DEPARTMENT OF HEALTH & HUMAN SERVICES

Office of Inspector General

Washington, D.C. 20201

JUN - 7 2004

**TO:** Mark B. McClellan, M.D., Ph.D.
Administrator
Centers for Medicare & Medicaid Services

**FROM:** Joseph E. Vengrin
Deputy Inspector General for Audit Services

**SUBJECT:** Four-State Review of Medicaid Payments for Incarcerated Beneficiaries (A-04-02-06002)

Attached is a copy of our final report providing the results of our four-State review of Medicaid payments for services provided to incarcerated beneficiaries. We undertook the audit to address congressional interest in ways to prevent improper Medicare and Medicaid payments on behalf of beneficiaries who are ineligible because they are incarcerated.

The objectives of our review were to:

- determine the extent to which the four States improperly used Medicaid funds to pay for outpatient health care services provided to incarcerated beneficiaries

- quantify the potential cost savings to the Medicaid program that would result if inpatient services to incarcerated beneficiaries who are not in a prison setting were made unallowable

Section 1905 of Title XIX of the Social Security Act and guidance from the Centers for Medicare & Medicaid Services (CMS) state that Federal financial participation (FFP) is not available for services provided to inmates except when the inmate is not in a prison setting and becomes an inpatient in a medical institution.

The four States included in our review were Florida, Massachusetts, Missouri, and North Carolina. Our review covered Medicaid fee-for-service claims paid by the States during the period October 1, 1998 through September 30, 2001. We reviewed 100 claims from each State and found that Medicaid paid seven improper claims for outpatient services in Florida, three in Massachusetts, two in Missouri, and three in North Carolina. We estimated that Florida made improper Medicaid payments totaling $2,597,773 ($1,450,077 FFP) for outpatient services provided to incarcerated beneficiaries. For the three other States, we did not identify a sufficient number of improper payments in our sample to allow us to make a reliable estimate of the improper payments in the population.

Medicaid payments for inpatient services for incarcerated beneficiaries who were not in a prison setting were allowable based on CMS policy. We found that Massachusetts and the Federal Government could have saved $3,010,925 ($1,505,462 FFP) if the Medicaid payment policy on inpatient health care services for incarcerated beneficiaries had been consistent with the policy on outpatient services. For the three other States, we did not identify a sufficient number of claims for incarcerated beneficiaries to allow us to make a reliable estimate of the potential savings.

We recommend that CMS:

- ensure that the State Medicaid agencies have policies and procedures for identifying incarcerated beneficiaries so that FFP is not claimed for outpatient services

- consider a change in policy to exclude FFP for inpatient services provided to incarcerated beneficiaries who are not in a prison setting

In written comments, CMS concurred with our recommendations. The CMS comments are included as Appendix C to our report.

We would appreciate your views and information on the status of any action taken or contemplated on the recommendations within the next 60 days. If you have any questions, please contact me or your staff may call George M. Reeb, Assistant Inspector General for the Centers for Medicare & Medicaid Audits, at (410) 786-7104 or through e-mail at george.reeb@oig.hhs.gov. Please refer to report number A-04-02-06002 in all correspondence.

Attachment

**Department of Health and Human Services**

**OFFICE OF INSPECTOR GENERAL**

# FOUR-STATE REVIEW OF MEDICAID PAYMENTS FOR INCARCERATED BENEFICIARIES


**JUNE 2004**
**A-04-02-06002**

## EXECUTIVE SUMMARY

### BACKGROUND

Section 1905 of Title XIX of the Social Security Act (the Act) states that Federal financial participation (FFP) is not available for services provided to inmates except when the inmate is not in a prison setting and becomes an inpatient in a medical institution.

We undertook the audit to address congressional interest in preventing improper Medicare and Medicaid payments to beneficiaries who are ineligible because they are incarcerated. In a previous report, "Review of Medicare Payments for Services Provided to Incarcerated Beneficiaries" (A-04-00-05568), dated April 25, 2001, we pointed out that the Centers for Medicare & Medicaid Services (CMS) had not obtained recipient data from the Social Security Administration that identified incarcerated beneficiaries. As a result, CMS made potentially improper Medicare payments on behalf of such beneficiaries. This report summarizes our audit of Medicaid fee-for-service payments for services provided in four States to determine if State Medicaid programs have similar vulnerabilities. The four States we audited were Florida, Massachusetts, Missouri, and North Carolina.

### OBJECTIVES

The objectives of our review were to:

- determine the extent to which the four States improperly used Medicaid funds to pay for outpatient health care services provided to incarcerated beneficiaries

- quantify the potential cost savings to the Medicaid program that would result if inpatient services to incarcerated beneficiaries who are not in a prison setting were made unallowable

Our review covered Medicaid fee-for-service claims paid by the States during the period October 1, 1998 through September 30, 2001.

### FINDINGS

#### Outpatient Services: Improper Medicaid Payments

The four States made improper Medicaid payments for outpatient services provided to incarcerated beneficiaries. We reviewed 100 claims from each State and found that Medicaid paid:

- seven improper claims in Florida
- three improper claims in Massachusetts
- two improper claims in Missouri
- three improper claims in North Carolina

We estimated that Florida made improper Medicaid payments totaling $2,597,773 ($1,450,077 FFP)) for outpatient services provided to incarcerated beneficiaries. For the three other States, we did not identify a sufficient number of improper payments in our sample to allow us to make a reliable estimate of the improper payments in the population.

**Inpatient Services: Cost Savings if Medicaid Payments Were Not Allowed**

Medicaid payments for inpatient services for incarcerated beneficiaries who were not in a prison setting were allowable based on CMS policy. We found that Massachusetts and the Federal Government could have saved $3,010,925 ($1,505,462 FFP) if the Medicaid payment policy on inpatient health care services for incarcerated beneficiaries had been consistent with the policy on outpatient services. For the three other States, we did not identify a sufficient number of claims for incarcerated beneficiaries to allow us to make a reliable estimate of the potential savings.

## RECOMMENDATIONS

We recommend that CMS:

- ensure that the State Medicaid agencies have policies and procedures for identifying incarcerated beneficiaries so that FFP is not claimed for outpatient services

- consider a change in policy to exclude FFP for inpatient services provided to incarcerated beneficiaries who are not in a prison setting

## CMS COMMENTS

In written comments to our draft report, CMS concurred with our recommendations. CMS also made technical comments, which we have incorporated in the report. The complete text of CMS's comments is included as Appendix C.

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# INTRODUCTION

## BACKGROUND

### Medical Assistance as Defined by the Medicaid Program

Title XIX of the Act created the Medicaid program, which authorizes grants to States to provide medical assistance for persons with limited income and resources. The Medicaid program is financed jointly by the Federal and State governments and is administered by each State in accordance with a State plan approved by CMS. Section 1905(a) of the Act defines medical assistance, in part, as:

> . . . payment of part or all of the cost of . . . physicians' or dentists' services, at the option of the State, to individuals . . . not receiving aid or assistance under any plan of the State . . . and with respect to whom Supplemental Security Income benefits are not being paid . . .

However, section 1905(a)(27)(A) of the Act states that ". . . any such payments with respect to care or services for any individual who is an inmate of a public institution (except as a patient in a medical institution) . . ." is not included with the term medical assistance.

### Improper Medicare Payments to Incarcerated Beneficiaries Previously Identified

We undertook the audit to address congressional interest in ways to prevent improper Medicare and Medicaid payments to beneficiaries who are ineligible because they are incarcerated. In a previous report, "Review of Medicare Payments for Services Provided to Incarcerated Beneficiaries" (A-04-00-05568), dated April 25, 2001, we pointed out that CMS had not obtained recipient data from the Social Security Administration that identified incarcerated beneficiaries. As a result, CMS made potentially improper Medicare payments on behalf of such beneficiaries. This report summarizes our audit of Medicaid fee-for-service payments for services provided in four States to determine if State Medicaid programs have similar vulnerabilities. The four States we audited were Florida, Massachusetts, Missouri, and North Carolina.

## OBJECTIVES, SCOPE, AND METHODOLOGY

### Objectives

The objectives of our review were to:

- determine the extent to which the four States improperly used Medicaid funds to pay for outpatient health care services provided to incarcerated beneficiaries

- quantify the potential cost savings to the Medicaid program that would result if inpatient services to incarcerated beneficiaries who are not in a prison setting were made unallowable

## Scope

To perform our review, we compared a file of incarcerated individuals (provided by the Social Security Administration) to CMS's Medicaid Statistical Information System file of paid claims for outpatient and inpatient services during the period October 1, 1998 through September 30, 2001. This match identified the Medicaid fee-for-services claims that were paid on behalf of identified incarcerated individuals. We extracted only those claims paid during our audit period (Federal fiscal years (FY) 1999, 2000, and 2001) to determine our universe. This universe was used as our sampling frame. Statistical samples were taken from the universe of paid claims in each of two categories: prescription drugs/other paid claims (outpatient services) and inpatient/long-term care paid claims (inpatient services).

We issued the following reports:

- Review of Medicaid Payments for Outpatient Services and Prescription Drugs Provided to Incarcerated Recipients in the State of Florida (A-04-01-05011), issued October 31, 2002

- Review of Medicaid Payments for Outpatient Services and Prescription Drugs Provided to Incarcerated Recipients in the State of Massachusetts (A-01-02-00008), issued August 30, 2002

- Review of Medicaid Payments for Outpatient Services and Prescription Drugs Provided to Incarcerated Recipients in the State of Missouri (A-07-02-03020), issued October 4, 2002

- Review of Medicaid Payments for Outpatient Services and Prescription Drugs Provided to Incarcerated Recipients in the State of North Carolina (A-04-02-06003), issued October 31, 2002

Our review of each State's internal controls was limited to gaining an understanding of controls related to our first objective.

## Methodology

We did not assess the completeness of the Social Security Administration's data file and CMS's Medicaid Statistical Information System files, nor did we evaluate the adequacy of the input controls.

### Outpatient Services

From our universe of claims paid on behalf of incarcerated beneficiaries, we selected a statistical sample of 100 claims from each State. We computed the amount of error by determining the dollar amounts erroneously billed to Medicaid in our sample. Table 1 shows the dollar value of the universe and sample for each State:

Table 1: OUTPATIENT SERVICES

| State | Universe | Sample |
|---|---|---|
| Florida | $164,052,544 | $12,124 |
| Massachusetts | 64,985,281 | 11,637 |
| Missouri | 34,309,585 | 6,581 |
| North Carolina | 33,319,191 | 10,924 |
| **Total** | **$296,666,601** | **$41,266** |

Florida was the only State we used to project estimates of improper payments. For the other three States, we did not identify a sufficient number of improper payments in our sample to allow us to make a reliable estimate of the improper payments in the population. The details of the sample methodology for Florida are included in Appendix A.

**Inpatient Services**

From our universe of claims paid on behalf of incarcerated beneficiaries, we selected a stratified sample of 400 paid claims with each State representing a stratum of 100. The universe totaled $130,862,277 and the sample totaled $1,568,786. Table 2 shows the dollar value of the universe and sample for each State. For sample methodology, see Appendix B.

Table 2: INPATIENT SERVICES

| State | Universe | Sample |
|---|---|---|
| Florida | $ 66,746,499 | $ 410,774 |
| Massachusetts | 18,169,765 | 534,071 |
| Missouri | 15,121,453 | 236,965 |
| North Carolina | 30,824,560 | 386,976 |
| **Total** | **$130,862,277** | **$1,568,786** |

**Validation Procedure**

We validated the sample data using each State's Medicaid Management Information System or paid claims history file. We then determined when and where the recipients were incarcerated. For the most part, the incarceration data from the Social Security Administration did not identify the prisoner release date. Therefore, we performed several steps to determine if the Medicaid payment was made for a service provided during a period of incarceration. The steps included:

- telephoning the contact (if one was shown in the Social Security Administration database) to inquire about the recipient

- utilizing Internet sites containing State and Federal prisoner databases

- contacting the States' Medicaid Fraud Control Units to obtain incarceration information from the States' Department of Law Enforcement

- determining where the health care providers who billed for the Medicaid services were located and contacting county and local jails in the surrounding area

For each claim in our sample, we determined whether a claim paid by Medicaid should have been paid by the entity that incarcerated the beneficiary (e.g., if a State prisoner, then the State of incarceration). Each claim was categorized as either unallowable or allowable. The claim was deemed unallowable if the beneficiary was incarcerated at the date of service, while allowable claims occurred when the beneficiary was not incarcerated at the date of service.

Our audit was conducted in accordance with generally accepted government auditing standards.

## FINDINGS AND RECOMMENDATIONS

The States made improper Medicaid payments for outpatient services for incarcerated beneficiaries. We reviewed a sample of 100 claims for each State and found that Medicaid had paid:

- seven improper claims in Florida
- three improper claims in Massachusetts
- two improper claims in Missouri
- three improper claims in North Carolina

We estimated that Florida made improper Medicaid payments totaling $2,597,773 ($1,450,077 FFP) for outpatient services provided to incarcerated beneficiaries. For the three other States, we did not identify a sufficient number of improper payments in our sample to allow us to make a reliable estimate of the improper payments in the population.

Medicaid properly made payments for inpatient services for incarcerated beneficiaries who were not in a prison setting. We found that Massachusetts and the Federal Government could have saved $3,010,925 ($1,505,462 FFP) if the Medicaid payment policy on inpatient services for incarcerated beneficiaries had been consistent with the policy on outpatient services. For the three other States, we did not identify a sufficient number of claims for incarcerated beneficiaries to allow us to make a reliable estimate of the potential savings.

## APPLICABLE LAW AND REGULATIONS

Section 1905 of the Act, implementing Federal regulations, and CMS guidance have made it clear that FFP under the Medicaid program is not available for any services provided to inmates, except when the inmate is not in a prison setting and becomes an inpatient in a medical institution.

Regulations implementing the FFP exclusion for inmates in section 1905(a) of the Act are found at 42 CFR § 435.1008. Specifically, 42 CFR § 435.1008, entitled "Institutionalized Individuals," states that:

> (a) FFP is not available in expenditures for services provided to –
>
> (1) Individuals who are inmates of public institutions as defined in section 435.1009.

The regulations at 42 CFR § 435.1009 define both an inmate of a public institution and a public institution:

> Inmate of a public institution means a person who is living in a public institution. An individual is not considered an inmate if –
>
> (a) He is in a public educational or vocational training institution for purposes of securing education or vocational training; or
>
> (b) He is in a public institution for a temporary period pending other arrangements appropriate to his needs . . .
>
> Public institution means an institution that is the responsibility of a governmental unit or over which a governmental unit exercises administrative control. The term "public institution" does not include
>
> (a) A medical institution as defined in this section;
>
> (b) An intermediate care facility as defined in §§ 440.140 and 440.150 of this chapter;
>
> (c) A publicly operated community residence that serves no more than 16 residents, as defined in this section; or
>
> (d) A child-care institution as defined in this section . . .

On December 12, 1997, CMS issued a letter to all Associate Regional Administrators clarifying CMS's Medicaid coverage policy for inmates of a public institution. The guidance provides an exception to the prohibition of FFP for inmates, stating:

> FFP is permitted when an individual becomes a patient in a medical institution. This occurs when the inmate is admitted as an inpatient in a hospital, nursing facility, juvenile psychiatric facility or intermediate care facility. Accordingly, FFP is available for any Medicaid covered services provided to an 'inmate' while an inpatient in these facilities.

The letter also states that FFP is not available for inmates receiving care "on premises of prison jail, detention center, or other penal setting."

## OUTPATIENT SERVICES

Each of the four States we reviewed made improper Medicaid payments for outpatient services for incarcerated beneficiaries. Our findings are explained below.

### Florida

In Florida, we determined that 7 of the 100 claims in our sample were for services provided to beneficiaries who were incarcerated in Federal, State, county, or mental health facilities on the date of service. Florida concurred with our recommendation to utilize the incarceration data available from the Social Security Administration and has initiated efforts to recoup the funds. Projecting to the universe of claims for services provided to beneficiaries in Florida, we estimate the State made Medicaid overpayments of $2,597,773 ($1,450,077 FFP).

### Massachusetts

Since October 2001, Massachusetts has conducted quarterly matches of its Medicaid eligibility files against the Social Security Administration's prisoner database. In our sample of 100 claims, we found that the State made Medicaid fee-for-service payments for 3 claims for services provided to incarcerated beneficiaries; however, we did not find a sufficient number of errors in our sample to make projections based on Office of Audit Services policies and procedures.

### Missouri

Two of the 100 claims in our sample were for services provided to beneficiaries who were incarcerated in Federal, State, county, or mental health facilities on the date of service. Missouri used data from its Department of Corrections to identify incarcerated beneficiaries. Missouri also used a Social Security Administration data match to identify incarcerated beneficiaries receiving food stamps. If the State discovered that a beneficiary was incarcerated, it took appropriate steps to stop Medicaid benefits.

Although Missouri made some improper Medicaid fee-for-service payments for outpatient services for incarcerated beneficiaries, we did not identify a sufficient number of improper payments in our sample to allow us to make a reliable estimate of the improper payments in the population.

### North Carolina

Three of the 100 claims in our sample were for services provided to North Carolina beneficiaries who were incarcerated in Federal, State, county, or mental health facilities on the date of service. North Carolina's procedures for Medicaid eligibility determinations considered incarceration status. For example, both the State's "Adult Medicaid Manual" and the "Family & Children's Medicaid Manual" specifically required caseworkers to "identify the type of residence" for each

applicant. The "Living Arrangements" sections of the manuals provided that "Inmates (of any age) of a penal institution are not eligible for Medicaid." In addition, the State used information from the Social Security Administration including suspension of benefits based on reported incarcerations.

Our audit revealed that North Carolina made improper Medicaid fee-for-service payments for outpatient services for incarcerated beneficiaries; however, we did not identify a sufficient number of improper payments in our sample to allow us to make a reliable estimate of the improper payments in the population.

## INPATIENT SERVICES

Nineteen of the 400 sampled inpatient claims, totaling $81,979, were for services provided to beneficiaries who were incarcerated in Federal, State, county, or mental health facilities on the date of service. Twelve of the 19 claims were in the Massachusetts stratum. We estimated that the Massachusetts Medicaid program and the Federal Government could have saved $3,010,925 ($1,505,562 FFP) if these services had been unallowable. The remaining seven claims from the three other States were not sufficient in number to allow us to make a reliable estimate of the potential savings for those States.

CMS allows Medicaid payments for inpatient services for incarcerated beneficiaries who are not in a prison setting. This policy is inconsistent with other CMS policies related to reimbursement for services provided to incarcerated beneficiaries. As previously discussed in this report, FFP is generally not available for outpatient services provided to incarcerated beneficiaries. Additionally, CMS prohibits disproportionate share hospital (DSH) payments to hospitals to cover the cost of providing inpatient services to inmates. On August 16, 2002, CMS issued a policy clarification letter to all State Medicaid directors addressing States' and providers' questions regarding DSH payments for prison inmate care. Specifically, CMS advised that "Inmates of correctional facilities are wards of the State. As such, the State is obligated to cover their basic economic needs (food, housing, and medical care) because failure to do so would be in violation of the eighth amendment of the Constitution."

## RECOMMENDATIONS

We recommend that CMS:

- ensure that State Medicaid agencies have policies and procedures for identifying incarcerated beneficiaries so that FFP is not claimed for outpatient services

- consider a change in policy to exclude FFP for inpatient services provided to incarcerated beneficiaries who are not in a prison setting

## CMS COMMENTS

In written comments to our draft report, CMS concurred with our recommendations. CMS also made technical comments that we have incorporated in the report. The complete text of CMS's comments is included as Appendix C.

# APPENDICES

## SAMPLE METHODOLOGY RESULTS AND PROJECTION: OUTPATIENT CLAIMS—FLORIDA

### Objective

Our objective was to determine the extent to which Florida used Medicaid funds to pay for prescription drugs and other (outpatient) health care services provided to inmates.

### Population

The universe consisted of 1,445,684 Medicaid fee-for-service claims with payments totaling $164,052,544 for prescription drug and other (outpatient) health care services provided to beneficiaries during incarceration.

### Sampling Unit

The sampling unit was a Medicaid paid claim.

### Sample Design

We used a simple random sample design.

### Sample Size

We used a sample size of 100 claims.

### Estimation Methodology

We computed the amount of error by determining the dollar amounts erroneously billed to Medicaid in our sample. We then used the Office of Audit Services statistical software for unrestricted variable appraisal sampling to project the amount of error from the sample. We estimated the overpayment and recommended recovery at the lower limit of 90-percent confidence interval.

| Variable Projection | Overpayment |
|---|---|
| Point Estimate | $12,302,771 |
| 90-Percent Confidence Interval | |
| Lower Limit | $ 2,597,773 |
| Upper Limit | $22,007,768 |

# SAMPLE METHODOLOGY RESULTS AND PROJECTION: INPATIENT CLAIMS

## Objective

Our objective was to determine the extent to which States used Medicaid funds to pay for inpatient and long-term health care services provided to inmates.

## Population

The universe consisted of 35,394 Medicaid fee-for-service claims with payments totaling $130,862,277 for inpatient and long-term health care services provided to beneficiaries during incarceration.

## Sampling Unit

The sampling unit was a Medicaid paid claim.

## Sample Design

We used a stratified sample design. Each of the four selected States constituted a stratum. We selected a random sample of 100 claims within each stratum.

## Sample Size

We used a sample size of 400 claims, consisting of 100 claims from each of the 4 States.

## Estimation Methodology

We estimated the cost savings to the Medicaid program had inpatient and long-term health care services provided to incarcerated beneficiaries been unallowable under current CMS policy. We used the Office of Audit Services statistical software for variable appraisal sampling to project the cost savings from the sample. We estimated the cost savings using the point estimate.

| Variable Projection | Cost Savings |
|---|---|
| Point Estimate | $3,010,925 |
| 90-Percent Confidence Interval | |
| Lower Limit | $ 734,606 |
| Upper Limit | $5,287,243 |

DEPARTMENT OF HEALTH & HUMAN SERVICES

Centers for Medicare & Medicaid Services

*Administrator*
Washington, DC 20201

**DATE:** NOV 15 2003

**TO:** Dara Corrigan
Acting Principal Deputy Inspector General

**FROM:** Thomas A. Scully
Administrator



**SUBJECT:** Office of the Inspector General (OIG) Draft Report: *"Four State Review of Medicaid Payments for Incarcerated Recipients"* (A-04-02-06002)

Thank you for the opportunity to comment on the above-referenced report. The following are the Centers for Medicare & Medicaid Services' (CMS) comments to the OIG's recommendations.

OIG RECOMMENDATION
OIG recommends CMS ensure that the state Medicaid agencies have policies and procedures for identifying incarcerated recipients in order that federal financial participation (FFP) is not claimed for outpatient services.

CMS RESPONSE
CMS agrees that it is necessary to ensure that state Medicaid agencies have policies and procedures in place to assure compliance with federal policy regarding incarcerated recipients. After a decision regarding a potential policy change, monitoring would be implemented prospectively.

OIG RECOMMENDATION
OIG recommends CMS consider a change in policy to exclude FFP for inpatient services provided to incarcerated recipients.

CMS RESPONSE
CMS agrees to review its current polices for incarcerated recipients.

Attached are our technical comments.

OIG Draft Report: *"Four State Review of Medicaid Payments for Incarcerated Recipients"* (A-04-02-06002)

Technical Comments

- The last sentence of the first paragraph of the Findings section could be viewed more broadly than CMS' articulated policy because it is not consistent with the reference in the CMS guidance to a "prison setting"(which is broader than "prison grounds") and does not give weight to the statutory term "patient" (the reference to an "inpatient facility" does not clearly define the status of the individual as a patient). It would be more accurate to rephrase this sentence to read: "The CMS policy is that FFP is not available for services provided to inmates, except when the inmate is not in a prison setting and becomes an inpatient in a medical institution."

- Similar conforming changes in several places would increase the accuracy of the report, such as in the second paragraph of the Background section, the second sentence of the Findings and Recommendations section, the first sentence of the Inconsistencies in CMS Policy section, and the second sentence of the Conclusion.

- In addition, in the third paragraph of the Findings section, the first sentence would be more accurate if the initial clause were revised to read: "Since the current CMS policy allows Medicaid payment for inpatient services provided to inmates who are not in a prison setting, . . ."

- In the Objective, Scope and Methodology section, second bullet point, the final phrase would be more accurate if it read: "under the current CMS policy, which allows Medicaid payment for inpatient services provided to inmates who are not in a prison setting."

- The second sentence of the Inpatient Services section would be more accurate if it read: "The current CMS policy allows Medicaid payment for inpatient services provided to inmates who are not in a prison setting." A similar conforming change should be made in the third sentence of Inconsistencies in CMS Policy section.