



Office of Audit Services, Region III  
Public Ledger Building, Suite 316  
150 S. Independence Mall West  
Philadelphia, PA 19106-3499

MAR 17 2004

Report Number: A-03-01-00225

Mr. Patrick W. Finnerty  
Director  
Commonwealth of Virginia  
Department of Medical Assistance Services  
Suite 1300  
600 East Broad Street  
Richmond, Virginia 23219

Dear Mr. Finnerty:

Enclosed are two copies of the Department of Health and Human Services (HHS), Office of Inspector General's (OIG) final report entitled "Review of Medicaid Claims for Beneficiaries Under the Age of 21 Who Reside in Institutions for Mental Diseases in the Commonwealth of Virginia." A copy of this report will be forwarded to the HHS action official noted below for her review and any action deemed necessary.

The HHS action official named below will make final determination as to actions taken on all matters reported. We request that you respond to the HHS action official within 30 days from the date of this letter. Your response should present any comments or additional information that you believe may have a bearing on the final determination.

In accordance with the principles of the Freedom of Information Act (5 U.S.C. 552, as amended by Public Law 104-231), OIG, OAS reports are made available to members of the public to the extent information contained therein is not subject to exemptions in the Act. (See 45 CFR Part 5).

If you have any questions or comments about this report, please do not hesitate to call me or your staff may contact Mr. James Maiorano, Audit Manager at (215) 861-4476. To facilitate identification, please refer to Report Number A-03-01-00225 in all correspondence relating to this report.

Sincerely,

A handwritten signature in black ink, appearing to read "Stephen Virbitsky", with a long horizontal flourish extending to the right.

Stephen Virbitsky  
Regional Inspector General  
for Audit Services

Enclosure

Page 2 – Mr. Patrick W. Finnerty

**Direct Reply to HHS Action Official:**

Ms. Sonia Madison

Regional Administrator

Centers for Medicare & Medicaid Services, Region III

Public Ledger Building, Suite 216

150 S. Independence Mall West

Philadelphia, PA 19106-3499

**Department of Health and Human Services**

**OFFICE OF  
INSPECTOR GENERAL**

**REVIEW OF MEDICAID CLAIMS FOR  
BENEFICIARIES UNDER THE AGE OF  
21 WHO RESIDE IN INSTITUTIONS  
FOR MENTAL DISEASES IN THE  
COMMONWEALTH OF VIRGINIA**



**MARCH 2004  
A-03-01-00225**

# *Office of Inspector General*

<http://oig.hhs.gov>

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The mission of the Office of Inspector General (OIG), as mandated by Public Law 95-452, as amended, is to protect the integrity of the Department of Health and Human Services (HHS) programs, as well as the health and welfare of beneficiaries served by those programs. This statutory mission is carried out through a nationwide network of audits, investigations, and inspections conducted by the following operating components:

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In accordance with the principles of the Freedom of Information Act (5 U.S.C. 552, as amended by Public Law 104-231), Office of Inspector General reports are made available to members of the public to the extent the information is not subject to exemptions in the act. (See 45 CFR Part 5.)

## **OAS FINDINGS AND OPINIONS**

The designation of financial or management practices as questionable or a recommendation for the disallowance of costs incurred or claimed, as well as other conclusions and recommendations in this report, represent the findings and opinions of the HHS/OIG. Authorized officials of the HHS divisions will make final determination on these matters.



## **EXECUTIVE SUMMARY**

### **OBJECTIVE**

The objective of our review was to determine if controls were in place to preclude the Commonwealth of Virginia (Commonwealth) from claiming Federal financial participation (FFP) under the Medicaid program for all medical services, except inpatient psychiatric services, provided to residents of institutions for mental diseases (IMDs) under the age of 21. Examples of the types of medical claims that were not eligible for FFP for IMD residents within this age group included inpatient acute care, physician, clinic, pharmacy, laboratory, and dental services. Our audit period was July 1, 1997 through June 30, 2001.

### **FINDINGS**

Our review determined that the Commonwealth's Department of Medical Assistance Services (DMAS) improperly claimed FFP for medical services provided to IMD residents under the age of 21. In addition, we found that the Commonwealth did not maintain a complete listing of the residents in the IMD facilities.

In our opinion, the Commonwealth improperly claimed FFP because it did not have controls in place to preclude FFP from being claimed for medical services provided to IMD residents under the age of 21. Additionally, the Commonwealth did not have adequate procedures to identify all Medicaid eligible patients in the IMDs.

As a result, 119,922 of the 132,135 claims reviewed for 5,571 IMD residents, totaling \$3,948,532 of FFP, were improperly claimed. Additionally, the Commonwealth failed to identify 1,825 of the 5,571 residents included in our audit that were residents of IMD facilities.

### **RECOMMENDATIONS**

We recommend that the Commonwealth:

- refund \$3,948,532 to the Federal Government,
- implement controls to prevent FFP from being claimed for medical services, other than inpatient psychiatric services, provided to IMD residents under the age of 21,
- issue written guidance to medical providers and IMDs that separate medical claims should not be made for IMD residents under the age of 21,
- establish procedures to identify all Medicaid recipients under the age of 21 admitted to an IMD, and
- identify and refund to the Federal Government any improper FFP claimed for the period subsequent to our June 30, 2001 audit cutoff date.

## **AUDITEE COMMENTS**

The Commonwealth provided a written response on February 4, 2004 to a draft of this report. Citing Federal regulations for IMD services, its approved state Medicaid plan, and Federal regulations for Early, Periodic, Screening, Diagnosis, and Treatment (EPSDT) services, the Commonwealth strongly disagreed with our findings and recommendations. The Commonwealth's response is summarized after the Recommendations section and is included in its entirety as Appendix B.

## **OFFICE OF INSPECTOR GENERAL'S RESPONSE**

We disagree with the Commonwealth's comments and continue to recommend a refund of \$3,948,532 to the Federal Government and implementation of our remaining recommendations. According to the statute, regulations, and Centers for Medicare & Medicaid Services (CMS) guidance States may not claim FFP for any services provided to IMD residents under the age of 21 and in some instances those under the age of 22, with the exception of inpatient psychiatric services.

## INTRODUCTION

### BACKGROUND

#### Definition of an Institution for Mental Diseases

Section 1905(i) of the Social Security Act (Act) and 42 Code of Federal Regulations (CFR) § 435.1009 define 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, including medical attention, nursing care, and related services. Psychiatric hospitals (including State-operated and private psychiatric hospitals) and inpatient psychiatric residential treatment facilities with more than 16 beds are IMDs.

#### Medicaid Exclusion

Regulations found at 42 CFR §§ 435.1008 and 441.13 preclude paying FFP for any services to residents under the age of 65 who are in an IMD, except for inpatient psychiatric services provided to individuals under the age of 21 and in some instances those under the age of 22.<sup>1</sup>

CMS guidance to States specifies that FFP is only available for inpatient psychiatric services under the Medicaid program for individuals under the age of 21 and in certain instances those under the age of 22. Specifically, CMS issued Transmittal Number 65 of the State Medicaid Manual in March 1994 and Transmittal Number 69 of the State Medicaid Manual in May 1996. Section 4390 of the State Medicaid Manual, entitled “Institutions for Mental Diseases,” provides in subsection A.2. (“IMD Exclusion”):

The IMD exclusion is in 1905(a) of the Act in paragraph (B) following the list of Medicaid services. This paragraph states that FFP is not available for any medical assistance under title XIX for services provided to any individual who is under age 65 and who is a patient in an IMD unless the payment is for inpatient psychiatric services for individuals under age 21.

CMS guidance to States has also established that FFP is not permitted for IMD residents who are temporarily released to acute care hospitals for medical treatment. Specifically, section 4390.1 of the State Medicaid Manual, entitled “Periods of Absence From IMDs,” states in part that, “If a patient is temporarily transferred from an IMD for the purpose of obtaining medical treatment . . . the patient is still considered an IMD patient.”

In summary, based on the Act, the implementing Federal regulations, and CMS’s guidance FFP may not be claimed for any medical services, except inpatient psychiatric services, for IMD residents under the age of 21.

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<sup>1</sup> If the individual was receiving the services immediately before he or she reached age 21, services may continue to be provided until the earlier of (1) the date the individual no longer requires the services or (2) the date the individual reaches the age of 22.

## **Commonwealth's Medicaid Program**

In the Commonwealth, DMAS operates the Medicaid program, sets mental health policy and procedures, and processes claims through a fiscal intermediary, First Health Services. First Health Services uses the Medicaid Management Information System, a computerized payment and information reporting system, to process and pay Medicaid claims.

## **OBJECTIVE, SCOPE, AND METHODOLOGY**

### **Objective**

The objective of our review was to determine if controls were in place to preclude the Commonwealth from claiming FFP under the Medicaid program for all medical services, except inpatient psychiatric services, provided to residents of IMDs under the age of 21. Examples of the types of medical claims that were not eligible for FFP for IMD residents within this age group included inpatient acute care, physician, clinic, pharmacy, laboratory, and dental services.

### **Scope**

The review focused on 21 private and 6 Commonwealth operated IMDs. The audit period was July 1, 1997 through June 30, 2001. During our audit, we did not review the overall internal control structure of the Commonwealth or the Medicaid program. Rather, our internal control review was limited to reviewing the controls in place to prevent the Commonwealth from claiming FFP under the Medicaid program for all medical services, except inpatient psychiatric services, provided to IMD residents under the age of 21. Audit fieldwork was performed at the Commonwealth, several Commonwealth and privately managed IMDs, and our regional office in Philadelphia, Pennsylvania.

### **Methodology**

Our review was conducted in accordance with generally accepted government auditing standards. To accomplish our audit objective, we took the following steps:

- We held discussions with Commonwealth agency officials to ascertain policies and procedures for claiming FFP under the Medicaid program for individuals under the age of 21 who were residents of the IMDs.
- We obtained an understanding of computer controls and edits established by the Commonwealth regarding the claiming of FFP for medical services, other than inpatient psychiatric services, provided to IMD residents under the age of 21.
- We obtained a listing of Commonwealth-operated psychiatric hospitals and private psychiatric hospitals within the Commonwealth.
- We obtained a list of Medicaid patients who were under the age of 21 and were residents of the 27 identified IMDs during our audit period.

- We compared the Commonwealth's list of Medicaid eligible IMD patients under the age of 21 to lists of Medicaid eligible patients we obtained from the 21 private and 6 Commonwealth-operated IMDs to determine whether the Commonwealth's list was accurate and complete.
- We obtained a list of Medicaid paid claims for services rendered to IMD residents under the age of 21. The listing consisted of Medicaid payments to various medical providers for services rendered from July 1, 1997 to June 30, 2001.
- We performed a review of Medicaid paid claims for medical services from various medical providers for IMD patients included in our audit to determine whether these claims were eligible for FFP.

### **FINDINGS AND RECOMMENDATIONS**

Our review determined that the Commonwealth's DMAS improperly claimed FFP for medical services provided to IMD residents under the age of 21. In addition, we found that the Commonwealth did not maintain a complete listing of the residents in the IMD facilities.

In our opinion, the Commonwealth improperly claimed FFP because it did not have controls in place to preclude FFP from being claimed for all medical services provided to IMD residents under the age of 21. Additionally, the Commonwealth did not have adequate procedures to identify all Medicaid eligible patients in the IMDs.

As a result, 119,922 of the 132,135 claims reviewed for 5,571 IMD residents, totaling \$3,948,532 of FFP, were improperly claimed. Additionally, the Commonwealth failed to identify 1,825 of the 5,571 Medicaid eligible individuals included in our audit that were residents of IMD facilities.

During the period July 1, 1997 through June 30, 2001, the Commonwealth claimed FFP for 132,135 Medicaid claims totaling over \$5.1 million for IMD residents under age 21. Of the 132,135 claims reviewed, 12,213 claims were eligible for FFP. These claims included medical services that were performed either before the patient was admitted to an IMD or after the patient was discharged from an IMD. However, the Commonwealth improperly claimed \$3,948,532 of FFP for the remaining 119,922 (132,135 minus 12,213) medical claims during the period of IMD residency.

The following table shows the type of service, number of claims, and the FFP amounts questioned.

<b>Type of Service</b>	<b>Number of Claims</b>	<b>FFP</b>
Physician	70,821	\$1,700,092
Pharmacy	27,653	979,624
Outpatient Hospital and Clinic	6,682	814,633
Other Medical Services	14,760	437,592
Inpatient Acute Care	6	16,591
<b>Total</b>	<b>119,922</b>	<b>\$3,948,532</b>

The Commonwealth’s psychiatric services manual provided clear information that the inpatient psychiatric per diem rates for IMDs were all inclusive and that medical and ancillary services should not be separately claimed by outside medical providers. Commonwealth officials stated that they had no controls or edits in place to prevent these claims from being paid and claimed for FFP.

In addition, we found that the Commonwealth did not maintain a complete listing of the Medicaid eligible residents under the age of 21 who were admitted to the IMD facilities. The Commonwealth’s records showed 3,746 Medicaid eligible recipients in the 27 IMDs reviewed. However, records maintained by the individual IMDs identified 5,571 Medicaid eligible recipients. As a result, the Commonwealth’s eligibility files did not identify 1,825 (5,571 minus 3,746) Medicaid eligible recipients in IMDs who were under the age of 21. As shown in Appendix A, most of those unidentified Medicaid eligible recipients were residents of Commonwealth-operated IMDs.

## **RECOMMENDATIONS**

We recommend that the Commonwealth:

- refund \$3,948,532 to the Federal Government,
- implement controls to prevent FFP from being claimed for medical services, other than inpatient psychiatric services, provided to IMD residents under the age of 21,
- issue written guidance to medical providers and IMDs that separate medical claims should not be made for IMD residents under the age of 21,
- establish procedures to identify all Medicaid recipients under the age of 21 admitted to an IMD, and
- identify and refund to the Federal Government any improper FFP claimed for the periods subsequent to our June 30, 2001 audit cutoff date.

## **AUDITEE'S COMMENTS**

We received comments from the Commonwealth dated February 4, 2004. Citing Federal regulations for IMD services, its approved state Medicaid plan, and Federal regulations for EPSDT services, the Commonwealth strongly disagreed with our findings and recommendations.

First, the Commonwealth noted that the exception found at 42 CFR § 435.1008(a)(2) regarding FFP for children and adolescents receiving residential psychiatric treatment allows reimbursements to providers, other than the psychiatric residential treatment facility, while the recipient is an inpatient (inmate). The Commonwealth stated that the wording of this exception allows FFP for payment for all services provided, and is not limited to the facility costs for inpatient psychiatric services. The Commonwealth added that there is nothing in the regulation that states that payments may only be made to the treatment facility.

Second, the Commonwealth stated that the CMS approved amendment to its state plan, effective January 1, 2000, provided that payment will be made for inpatient psychiatric services in residential treatment facilities using a per diem payment rate as determined by the State Agency. This rate shall constitute payment for all residential psychiatric treatment facility services, excluding all professional services. The Commonwealth maintains that the exclusion of professional services from the per diem rate indicates that these services shall continue to be paid according to the part of the state plan that addresses professional services, not that they will receive no reimbursement. Therefore, the Commonwealth believes that payments for professional services rendered to children in an IMD were properly made and should not be reimbursed to CMS.

Finally, the Commonwealth stated that the allowance for payments for all services rendered to persons under 21 is further supported by EPSDT provisions required by 42 CFR § 441, Subpart B. Inpatient services in IMDs are EPSDT services and subject to these Federal regulations. The Commonwealth believes the intent of the Social Security Act, especially the EPSDT component, is to provide all medically necessary services to children. EPSDT regulations do not state that the inpatient status of the child absolves the state or Federal government of the duty to pay. The Commonwealth maintains that EPSDT regulations support the IMD exclusion and can only be interpreted to allow the reimbursement for all necessary Medicaid services for those under the age of 22, including those services provided to children residing in IMDs. For these reasons, the Commonwealth believes that the audit findings are incorrect.

## **OIG'S RESPONSE**

We disagree with the Commonwealth's comments and continue to believe that the FFP claims in question are unallowable. According to the statute, regulations, and CMS's guidance States may not claim FFP for any services provided to IMD residents under the age of 21 and in some instances those under the age of 22, with the exception of inpatient psychiatric services.

The Commonwealth argued that the wording of the regulation that allows FFP for services to persons under 22 in IMDs allows payment for all services provided, and is not limited to the facility costs for inpatient psychiatric services. We disagree. Under the statute, implementing Federal regulations, and CMS's guidance the only exception to the IMD exclusion for

individuals under the age of 21 is for inpatient psychiatric services. No other services may be claimed for FFP.

Section 1905(a) of the Act defines the term “medical assistance.” Medical assistance includes inpatient hospital services and nursing facility services for IMD residents 65 years of age or over but excludes care or services for IMD residents under 65, except “inpatient psychiatric hospital services for individuals under the age of 21.”

Federal regulations at 42 CFR § 441.13 prohibit payment of FFP for “any individual who is under age 65 and is in an institution for mental diseases, except an individual who is under age 22 and receiving inpatient psychiatric services under subpart D of this part.”

CMS consistently provided guidance to States regarding the IMD exclusion. Specifically, CMS Transmittal Number 65 of the State Medicaid Manual (issued in March 1994) and Transmittal Number 69 of the State Medicaid Manual (issued in May 1996) both provided guidance that FFP was not available for any medical assistance under title XIX for services provided to any individual under age 65 who is a patient in an IMD, unless the payment is for inpatient psychiatric services for individuals under the age of 21. This guidance goes on to state that FFP was not permitted for IMD residents who were temporarily released to acute care hospitals for medical treatment.

Section 4390 of the State Medicaid Manual, entitled “Institutions for Mental Diseases,” provides in subsection 4390 A.2. (“IMD Exclusion”) that:

The IMD exclusion is in 1905(a) of the Act in paragraph (B) following the list of Medicaid services. This paragraph states that FFP is not available for any medical assistance under title XIX for services provided to any individual who is under age 65 and who is a patient in an IMD unless the payment is for inpatient psychiatric services for individuals under age 21. This exclusion was designed to assure that States, rather than the Federal government, continue to have principal responsibility for funding inpatient psychiatric services. Under this broad exclusion, no Medicaid payment can be made for services provided either in or outside the facility for IMD patients in this age group.

Thus, CMS’s guidance is completely consistent with section 1905(a) of the Act and implementing Federal regulations.

The Commonwealth also argued that an amendment to its CMS approved state plan allows for reimbursement for separate claims paid for professional services. The amendment states in part that, “Effective January 1, 2000, payment will be made for inpatient psychiatric services in residential treatment facilities using a per diem payment rate as determined by the state agency based on information submitted by enrolled residential psychiatric treatment facility services, excluding all professional services.” We do not believe that the excluding of professional services from the per diem rates of IMDs make those professional services qualified for FFP for residents under the age of 21. Services approved under the state plan need to comply with statute and implementing Federal regulations. In this case, the statute and regulations clearly indicate

that services provided to residents of IMDs under the age of 21 are not eligible for FFP except for inpatient psychiatric services.

Finally, the Commonwealth believes the intent of the Act, especially the EPSDT component, is to provide all medically necessary services to children. For those reasons cited below, we disagree with the Commonwealth.

As part of the definition of “medical assistance” in section 1905(a) of the Act, subsection (a)(4)(B) states that medical assistance includes EPSDT services (as defined in subsection (r)) for individuals who are eligible under the plan and are under the age of 21. However, section 1905(a) also provides, in the material following subsection (a)(27):

except as otherwise provided in paragraph (16), such term does not include –

(A) any such payments with respect to care or services for an individual who is an inmate of a public institution (except as a patient in a medical institution); or

(B) any such payments with respect to care or services for an individual who has not attained 65 years of age and who is a patient in an institution for mental diseases.

Section 1905(a) thus provides, notwithstanding the general allowability of payments for EPSDT and other services, that “such payments” are **not** eligible for FFP if made with respect to care or services for those under 65 who are patients in an IMD. The only exception to this exclusion from coverage for IMD patients is contained in paragraph 16, which authorizes payments for “inpatient psychiatric hospital services for individuals under age 21, as defined in subsection (h) [which further provides in part that certain 22-year-olds may qualify for payment].” Therefore, unless the EPSDT services at issue are also within the scope of “inpatient psychiatric hospital services for individuals under age 21,” they are subject to the statute’s exclusion from coverage for IMD patients under 65.

This is contrary to the position of the Commonwealth, which apparently argues that the general requirement for coverage of EPSDT services in section 1905(a)(4) overrides the exclusion from coverage in the language following section 1905(a)(27). Such a reading of the statute, if applied consistently to all other enumerated mandatory services, would render meaningless the language following subsection (a)(27) that medical assistance does not include services for inmates of public institutions or services to patients in an IMD who are under 65. Consequently, such a reading would be contrary to the fundamental principle of statutory construction that all words of a statute are to be given effect. Also, the presence of one specific exception from the exclusion of services to IMD patients under age 65 indicates that the Congress knew how to make such an exception (for inpatient psychiatric hospital services for individuals under age 21), and under standard principles of statutory construction, it thus must be presumed that the Congress did not intend to make an exception for EPSDT services. The statute cannot reasonably be read to imply that services other than those within the scope of “inpatient psychiatric services for individuals under age 21” can be included as medical assistance under the program for IMD inpatients under age 65.

This reading is fully consistent with CMS regulations and the State Medicaid Manual. Specifically, 42 CFR § 441.13, entitled “Prohibitions on FFP: Institutionalized individuals,” states that “(a) FFP is not available in expenditures for . . . Any individual who is under age 65 and is in an institution for mental diseases, except an individual who is under age 22 and receiving inpatient psychiatric services under subpart D of this part.”

The regulations governing EPSDT services do not in any way state that these services may be provided to patients under 21 or 22 in an IMD, regardless of whether such patients are receiving inpatient psychiatric hospital services. 42 CFR § 440.40(b) merely defines what types of services are available as part of the EPSDT program.

Based on the above, we continue to believe that our findings and recommendations are valid and we continue to recommend that Virginia refund \$3,948,532 to the Federal Government and implement our four remaining recommendations.

# **APPENDICES**

**IMD Residents in Private Facilities**

		Number of Medicaid Eligible Patients in IMDs		
Hospital Name	Identified at the IMD	Identified by the Commonwealth	Identified at IMD but not by Commonwealth	
1	Alice C. Tyler	57	48	9
2	Barry Robinson	135	66	69
3	Charter Behavioral*	31	31	0
4	Charter Greensboro Behavioral*	44	44	0
5	Charter Hospital of Charlottesville*	146	146	0
6	Charter Westbrook BHS*	438	438	0
7	Dominion Hospital	221	194	27
8	Graynor Manor	47	35	12
9	Healthcare Virginia	155	2	153
10	Healthcare Virginia Inc.	25	18	7
11	Jackson Field Home	81	63	18
12	Norfolk Psychiatric Center	381	245	136
13	Piedmont Behavioral	206	180	26
14	Poplar Spring	599	530	69
15 & 16	The Pines (Two Hospitals Combined)	120	104	16
17	Virginia Beach Psychiatric	195	149	46
18	Virginia Psychiatric Co Inc.	299	219	80
19	West End (Hallmark Youth).	180	164	16
20	Woodridge Hospital	130	92	38
21	Woodside Hospital	93	81	12
<b>Total Private Facilities</b>		<b>3,583</b>	<b>2,849</b>	<b>734</b>

\*Closed

**IMD Residents in the Commonwealth Facilities**

Number of Medicaid Eligible Patients in IMDs

Hospital Name		Identified at the IMD	Identified by the Commonwealth	Identified at IMD but not by Commonwealth
1	Central Hospital	274	32	242
2	Commonwealth Hospital	777	514	263
3	Northern Virginia	2	2	0
4	Southern Virginia Mental Institution	11	11	0
5	Southwestern Virginia	874	325	549
6	Western State Hospital	50	13	37
<b>Total Commonwealth Facilities</b>		<b>1,988</b>	<b>897</b>	<b>1,091</b>
<b>Total</b>		<b>5,571</b>	<b>3,746</b>	<b>1,825</b>



## COMMONWEALTH of VIRGINIA

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February 4, 2004

Stephen Virbitsky  
Regional Inspector General for Audit Services  
Office of Audit Services  
Region III  
150 S. Independence Mall West  
Suite 316  
Philadelphia, PA 19106

Report Number A-03-01-00225

Dear Mr. Virbitsky:

Thank you for the opportunity to review the draft report for Medicaid Claims Made for Beneficiaries Under the Age of 21/22 who Reside in Institutions for Mental Diseases in the Commonwealth of Virginia (Report Number A-03-01-00225). Virginia strongly disagrees with the findings of the audit and wishes to present written comments regarding DMAS's views relative to the validity of the facts and law at issue. It is Virginia's position that the exception, found at 42 CFR 435.1008(a)(2) regarding federal financial participation (FFP) for children and adolescents receiving residential psychiatric treatment allows reimbursements to providers, other than the psychiatric residential treatment facility (PRTF), while the recipient is an inpatient (inmate).

The pertinent portion of 42 CFR 435.1008 states as follows:

§ 435.1008 Institutionalized individuals.

(a) FFP is not available in expenditures for services provided to—

(1) Individuals who are inmates of public institutions as defined in § 435.1009; or

(2) Individuals under age 65 who are patients in an institution for mental diseases unless they are under age 22 and are receiving inpatient psychiatric services under § 440.160 of this subchapter.

The exclusion that allows FFP for services to persons under 22 in institutions for mental disease (IMD) (42 CFR 435.1008(a)(2)) provides that, while FFP is not generally available for Medicaid services to individuals under age 65 residing in an IMD, it *is* available for those under age 22 who are receiving inpatient psychiatric services. The wording of this exception allows payment for *all* services provided, and is not limited to the facility costs for inpatient psychiatric services. There is nothing in the regulation that states that payments may only be made to the treatment facility.

Also supporting this position is Virginia's approved state plan amendment for this service. The state plan language states as follows: "Methodology. Effective January 1, 2000, payment will be made for inpatient psychiatric services in residential treatment facilities using a per diem payment rate as determined by the state agency based on information submitted by enrolled residential psychiatric treatment facilities. This rate shall constitute payment for all residential psychiatric treatment facility services, **excluding all professional services** (emphasis added)." (Attachment 4.19-B, Page 4.1 of 15). The exclusion of professional services from the per diem rate indicates that these services shall continue to be paid according to the part of the State Plan that addresses professional services, not that they will receive no reimbursement. Therefore, reimbursement for separate claims paid for professional services is approved by the Centers for Medicare and Medicaid Services (CMS) and is in accordance with Virginia's state plan. In summary, Virginia believes that payments for professional services rendered to children in an IMD were properly made and should not be reimbursed to CMS.

Virginia is now aware that the Office of the Inspector General (OIG) differs on this interpretation. The OIG position states that no reimbursements to any provider, other than the PRTF, may occur while the recipient is in the PRTF. Given CMS's approval of the state plan that specifically excludes professional services from the IMD per diem rate, without any discussion of how those services would be reimbursed, we believe that CMS concurred with our interpretation. The later interpretation of the OIG should not be effective without Virginia having a chance to amend its state plan to address the per diem to be inclusive of the professional components that are now at issue. Virginia should not be penalized when it had an approved state plan that specifically excludes professional services from the reimbursement paid to the treatment facility.

The allowance of payments for all services rendered to persons under 21, is further supported by Early, Periodic, Screening, Diagnosis, and Treatment (EPSDT) provisions required by 42 CFR 441, Subpart B. States must provide "treatment to correct or ameliorate defects and chronic conditions found" (42 CFR 441.50). Inpatient services in IMDs are EPSDT services and subject to these federal regulations. The EPSDT program encourages early treatment to prevent further sequelae. This approach prevents further disability to the child and more expensive treatments for advanced conditions.

Virginia believes the intent of the Social Security Act, especially the EPSDT component, is to provide all medically necessary services to children. For example, if a child needed dental services that are not covered in the Medicaid state plan, the Medicaid program would be required to pay for the service. EPSDT regulations do not state that the inpatient status of the child absolves the state or federal government of the duty to pay.

Virginia maintains that EPSDT regulations support the IMD exclusion and can only be interpreted to allow the reimbursement for all necessary Medicaid services for those under 22, including those services provided to children residing in a PRTF. The Omnibus Budget Reconciliation Act (OBRA) of 1989, which postdates the IMD exclusion, reinforced the state's responsibility to provide all services to correct and ameliorate health conditions of children.

For these reasons, Virginia believes that the audit findings are incorrect. I look forward to your consideration of the information presented in this letter. Please feel free to contact me with any questions.

Sincerely,



Patrick W. Finnerty

PWF:ckh

CC: Dennis G. Smith, CMS  
Mary T. McSorley, CMS

# ACKNOWLEDGMENTS

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