



December 31, 2009

TO: Mary Wakefield, Ph.D., R.N.
Administrator
Health Resources and Services Administration

FROM: /John Hapchuk/ for
Joseph E. Vengrin
Deputy Inspector General for Audit Services

SUBJECT: Review of Ryan White Title II Funding in Maryland (A-03-08-00551)

Attached is an advance copy of our final report on Ryan White Title II funding in Maryland. We will issue this report to the Maryland Department of Health and Mental Hygiene's Infectious Disease and Environmental Health Administration (the State agency) within 5 business days.

The Ryan White Comprehensive AIDS Resources Emergency (CARE) Act of 1990 funds health care and support services for people who have HIV/AIDS and who have no health insurance or are underinsured. Title II of the CARE Act provides grants to States and territories to fund the purchase of medications through AIDS Drug Assistance Programs (ADAP) and other health care and support services. Federal law states that these grant funds may not be used to pay for items or services that are eligible for coverage by other Federal, State, or private health insurance. Additionally, Title II grant funds may be used only for individuals determined to meet medical and financial eligibility requirements and must be used for items or services that the grantee actually purchases.

Our objectives were to determine:

- for grant years 2003 through 2005, whether the State agency complied with the Title II payer-of-last-resort requirement that funds not be used to pay for drugs that are eligible for coverage by other Federal, State, or private health insurance and whether the State agency used the Title II funds only for eligible clients and
- for grant years 2000 through 2005, whether the State agency claimed expenditures only for drugs that it actually purchased.

The State agency generally complied with the Title II payer-of-last-resort requirement that funds not be used to pay for drugs that are eligible for coverage by other Federal, State, or private health insurance and with the requirement that funds be used only for eligible clients. All 125

payments that we reviewed were correctly claimed to the Title II program for eligible clients without other health care coverage that would have paid for the HIV/AIDS drug. However, because we did not contact private insurers to determine whether ADAP clients had private health insurance, we would not have identified any instances in which ADAP clients had such coverage but had not informed the State agency.

The State agency did not comply with the Federal requirement that reported expenditures include only drugs that the State agency actually purchased. Specifically, the State agency claimed \$1,847,921 in unallowable Title II expenditures for drugs that it authorized but never purchased. The State agency did not make all of the necessary adjustments to its database to reduce reported Title II expenditures for drugs that were authorized but not purchased.

We recommend that the State agency refund \$1,847,921 to the Federal Government for reported expenditures for drugs that it authorized but never purchased.

In written comments on our draft report, the State agency concurred with our finding and said that it would refund the \$1,847,921 to the Federal Government.

If you have any questions or comments about this report, please do not hesitate to call me, or your staff may contact Lori S. Pilcher, Assistant Inspector General for Grants, Internal Activities, and Information Technology Audits, at (202) 619-1175 or through email at Lori.Pilcher@oig.hhs.gov or Stephen Virbitsky, Regional Inspector General for Audit Services, Region III, at (215) 861-4470 or through email at Stephen.Virbitsky@oig.hhs.gov. Please refer to report number A-03-08-00551.

Attachment



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

January 8, 2010

Report Number: A-03-08-00551

Ms. Heather Hauck
Director, Infectious Disease and Environmental Health Administration
Maryland Department of Health and Mental Hygiene
500 North Calvert Street, Fifth Floor
Baltimore, Maryland 21202

Dear Ms. Hauck:

Enclosed is the U.S. Department of Health and Human Services (HHS), Office of Inspector General (OIG), final report entitled "Review of Ryan White Title II Funding in Maryland." 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 at (215) 861-4470, or contact Leonard Piccari, Audit Manager, at (215) 861-4493 or through email at Leonard.Piccari@oig.hhs.gov. Please refer to report number A-03-08-00551 in all correspondence.

Sincerely,

/Stephen Virbitsky/
Regional Inspector General
for Audit Services

Enclosure

Direct Reply to HHS Action Official:

Ms. Sandy Seaton
Health Resources and Services Administration
Office of Federal Assistance Management/Division of Financial Integrity
Room 11A-55, Parklawn Building
Rockville, Maryland 20857

Department of Health and Human Services

**OFFICE OF
INSPECTOR GENERAL**

**REVIEW OF RYAN WHITE
TITLE II FUNDING IN
MARYLAND**



Daniel R. Levinson
Inspector General

January 2010
A-03-08-00551

Office of Inspector General

<http://oig.hhs.gov>

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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.

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

The Ryan White Comprehensive AIDS Resources Emergency (CARE) Act of 1990, P.L. No. 101-381, funds health care and support services for people who have HIV/AIDS and who have no health insurance or are underinsured. As the Federal Government's largest source of funding specifically for people with HIV/AIDS, the CARE Act assists more than 500,000 individuals each year. Within the U.S. Department of Health and Human Services, the Health Resources and Services Administration (HRSA) administers the CARE Act.

Title II of the CARE Act, sections 2611–2631 of the Public Health Service Act, provides grants to States and territories to fund the purchase of medications through AIDS Drug Assistance Programs (ADAP) and other health care and support services. Pursuant to 42 U.S.C. § 300ff-27(b)(6)(F), these grant funds may not be used to pay for items or services that are eligible for coverage by other Federal, State, or private health insurance. This provision is commonly referred to as the “payer of last resort” requirement. Additionally, Title II grant funds may be used only for individuals determined to meet medical and financial eligibility requirements.

On its final “Financial Status Reports” for grant years 2000 through 2005, the Maryland Department of Health and Mental Hygiene’s Infectious Disease and Environmental Health Administration (the State agency) claimed Title II drug expenditures totaling \$106,404,667. HRSA requires that grantees exclude from these reports any items or services that the program authorized but did not purchase during the year.

OBJECTIVES

Our objectives were to determine:

- for grant years 2003 through 2005, whether the State agency complied with the Title II payer-of-last-resort requirement that funds not be used to pay for drugs that are eligible for coverage by other Federal, State, or private health insurance and whether the State agency used the Title II funds only for eligible clients and
- for grant years 2000 through 2005, whether the State agency claimed expenditures only for drugs that it actually purchased.

SUMMARY OF FINDING

The State agency generally complied with the Title II payer-of-last-resort requirement that funds not be used to pay for drugs that are eligible for coverage by other Federal, State, or private health insurance and with the requirement that funds be used only for eligible clients. All 125 payments that we reviewed were correctly claimed to the Title II program for eligible clients without other health care coverage that would have paid for the HIV/AIDS drug. However, because we did not contact private insurers to determine whether ADAP clients had private

health insurance, we would not have identified any instances in which ADAP clients had such coverage but had not informed the State agency.

The State agency did not comply with the Federal requirement that reported expenditures include only drugs that the State agency actually purchased. Specifically, the State agency claimed \$1,847,921 in unallowable Title II expenditures for drugs that it authorized but never purchased. The State agency did not make all of the necessary adjustments to its database to reduce reported Title II expenditures for drugs that were authorized but not purchased.

RECOMMENDATION

We recommend that the State agency refund \$1,847,921 to the Federal Government for reported expenditures for drugs that it authorized but never purchased.

STATE AGENCY COMMENTS

In its written comments on our draft report (included in their entirety as Appendix B), the State agency concurred with our finding and said that it would refund the \$1,847,921 to the Federal Government. The State agency also offered a technical comment, and we revised our report accordingly.

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INTRODUCTION

BACKGROUND

The Ryan White Comprehensive AIDS Resources Emergency (CARE) Act of 1990, P.L. No. 101-381, funds health care and support services for people who have HIV/AIDS and who have no health insurance or are underinsured. As the Federal Government's largest source of funding specifically for people with HIV/AIDS, the CARE Act assists more than 500,000 individuals each year. Within the U.S. Department of Health and Human Services, the Health Resources and Services Administration (HRSA) administers the CARE Act.

Title II Grant Funds

Title II of the CARE Act, sections 2611–2631 of the Public Health Service Act, provides grants to States and territories to fund the purchase of medications through AIDS Drug Assistance Programs (ADAP) and other HIV/AIDS health and support services, such as outpatient care, home and hospice care, and case management.

In Maryland, the Department of Health and Mental Hygiene's Infectious Disease and Environmental Health Administration (the State agency) administers the Title II program. The majority of Maryland's Title II program funds are designated for drugs to treat HIV/AIDS through the ADAP. For example, ADAP expenditures for the grant year ended March 31, 2006, accounted for about 62 percent of Title II expenditures.

Payer-of-Last-Resort Requirement

Title II of the CARE Act stipulates that grant funds not be used to pay for items or services that are eligible for coverage by other Federal, State, or private health insurance. This provision is commonly referred to as the "payer of last resort" requirement. Specifically, section 2617(b)(6)(F) of the Public Health Service Act (42 U.S.C. § 300ff-27(b)(6)(F)) states:

[T]he State will ensure that grant funds are not utilized to make payments for any item or service to the extent that payment has been made, or can reasonably be expected to be made, with respect to that item or service –

- (i) under any State compensation program, under an insurance policy, or under any Federal or State health benefits program; or
- (ii) by an entity that provides health services on a prepaid basis.¹

In addition, HRSA Program Policy No. 97-02, issued February 1, 1997, and reissued as DSS² Program Policy Guidance No. 2 on June 1, 2000, reiterates the statutory requirement that "funds

¹Subsequent to our audit period, the Ryan White HIV/AIDS Treatment Modernization Act of 2006, §§ 204(c)(1)(A) and (c)(3), P.L. No. 109-415 (Dec. 19, 2006), redesignated this provision as section 2617(b)(7)(F) (42 U.S.C. § 300ff-27(b)(7)(F)) and amended subparagraph (ii) to prohibit the State from using these grant funds for any item or service that should be paid for "by an entity that provides health services on a prepaid basis (except for a program administered by or providing the services of the Indian Health Service)."

²DSS is the Division of Service Systems, a component of HRSA's HIV/AIDS Bureau.

received . . . will not be utilized to make payments for any item or service to the extent that payment has been made, or can reasonably be expected to be made . . .” by sources other than Title II funds. The guidance then provides: “At the individual client level, this means that grantees and/or their subcontractors are expected to make reasonable efforts to secure other funding instead of CARE Act funds whenever possible.”

Program Eligibility Requirements

Pursuant to section 2616(b) of the Public Health Service Act (42 U.S.C. § 300ff-26(b)), to be eligible to receive assistance from a State under Title II of the CARE Act, an individual must “(1) have a medical diagnosis of HIV disease; and (2) be a low-income individual, as defined by the State.” Code of Maryland Regulations Title 10.18.05.03.B and .C require a written certification by specified medical professionals that the applicant has been diagnosed with HIV or AIDS and define a low-income individual as an applicant whose household income is not expected to exceed limits based on a percentage of the Federal poverty guidelines.

Financial Reporting Requirement

Pursuant to 45 CFR § 92.41, grantees are required to use Standard Form 269, “Financial Status Report” (FSR), to report the status of grant funds. HRSA uses these reports to monitor cash advances to grantees and to obtain disbursement or outlay information for each grant. The FSR, which is an accounting of expenditures under the grant, is due within 90 days after the grant year. The “CARE Act Title II Manual” prohibits grantees from including unliquidated obligations (items or services that the program authorized but did not purchase during the year) on their FSRs.

OBJECTIVES, SCOPE, AND METHODOLOGY

Objectives

Our objectives were to determine:

- for grant years 2003 through 2005, whether the State agency complied with the Title II payer-of-last-resort requirement that funds not be used to pay for drugs that are eligible for coverage by other Federal, State, or private health insurance and whether the State agency used the Title II funds only for eligible clients and
- for grant years 2000 through 2005, whether the State agency claimed expenditures only for drugs that it actually purchased.

Scope

Our review covered the State agency’s compliance with the payer-of-last-resort requirement for the period April 1, 2003, through March 31, 2006 (grant years 2003 through 2005). We also reviewed reported ADAP drug expenditures for the period April 1, 2000, through March 31,

2006 (grant years 2000 through 2005).³ On its final FSRs, the State agency claimed ADAP expenditures totaling \$106,404,667 for HIV/AIDS drugs dispensed at pharmacies throughout Maryland during grant years 2000 through 2005.

We did not assess the State agency's overall internal controls for administering Title II funds. Rather, we limited our review to gaining an understanding of those controls related to claiming HIV/AIDS drug costs. Because of concerns about protecting program clients' personally identifiable identification, we did not contact private health insurance companies to determine whether clients had private health insurance coverage.

We conducted our fieldwork at the State agency in Baltimore, Maryland, and at six pharmacies located throughout Maryland from February 2008 through February 2009.

Methodology

To accomplish our objectives, we:

- reviewed applicable Federal and State laws, regulations, and guidance;
- reviewed documentation provided by the State agency for grant years 2000 through 2005, including Title II grant applications, notices of grant award, FSRs and supporting accounting records, and the ADAP drug formulary (a list of drugs authorized for purchase by the program);
- held discussions with State agency officials to identify policies, procedures, and guidance for billing HIV/AIDS drugs to other Federal or State programs and private health insurance plans;
- analyzed the State agency's procedures for accounting for and dispensing drugs to Title II clients;
- identified from the State agency's invoice database for grant years 2003 through 2005 a sampling frame of 173,273 drug payments totaling \$82,233,150 (Federal share) that were equal to or greater than \$100.01 each;
- verified the completeness of the State agency's invoice database by judgmentally selecting client case folders and matching the data to the database;
- reviewed all 25 payments of \$3,500 or more and selected, as detailed in Appendix A, a simple random sample of 100 payments between \$100.01 and \$3,499.99 each;
- reviewed, for the 125 payments;

³The original scope of our review was April 1, 2003, through March 31, 2006. Based on our preliminary results, we advised the State agency that we were expanding the scope to cover reported ADAP drug expenditures from April 1, 2000, through March 31, 2006.

- State agency client data to determine whether the clients were enrolled in private health insurance plans,
- Federal Medicaid records to determine whether the clients were enrolled in Medicaid, and
- State agency client case folders to verify client eligibility;
- identified drug payments for grant years 2000 through 2005 from the State agency's invoice database and determined whether they matched the drug expenditures on the FSRs; and
- visited six judgmentally selected pharmacies that participated in the ADAP to review procedures for dispensing HIV/AIDS drugs and for billing the State agency.

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 finding and conclusions based on our audit objectives.

FINDING AND RECOMMENDATION

The State agency generally complied with the Title II payer-of-last-resort requirement that funds not be used to pay for drugs that are eligible for coverage by other Federal, State, or private health insurance and with the requirement that funds be used only for eligible clients. All 125 payments that we reviewed were correctly claimed to the Title II program for eligible clients without other health care coverage that would have paid for the HIV/AIDS drug. However, because we did not contact private insurers to determine whether ADAP clients had private health insurance, we would not have identified any instances in which ADAP clients had such coverage but had not informed the State agency.

The State agency did not comply with the Federal requirement that reported expenditures include only drugs that the State agency actually purchased. Specifically, the State agency claimed \$1,847,921 in unallowable Title II expenditures for drugs that it authorized but never purchased. The State agency did not make all of the necessary adjustments to its database to reduce reported Title II expenditures for drugs that were authorized but not purchased.

EXPENDITURES REPORTED FOR PURCHASES NOT MADE

Pursuant to 45 CFR § 92.23(b), obligations must be liquidated within 90 days of the end of the grant period unless the program grants an extension. HRSA may grant extensions of up to 6 months after the end of the fiscal year. The "CARE Act Title II Manual," section III, chapter 2(D), requires grantees to report annual grant expenditures on the final FSR and to exclude any unliquidated obligations (the costs of items or services that were authorized but not purchased during the year).

The State agency incorrectly claimed \$1,847,921 for medications that it authorized but never purchased. These claims occurred before May 2004, when the State agency was using a paper invoice system. Under the paper invoice system, the pharmacy called the State agency for approval to dispense the drug after an ADAP client provided a prescription to a participating pharmacy. The State agency then created a preauthorization for the expenditure in its database. When the pharmacy submitted a paper invoice, it received payment based on the preauthorization. If the State agency received no invoice, its procedure was to remove the preauthorized expenditure from the database and prevent its inclusion on the FSR.

For grant years 2000 through 2003, the State agency claimed net preauthorized expenditures totaling \$1,847,921 for which pharmacies never submitted invoices and the State agency never made payments. The State agency did not follow its procedure to remove these unpaid preauthorizations from its database and prevent their inclusion on the FSR. The table below summarizes the unpaid preauthorizations claimed by grant year.

Unpaid Preauthorizations Claimed by Grant Year

Grant Year	Net Unpaid Preauthorizations Claimed on the FSR
2000	\$419,808
2001	461,706
2002	545,198
2003	421,209
2004	0
2005	0
Total	\$1,847,921

In May 2004, the State agency adopted an electronic invoice system and discontinued using preauthorizations and paper invoices, which eliminated the need for manually removing preauthorized expenditures from the database. The State agency accurately reported expenditures for grant years 2004 and 2005.

RECOMMENDATION

We recommend that the State agency refund \$1,847,921 to the Federal Government for reported expenditures for drugs that it authorized but never purchased.

STATE AGENCY COMMENTS

In its written comments on our draft report (included in their entirety as Appendix B), the State agency concurred with our finding and said that it would refund the \$1,847,921 to the Federal Government. The State agency also offered a technical comment, and we revised our report accordingly.

APPENDIXES

APPENDIX A: SAMPLE DESIGN AND METHODOLOGY

POPULATION

The population consisted of all federally funded payments for AIDS Drug Assistance Program (ADAP) drugs dispensed to HIV/AIDS patients and claimed from April 1, 2003, through March 31, 2006.

SAMPLING FRAME

We excluded from the population payments that were less than or equal to \$100 each. The resulting sampling frame consisted of 173,273 payments totaling \$82,233,150 that were equal to or greater than \$100.01 each. The 173,273 payments included 173,248 payments of \$100.01 to \$3,499.99 each and 25 payments of \$3,500 or more each.

SAMPLE UNIT

The sample unit was a payment for ADAP drugs dispensed to an HIV/AIDS patient.

SAMPLE DESIGN

We used a simple random sample to select payments of \$100.01 to \$3,499.99 each.

SAMPLE SIZE

We selected a sample of 100 payments from the 173,248 payments of \$100.01 to \$3,499.99 each. We also reviewed all 25 payments of \$3,500 or more each. In total, we reviewed 125 payments.

SOURCE OF THE RANDOM NUMBERS

We used the Office of Inspector General, Office of Audit Services, statistical sampling software to generate the random numbers for our sample.

METHOD OF SELECTING SAMPLE ITEMS

We sequentially numbered the payments in our sampling frame that amounted to \$100.01 to \$3,499.99 each. After generating 100 random numbers, we selected the corresponding frame items.

APPENDIX B: STATE AGENCY COMMENTS



STATE OF MARYLAND

DHMH

Maryland Department of Health and Mental Hygiene

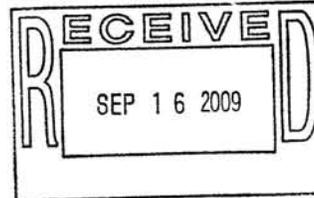
Martin O'Malley, Governor – Anthony G. Brown, Lt. Governor – John M. Colmers, Secretary
Infectious Disease and Environmental Health Administration

Heather L. Hauck, LICSW, MSW, Director

Angela M. Wakhweya, MD, MSc., Deputy Director
Richard W. Stringer, Chief Financial Officer

Clifford S. Mitchell, MS, MD, MPH, Acting Assistant Director
David Blythe, MD, MPH, Acting Assistant Director/State Epidemiologist

September 11, 2009



Stephen Virbitsky, Regional Inspector General for Audit Services
Department of Health & Human Services,
Office of Inspector General
Office of Audit Services, Region III
Public Ledger Building, Suite 316
150 S. Independence Mall West
Philadelphia, PA 19106-3499

RE: Audit Report Number A-03-08-00551

Dear Mr. Virbitsky:

This letter is in response to the U.S. Department of Health and Human Services, Office of Inspector General (OIG) draft report entitled "Review of Ryan White Title II Funding in Maryland" covering grant years 2000 to 2005. The report indicates one finding of "the State agency did not comply with the Federal requirement that reported expenditures include only drugs that the state agency actually purchased". As the report indicates, this finding is due to complex paper invoice system in use in grant years 2000 through 2003. The adoption of an electronic invoice system in May 2004 corrected the problem, and, as the report states, "the State agency accurately reported expenditures for grant years 2004 and 2005".

The recommendation in the report is that "the State agency refund \$1,847,921 to the Federal Government for reported expenditures for drugs that it never purchased". The State is in concurrence with the finding in the report, and as recommended, will refund \$1,847,921 to the Federal Government.

As per our conversation with Leonard Piccari, the Audit Manager, we are requesting that one sentence in the draft audit report be modified. On page 4 of the draft report, in the section "Finding and Recommendation", we are requesting that the phrase "drugs that it never purchased" be changed to "drugs that it authorized but never purchased".

We appreciate the opportunity to review the draft report.

Sincerely,

Heather L. Hauck, LICSW, MSW
Director

cc: Glenn Clark, Chief, Center for HIV Care Services
Angela Wakhweya, Deputy Director

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