



DEPARTMENT OF HEALTH & HUMAN SERVICES

Office of Inspector General

Washington, D.C. 20201

June 27, 2011

TO: Donald M. Berwick, M.D.
Administrator
Centers for Medicare & Medicaid Services

FROM: /Daniel R. Levinson/
Inspector General

SUBJECT: Review of Administrative Costs Claimed for Pennsylvania's Home and Community-Based Waiver for Individuals Aged 60 and Over (A-03-10-00202)

Attached, for your information, is an advance copy of our final report on our review of Medicaid administrative costs claimed for Pennsylvania's home and community-based waiver for individuals aged 60 and over. We will issue this report to the Pennsylvania Department of Public Welfare within 5 business days.

If you have any questions or comments about this report, please do not hesitate to call me or contact Brian P. Ritchie, Assistant Inspector General for the Centers for Medicare & Medicaid Audits, at (410) 786-7104 or through email at Brian.Ritchie@oig.hhs.gov. Please refer to report number A-03-10-00202.

Attachment



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

June 28, 2011

Report Number: A-03-10-00202

Mr. Kevin Friel
Acting Deputy Secretary for Administration
Pennsylvania Department of Public Welfare
P. O. Box 2675
Harrisburg, PA 17105-2675

Dear Mr. Friel:

Enclosed is the U.S. Department of Health & Human Services (HHS), Office of Inspector General (OIG), final report entitled *Review of Administrative Costs Claimed for Pennsylvania's Home and Community-Based Waiver for Individuals Aged 60 and Over*. 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 Robert Baiocco, Audit Manager, at (215) 861-4486 or through email at Robert.Baiocco@oig.hhs.gov. Please refer to report number A-03-10-00202 in all correspondence.

Sincerely,

/Stephen Virbitsky/
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 ADMINISTRATIVE COSTS
CLAIMED FOR PENNSYLVANIA'S HOME
AND COMMUNITY-BASED WAIVER FOR
INDIVIDUALS AGED 60 AND OVER**



Daniel R. Levinson
Inspector General

June 2011
A-03-10-00202

Office of Inspector General

<http://oig.hhs.gov>

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The Office of Audit Services (OAS) provides auditing services for HHS, either by conducting audits with its own audit resources or by overseeing audit work done by others. Audits examine the performance of HHS programs and/or its grantees and contractors in carrying out their respective responsibilities and are intended to provide independent assessments of HHS programs and operations. These assessments help reduce waste, abuse, and mismanagement and promote economy and efficiency throughout HHS.

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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

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

Section 1903(a) of the Act permits States to claim Federal reimbursement for Medicaid administrative costs. Subpart E of 45 CFR part 95 requires the State agency to allocate administrative and training costs to the Medicaid program in accordance with an approved public assistance cost allocation plan. When claiming administrative costs, States must comply with cost principles found at 2 CFR part 225. State agencies may claim administrative costs for particular cost objectives (programs) only to the extent of the benefits received by such programs. Only allocable costs are allowable, and costs must be reasonable and necessary for proper administration of the program (2 CFR part 225, App. A).

Section 1915(c) of the Act permits States to seek a waiver from their State plans to furnish an array of services that assist Medicaid beneficiaries to live in the community and avoid institutionalization. States have broad discretion to design waiver programs to address the needs of target populations. Pursuant to section 1903(a) of the Act, CMS allows States to claim administrative costs under the waiver.

Pennsylvania's Home and Community-Based Services Waiver for Individuals Aged 60 and Over (Aging Waiver) authorizes services for beneficiaries aged 60 or older who are economically distressed and are clinically eligible for care in a skilled nursing facility. Within the State agency, the Office of Long Term Living (Long Term Living) administers the Aging Waiver program. Long Term Living contracts with 52 local Area Agencies on Aging (local agencies) for daily management activities of the Aging Waiver. The State agency claimed \$56,034,597 (\$28,239,571 Federal share) in administrative costs for the Aging Waiver program in State fiscal year 2008–2009.

OBJECTIVE

Our objective was to determine whether the State agency complied with Federal requirements when it claimed administrative costs for the Aging Waiver program.

SUMMARY OF FINDINGS

The State agency did not comply with Federal requirements when it claimed administrative costs under the Aging Waiver. The State agency claimed \$4,225,120 (\$2,112,560 Federal share) in administrative costs for non-Aging Waiver activities and \$494,638 (\$370,978 Federal share) because of an adjustment error. Because the State agency (1) did not amend its cost allocation

plan to identify the administrative costs associated with the Aging Waiver program and non-Aging Waiver activities or submit a methodology for allocating them and (2) did not ensure that all costs claimed under the Aging Waiver were accurate, the State agency claimed unallowable costs.

We also set aside for CMS's adjudication \$51,314,839 (\$25,756,033 Federal share) in local agencies' administrative costs for Aging Waiver activities. The State agency identified the administrative activities in the Aging Waiver but did not amend the cost allocation plan or submit a methodology for allocating the associated costs.

RECOMMENDATIONS

We recommend that the State agency:

- refund \$2,112,560 in Federal funds for administrative costs not identified in the Aging Waiver or the cost allocation plan,
- refund \$370,978 in Federal funds to correct an adjustment error,
- amend its cost allocation plan to identify all Aging Waiver administrative costs and include detailed allocation methodologies to enable CMS to determine if the costs are being allocated in proportion to benefits received, and
- work with CMS to determine the allocability of \$51,314,839 (\$25,756,033 Federal share) in local agencies' administrative costs for Aging Waiver activities and adjust the Quarterly Medicaid Statement of Expenditures for the Medical Assistance Program (CMS-64) accordingly.

STATE AGENCY COMMENTS

In written comments on our draft report, the State agency generally did not agree with our recommendations. The State agency said that we based our disallowance on a technical violation of cost allocation regulations and that the bulk of the disallowance "consists of costs that the State had an option to classify as either services or administrative costs under the waiver program" and that the expenditures do not lose their nature as services and are therefore "exempt from the requirement for inclusion in a cost allocation plan" The State agency also said that the adjustment was valid and was the result of a timing difference between the quarterly CMS-64 reports and the monthly expenditure reports submitted by the local agencies.

The State agency's comments are included in their entirety as the Appendix.

OFFICE OF INSPECTOR GENERAL RESPONSE

After reviewing the State agency comments, we have made changes to our report and revised our recommendations. We continue to support our recommendations that the State agency refund \$2,112,560 for administrative costs that are not identified in the Aging Waiver or the cost

allocation plan and \$370,978 for an adjustment error for which the State agency did not show that a correction had been submitted.

We have revised our report and the recommendation to set aside for CMS adjudication \$25,756,033 identified as administrative costs in the Aging Waiver program that were not included in the cost allocation plan. The regulations do not make an exception for administrative costs that might otherwise have been claimed as services. We therefore continue to recommend that the State agency amend its cost allocation plan and submit an allocation methodology to ensure that only allocable costs are claimed under the Aging Waiver program.

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STATE AGENCY COMMENTS

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 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. In Pennsylvania, the Department of Public Welfare (State agency) administers the Medicaid program, including its waiver programs.

Section 1903(a) of the Act permits States to claim Federal reimbursement for Medicaid administrative costs. Most administrative costs “for the proper and efficient administration” of the Medicaid program are reimbursed at the 50-percent rate (section 1903(a)(7) of the Act). However, States receive enhanced Federal funding for some administrative costs. States claim administrative costs on Form CMS-64, Quarterly Medicaid Statement of Expenditures for the Medical Assistance Program (CMS-64).

Home and Community-Based Services Waiver

Section 1915(c) of the Act permits States to seek a waiver to furnish an array of services that assist Medicaid beneficiaries to live in the community and avoid institutionalization. States have broad discretion to design waiver programs to address the needs of target populations. Pursuant to section 1903(a) of the Act, CMS allows States to claim administrative costs under a waiver.

Pennsylvania’s Home and Community-Based Services (HCBS) Waiver for Individuals Aged 60 and Over (Aging Waiver) authorizes services for beneficiaries aged 60 or older who are economically distressed and are clinically eligible for care in a skilled nursing facility. The Aging Waiver program provides respite care, companion services, medical equipment and supplies, assistance with financial management, adult day care, home-delivered meals, transportation, personal care, counseling, home health care, and other services. The Aging Waiver also authorizes certain administrative activities, including case management.¹ CMS approved a 5-year renewal of the Aging Waiver, effective July 1, 2008.

Local Area Agencies on Aging

Within the State agency, the Office of Long Term Living (Long Term Living) administers the Aging Waiver program. Long Term Living contracts with 52 local Area Agencies on Aging (local agencies) for daily management activities of the Aging Waiver program. In addition to

¹ The Aging Waiver refers to case management as “care management,” which includes authorization of services but excludes other activities identified separately in the Aging Waiver.

acting as Medicaid contractors for the Aging Waiver program, local agencies provide a wide range of non-Medicaid services for the Pennsylvania Department of Aging. Of the 52 local agencies, 35 are divisions of county governments and 17 are nonprofit organizations.

The Aging Waiver says that the State agency may claim local agency administrative costs for case management, provider certification, and general administrative activities, provided those costs do not exceed a monthly rate of \$262 per beneficiary. The Aging Waiver also says that the State agency may claim local agency administrative costs for intake services and services to transition individuals from nursing homes to home and community-based settings. CMS allows local agencies to implement their own methodologies to allocate costs for administrative activities.

Local agencies report their administrative costs monthly to Long Term Living using the Waiver Expenditures report. Long Term Living submits these local agency costs to the State agency for inclusion, with other administrative costs related to the Aging Waiver program, on the Form CMS-64. In State fiscal year (FY) 2008–2009,² the State agency claimed \$56,034,597 (\$28,239,571 Federal share) in administrative costs for the Aging Waiver.

Cost Allocation Plans

Subpart E of 45 CFR part 95 requires State agencies to allocate administrative and training costs to programs in accordance with public assistance cost allocation plans (cost allocation plan) that describe the costs claimed and the methodology for allocating the costs to the programs. When claiming administrative costs, States must comply with cost principles found at 2 CFR part 225³ (45 CFR § 95.507). The cost principles allow State agencies to claim administrative costs for particular cost objectives (programs) only in proportion to the benefits received by such programs. Only allocable costs are allowable, and costs must be reasonable and necessary for proper administration of the programs (2 CFR part 225, App. A).

The Department of Health & Human Services, Division of Cost Allocation (DCA),⁴ approves States' cost allocation plans after CMS reviews and comments on the fairness of the cost allocation methodologies. State agencies must adhere to their approved cost allocation plans in computing claims for the Federal share of administrative costs (45 CFR § 95.517) and must update the plans by submitting amendments when the cost allocation plans become outdated or other changes occur that make the approved cost allocation plans invalid (45 CFR § 95.509). States may claim costs based on proposed cost allocation plans or plan amendments; however, States must make retroactive adjustments to their claims, if necessary, to conform to the subsequently approved cost allocation plans (45 CFR § 95.517). If costs are not claimed in accordance with an approved cost allocation plan and State agencies have not submitted

² Pennsylvania's State FY begins on July 1 and is identified by the beginning and ending year (e.g., State FY 2008–2009).

³ This regulation was formerly the Office of Management and Budget (OMB) Circular A-87, *Cost Principles for State, Local, and Indian Tribal Governments*.

⁴ The DCA is part of the Office of the Deputy Secretary for Program Support.

amendments as specified in 45 CFR § 95.509, the improperly claimed costs will be disallowed (45 CFR § 95.519).

Pennsylvania's cost allocation plan for State FY 2008–2009 allows administrative costs for two HCBS waivers, the Community Care Waiver and the Attendant Care Waiver, but does not identify administrative costs for the Aging Waiver.

OBJECTIVE, SCOPE, AND METHODOLOGY

Objective

Our objective was to determine whether the State agency complied with Federal requirements when it claimed administrative costs for the Aging Waiver program.

Scope

We reviewed administrative costs claimed for the Aging Waiver program in State FY 2008–2009. We did not review the overall internal control structure of the State agency. We limited our review to those controls related to the State agency's methodology for claiming Aging Waiver administrative costs.

We performed our fieldwork at Long Term Living offices in Harrisburg, Pennsylvania, and at local agencies in Philadelphia and Eddystone, Pennsylvania, between March and June 2010.

Methodology

To accomplish our objective, we:

- reviewed relevant criteria, including the Act, Federal Medicaid regulations, CMS's *State Medicaid Manual*, CMS letters to State Medicaid directors, CMS guidance in preparing HCBS waivers, DCA guidance in preparing cost allocation plans, and Department of Aging program directives;
- reviewed the Aging Waiver and the State agency's cost allocation plan for State FY 2008–2009;
- interviewed CMS, State agency, and Long Term Living officials and officials at local agencies for Philadelphia and Delaware Counties to understand the operation and oversight of the Aging Waiver;
- reconciled Aging Waiver administrative costs submitted on the CMS-64 to State agency accounting records;
- reviewed local agencies' contracts for managing the Aging Waiver program;

- reviewed documentation to support Aging Waiver expenditures, including local agencies' expenditure reports, contracts, and invoices;
- reviewed the audited financial statements prepared according to OMB Circular A-133, *Audits of States, Local Governments, and Non-Profit Agencies*, for the year ended June 30, 2009, for 13 local agencies; and
- discussed our findings with CMS, State agency, and Long Term Living officials.

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 did not comply with Federal requirements when it claimed administrative costs under the Aging Waiver. The State agency claimed \$4,225,120 (\$2,112,560 Federal share) in administrative costs for non-Aging Waiver activities and \$494,638 (\$370,978 Federal share) because of an adjustment error. Because the State agency (1) did not amend its cost allocation plan to identify the administrative costs associated with the Aging Waiver program and non-Aging Waiver activities or submit a methodology for allocating them and (2) did not ensure that all costs claimed under the Aging Waiver were accurate, the State agency claimed unallowable costs.

We also set aside for CMS's adjudication \$51,314,839 (\$25,756,033 Federal share) in local agencies' administrative costs for Aging Waiver activities. The State agency identified the administrative activities in the Aging Waiver but did not amend the cost allocation plan or submit a methodology for allocating the associated costs.

ADMINISTRATIVE COSTS NOT IDENTIFIED IN THE AGING WAIVER OR THE COST ALLOCATION PLAN

Federal Requirements

Pursuant to 2 CFR part 225, App. A, § C.1, for administrative costs to be allowable they must be necessary and reasonable for the proper and efficient administration of the Medicaid program, be allocable to Federal awards, and be adequately documented. Section C.3.a specifies that "a cost is allocable to a particular cost objective if the goods or services involved are chargeable or assignable to such cost objective in accordance with relative benefits received."

Federal regulations (45 CFR part 95, subpart E) require States to adhere to an approved cost allocation plan in computing claims for a Federal share of administrative costs. The cost allocation plan shall describe the procedures used to identify, measure, and allocate all costs to

each of the programs operated by a State agency. The Federal Government will disallow costs not claimed in accordance with the cost allocation plan (45 CFR § 95.519).

CMS guidance issued in a December 1994 letter to State Medicaid directors (Number 122094) clarified CMS's policy concerning State claims for administrative costs. CMS stated that an allowable administrative cost "must be included in a cost allocation plan that is approved ... and supported by a system which has the capability to isolate the costs which are directly related to the support of the Medicaid program from all other costs incurred by the agency."

Non-Aging Waiver Administrative Costs

The State agency claimed \$4,225,120 (\$2,112,560 Federal share) in administrative costs for a training contract, Department of Aging salaries, a pilot program, and a helpline. However, the State agency did not include these costs in its cost allocation plan or in the Aging Waiver. The State agency also did not submit a methodology for allocating those costs.

Trade Association Training Contract

The State agency claimed \$2,725,745 (\$1,362,872 Federal share) for a contract with the Pennsylvania Association of Area Agencies on Aging (the Association)⁵ to coordinate training for local agencies' staff. The Association provided training through the Pennsylvania Long Term Training Institute (PLTI). Staff members who received training through the PLTI performed activities and services for the Aging Waiver program and other programs supported by the State agency and the Pennsylvania Department of Aging. However, neither the Aging Waiver nor the cost allocation plan identified training costs for Aging Waiver staff.

Pennsylvania Department of Aging Salaries

The State agency claimed \$815,376 (\$407,688 Federal share) for salaries of 12 employees of the Pennsylvania Department of Aging. Long Term Living stated that the employees worked on Aging Waiver program activities. However, the State agency had no memorandum of understanding in effect with the Department of Aging as required by the cost allocation plan to identify this allocation. A memorandum of understanding that expired in 1999 addressed State agency and Department of Aging organizational responsibilities concerning the Aging Waiver program. However, the 2008 renewal of the Aging Waiver described a new organizational structure and stated that the Department of Aging no longer had responsibility for the Aging Waiver program.

Pilot Program

The State agency claimed \$633,000 (\$316,500 Federal share) for a pilot program in Allegheny and Cumberland Counties called the Aging and Disability Resource Center Program. The Aging and Disability Resource Center Program's purpose was to link the full range of long-term

⁵ The statewide organization was created to represent and support the local agencies' collective professional interests.

support services, including long-term living information and referral services, benefit counseling, and access to services and benefits, into a single, coordinated system. The State agency claimed Aging Waiver administrative costs of \$490,000 (\$245,000 Federal share) for the Cumberland [County] Link to Aging and Disability Resources and \$143,000 (\$71,500 Federal share) for the Allegheny [County] Link to Aging and Disability Resources.⁶ However, the pilot program was not created under the Aging Waiver, and the costs allocation plan did not identify costs related to the pilot program.

Long Term Living Helpline

The State agency claimed \$51,000 (\$25,500 Federal share) for the operation of a telephone service to address beneficiary questions, complaints, and concerns. The Long Term Care Helpline (Helpline) was for providers and beneficiaries who had been unable to resolve issues at their local agencies and had concerns or questions regarding their services. The Helpline served all Long Term Living programs and was not limited to Aging Waiver issues. Neither the Aging Waiver nor the cost allocation plan identified costs related to the Helpline.

ADJUSTMENT ERROR

Section 1903(a)(2)(A) of the Act authorizes States to claim up to 75 percent of costs “attributable to compensation or training of skilled professional medical personnel [SPMP], and staff directly supporting such personnel” Federal regulations establish the requirements for claiming costs at the enhanced rates (42 CFR § 432.50(d)).

The State agency could not support an adjustment of \$494,638 (\$370,978 Federal share). A CMS review determined that the State agency’s claim for SPMP training costs did not meet the requirements for an enhanced Federal share. CMS asked for a refund of \$2,105,743 (Federal share), and the State agency refunded \$1,611,105 (Federal share). In reclassifying the costs that were not SPMP to correct its claim, the State agency made an adjustment error of \$494,638.

ADMINISTRATIVE COSTS IDENTIFIED IN THE AGING WAIVER BUT NOT IN THE COST ALLOCATION PLAN

Federal Requirements

Subpart E of 45 CFR part 95 requires the State agency to allocate administrative and training costs to a program in accordance with a cost allocation plan that describes the costs claimed and the methodology for allocating the costs to a program. The cost allocation plan shall describe the procedures used to identify, measure, and allocate all costs to each of the programs operated by a State agency. When claiming administrative costs, States must also comply with costs principles found at 2 CFR part 225 (45 CFR § 95.507).

⁶ The pilot program did not take the place of Aging Waiver intake services, for which the State agency also claimed \$456,710 (\$228,355 Federal share).

Pursuant to 45 CFR § 95.507(b)(1), the State agency submitted an amendment to the cost allocation plan for State FY 2008–2009. The amendment identified Long Term Living in the new organizational structure, and the State agency certified that the cost allocation plan complied with the provisions of 2 CFR part 225. However, neither the amendment nor any prior amendments to the cost allocation plan identified Aging Waiver administrative costs or described the State agency’s methodology for allocating the Aging Waiver administrative costs.

Aging Waiver Administrative Costs

We have set aside for CMS adjudication \$51,314,839 (\$25,756,033 Federal share) that the State agency claimed for local agencies’ Aging Waiver administrative costs identified in the Aging Waiver but not in the cost allocation plan.

The Aging Waiver stated that local agencies would provide administrative services for the State agency. However, the State agency’s claim may have included costs that did not benefit the Aging Waiver. Local agencies’ administrative costs were:

- \$38,254,540 (\$19,225,884 Federal share) for case management activities, which included needs assessment, care planning, and service authorization for beneficiaries to prevent institutionalization;
- \$3,827,334 (\$1,913,667 Federal share) for the local agencies’ administrative costs, which were calculated as the lesser of actual administrative costs or 10 percent of local agencies’ care management and provider certification costs;
- \$3,600,000 (\$1,800,000 Federal share) for intake services performed by local agencies’ Information and Referral personnel, who answered questions on the availability of services and programs for the elderly;
- \$2,515,029 (\$1,257,514 Federal share) for nursing home transition services, which included providing information about availability of long-term care in a variety of settings (e.g., in the home, in assisted living) and planning and coordinating beneficiaries’ moves to long-term care or between alternative long-term-care settings; and
- \$2,424,150 (\$1,212,075 Federal share) for provider certifications, by which local agencies validate that the provider meets the qualifications specified in the waiver program for the service that the provider renders.

The State agency also claimed as Aging Waiver administrative costs \$693,786 (\$346,893 Federal share) for costs related to the Social Assistance Management System (SAMS) software used for case-related activities. These costs included \$302,400 (\$151,200 Federal share) for the annual licensing fee and \$391,386 (\$195,693 Federal share) for payments to five software vendors for providing support services to the SAMS.

RECOMMENDATIONS

We recommend that the State agency:

- refund \$2,112,560 in Federal funds for administrative costs not identified in the Aging Waiver or the cost allocation plan,
- refund \$370,978 in Federal funds to correct an adjustment error,
- amend its cost allocation plan to identify all Aging Waiver administrative costs and include detailed allocation methodologies to enable CMS to determine if the costs are being allocated in proportion to benefits received, and
- work with CMS to determine the allocability of \$51,314,839 (\$25,756,033 Federal share) in local agencies' administrative costs for Aging Waiver activities and adjust the Form CMS-64 accordingly.

STATE AGENCY COMMENTS

In written comments on our draft report, the State agency generally did not agree with our recommendations. The State agency said that we based our disallowance on a technical violation of cost allocation regulations and that CMS should recommend that the State agency amend its cost allocation plan rather than take a disallowance. The State agency also said that the bulk of the disallowance “consists of costs that the State had an option to classify as either services or administrative costs under the waiver program. Although Pennsylvania opted to classify these costs as administrative costs, it does not follow that the expenditures lose their nature as services for cost allocation plan purposes. Services are exempt from the requirement for inclusion in a cost allocation plan” The State agency also said that the adjustment was valid and was the result of a timing difference between the quarterly CMS-64 reports and the monthly expenditure reports submitted by the local agencies.

The State agency's comments are included in their entirety as the Appendix.

OFFICE OF INSPECTOR GENERAL RESPONSE

After reviewing the State agency comments, we have made changes to our report and revised our recommendations. We continue to support our recommendations that the State agency refund \$2,112,560 for administrative costs that are not identified in the Aging Waiver or the cost allocation plan and \$370,978 for an adjustment error for which the State agency did not show that a correction had been submitted.

We have revised our report and the recommendation to set aside for CMS adjudication \$25,756,033 identified as administrative costs in the Aging Waiver program that were not included in the cost allocation plan. The regulations do not make an exception for administrative costs that might otherwise have been claimed as services. We therefore continue to recommend

that the State agency amend its cost allocation plan and submit an allocation methodology to ensure that only allocable costs are claimed under the Aging Waiver program.

APPENDIX

APPENDIX: STATE AGENCY COMMENTS



COMMONWEALTH OF PENNSYLVANIA

MAR 04 2011

Mr. Steven Virbitsky
Regional Inspector General for Audit Services
Department of Health & Human Services
Office of Inspector General
Office of Audit Services, Region III
150 South Independence Mall West, Suite 316
Philadelphia, Pennsylvania 19106-3499

Dear Mr. Virbitsky:

The Department of Public Welfare (DPW) has received the draft report number A-03-10-00202 titled, "Review of Administrative Costs Claimed for Pennsylvania's Home and Community-Based Waiver for Individuals Aged 60 and Over", and the work papers requested. The objective of this audit was to ensure Pennsylvania's compliance with federal regulations regarding the administrative claims for the 60+ Aging Waiver program.

Office of Inspector General (OIG) Recommendation: We recommend that the State agency refund \$25,756,033 in federal funds for local agencies' Aging Waiver administrative costs not identified in the cost allocation plan.

Department of Public (DPW) Response: OIG's proposed sanction is unreasonable and contrary to Department of Health and Human Services (HHS) policy given that, apart from the \$370,978 addressed below, the audit did not cite any costs that were inappropriately allocated to the waiver program. Appendices A-3, A-4, A-5, A-7, D-1 and D-2 of the Aging Waiver application detail the functions Area Agencies on Aging (AAA's) perform under the Aging Waiver. The Centers for Medicare and Medicaid Services (CMS) approved the waiver renewal application in November 2008. Therefore, the OIG has found a technical violation of the cost-allocation plan regulations. Under these circumstances, HHS policy precludes the OIG's proposed disallowance recommendation.

The procedures to be followed in situations like this are set forth on page 97 of the DCA Best Practices Manual For Reviewing Public Assistance Cost Allocation Plans (December 2007). That manual provides in relevant part as follows:

DEPUTY SECRETARY FOR ADMINISTRATION

6-200-30 Failure to Amend Cost Allocation Plan

A. If as a result of a review or from other information obtained, it is determined that a State agency failed to amend its cost allocation plan as required by 45 CFR 95.509, the DCA will notify the State that an amended plan is required and that disallowances will be made if it is not submitted within a reasonable period of time. This notification will indicate why the plan needs to be amended, request the State to review not only the sections of the plan that are in question but also the overall plan to identify any other changes that may be required, and specify a reasonable due date for submission of the amended plan. If the amended plan or an acceptable justification for an extension is not submitted by the due date, disallowances will be made in accordance with the procedures in 6-200-50

As outlined in the policy above, your audit constitutes "other information" informing the CMS that Pennsylvania failed to amend its cost allocation plan to incorporate the Aging Waiver. As such, the next step is not a disallowance, but for CMS to request a cost allocation plan amendment. Only if an amendment is not submitted by the due date, is a disallowance to be taken. HHS is bound by its own guidance setting forth the procedures for resolving issues of this nature. *Morton v. Ruiz*, 415 U.S. 199 (1974).

We also note that the bulk of the exception taken in this case consists of costs that the State had an option to classify as either services or administrative costs under the waiver program. Although Pennsylvania opted to classify these costs as administrative costs, it does not follow that the expenditures lose their nature as services for cost allocation plan purposes. Services are exempt from the requirement for inclusion in a cost allocation plan. 45 C.F.R. §95.505.

OIG Recommendation: We recommend that the State agency refund \$2,112,560 in federal funds in non-Aging Waiver administrative costs not identified in the cost allocation plan.

DPW Response: DPW's response is the same as for the previous recommendation.

OIG Recommendation: We recommend that the State agency refund \$370,978 in federal funds to correct an adjustment error.

DPW Response: The DPW feels that this adjustment was valid, as there are timing differences between the CMS-64 quarterly reporting and the monthly expenditure reports submitted by the Area Agencies on Aging. The DPW reports on the CMS-64 the waiver expenditures that were reimbursed during the quarter regardless of the time period in which the expenditures occurred. However, the AAAs monthly expenditure reporting are identified as occurring within a specific fiscal year ended June 30.

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Therefore, the expenditures adjusted on the CMS-64 reporting were incurred by the AAAs during the fiscal year ended June 30, 2008, yet reimbursed by the DPW during the state fiscal year ended June 30, 2009.

OIG Recommendation: We recommend that the State agency amend its cost allocation plan to identify all Aging Waiver administrative costs and include detailed allocation methodologies to allow CMS to determine if costs are being allocated in proportion to benefits received.

DPW Response: The DPW's cost allocation plan will more clearly reference the Department of Aging's cost allocation plan, as Aging is responsible for the detailed allocation of the administrative costs referenced above. The Department of Aging will provide clarity in the administrative costs within the cost allocation plan submit separately to CMS.

Thank you for your assistance in this matter. If you have questions or concerns regarding this request, please contact Maranatha Earling, Audit Resolution Section, at (717) 772-4911.

Sincerely,



Kevin Friel
Acting Deputy Secretary for Administration

c: Mr. Robert Baiocco, Audit Manager