



Office of Audit Services
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July 21, 2010

Report Number: A-01-09-00011

Brenda M. Harvey
Commissioner
Department of Health and Human Services
221 State Street
State House Station 11
Augusta, Maine 04333

Dear Commissioner Harvey:

Enclosed is the U.S. Department of Health & Human Services (HHS), Office of Inspector General (OIG), final report entitled *Review of Medicaid Disproportionate Share Hospital Payments Made by Maine to the Riverview Psychiatric Center*. 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.

Section 8L of the Inspector General Act, 5 U.S.C. App., requires that OIG post its publicly available reports on the OIG Web site. Accordingly, this report will be posted at <http://oig.hhs.gov>.

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) 565-9281 or through email at Curtis.Roy@oig.hhs.gov. Please refer to report number A-01-09-00011 in all correspondence.

Sincerely,

/Michael J. Armstrong/
Regional Inspector General
for Audit Services

Enclosure

Direct Reply to HHS Action Official:

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

Department of Health & Human Services

**OFFICE OF
INSPECTOR GENERAL**

**REVIEW OF MEDICAID
DISPROPORTIONATE SHARE
HOSPITAL PAYMENTS MADE BY
MAINE TO THE RIVERVIEW
PSYCHIATRIC CENTER**



Daniel R. Levinson
Inspector General

July 2010
A-01-09-00011

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

Section 1923 of the Social Security Act, as amended, requires States to make additional Medicaid disproportionate share hospital (DSH) payments to hospitals that serve disproportionately large numbers of low-income patients. The Omnibus Budget Reconciliation Act of 1993 limits these payments to a hospital's uncompensated care costs, which are the annual costs incurred to provide services to Medicaid and uninsured patients less payments received for these patients. This limit is known as the hospital-specific DSH limit. In addition, a Centers for Medicare & Medicaid Services (CMS) letter to State Medicaid Directors (1994 CMS letter) stated that the cost of services included in a hospital's DSH limit could not exceed the amount that would be allowable under Medicare principles of cost reimbursement.

States have considerable flexibility in defining their DSH payments under sections 1923(a) and (b) of the Social Security Act. Each State prepares a State plan that defines how it will operate its Medicaid program, including the DSH program, and submits the plan to CMS for approval.

The Maine Department of Health and Human Services (the State agency) administers MaineCare, the Maine Medicaid program. Pursuant to the State plan, DSH payments made to an institution for mental diseases (IMD) are limited to the costs of services furnished to MaineCare members and individuals with no source of third-party coverage, minus payments received for these services. The Riverview Psychiatric Center (Riverview) is a state-operated IMD located in Augusta, Maine. The State agency claimed DSH payments made to Riverview totaling \$24,592,248 (\$15,524,476 Federal share) for State fiscal year (FY) 2007 and \$27,635,823 (\$17,493,300 Federal share) for FY 2008.

OBJECTIVE

Our objective was to determine whether the DSH payments that the State agency made to Riverview and claimed for FYs 2007 and 2008 exceeded the hospital-specific DSH limits imposed by Federal requirements and the State plan.

SUMMARY OF FINDINGS

The DSH payments that the State agency made to Riverview and claimed for FY 2007 did not exceed the hospital-specific DSH limit imposed by Federal requirements and the State plan. However, the DSH payments claimed for FY 2008 exceeded the hospital-specific DSH limit by \$2,115,874 (\$1,339,349 Federal share). Specifically, the State agency did not limit allowable costs (1) to costs incurred by Medicaid and uninsured patients and (2) to costs associated with beds certified for Medicare participation.

We attribute the excess DSH payments to the State agency's lack of policies and procedures to ensure that the DSH payments made to Riverview did not exceed the hospital-specific DSH limits imposed by Federal requirements and the State plan.

RECOMMENDATIONS

We recommend that the State agency:

- refund \$1,339,349 to the Federal Government,
- work with CMS to review DSH payments claimed after our audit period and refund any overpayments, and
- establish policies and procedures to ensure that it complies with Federal requirements and the State plan in calculating future hospital-specific DSH limits.

STATE AGENCY COMMENTS

In its written comments on our draft report, the State agency concurred with our findings and recommendations. The State agency's comments are included in their entirety as Appendix B.

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INTRODUCTION

BACKGROUND

Medicaid Program

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

Medicaid Disproportionate Share Hospital Program

The Omnibus Budget Reconciliation Act of 1981 established the disproportionate share hospital (DSH) program, which is codified in section 1923 of the Act. This section requires State Medicaid agencies to make additional payments to hospitals that serve disproportionately large numbers of low-income patients. Sections 1923(a) and (b) of the Act give States considerable flexibility in defining their DSH programs.

The Omnibus Budget Reconciliation Act of 1993 requires States to limit DSH payments made to individual hospitals to each hospital's uncompensated care costs, which are the annual allowable costs that the hospital incurs for providing services to Medicaid and uninsured patients less any payments that the hospital receives for these patients. This limit is known as the hospital-specific DSH limit. A CMS letter to State Medicaid Directors dated August 17, 1994 (1994 CMS letter) clarified the DSH provisions of the Omnibus Budget Reconciliation Act of 1993. The letter stated that the cost of services included in a hospital-specific DSH limit could not exceed the amount that would be allowable under Medicare principles of cost reimbursement.

Maine Disproportionate Share Hospital Program

The Maine Department of Health and Human Services (the State agency) administers MaineCare, the Maine Medicaid program. The Federal Government pays its share of Medicaid expenditures, including DSH expenditures, according to a formula established in section 1905(b) of the Act. That share is known as the Federal medical assistance percentage (FMAP). The FMAP in Maine was approximately 63 percent during our audit period. Pursuant to the State plan, DSH payments made to an institution for mental diseases (IMD) are limited to the costs of services furnished to MaineCare members and individuals with no source of third-party coverage, minus payments received for these services.

Institutions for Mental Diseases

Section 1905(i) of the Act defines an IMD as a hospital, nursing facility, or other institution of more than 16 beds that is primarily engaged in providing diagnosis, treatment, or care of persons

with mental diseases. Psychiatric hospitals (including State-operated psychiatric hospitals) with more than 16 beds are considered IMDs.

Riverview Psychiatric Center

The Riverview Psychiatric Center (Riverview) is a state-operated IMD located in Augusta, Maine. It has 92 beds, of which 86 are certified for Medicare participation. Riverview provides support, treatment, and care, including intensive 24-hour inpatient psychiatric services, to adults with severe mental illness. The State agency claimed DSH payments made to Riverview totaling \$24,592,248 (\$15,524,476 Federal share) for State fiscal year (FY) 2007 and \$27,635,823 (\$17,493,300 Federal share) for FY 2008.

OBJECTIVE, SCOPE, AND METHODOLOGY

Objective

Our objective was to determine whether the DSH payments that the State agency made to Riverview and claimed for FYs 2007 and 2008 exceeded the hospital-specific DSH limits imposed by Federal requirements and the State plan.

Scope

We reviewed DSH payments totaling \$52,228,071 (\$33,017,776 Federal share) that the State agency made to Riverview and claimed for FYs 2007 and 2008.

Our objective did not require an understanding or assessment of the State agency's complete internal control structure. We limited consideration to those controls related to the State agency's methodology for determining hospital-specific DSH limits, processing claims, and determining subsequent reimbursements.

We performed our fieldwork at the State agency in Augusta, Maine, from October 2009 to April 2010.

Methodology

To accomplish our audit objective, we:

- reviewed applicable Federal laws, regulations, and guidance and the CMS-approved State plan;
- interviewed officials from CMS, the State agency, Maine's fiscal intermediary, and Riverview;
- reconciled the DSH payments that the State agency claimed during FYs 2007 and 2008 on Form CMS-64, "Quarterly Medicaid Statement of Expenditures for the Medical Assistance Program," to the State agency's detailed accounting records;

- reviewed the State agency’s methodology for calculating hospital-specific DSH limits;
- traced total costs included in the hospital-specific DSH limit calculations to the hospital cost reports and other supporting documentation; and
- evaluated total costs included in the hospital-specific DSH limit calculations for the audit period to determine whether they were reasonable and allowable for Federal reimbursement.

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 objective.

FINDING AND RECOMMENDATIONS

The DSH payments that the State agency made to Riverview and claimed for FY 2007 did not exceed the hospital-specific DSH limit imposed by Federal requirements and the State plan. However, the DSH payments claimed for FY 2008 exceeded the hospital-specific DSH limit by \$2,115,874 (\$1,339,349 Federal share). Specifically, the State agency did not limit allowable costs (1) to costs incurred by Medicaid and uninsured patients and (2) to costs associated with beds certified for Medicare participation.

We attribute the excess DSH payments to the State agency’s lack of policies and procedures to ensure that the DSH payments made to Riverview did not exceed the hospital-specific DSH limits imposed by Federal requirements and the State plan.

PROGRAM REQUIREMENTS

Hospital-Specific Disproportionate Share Hospital Limits

Section 1923(g)(1)(A) of the Act states that DSH payments to a hospital may not exceed:

... the costs incurred during the year of furnishing hospital services (as determined by the Secretary and net of payments under this title [Title XIX], other than under this section, and by uninsured patients) by the hospital to individuals who either are eligible for medical assistance under the State plan or have no health insurance (or other source of third party coverage) for services provided during the year.

The Maine State plan, Attachment 4.19-A, page 9, effective July 1, 2006, incorporates these same requirements by stating that DSH payments made to IMDs are limited to 100 percent of the costs of services furnished to MaineCare members and uncompensated care services provided to individuals with no source of third-party coverage, minus payments that the State agency made for services furnished to MaineCare members.

CMS clarified the DSH provisions of the Omnibus Budget Reconciliation Act of 1993 in the 1994 CMS letter, in which it states:

. . . in defining “costs of services” under this provision [the hospital-specific DSH limit], HCFA¹ would permit the State to use the definition of allowable costs in its State plan, or any other definition, as long as the costs determined under such a definition do not exceed the amounts that would be allowable under the Medicare principles of cost reimbursement . . . HCFA believes this interpretation of the term “costs incurred” is reasonable because it provides States with a great deal of flexibility up to a maximum standard that is widely known and used in the determination of hospital costs.

Program Participation Requirements

CMS’s State Operations Manual, section 1000B, states that when services are furnished through institutions that must be certified for Medicare, the institutional standards must be met for Medicaid as well.

Federal regulations (42 CFR § 440.140(a) and sections 1905(a)(16), 1905(h)(1)(A), and 1861(f) of the Act) require IMDs to meet Medicare program participation requirements to receive federally matched Medicaid funding. These regulations require hospitals that participate in the Medicaid program to establish compliance with the basic Medicare conditions of participation requirements that address issues such as licensing, quality of care, safety, patient rights, self-assessment and performance improvement, service availability, utilization and review, and other requirements that apply to all hospitals as stated at 42 CFR §§ 482.1 through 482.57.

IMDs must meet these requirements before they can receive federally matched Medicaid funding, including DSH payments.

CALCULATIONS OF HOSPITAL-SPECIFIC DISPROPORTIONATE SHARE HOSPITAL LIMITS

The DSH payments that the State agency made to Riverview for FY 2008 exceeded the hospital-specific DSH limit imposed by Federal requirements and the State plan. Specifically, the State agency overstated its DSH limit calculation by including the following costs:

- **Costs Not Incurred for Medicaid and Uninsured Patients.** The State agency used data from the Medicare cost reports to determine the costs that were allowable under Medicare

¹ The Health Care Financing Administration, which is now CMS.

cost principles. However, contrary to Federal requirements, these costs were not limited to the costs incurred by Medicaid and uninsured patients. Instead, the costs that the State agency used in the DSH limit calculations were incurred by all patients, including those covered by Medicare or private insurance.

Costs Associated with Uncertified Beds. The State agency did not limit costs in the DSH limit calculations to those associated with Riverview's 86 CMS-certified beds. Instead, contrary to Federal requirements, the total costs from the Medicare cost reports that the State Agency used in the DSH limit calculations were associated with all 92 beds. Six of Riverview's beds were not certified for Medicare participation because they were reserved for patients placed in administrative segregation.²

We recalculated the hospital-specific DSH limit by determining the allowable costs from the Medicare costs reports based on the percentage of the hospital's total inpatient days that were attributed to Medicaid and uninsured patients residing in CMS-certified beds.

PAYMENTS CLAIMED IN EXCESS OF HOSPITAL-SPECIFIC DISPROPORTIONATE SHARE HOSPITAL LIMITS

As a result of overstating costs in its calculation of the hospital-specific DSH limit, the State agency claimed a total of \$2,115,874 (\$1,339,349 Federal share) for DSH payments made to Riverview during FY 2008 that exceeded the DSH limit imposed by Federal requirements and the State plan. Appendix A contains summary information on the DSH limit calculation and recalculation for FY 2008.

LACK OF POLICIES AND PROCEDURES

The State agency did not have policies and procedures to ensure that the DSH payments made to Riverview did not exceed the hospital-specific DSH limits imposed by Federal requirements and the State plan.

RECOMMENDATIONS

We recommend that the State agency:

- refund \$1,339,349 to the Federal Government,
- work with CMS to review DSH payments claimed after our audit period and refund any overpayments, and
- establish policies and procedures to ensure that it complies with Federal requirements and the State plan in calculating future hospital-specific DSH limits.

² Administrative segregation is the temporary separation of a patient on forensic status from other patients and the normal living environment for the purpose of maintaining safety and security while a transitional plan, including a safety assessment, is completed.

STATE AGENCY COMMENTS

In its written comments on our draft report, the State agency concurred with our findings and recommendations. The State agency's comments are included in their entirety as Appendix B.

APPENDIXES

**APPENDIX A: STATE AGENCY'S DISPROPORTIONATE SHARE HOSPITAL
LIMIT CALCULATION FOR STATE FISCAL YEAR 2008 AND
OFFICE OF INSPECTOR GENERAL'S RECALCULATION**

	FY 2008 State Agency Calculation	FY 2008 OIG¹ Recalculation
A Total Allowable Costs		
Allowable Costs based on Medicare cost principles ²	\$ 31,725,006	\$ 31,725,006
B Allocation of Allowable Costs		
Days Attributed to Medicare, Privately Insured, and Patients Residing in Uncertified Beds	5,266	5,266
Days Attributed to Medicaid and Uninsured Patients Residing in Certified Beds	26,923	26,923
Total Inpatient Days	<u>32,189</u>	<u>32,189</u>
Total Inpatient Days Allocated to Medicaid and Uninsured Patients Residing in Certified Beds	32,189	26,923
Percentage of Allocated Inpatient Days	100%	84%
<i>Total Allocated Allowable Costs</i>	\$ 31,725,006	\$ 26,534,914
C Less: Third Party Revenues		
Medicaid Reimbursement	\$ 857,048	\$ 1,015,243
Self-Pay Reimbursement	0	0
Medicare Reimbursement	1,380,139	0
Private Insurance Reimbursement	109,183	0
<i>Total Revenue Offsets</i>	<u>\$ 2,346,370</u>	<u>\$ 1,015,243</u>
D DSH Limit Calculation¹		
DSH Limit (B - C)	\$ 29,378,636	\$ 25,519,670
Blended FMAP Rate ^{1,3}	63.30%	63.30%
<i>Total DSH Limit (Federal Share)</i>	\$ 18,596,677	\$ 16,153,951
E DSH Payment		
State Agency DSH Payment (Federal Share)	\$ 17,493,300	\$ 17,493,300
F Amount in Excess of/(Under) the DSH Limit (E- D)	\$ (1,103,377)	\$ 1,339,349

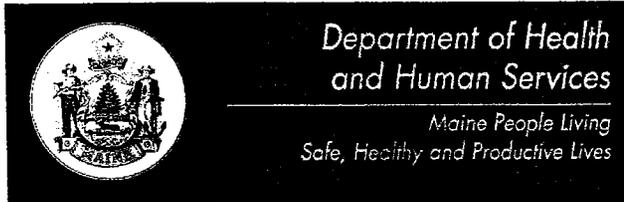
¹ OIG = Office of Inspector General.

FMAP = Federal medical assistance percentage.

DSH = Disproportionate Share Hospital.

² Per the hospital's Medicare cost report: total costs from worksheet B, part I, column 27, line 95; hospital-based physician costs from worksheet A-8-2, column 4, line 101; and certified registered nurse anesthetists costs from worksheet A-8, column 2, line 40.

³ There were two FMAP rates in effect for Maine during State fiscal year 2008: 63.27% for the first quarter and 63.31% for the last three quarters. Therefore, we applied the average FMAP for the four quarters.



John E. Baldacci, Governor

Brenda M. Harvey, Commissioner

Department of Health and Human Services
Commissioner's Office
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June 24, 2010

Mr. Michael J. Armstrong, Regional Inspector General for Audit Services.
Office of Audit Services, Region I
John F. Kennedy Federal Building, Room 2425
Boston, MA 02203

Re: *Review of Medicaid Disproportionate Share Hospital Payments Made by Maine to the Riverview Psychiatric Center – Draft Report Number A-01-09-00011*

Dear Mr. Armstrong:

The Department of Health and Human Services (DHHS) appreciates the opportunity to respond to the above mentioned draft audit report. We offer the following comments in relation to the recommendations on Page 5 of this report.

For your convenience, below we include the summary finding and list each recommendation followed by our response. Each response includes the State's proposed corrective action plan which we believe will bring the State into compliance with Federal requirements.

Finding:

The Disproportionate Share Hospital (DSH) payments that the State agency made to Riverview and claimed for FY 2007 did not exceed the hospital-specific DSH limit imposed by Federal requirements and the State plan. However, the DSH payments claimed for FY 2008 exceeded the hospital-specific DSH limit by \$2,115,874 (\$1,339,349 Federal share). Specifically, the State agency did not limit allowable costs (1) to costs incurred by Medicaid and uninsured patients and (2) to costs associated with beds certified for Medicare participation.

We attribute the excess DSH payments to the State agency's lack of policies and procedures to ensure that the DSH payments made to Riverview did not exceed the hospital-specific DSH limits imposed by Federal requirements and the State plan.

Recommendation:

Refund \$1,339,349 to the Federal Government.

Response:

DHHS agrees with this recommendation. DHHS has discussed this issue with staff in the CMS Boston Regional Office. Based on that discussion, DHHS will return the 2008 overpayment of \$1,339,349 and receive the 2007 underpayment of \$418,568 identified during the exit conference which will be on the next CMS-64 Form filed after issuance of the final report.

Mr. Michael J. Armstrong
Page 2

Recommendation:

Establish policies and procedures to ensure that it complies with Federal requirements and the State plan in calculating future hospital-specific DSH limits.

Response:

DHHS agrees with this recommendation. DHHS is working with an independent external CPA firm to refine the DSH limit calculations. Policies and procedures will be developed and implemented. The State is planning to integrate the results of this work into the current quarterly or annual IMD-DSH reporting to CMS.

Recommendation:

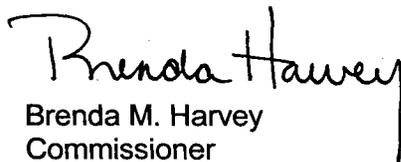
Work with CMS to review DSH payments claimed after our audit period and refund any overpayments.

Response:

DHHS agrees with this recommendation. As the annual DSH limit calculations are filed (as earlier noted), DHHS staff will work with personnel in the Boston Regional Office to return overpayments, if any.

We appreciate the time spent in Maine by OIG staff reviewing Maine's Medicaid disproportionate share hospital payments made to the Riverview Psychiatric Center. We believe this effort will enable us to perform this function more accurately in the future.

Sincerely,


Brenda M. Harvey
Commissioner