

Department of Health and Human Services

**OFFICE OF
INSPECTOR GENERAL**

**NEW YORK IMPROPERLY CLAIMED
MEDICAID REIMBURSEMENT FOR
SOME HOME HEALTH SERVICES
CLAIMS SUBMITTED BY CERTIFIED
HOME HEALTH AGENCIES IN NEW
YORK CITY**

*Inquiries about this report may be addressed to the Office of Public Affairs at
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Daniel R. Levinson
Inspector General

November 2012
A-02-10-01022

Office of Inspector General

<https://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 Act), the Medicaid program provides medical assistance to low-income individuals and individuals with disabilities. The Federal and State Governments jointly fund and administer Medicaid. At the Federal level, the Centers for Medicare & Medicaid Services (CMS) administers Medicaid. Each State administers its Medicaid program in accordance with a CMS-approved State plan. Although each State has considerable flexibility in designing and operating its Medicaid program, it must comply with applicable Federal requirements. Pursuant to section 1905(b) of the Act, the Federal Government pays its share of a State's medical assistance expenditures under Medicaid based on the Federal medical assistance percentage, which varies depending on a State's relative per capita income.

In New York State, the Department of Health (State agency) administers Medicaid. The home health services program is operated by the State agency's Office of Long Term Care. Under the program, Certified Home Health Agencies (CHHA) provide preventive, therapeutic, and/or rehabilitative services to Medicaid beneficiaries.

Pursuant to Federal regulations, home health services are provided to a beneficiary at the beneficiary's place of residence and on his or her physician's orders as part of a written plan of care that the physician reviews every 60 days. Many providers use Form CMS-485, Home Health Certification and Plan of Care, as the required plan of care to document physicians' orders for home health services.

OBJECTIVE

Our objective was to determine whether the State agency claimed Federal Medicaid reimbursement for selected State plan home health services claims submitted by CHHAs in New York City in accordance with Federal and State requirements.

SUMMARY OF FINDINGS

The State agency claimed Federal Medicaid reimbursement for some home health services claims submitted by CHHAs in New York City that were not in accordance with Federal and State requirements. Of the 100 claims in our random sample, 83 claims complied with Federal and State requirements, but 17 claims did not. Of the 17 claims, 1 contained more than 1 deficiency. Specifically, for 17 claims, the plan of care was not reviewed every 60 days and, for 1 claim, the provider was unable to document that the service was provided.

These deficiencies occurred because some CHHAs in New York City did not comply with Federal and State requirements.

On the basis of our sample results, we estimated that the State agency improperly claimed \$69,121,473 in Federal Medicaid reimbursement during our January 1, 2007, through December 31, 2009, audit period.

RECOMMENDATIONS

We recommend that the State agency:

- refund \$69,121,473 to the Federal Government and
- issue guidance to CHHAs in New York City on Federal and State requirements for physicians' orders and plans of care.

STATE AGENCY COMMENTS AND OFFICE OF INSPECTOR GENERAL RESPONSE

In written comments on our draft report, the State agency did not indicate either concurrence or nonconcurrence with our two recommendations and stated that it is currently reviewing the claims data associated with our findings. The State agency stated that once its review is complete, it will evaluate whether to refund monies to the Federal Government and “also evaluate whether the issuance of guidance to CHHAs in New York City is warranted.”

After reviewing the State agency's comments, we maintain that our findings and recommendations are valid. The State agency's comments appear in their entirety as Appendix D.

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INTRODUCTION

BACKGROUND

Medicaid Program

Pursuant to Title XIX of the Social Security Act (the Act), the Medicaid program provides medical assistance to low-income individuals and individuals with disabilities. The Federal and State Governments jointly fund and administer Medicaid. At the Federal level, the Centers for Medicare & Medicaid Services (CMS) administers Medicaid. Each State administers its Medicaid program in accordance with a CMS-approved State plan. Although each State has considerable flexibility in designing and operating its Medicaid program, it must comply with applicable Federal requirements. Pursuant to section 1905(b) of the Act, the Federal Government pays its share of a State's medical assistance expenditures under Medicaid based on the Federal medical assistance percentage (FMAP), which varies depending on a State's relative per capita income.

New York State's Medicaid Program

In New York State (the State), the Department of Health (State agency) administers Medicaid. The State agency uses the Medicaid Management Information System (MMIS), a computerized payment and information reporting system, to process and pay Medicaid claims. From January 1, 2006, through September 30, 2008, the FMAP in the State was 50 percent. From October 1, 2008, through June 30, 2010, the FMAP in the State varied from 58.78 percent to 61.59 percent.¹

New York State's Home Health Services Program

Within the State agency, the Office of Long Term Care operates the home health services program. Under that program, Certified Home Health Agencies (CHHA) provide preventive, therapeutic, and/or rehabilitative services to Medicaid beneficiaries.² CHHAs may contract with Licensed Home Care Services Agencies (LHCSA) to provide home health services.³ Most CHHAs provide nursing care directly to beneficiaries and contract with one or more LHCSAs to provide other home health services such as physical therapy and occupational therapy.

Reimbursement under the Medicaid program is available for home health services provided by CHHAs certified by the State agency. According to State regulations at Title 10 § 763.3(a) of the New York Compilation of Codes, Rules, & Regulations (NYCRR), a CHHA must be able to provide, directly or through contractual arrangement, a minimum of four services: nursing,

¹ Specifically, from October 1, 2008, through March 31, 2009, the FMAP was 58.78 percent; from April 1, 2009, through June 30, 2009, the FMAP was 60.19 percent; and from July 1, 2009, through June 30, 2010, the FMAP was 61.59 percent.

² Medicaid beneficiaries who receive home health services may be acutely or chronically ill with conditions requiring skilled nursing services or conditions requiring only maintenance and supervision. The level of need may range from total dependence to virtual independence.

³ LHCSAs are not-for-profit or proprietary organizations and are generally not qualified to participate as CHHAs.

home health aide, medical supplies/equipment/appliances, and at least one optional service (e.g., physical therapy, occupational therapy).

Federal Requirements for Home Health Services

Section 1905(a)(7) of the Act authorizes home health services. Pursuant to 42 CFR § 440.70(a), “home health services” are services provided to a beneficiary at the beneficiary’s place of residence and “[o]n his or her physician’s orders as part of a written plan of care that the physician reviews every 60 days” Many providers use Form CMS-485, Home Health Certification and Plan of Care, as the required plan of care to document physicians’ orders for home health services.⁴ Line 3 of Form CMS-485 is entitled “Certification Period” and includes spaces for providers to enter “From” and “To” dates for valid home health services. The certification period represents the 60-day period during which the plan of care is valid. Physician review is required at the end of each certification period. (See Appendix A for the CMS form.)

Principles and standards for determining allowable costs incurred by State and local governments under Federal awards are established by 2 CFR pt. 225 (formerly Office of Management and Budget Circular A-87, *Cost Principles for State, Local, and Indian Tribal Governments*). Pursuant to 2 CFR § App. A,C.1.c, to be allowable, costs must be authorized or not prohibited by State or local laws and regulations.

State Requirements for Home Health Services

New York’s approved State Medicaid Plan (SPA 07-13) provides that home health care services are medically necessary services (physician order required) that a CHHA provides to individuals in the home and community. State regulations for home health services covered under the State plan are in 18 NYCRR § 505.23.⁵

OBJECTIVE, SCOPE, AND METHODOLOGY

Objective

Our objective was to determine whether the State agency claimed Federal Medicaid reimbursement for selected State plan home health services claims submitted by CHHAs in New York City in accordance with Federal and State requirements.

⁴ Form CMS-485 is not a required form. CHHAs may submit any document that: (1) has a physician’s signature and date, (2) has all of the Form’s data elements, and (3) is in accordance with the current rules governing the home health plan of care.

⁵ All citations to 18 NYCRR § 505.23 are to the 2009 edition of the NYCRR, which is applicable to our entire audit period. The section was amended in November 2010.

Scope

Our audit period covered January 1, 2007, through December 31, 2009. Our review covered 8,014,053 claim lines, totaling \$1,284,554,312 (\$642,291,220 Federal share), submitted by CHHAs in New York City. (In this report, we refer to these lines as claims.) We limited our review to claims for the following State plan services: home health aide, nursing, occupational therapy, physical therapy, audiology, speech therapy, and speech pathology.

We plan to issue a separate report (A-02-11-01008) on the State agency's claims for Medicaid reimbursement for home health services claims submitted by CHHAs outside New York City.

During our audit, we did not review the overall internal control structure of the State agency or the Medicaid program. Rather, we limited our internal control review to those controls related to the objective of our audit.

We performed fieldwork at the State agency's offices in Albany, New York; at the MMIS fiscal agent in Rensselaer, New York; at 31 CHHAs in New York City; and at 37 LHCSAs throughout the New York City metropolitan area.

Methodology

To accomplish our objective, we:

- reviewed applicable Federal and State laws, regulations, and guidelines;
- held discussions with officials of the State agency and the New York City social service district to gain an understanding of the home health services program;
- identified a sampling frame of 8,014,053 selected State plan home health services claims, totaling \$1,284,554,312 (\$642,291,220 Federal share), submitted by CHHAs in New York City;⁶
- selected a simple random sample of 100 claims⁷ from the sampling frame of 8,014,053 claims; and for each of these 100 claims we:
 - reviewed the CHHA's and contracted LHCSA's (if applicable) documentation supporting the claim and
 - reviewed the personnel file of the corresponding home health aide or medical professional for training documentation and certifications; and

⁶ We used CHHAs' correspondence addresses and county codes on the MMIS to identify those located in New York City. The sampling frame did not include claims submitted by 11 CHHAs previously audited by the New York State Office of Medicaid Inspector General. In addition, the sampling frame did not include CHHAs' claims for services provided by one CHHA that we previously audited (A-02-10-01002).

⁷ The 100 sample claims included 76 home health aide services, 22 nursing services, and 2 physical therapy services.

- estimated the unallowable Federal Medicaid reimbursement paid in the population of 8,014,053 claims.

Our sample design and methodology are in Appendix B.

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.

FINDINGS AND RECOMMENDATIONS

The State agency claimed Federal Medicaid reimbursement for some home health services claims submitted by CHHAs in New York City that were not in accordance with Federal and State requirements. Of the 100 claims in our random sample, 83 claims complied with Federal and State requirements, but 17 claims did not. Of the 17 claims, 1 contained more than 1 deficiency. Specifically, for 17 claims, the plan of care was not reviewed every 60 days and, for 1 claim, the provider was unable to document that the service was provided.

These deficiencies occurred because some CHHAs in New York City did not comply with Federal and State requirements.

Based on our sample results, we estimated that the State agency improperly claimed \$69,121,473 in Federal Medicaid reimbursement during our January 1, 2007, through December 31, 2009, audit period.

PLAN OF CARE NOT REVIEWED

Pursuant to 42 CFR § 440.70(a)(2), home health services mean services provided to a beneficiary on his or her physician's orders as part of a written plan of care that the physician reviews every 60 days. All of the CHHAs in our sample used Form CMS-485 to document both the certification period based on a physician's review every 60 days and a plan of care for each Medicaid beneficiary.

For 17 of the 100 claims in our sample, a physician did not review the corresponding plan of care within the 60-day certification period indicated on the corresponding Form CMS-485. For these claims, the physician reviewed Form CMS-485 an average of 51 days after the 60-day certification period ended. The CHHA officials that we interviewed stated that these unallowable claims occurred because it was difficult to coordinate plan of care reviews with beneficiaries' physicians within the required 60-day period.

SERVICE NOT DOCUMENTED

Pursuant to 42 CFR § 433.32, services claimed for Federal Medicaid reimbursement must be documented. Pursuant to 18 NYCRR § 505.23(e)(1), payments for home health services are prohibited unless the claims for payment are supported by documentation of the time spent providing services.

For 1 of the 100 sample claims, the provider was unable to document that services were provided for 8 of the 20 hours billed on our sample service date.

ESTIMATE OF THE UNALLOWABLE AMOUNT

Of the 100 home health services claims that we sampled, 17 were not made in accordance with Federal and State requirements. On the basis of our sample results, we estimated that the State improperly claimed \$69,121,473 in Federal Medicaid reimbursement from January 1, 2007, through December 31, 2009, for selected State plan home health services claims that CHHAs in New York City submitted. Our sample results and estimates are in Appendix C.

RECOMMENDATIONS

We recommend that the State agency:

- refund \$69,121,473 to the Federal Government and
- issue guidance to CHHAs in New York City on Federal and State requirements for physicians' orders and plans of care.

STATE AGENCY COMMENTS AND OFFICE OF INSPECTOR GENERAL RESPONSE

In written comments on our draft report, the State agency did not indicate either concurrence or nonconcurrence with our two recommendations and stated that it is currently reviewing the claims data associated with our findings. The State agency stated that once its review is complete, it will evaluate whether to refund monies to the Federal Government and “also evaluate whether the issuance of guidance to CHHAs in New York City is warranted.”

After reviewing the State agency's comments, we maintain that our findings and recommendations are valid. The State agency's comments appear in their entirety as Appendix D.

APPENDIXES

APPENDIX A: FORM CMS-485, HOME HEALTH CERTIFICATION AND PLAN OF CARE

Department of Health and Human Services
Centers for Medicare & Medicaid Services

Form Approved
OMB No. 0938-0357

HOME HEALTH CERTIFICATION AND PLAN OF CARE

1. Patient's HI Claim No.	2. Start Of Care Date	3. Certification Period From: _____ To: _____	4. Medical Record No.	5. Provider No.	
6. Patient's Name and Address			7. Provider's Name, Address and Telephone Number		
8. Date of Birth		9. Sex <input type="checkbox"/> M <input type="checkbox"/> F	10. Medications: Dose/Frequency/Route (N)ew (C)hanged		
11. ICD-9-CM	Principal Diagnosis	Date			
12. ICD-9-CM	Surgical Procedure	Date			
13. ICD-9-CM	Other Pertinent Diagnoses	Date			
14. DME and Supplies			15. Safety Measures:		
16. Nutritional Req.			17. Allergies:		
18.A. Functional Limitations			18.B. Activities Permitted		
1 <input type="checkbox"/> Amputation	5 <input type="checkbox"/> Paralysis	9 <input type="checkbox"/> Legally Blind	1 <input type="checkbox"/> Complete Bedrest	6 <input type="checkbox"/> Partial Weight Bearing	A <input type="checkbox"/> Wheelchair
2 <input type="checkbox"/> Bowel/Bladder (Incontinence)	6 <input type="checkbox"/> Endurance	A <input type="checkbox"/> Dyspnea With Minimal Exertion	2 <input type="checkbox"/> Bedrest BRP	7 <input type="checkbox"/> Independent At Home	B <input type="checkbox"/> Walker
3 <input type="checkbox"/> Contracture	7 <input type="checkbox"/> Ambulation	B <input type="checkbox"/> Other (Specify)	3 <input type="checkbox"/> Up As Tolerated	8 <input type="checkbox"/> Crutches	C <input type="checkbox"/> No Restrictions
4 <input type="checkbox"/> Hearing	8 <input type="checkbox"/> Speech		4 <input type="checkbox"/> Transfer Bed/Chair	9 <input type="checkbox"/> Cane	D <input type="checkbox"/> Other (Specify)
			5 <input type="checkbox"/> Exercises Prescribed		
19. Mental Status:			5 <input type="checkbox"/> Disoriented	7 <input type="checkbox"/> Agitated	
	1 <input type="checkbox"/> Oriented	3 <input type="checkbox"/> Forgetful	6 <input type="checkbox"/> Lethargic	8 <input type="checkbox"/> Other	
	2 <input type="checkbox"/> Comatose	4 <input type="checkbox"/> Depressed	3 <input type="checkbox"/> Fair	4 <input type="checkbox"/> Good	5 <input type="checkbox"/> Excellent
20. Prognosis:			1 <input type="checkbox"/> Poor	2 <input type="checkbox"/> Guarded	
21. Orders for Discipline and Treatments (Specify Amount/Frequency/Duration)					

22. Goals/Rehabilitation Potential/Discharge Plans

23. Nurse's Signature and Date of Verbal SOC Where Applicable:	25. Date HHA Received Signed POT
24. Physician's Name and Address	26. I certify/recertify that this patient is confined to his/her home and needs intermittent skilled nursing care, physical therapy and/or speech therapy or continues to need occupational therapy. The patient is under my care, and I have authorized the services on this plan of care and will periodically review the plan.
27. Attending Physician's Signature and Date Signed	28. Anyone who misrepresents, falsifies, or conceals essential information required for payment of Federal funds may be subject to fine, imprisonment, or civil penalty under applicable Federal laws.

APPENDIX B: SAMPLE DESIGN AND METHODOLOGY

POPULATION

The population selected was State plan home health claim lines (claims) submitted by Certified Home Health Agencies (CHHA) in New York City during our January 1, 2007, through December 31, 2009, audit period that New York State claimed for Federal Medicaid reimbursement.

SAMPLING FRAME

The sampling frame was a computer file containing 8,014,053 detailed paid claims for selected State plan home health services submitted by CHHAs in New York City during our audit period.¹ The total Medicaid reimbursement for the 8,014,053 claims was \$1,284,554,312 (\$642,291,220 Federal share). The Medicaid claims were extracted from the claim files maintained at the Medicaid Management Information System fiscal agent.

SAMPLE UNIT

The sample unit was an individual Federal Medicaid home health services claim.

SAMPLE DESIGN

We used a simple random sample to evaluate the population of Federal Medicaid claims.

SAMPLE SIZE

We selected a sample of 100 claims.

SOURCE OF RANDOM NUMBERS

The source of the random numbers was the Office of Audit Services' statistical software, RAT-STATS. We used the random number generator for our sample.

METHOD FOR SELECTING SAMPLE ITEMS

We consecutively numbered the 8,014,053 detailed claims. After generating 100 random numbers, we selected the corresponding frame items. We created a list of 100 sample items.

ESTIMATION METHODOLOGY

We used RAT-STATS to calculate our estimates. We used the lower limit at a 90-percent confidence level to estimate the overpayment associated with the unallowable claims.

¹ We limited our review to claims for the following State plan services: home health aide, nursing, occupational therapy, physical therapy, audiology, speech therapy, and speech pathology.

APPENDIX C: SAMPLE RESULTS AND ESTIMATES

Sample Details and Results

Claims in Frame	Value of Frame (Federal Share)	Sample Size	Value of Sample (Federal Share)	Number of Unallowable Claims	Value of Unallowable Claims (Federal Share)
8,014,053	\$642,291,220	100	\$9,274	17	\$1,542

Estimated Value of Unallowable Costs (Limits Calculated for a 90-Percent Confidence Interval)

Point estimate	\$123,574,293
Lower limit	\$69,121,473
Upper limit	\$178,027,113

APPENDIX D: STATE AGENCY COMMENTS

Nirav R. Shah, M.D., M.P.H.
Commissioner



Sue Kelly
Executive Deputy Commissioner

August 22, 2012

James P. Edert
Regional Inspector General for Audit Services
Department of Health and Human Services
Region II
Jacob Javitz Federal Building
26 Federal Plaza
New York, New York 10278

Ref. No: A-02-10-01022

Dear Mr. Edert:

The New York State Department of Health (Department) has reviewed Department of Health and Human Services, Office of Inspector General (OIG) draft audit report A-02-10-01022 entitled "New York Improperly Claimed Medicaid Reimbursement for Some Home Health Services Claims Submitted by Certified Home Health Agencies in New York City."

The report includes recommendations for the Department to refund \$69,121,473 to the Federal Government, and to also issue guidance to Certified Home Health Agencies (CHHAs) in New York City on Federal and State Requirements for physicians' orders and plans of care.

OIG identified for the Department the claims data associated with the findings, which is currently under review by Department staff. When this review is finalized, the Department will evaluate the recommendation for it to refund monies to the Federal Government, and also evaluate whether the issuance of guidance to CHHAs in New York City is warranted.

Thank you for the opportunity to comment.

Sincerely,

A handwritten signature in black ink, appearing to read "Michael J. Nazarko". The signature is stylized and includes a large flourish at the end.

Michael J. Nazarko
Deputy Commissioner for Administration

Mr. James P. Edert
August 22, 2012
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cc: Richard Cook
Rebecca Fuller Gray
Mark Kissinger
Mary Ann Anglin
Cynthia Beaudoin
Jason Helgerson
James C. Cox
Diane Christensen
Stephen Abbott
Stephen LaCasse
Irene Myron
John Brooks
Ronald Farrell