



DEPARTMENT OF HEALTH AND HUMAN SERVICES  
OFFICE OF AUDIT SERVICES  
233 NORTH MICHIGAN AVENUE  
CHICAGO, ILLINOIS 60601

REGION V  
OFFICE OF  
INSPECTOR GENERAL

March 5, 2003

Report Number A-05-02-00063

Mr. Mike Robinson, Commissioner  
Commonwealth of Kentucky  
Cabinet for Health Services  
Department for Medicaid Services  
275 East Main Street  
Frankfort, Kentucky 40621

Dear Mr. Robinson:

Enclosed are two copies of the U.S. Department of Health and Human Services (HHS), Office of Inspector General, Office of Audit Services' (OAS) report entitled "Audit of Medicaid Payments for Oxygen Related Durable Medical Equipment and Supplies" for the period January 1, 1998 through December 31, 2000. The report was prepared in partnership with the Kentucky Auditor of Public Accounts. A copy of this report will be forwarded to the action official noted below for his review and any action deemed necessary.

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

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

To facilitate identification, please refer to Report Number A-05-02-00063 in all correspondence relating to this report.

Sincerely,

Paul Swanson  
Regional Inspector General  
for Audit Services

Edward B. Hatchett, Jr.  
Auditor of Public Accounts  
Commonwealth of Kentucky

Enclosures – as stated

**Direct Reply to HHS Action Official:**

Associate Regional Administrator  
Centers for Medicare and Medicaid Services, Region IV  
Division of Medicaid and State Operations  
Sam Nunn Atlanta Federal Center  
61 Forsyth Street, SW, Suite 4T20  
Atlanta, GA 30303

**Department of Health and Human Services**

**OFFICE OF  
INSPECTOR GENERAL**

**PARTNERSHIP AUDIT OF MEDICAID  
PAYMENTS FOR OXYGEN  
RELATED DURABLE MEDICAL  
EQUIPMENT AND SUPPLIES**

**JANUARY 1, 1998 THROUGH  
DECEMBER 31, 2000**

**KENTUCKY DEPARTMENT FOR  
MEDICAID SERVICES  
FRANKFORT, KENTUCKY**



**JANET REHNQUIST**  
Inspector General

**MARCH 2003**  
**A-05-02-00063**

# *Office of Inspector General*

<http://oig.hhs.gov>

---

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

## *Office of Audit Services*

The OIG's Office of Audit Services (OAS) provides all 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 in order to reduce waste, abuse, and mismanagement and to promote economy and efficiency throughout the department.

## *Office of Evaluation and Inspections*

The OIG's Office of Evaluation and Inspections (OEI) conducts short-term management and program evaluations (called inspections) that focus on issues of concern to the department, the Congress, and the public. The findings and recommendations contained in the inspections reports generate rapid, accurate, and up-to-date information on the efficiency, vulnerability, and effectiveness of departmental programs.

## *Office of Investigations*

The OIG's Office of Investigations (OI) conducts criminal, civil, and administrative investigations of allegations of wrongdoing in HHS programs or to HHS beneficiaries and of unjust enrichment by providers. The investigative efforts of OI lead to criminal convictions, administrative sanctions, or civil monetary penalties. The OI also oversees state Medicaid fraud control units, which investigate and prosecute fraud and patient abuse in the Medicaid program.

## *Office of Counsel to the Inspector General*

The Office of Counsel to the Inspector General (OCIG) provides general legal services to OIG, rendering advice and opinions on HHS programs and operations and providing all legal support in OIG's internal operations. The OCIG imposes program exclusions and civil monetary penalties on health care providers and litigates those actions within the department. The OCIG also represents OIG in the global settlement of cases arising under the Civil False Claims Act, develops and monitors corporate integrity agreements, develops model compliance plans, renders advisory opinions on OIG sanctions to the health care community, and issues fraud alerts and other industry guidance.

# *Notices*

---

**THIS REPORT IS AVAILABLE TO THE PUBLIC**  
at <http://oig.hhs.gov>

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

## **OAS FINDINGS AND OPINIONS**

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



## **EXECUTIVE SUMMARY**

This report presents the results of a partnership audit of Medicaid payments for oxygen related durable medical equipment and supplies in Kentucky. The audit was conducted by the U.S. Department of Health and Human Services' Office of Inspector General and the Kentucky Auditor of Public Accounts.

### **OBJECTIVE**

The objective of our review was to determine if the Kentucky Medicaid program (State agency) was reimbursing providers in excess of State Medicare limits for durable medical equipment (DME) and supplies used to provide oxygen.

### **FINDING**

We determined that providers were paid amounts for DME and supplies that exceeded the dollar amount allowed for similar items under the Medicare program. The higher reimbursements occurred because the State agency did not update its reimbursement limits for these items on a timely basis.

During our three year audit period ending December 31, 2000, the Medicaid program was overcharged \$727,000 (Federal share \$511,397) for oxygen related DME and supplies that were reimbursed at levels in excess of Medicare payment limits.

### **RECOMMENDATIONS**

We are recommending that the State agency: (i) refund \$727,000 (Federal share \$511,397) for excessive reimbursements to providers and (ii) ensure that the Medicaid payment limits for oxygen related DME and supplies are updated on a timely basis.

### **STATE AGENCY COMMENTS AND OIG RESPONSE**

In a response dated January 28, 2003, State agency officials disagreed with our findings and recommendations. Their response is summarized in the body of the report and is included in its entirety as an Appendix to this report.

State agency officials stated that from May 1989 until July 2000, the Medicaid program paid providers of DME their usual and customary charges, not to exceed Medicare upper limits. They further stated that Kentucky administrative regulations provide that Medicaid fees will be revised annually on July 1, regardless of when Medicare fees are revised. In addition, these officials argued that Department of Health and Human Services, Departmental Appeals Board (DAB) decisions support their rationale to delay implementation of the rates until July 1.

We acknowledge that the State agency revised the Medicaid fees each July 1, the date its fiscal year begins. However, the Medicare rates, which according to the Kentucky administrative regulations are the upper payment limits for the Medicaid program, are effective January 1 each year. Our recommendations relate to the timing of the

implementation of the Medicaid rates. The DAB decisions noted in the State agency's response are related to rate settings, primarily at long term care facilities, and are not applicable to the recommendations.

## TABLE OF CONTENTS

	<b>Page</b>
INTRODUCTION .....	1
BACKGROUND .....	1
OBJECTIVE, SCOPE AND METHODOLOGY .....	1
Objective .....	1
Scope .....	1
Methodology .....	1
FINDINGS AND RECOMMENDATIONS.....	2
CRITERIA .....	2
CONDITION .....	3
CAUSE .....	3
EFFECT .....	4
RECOMMENDATIONS .....	4
STATE AGENCY COMMENTS.....	4
OIG RESPONSE .....	4

## INTRODUCTION

### BACKGROUND

The Medicaid program is jointly administered by the Federal government, through the Centers for Medicare and Medicaid Services (CMS) and by the States, through their designated State agency. Within broad guidelines established by federal statutes, regulations and policies, each state determines the type, amount, and scope of services and sets the rate of payment for services.

The CMS also administers the Medicare program, which generally provides medical care for the elderly. The CMS prepares a fee schedule for DME, prosthetics, orthotics, and supplies provided under the Medicare program. The fee schedule is updated annually, and as needed, by a regional carrier responsible for a specific geographic area. The fee schedule is segregated by the CMS Healthcare Common Procedure Coding System (HCPCS) numbers. Groups of HCPCS numbers are associated with specific categories of services. The Oxygen category contains 18 specific HCPCS numbers.

Changes in the Medicare fee schedules under the Balanced Budget Act of 1997 substantially reduced the payment levels for numerous Medicare items, including oxygen and oxygen equipment. The Act stated that for 1998, the national payment limit for these items is the 1997 limit reduced by 25 percent. The payment limit for 1999 and each subsequent year is the 1997 limit reduced by 30 percent.

This audit was performed jointly with the Kentucky Auditor of Public Accounts under the Department of Health and Human Services, Office of Inspector General (OIG), Office of Audit Services' Partnership Plan.

### OBJECTIVE, SCOPE AND METHODOLOGY

#### *Objective*

The objective of our review was to determine if the State agency was reimbursing providers in excess of State Medicare limits for durable medical equipment and supplies used to provide oxygen.

#### *Scope*

Our audit covered payments for DME and supply claims with dates of service during our three year audit period ending December 31, 2000, and included 151,326 paid claims, totaling \$17,454,708. The objective of the audit did not require an assessment of the internal controls.

#### *Methodology*

Under its Partnership Plan, the Department of Health and Human Services, Office of Inspector General (OIG), Office of Audit Services, entered into this joint audit with the

Kentucky Auditor of Public Accounts. The review was jointly performed by staff from the OIG and from the Kentucky Auditor of Public Accounts' office.

To accomplish our objective, we:

- Identified the codes used to claim reimbursement for oxygen related DME and supplies provided to Kentucky Medicaid recipients,
- Obtained the Medicare and Medicaid payment limits for items of oxygen related DME and supplies,
- Obtained Medicaid claims data for all HCPCS numbers identified as oxygen related DME and supplies under the Medicare fee schedule, and
- Calculated the overpayments associated with limiting the Medicaid payments to the applicable Medicare payment limit.

We performed our audit work at the State agency offices and the Kentucky Auditor of Public Accounts' offices in Frankfort, Kentucky, and the OIG's office in Columbus, Ohio, during April through July 2002. We discussed the results of our audit with State officials on July 24, 2002.

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

## **FINDINGS AND RECOMMENDATIONS**

We determined that provider payments for DME and supplies exceeded the amounts allowed for similar items under the Medicare program. The higher reimbursements occurred because the State agency did not update its reimbursement limits for these items on a timely basis.

During our three year audit period, the Medicaid program was overcharged \$727,000 (Federal share \$511,397) for oxygen related DME and supplies that were reimbursed at levels in excess of Medicare payment limits.

## **CRITERIA**

The Kentucky Medicaid State Plan provides that participating providers will be reimbursed on the basis of usual and customary actual billed charges not to exceed Medicare upper limits for the particular item. If the durable medical equipment, appliance or medical supplies are covered by Medicaid, but not covered by Medicare, Medicaid will set the applicable upper limit. Medicaid established upper limits shall be based on standards of reasonableness and designed not to exceed area prevailing charges.

## CONDITION

The State Medicaid Supply List contained payment data on 16 of the 18 HCPCS numbers classified by CMS as oxygen related equipment and supplies under the Medicare fee schedule. We determined that Medicaid reimbursements for 12 of the 16 oxygen related HCPCS numbers exceeded the Medicare payment limits.

The following schedule provides yearly detail by HCPCS number of the Medicare fee schedule amount, the number of payments exceeding the Medicare amount, and the associated Medicaid payments over the Medicare fee schedule amounts.

Year	HCPCS	Description	Medicare Fee Schedule Amounts	Payment Exceeds Medicare Fee Number of Units	Payments in Excess of Fee Schedule Amount
1998	A4621	Tracheotomy mask or collar	\$ 1.48	102	\$ 210
1999	A4621	Tracheotomy mask or collar	1.39	445	40
1998	E0424	Stationary compressed gas O2	245.16	101	7,481
1999	E0424	Stationary compressed gas O2	228.80	97	1,556
1998	E0434	Portable liquid O2	32.75	106	1,235
1999	E0434	Portable liquid O2	30.57	129	292
1998	E0439	Stationary liquid O2	245.16	116	9,309
1999	E0439	Stationary liquid O2	228.80	124	2,029
1998	E0442	Oxygen contents liq per/unit	148.44	5	332
1999	E0442	Oxygen contents liq per/unit	138.53	1	10
1998	E0443	Port O2 contents gas/unit	19.52	496	2,314
1999	E0443	Port O2 contents gas/unit	18.20	714	942
1998	E0444	Port O2 contents liq/unit	19.52	2	12
1998	E1400	Oxygen concentrator < 2 lite	245.16	5,616	447,494
1999	E1400	Oxygen concentrator < 2 lite	228.80	5,906	96,295
1998	E1401	Oxygen concentrator 2-3 lite	245.16	773	62,709
1999	E1401	Oxygen concentrator 2-3 lite	228.80	1,117	18,191
1998	E1402	Oxygen concentrator 3-4 lite	245.16	284	23,036
1999	E1402	Oxygen concentrator 3-4 lite	228.80	380	6,217
1998	E1403	Oxygen concentrator 4-5 lite	245.16	391	31,528
1999	E1403	Oxygen concentrator 4-5 lite	228.80	662	10,830
1998	E1404	Oxygen concentrator > 5 lite	245.16	47	3,827
1999	E1404	Oxygen concentrator > 5 lite	228.80	68	1,112
	<b>Total</b>			<b>17,682</b>	<b>\$ 727,000</b>

## CAUSE

The State agency did not implement the reductions for oxygen related equipment and supplies in a timely manner. The Medicaid fee schedule was updated on July 1 of 1998 and 1999. This resulted in a six-month time period between the date Medicare revised rates went into effect and the date changes were recorded in the Medicaid fee schedule. The 18 oxygen related equipment and supplies HCPCS numbers were not revised in the 2000 Medicare fee schedule.

## **EFFECT**

During our three year audit period, the Medicaid program was overcharged \$727,000 (Federal share \$511,397) for oxygen related DME and supplies that were reimbursed at levels in excess of Medicare payment limits.

## **RECOMMENDATIONS**

We recommend that the State agency:

- Refund \$727,000 (Federal share \$511,397) to the Medicaid program for excessive reimbursements to providers for oxygen related DME and supplies.
- Ensure that, in future periods, the Medicaid payment limits for oxygen related DME and supplies are updated in a timely manner.

## **STATE AGENCY COMMENTS**

State agency officials disagreed with our findings and recommendations. Although they agreed that they intended to pay Medicaid DME providers their usual and customary charges, not to exceed Medicare upper limits, they stated that since May 1989, Kentucky administrative regulations provide for the annual revision of Medicaid fees on July 1, regardless of when Medicare fees are revised.

These officials cited several Department of Health and Human Services, Departmental Appeals Board (DAB) decisions that support their rationale to delay implementation of the rates until July 1. They contended that DAB decisions generally defer to a state's reasonable interpretation of ambiguous language in its own plan, if it does not conflict with the federal requirements.

## **OIG RESPONSE**

We acknowledge that the State agency consistently revised its Medicaid fees at the start of its fiscal year on July 1. However, the Medicare rates, which according to the Kentucky administrative regulations are the upper payment limits for the Medicaid program, are effective on January 1. Our recommendations not only relate to the timing of the implementation of the Medicaid rates, but also to the significant overpayments that this delay allows to occur. We continue to believe that the State agency has a fiduciary responsibility to safeguard and minimize expenditures for both federal and state funds. Therefore, we continue to recommend that the State agency apply the intended Medicare limits to Medicaid payments when they become available for State agency implementation. In our second recommendation, we have deleted the reference to ensuring that Medicaid payment limits do not exceed Medicare fees.

# APPENDIX



**CABINET FOR HEALTH SERVICES**  
**COMMONWEALTH OF KENTUCKY**  
275 East Main Street  
FRANKFORT, KY 40621-0001



**DEPARTMENT FOR MEDICAID SERVICES**  
"An Equal Opportunity Employer M/F/D"

January 28, 2003

**Express Mail and Fax**

Mr. Paul Swanson  
Regional Inspector General for Audit Services  
Department for Health and Human Services  
Office of audit Services  
233 North Michigan avenue  
Chicago, Illinois 60601

Dear Mr. Swanson:

Thank you for the opportunity to review and comment on the draft of the report entitled "Partnership Audit of Medicaid Payments for Oxygen Related Durable Medical Equipment and Supplies" (CIN A-05-02-00063). We appreciate the efforts of your staff and that of the State Auditor participating in this review. Also, we would especially like to thank Mr. Leon Siverhus, Audit Manager, for allowing us the additional time to prepare our response to the audit.

In response to the draft report, we would like to address both the findings and the recommendations contained within the report. In the report you found that providers were paid amounts for DME and supplies that exceeded the Medicare limits because the State agency did not update its reimbursement limits on a timely basis. Based upon this finding you recommended that the State agency refund the federal share of the overpayment (\$511,397) and ensure that in the future that fee schedules are updated in a timely manner.

The Department disagrees with both the findings and the recommendations within the report. In May 1989 the Department began paying providers of Durable Medical Equipment (DME) in accordance with its approved state plan their usual and customary charges not to exceed Medicare upper limits. (this policy remained in place until July 2000.) The state's interpretation of this language was clarified through its administrative regulation with the following language: "Beginning in [State Fiscal Year] 1990, [Medicare] fees will be

"...promoting and safeguarding the health and wellness of all Kentuckians."



revised annually on July 1, regardless of when Medicare fees are revised." The Department has consistently applied this interpretation since July 1989. This interpretation has allowed the Department to budget and project expenditures consistent with its own fiscal year. Additionally, this interpretation has been consistent with the Department's adoption of a universal rate year of July 1 through June 30 for all provider groups, not just DME.

The Department of Health and Human Services, Departmental Appeals Board, has consistently taken the position that it "will generally defer to a state's interpretation of ambiguous language in its own plan, provided the interpretation is reasonable and does not conflict with federal requirements" *Louisiana Department of Health and Hospitals*, DAB NO. 1542, (1995) and that "the state's interpretation of its plan should be sustained if reasonably supported by the language of the provision or by factors such as administrative practice" *Arkansas Department of Human Services*, DGAB No. 540 (1984). This position has been further sustained in *Missouri Department of Social Services*, DAB NO. 1189 (1990) and *South Dakota Department of Social Services*, DAB No. 934 (1988), et.al.

The Department believes that this was a reasonable application of the intent of its approved state plan. The language of the plan reasonably supports this interpretation and there is no conflict with any federal requirement. To interpret otherwise would subject the state and the federal government to a possible determination that payments made prior to January 1998 could be considered underpayments subject to adjustments in excess of the amount of the described overpayments of this audit. Prior to January 1998, there had been no reduction in Medicare fees.

As noted earlier, the Department revised its payment methodology for DME providers in July 2000, therefore, the recommendation regarding updating of Medicare fees schedules is no longer relevant.

In closing, let me again thank you, your staff, especially Mr. Siverhus and that of the State Auditor. We look forward to working with you on the resolution of these issues.

Sincerely,



Mike Robinson  
Commissioner

MR/tp