide direct medical services. The Public Health Nurse Coordinators provide care coordination and assessment of the necessity and adequacy of medical care and services required by individual recipients.

SMS, through the Public Health Nurse Coordinators, provides New Hampshire families with coordination of available medical resources and helps them obtain specialty health care services for their eligible children with physical disabilities, chronic illnesses and special health care needs. SMS provides care coordination services, integration of care with child development and neuromotor clinics; nutritional and feeding/swallowing consultation; and coordination of psychological and physical therapy services. It also coordinates with the Neuromotor Disabilities Clinic, a statewide network of five specialty clinics, which are family-centered, community based and interdisciplinary. Public Health Nurse Coordinators provide these services through case management activities, working with the professional medical community. The Public Health Nurse Coordinators do not practice medicine or provide direct medical care. See Affidavit of [REDACTED].

Clearly, the assessment of need and coordination of available medical resources requires specialized medical knowledge and skill. "Coordination of available medical resources" is a proper SPMP function. Preamble to the SPMP regulation, 50 Fed. Reg. 46655. The Public Health Nurse Coordinators are absolutely critical in administering New Hampshire's Medicaid program in a manner that is medically

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sound as well as administratively efficient. For example, the Public Health Nurse Coordinators assess the medical needs and coordinate available medical resources for children with special health care needs who have, or are at increased risk for chronic physical, developmental, behavioral, or emotional conditions, which require health and related services of a type beyond that required by children generally. Special medical needs addressed by the Public Health Nurse Coordinators include cerebral palsy, neuromotor deficits, epilepsy, asthma and autism spectrum disorders.

OIG also indicated in supplemental information provided in response to a DHHS request that the Public Health Nurse Coordinators engage in non-SPMP activities such as "developing clinical policies, teaching seminars and clinics and determining medical condition eligibility." As stated above, the language of the SJD is imprecise and OIG appears to reach certain conclusions regarding job functions based upon a review of the SJD. The DHHS maintains that all job functions of the Public Health Nurse Coordinators are directly related to the determination of the medical necessity and coordination of specific medical services.

OIG also recommends disallowance for SPMP reimbursement associated with the SMS secretary (position # 42996) because, it contends, skilled professional medical staff did not directly supervise the secretary. The DHHS objects to this disallowance because the day-to-day secretarial tasks of this position were supervised by the Public Health Nurse Coordinators. The secretary pulled charts, requested medical records, prepared correspondence, typed notes dictated by the medical team and perform all traditional clinical tasks for the Public Health Nurse Coordinators that are directly necessary for the completion of the professional medical responsibilities and functions of the skilled professional medical staff. SPMP directly supervised this clerical person.

According to DHHS payroll record and contrary to OIG findings, as conveyed in the OIG supplemental transmittals, it appears that at three of the five Public Health Nurse Coordinators were never charged to job numbers 95601100 or 95601101 during the audit period, but were instead charged at the 50% administrative rate. DHHS maintains that all five Public Health Nurse Coordinator positions and a directly supporting secretary position could have been properly charged at the 75% enhanced SPMP rate. However, we estimate that the large majority of the clients served by SMS are Medicaid enrolled. The percentage of enrolled Medicaid clients may exceed 80%. It is not clear that NH DHHS cost allocated in a manner that accurately reflects the Medicaid portion of SPMP related work of the SMS unit. Thus, the NH DHHS reserves the right to adjust its FFP claim accordingly. To the extent that any adjustment is time barred pursuant to 45 CFR 95.1, such claim is allowable pursuant to 45 CFR 95.19(b). In any case, it does not appear that Medicaid was over charged for SPMP activities of the Special Medical Unit, but rather in the aggregate, undercharged.

Disability Determination Professional Staff (DDU)

OIG recommends disallowance for the personnel costs claimed at the enhanced 75% rate for a Program Specialist (position # 15753), Medical Services Consultant (position #19815), Supervisor IV (position #40345) and Clerk IV (position #12380). OIG apparently reviewed a SJD for the Program Specialist # 15753 that did not relate to the job performed at DDU, but instead related to job functions the individual later performed after transfer to another Unit, SURS. However, the individual's functions at DDU were similar to those of position #19815 who also worked in the DDU during the audit period. The DHHS objects to the recommended disallowance as discussed below.

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With regard to positions #19815 and #15753, OIG maintains that activities performed did not require medical knowledge or skills (as reflected in position #19815). OIG questioned "analyzing statistical data and clarifying policies." OIG also indicated in a supplemental transmittal that additional non-SPMP activities relative to position #19815 included "providing training of unit processes, education of Federal regulations and State policies to new staff and contracted consultants, and expedition of medical record collection process when necessary by contacting health care providers directly via phone or fax on behalf of applicants."

The Medical Services Consultant I conducts medical eligibility determinations for the Medicaid eligibility disability categories of Aid to the Permanently and Totally Disabled (APTD), Medicaid for Employed Adults with Disability (MEAD) and Aid to the Needy Blind (ANB). The Medical Services Consultant is part of a professional medical review team that participates in medical reviews in accordance with State and Federal law in determining Medicaid medical eligibility for the APTD, MEAD and ANB programs.

Medicaid disability determinations are made in accordance with 42 CFR 435.541, which requires that the agency must "...obtain a medical report and other non-medical evidence for individuals applying for Medicaid on the basis of disability. The medical report and non-medical evidence must include diagnosis and other information in accordance with the requirements for evidence applicable to disability determinations under the SSI program specified in 20 CFR part 416, subpart I. 42 CFR 435.541 further requires that the agency must utilize a medical review team and "...the review team must be composed of a medical or psychological consultant and another individual who is qualified to interpret and evaluate medical reports and other evidence relating to the individual's physical or mental impairments...". NH DHHS uses nurses in Medical Services Consultant I positions to meet these Federal requirements of having a medical team determine medical eligibility for these programs and also to administer a medically sound and administratively efficient Medicaid program.

Clearly, this function requires professional medical knowledge and skill and such activities are properly claimed at the enhanced SPMP rate of 75%. The DHHS disagrees and objects to the examples of non-SPMP activities provided by OIG. Specifically, DHHS maintains that training on the medical eligibility process and the federal and state regulations regarding medical eligibility determinations is an inherent job function. Likewise, contacting health care providers directly in order to obtain medical records necessary to conduct a medical eligibility review as part of review team activities is squarely within the scope of proper SPMP activities.

In addition, OIG recommends disallowance of the enhanced SPMP rate charged by NH DHHS for the personnel costs associated with the Supervisor IV of the DDU (position #40345). As a basis for the disallowance, the OIG stated that the job activities did not qualify for the enhanced rate. In addition OIG found that the position qualifications did not require medical training because a bachelor's degree in business, public administration, or health services administration was acceptable for the supervisor position. The DHHS objects as follows.

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The individual in the Supervisor IV position during the audit period held a nursing degree and was licensed as a Nurse in New Hampshire. In order to efficiently supervise the medical functions of the DDU unit, this RN appropriately exercised SPMP reimbursable job functions. It is the job functions that are critical to the SPMP analysis and not necessarily the educational requirements listed in the SJD. See Washington State Department of Social and Health Services, DAB No. 1033 (1989) pp. 7-9 of 12 (mental health program administrator with masters in nursing science qualified under the educational limitation and also qualified for SPMP reimbursed status even though the job was previously filled by person without the requisite degree.). In the present case, the job duties and responsibilities of the Supervisor met the SPMP criteria.

Further, during the audit period, the Supervisor carried a substantial caseload in which she performed the medical sequential evaluation to determine medical eligibility and participated as an active member of the medical review team. As discussed in the earlier medical supervisory section, the RN supervisor exercised specialized medical knowledge and skill in order to develop and administer the Medicaid medical disability function in a manner that is medically sound and administratively efficient and supervise medical staff of MMIS. As allowed by 42 CFR section 433.34 (b)(4).

With respect to personnel related expenses, the NH DHHS has reviewed and identified that in some instances certain operating costs were incorrectly submitted at the SPMP rate, when they should not have been. This sum has been identified in the amount of \$10,753. NH DHHS will review its financial protocols to correct this issue.

Conclusion

OIG also recommends disallowance in association with the DDU Clerk IV (position # 12380) because the Supervisor position, according to OIG, purportedly did not qualify for SPMP. NH DHHS objects to this disallowance because the day to day secretarial tasks of this position were supervised by SPMP staff and the Clerk IV performed clerical work in support of the DDU SPMP function, such as pulling medical charts, requesting medical records, preparing correspondence and performing all traditional clinical tasks for the DDU that are directly necessary for the completion of the professional medical responsibilities and functions of the skilled professional medical staff.

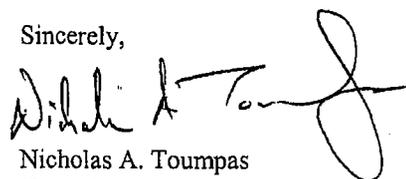
Errors

NH DHHS acknowledges that as part of the OIG review process that several errors have been identified. In particular, [REDACTED] (Position # 1983040) was incorrectly coded as a SPMP in Foster Health. [REDACTED] (Position #43000 SURS) and [REDACTED] (position #12271 QC) were incorrectly submitted as SPMP Medicaid Medical Professionals (SURS). [REDACTED] (Position #16097) in the Bureau of Elderly and Adult Services was incorrectly coded as a SPMP Medical Services Consultant. However, reimbursement for position #16097 would have been correctly submitted under a different line, Line 4a, as costs of in house activities directly attributable to the operation

For the reasons stated, New Hampshire maintains that it correctly sought SPMP reimbursement for skilled professional medical personnel, with the exception of certain limited identified instances. The NH DHHS requests that OIG reconsider its recommendation of disallowance. Please feel free to contact Mary P. Castelli, Senior Division Director, should you have additional questions.

Mr. Michael J. Armstrong
Regional Inspector General for Audit Services
Page 27
September 24, 2008

Sincerely,

A handwritten signature in black ink, appearing to read "Nicholas A. Toumpas". The signature is written in a cursive style with a large, looping flourish at the end.

Nicholas A. Toumpas
Commissioner

Enclosure

cc: James Fredyma, Controller

STATE OF NEW HAMPSHIRE
DEPARTMENT OF HEALTH AND HUMAN SERVICES

In the Matter of: *
*
NEW HAMPSHIRE DEPARTMENT * Report No. A-01-07-00011
OF HEALTH AND HUMAN SERVICES *
*
Response to OIG Review of New Hampshire's *
Medicaid Payments for Skilled Professional *
Medical Personnel at the Enhanced Rate From *
October 1, 2004, Through September 30, 2006 *

AFFIDAVIT OF [REDACTED] IN SUPPORT OF
THE RESPONSE OF THE STATE OF NEW HAMPSHIRE, DEPARTMENT OF
HEALTH AND HUMAN SERVICES

[REDACTED] duly sworn, deposes and says as follows:

1. I am currently employed as a Health Care Specialist Supervisor V (position # 19614) for the New Hampshire Department of Health and Human Services ("DHHS"), Division for Children, Youth and Families ("DCYF"), Foster Care Health Program.
2. In my capacity as Health Care Specialist Supervisor V, I am responsible for the administration of the Foster Care Health Program for the State of New Hampshire. I have been so employed and present since September 27, 1999 including during the period in question in this matter, October 1, 2004 through September 30, 2006.
3. I hold a nursing degree and I am currently licensed as a Registered Nurse in New Hampshire. Performance of the duties and responsibilities of my position of

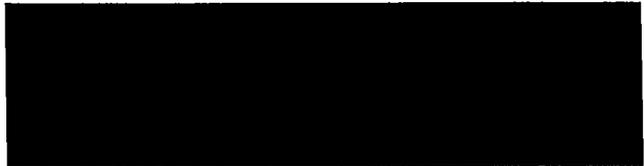
Health Care Specialist Supervisor V requires that I possess specialized medical knowledge and skill.

4. As part of my job, I oversee the statewide implementation of the Foster Care Health Program. I also supervise two Public Health Nurse Supervisor III's who also work solely within the Foster Care Health Program and utilize their specialized medical knowledge and skills in the performance of their duties. I do not supervise any other supervisor, Child Protection Social Worker or other staff.
5. I employ my specialized medical knowledge and skills in my supervision of the Public Health Nurse Supervisor III's in assigning and regulating caseloads, which requires an understanding of complex medical issues, the demands of specific medical conditions and trends as well as the medical resources available to meet the needs of the Foster Care Health Program. All of these factors that influence supervisory decisions require professional medical expertise in order to administer the Medicaid Program in a medically sound and administratively efficient manner.
6. To the extent that I use software to perform my job I use it to perform my medically related job functions more effectively as the State of New Hampshire attempts to rely less on paper and become more efficient in its operations.
7. My oversight responsibilities for the Foster Care Health Program include providing education and training about the program on the medical aspects of the Program so that others working with foster children better understand the particular health care needs of the children served by the Program.

8. In addition, I use my specialized medical knowledge and skills in the administration of the Foster Care Health Program including making contacts with medical providers on particular cases and serving as liaison on the medical aspects of the Foster Care Health Program with providers of services and other agencies that provide medical care.
9. Performance of my job duties and responsibilities as Health Care Specialist Supervisor V requires a high level of medical knowledge and skills that I call upon every day in the performance of my job and which I could not perform absent my medical knowledge and skill.

FURTHER AFFIANT SAYETH NOT.

Date: 9/22/08



STATE OF NEW HAMPSHIRE
MERRIMACK COUNTY

On this 22 day of September, 2008, before me personally appeared the above-named  and acknowledged that the foregoing statements are the truth to the best of her knowledge and belief.

Date: 1/7/09
Commission Expires



Notary Public/Justice of the Peace

STATE OF NEW HAMPSHIRE
DEPARTMENT OF HEALTH AND HUMAN SERVICES

In the Matter of:

NEW HAMPSHIRE DEPARTMENT
OF HEALTH AND HUMAN SERVICES

Report No. A-01-07-00011

Response to OIG Review of New Hampshire's *
Medicaid Payments for Skilled Professional *
Medical Personnel at the Enhanced Rate From *
October 1, 2004, Through September 30, 2006 *

AFFIDAVIT OF [REDACTED] IN SUPPORT OF
THE RESPONSE OF THE STATE OF NEW HAMPSHIRE, DEPARTMENT OF
HEALTH AND HUMAN SERVICES

[REDACTED] duly sworn, deposes and says as follows:

1. I am currently employed as a Nurse Supervisor V, Long Term Care Services (position # 16120) for the New Hampshire Department of Health and Human Services ("DHHS"), Bureau of Elderly and Adult Services, ("BEAS").
2. In my capacity as Nurse Supervisor V, I am responsible for the administration of medical eligibility determinations of those applying for the provision of nursing facility and community-based long-term care. I am also responsible for the supervision of all Medical Service Consultant Nurses who determine medical eligibility for the Program. I do not supervise other staff, however I do work in collaboration with and provide day-to-day direction to clerical staff that exclusively support the Medical Service Consultant Nurses.

3. I hold a nursing degree and I am currently licensed as a Registered Nurse in New Hampshire. Performance of the duties and responsibilities of my position of Nurse Supervisor V requires that I possess specialized medical knowledge and skill.
4. Under New Hampshire law, registered nurses must determine medical eligibility for nursing home level of care. Moreover, this assessment of needed medical care is a function that must be performed by a professional with medical skill and knowledge in order to be performed effectively.
5. I employ my specialized medical knowledge and skills in my supervision of the Medical Service Consultant Nurses and in assigning and regulating caseloads, which requires an understanding of complex medical issues, the demands of specific medical conditions and trends as well as the resources available to meet the needs of the Medicaid clients. All of these factors influence my supervisory decisions and require professional medical expertise in order to administer the Medicaid Program in a medically sound and administratively efficient manner.
6. I do not, nor do the Medical Service Consultant Nurse positions that I supervise, perform legal services associated with administrative appeals from DHHS medical assessments. To the extent my staff and I are involved our role is to furnish expert medical opinions for the adjudication of administrative appeals of our medical assessments and decisions.
7. In addition, I use my specialized medical knowledge and skills in the administration of the Program including outreach and making contacts with medical providers and serving as liaison on the medical aspects of the program with providers of services, case managers and agencies that provide medical care.

8. Performance of my job duties and responsibilities as Nurse Supervisor V requires a high level of medical knowledge and skills that I call upon every day in the performance of my job and which I could not perform absent my medical knowledge and skill.

FURTHER AFFIANT SAYETH NOT.

Date: 9/24/2008



STATE OF NEW HAMPSHIRE
MERRIMACK COUNTY

On this 24 day of SEPTEMBER, 2008, before me personally appeared the above-named  and acknowledged that the foregoing statements are the truth to the best of her knowledge and belief.

Date: 9.24.08



Notary Public/Justice of the Peace



STATE OF NEW HAMPSHIRE
DEPARTMENT OF HEALTH AND HUMAN SERVICES

In the Matter of:

NEW HAMPSHIRE DEPARTMENT
OF HEALTH AND HUMAN SERVICES

Report No. A-01-07-00011

Response to OIG Review of New Hampshire's
Medicaid Payments for Skilled Professional
Medical Personnel at the Enhanced Rate From
October 1, 2004, Through September 30, 2006

AFFIDAVIT OF [REDACTED] IN SUPPORT OF
THE RESPONSE OF THE STATE OF NEW HAMPSHIRE, DEPARTMENT OF
HEALTH AND HUMAN SERVICES

[REDACTED] duly sworn, deposes and says as follows:

1. I am currently employed as the Administrator for the New Hampshire Department of Health and Human Services ("DHHS"), Surveillance and Utilization Review ("SURS").
2. In my capacity as Administrator, I am responsible for the administration of Medicaid SURS for the State of New Hampshire. I have been so employed and present since March 25, 2000 including during the period in question in this matter, October 1, 2004 through September 30, 2006.
3. I hold a degree and I am currently licensed as a Registered Nurse in New Hampshire and the duties and responsibilities of my position requires specialized medical knowledge and skill.

4. My medical expertise, skill and training is essential to the performance of all duties and responsibilities of my position as Administrator of Surveillance Utilization Review subsystem (SURS), a federally required subsystem of the Medicaid Management Information System (MMIS) designed to safeguard against unnecessary or inappropriate use of Medicaid services and against excessive payments. Accordingly, my work with the MMIS is directly and inexorably related to the medically based analysis of Medicaid claims and as Administrator of SURS it is essential that I have a nursing degree and specialized medical knowledge and skill in order to develop, implement and utilize MMIS/SURS, specifically, fraud filters, and "Bloodhound" claims guard, a software used to detect inappropriate Medicaid claims.
5. As part of my job, I perform and supervise the performance of analyses of the necessity and adequacy of medical care and services in the context of utilization reviews. I perform and supervise the performance of medical reviews of complex physician and other Medicaid service providers. Further, I provide technical assistance and oversight of drug abuse screenings on pharmacy billings in the context of our pharmacy lock-in SURS reviews.
6. At all times during the period in question in this matter, October 1, 2004 through September 30, 2006, [REDACTED] (position #16221) and [REDACTED] (position #43002) worked in SURS as Medical Services Consultants II. Both positions performed analyses of the necessity and adequacy of medical care and services in the context of utilization reviews. Both positions perform medical

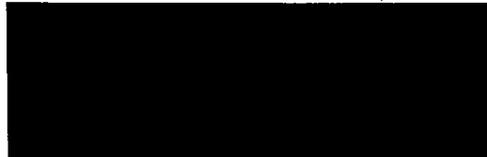
reviews of complex physician and other Medicaid service providers and require specialized medical knowledge and skill.

7. Understanding and use of the MMIS system is essential to carrying out medically based utilization reviews. For example, I utilize the MMIS/SURS provider profiling and exceptions processing in fulfilling my job duties and responsibilities. As the DHHS continues to develop the MMIS/SURS, we build and maintain a library of reporting Medicaid claims data. This includes examining procedure code combinations for specific conditions, combining "like" providers for profiling, and determining appropriate parameters for exceptions processing (i.e. what is an appropriate deviation from the norm for the treatment of certain conditions). Having a nursing degree and the specialized medical knowledge and skill is absolutely critical to the understanding of the Medicaid claims data needed to effectively perform the federally required SURs function.
8. By way of further example, in order to determine provider peer groups it is necessary to understand that comparing a cardiothoracic surgeon to a cardiologist would not be appropriate, because even though the patients may have similar conditions (heart related) how those conditions are treated and the expected services and outcomes would be very different between the two provider types and such specialized knowledge and skill is required in order to determine appropriate medical care is being provided and Medicaid is being billed appropriately.
9. Performance of my job duties and responsibilities as Administrator II of SURS requires a high level of medical knowledge and skills that I call upon every day in

the performance of my job and which I could not perform absent my medical knowledge and skill.

FURTHER AFFIANT SAYETH NOT.

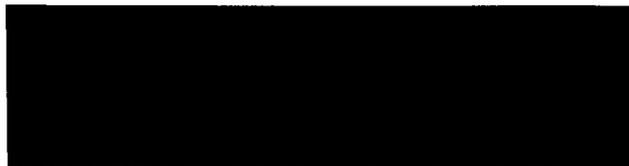
Date: 9/19/08



STATE OF NEW HAMPSHIRE
MERRIMACK COUNTY

On this 19th day of September 2008, before me personally appeared the above-named  and acknowledged that the foregoing statements are the truth to the best of her knowledge and belief.

Date: 9/19/08



Notary Public/Justice of the Peace

STATE OF NEW HAMPSHIRE
DEPARTMENT OF HEALTH AND HUMAN SERVICES

In the Matter of:

NEW HAMPSHIRE DEPARTMENT
OF HEALTH AND HUMAN SERVICES

Report No. A-01-07-00011

Response to OIG Review of New Hampshire's
Medicaid Payments for Skilled Professional
Medical Personnel at the Enhanced Rate From
October 1, 2004, Through September 30, 2006

AFFIDAVIT OF [REDACTED] IN SUPPORT OF
THE RESPONSE OF THE STATE OF NEW HAMPSHIRE, DEPARTMENT OF
HEALTH AND HUMAN SERVICES

[REDACTED] duly sworn, deposes and says as follows:

- 1 I am currently employed as an Administrator IV for the New Hampshire Department of Health and Human Services ("DHHS"), Office of Medicaid Business and Policy ("OMBP"). I have been so employed since December 8, 2006.
- 2 Prior to that date I was employed as an Administrator III (position #12435) for the New Hampshire Department of Health and Human Services ("DHHS"), Office of Medicaid Business and Policy ("OMBP"), Health Management Bureau. I was so employed from September 20, 1999 through December 7, 2006 including during the period in question in this matter, October 1, 2004 through September 30, 2006.
- 3 In my capacity as Administrator III, I was responsible for the administration of the Health Management Bureau, which included Special Medical Services (SMS) and the supervision of the Administrator II/ Bureau Chief in SMS (position # 14821).

4 As the former Bureau Chief of SMS and for all times of the audit period in question, I was familiar with the job duties, functions and the day-to-day activities of the SMS Public Health Nurse Coordinators. The Public Health Nurse Coordinators utilized their professional medical knowledge and skills to conduct case management activities on behalf of SMS enrolled clients, the majority of whom were Medicaid recipients. The Public Health Nurse Coordinators did not practice medicine or provide direct medical services to these clients.

FURTHER AFFIANT SAYETH NOT.

Date: 9-24-2008



STATE OF NEW HAMPSHIRE
MERRIMACK COUNTY

On this 24 day of September, 2008, before me personally appeared the above-named  and acknowledged that the foregoing statements are the truth to the best of her knowledge and belief.

Date: 9.24.08



Notary Public/~~Justice of the Peace~~

STATE OF NEW HAMPSHIRE
INTER-DEPARTMENT COMMUNICATION

DATE: March 25, 1999

FROM: [REDACTED]
Program Specialist

AT (OFFICE): Office of Family Services
Division for Children, Youth
and Families

SUBJECT: Request for 75% Medicaid Funding for Eight Foster Care Health Care Specialist, One Foster Care Health Specialist Coordinator and One Foster Care Health Care Supervisor

TO: [REDACTED]

DCYF requests 75% Medicaid funding (Federal Financial Participation - FFP) for the following new DCYF staff positions: eight (8) Foster Care Health Care Specialist, LG 20; one (1) Foster Care Health Care Specialist Coordinator, LG 22; and one (1) Foster Care Health Care Specialist Supervisor, LG 26. The Foster Care Health Specialist positions to be located in the district offices, the Coordinator and Supervisor to be located at State Office.

The Foster Care Health Specialist (generic job classification: Public Health Nurse Coordinator) will be serving Medicaid eligible children placed out of home (98% of all children placed out of home are covered under Medicaid) for children receiving services after being determined to be either at risk of abuse or neglect or substantiated as being abused or neglected; or is considered a Child in Need of Services (CHINS) or a delinquent children served by DCYF who is not an inmate of a public institution.

The Foster Care Health Care Specialist are necessary for the proper and efficient administration of the State plan. The New Hampshire State Plan requires that "Child Health Support Services are covered when pre-approved by DCYF. Covered services for foster children are provided by RN's and include a brief health screening at the time of the child's placement, referrals for comprehensive health and development assessments, health planning conferences, and follow-up care;" page 6-b, TN No: 97-07 and page 5-c, TN No: 97-07.

The functions provided by the Foster Care Health Care Specialist are medically intensive and differ from the services provided under the state plan for Targeted Case Management. The definition of services provided under Targeted Case Management is a set of interrelated activities under which the responsibility for locating, coordinating, and monitoring appropriate services for an individual rests with the specific person within the case management provider agency. The purpose of case management is to assist individuals in gaining access to needed medical, social, educational, and other services. The case manager must be a qualified child protective social worker, a juvenile services officer, or any other individual or agency designed by the NH DCYF.

The Foster Care Health Care Specialists are, at a minimum, registered nurses with two years nursing experience in Pediatrics, Community Health or in Child Development. The Foster Care Health Specialist Coordinator is, at a minimum, a registered nurse with a BS in Nursing or allied field of Social Work or Child Development with four (4) years nursing experience in Pediatrics, Community Health or in Child Development. The Foster Care Health Supervisor is, at a minimum, a registered nurse with a BS in Nursing or allied field of Social Work or Child Development and five (5) years nursing experience, two of which were in a supervisory capacity.

The necessity of meeting the complex and unique medical needs for children in foster care in an ever-growing elaborate managed care environment has required the addition within the district offices of skilled professional medical personnel. As part of the targeted case management functions, the child protective social worker or juvenile services officer will exchange information with the Foster Care Health Specialist such as the initial collection of assessment data, development of an individualized plan of care, and the coordination of needed services and providers. The Foster Care Health Specialists will intently focus on the specific health aspects of the child's care such as:

- Identification of either a private or state paid Managed Care Organization;
- Ascertaining the name of the child's primary health care physician;
- Coordinating prior authorization of medical care as provided in the child's individualized plan of care;
- Development of a specific health care plan;
- Facilitating health care planning meetings;
- Ensuring all health care recommendations are observed;
- Attends home visits to foster or biological families to assess health teaching needs;
- Advocates for the health needs of children in placement among health and community providers; and
- Recruiting health and community providers to enroll as Medicaid or state paid Managed Care Organization providers.

DCYF requests FFP of 75% in the Foster Care Health Specialist expenditures for salary or other compensation, fringe benefits, travel, per diem, and training as set forth in CFR 42 432.50 "Rates of FFP. (1) For skilled professional medical personnel...of the Medicaid agency, the rate is 75 percent." The Foster Care Health Care Specialists, Coordinator and Supervisor meet the definition of "skilled professional medical personnel who have professional education and training in the field of medical care or appropriate medical practice and who are in an employer-employee relationship with the Medicaid agency" as set forth in CFR 42 432.2.

The yearly costs, with salaries at maximum, will be as follows:

Position	Labor Grade	Salary Maximum Step 4	Number of Positions	Total Yearly Salary Costs	75% Medicaid Match	25% State Match
Foster Care Health Care Specialist	LG 20	\$33,228	x 8	\$265,824	\$199,368	\$66,456
Foster Care Health Care Coordinator	LG 22	\$36,153	x 1	\$36,153	\$27,115	\$9,038
Foster Care Health Care Supervisor	LG 26	\$43,407	x 1	\$43,407	\$32,555	\$10,852
			Yearly Totals:	\$345,384	\$259,038	\$86,346

Thank you for your consideration in this matter.