



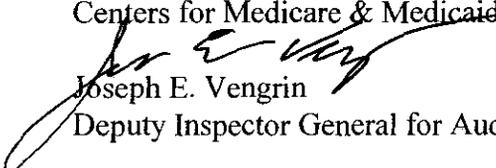
DEPARTMENT OF HEALTH & HUMAN SERVICES

Office of Inspector General

Washington, D.C. 20201

JUL 16 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:** Audit of Medicaid Payments for Oxygen-Related Durable Medical  
Equipment and Supplies (A-05-03-00018)

Attached is a copy of our final report providing the results of our audit of Medicaid payments for oxygen-related durable medical equipment (DME) and supplies for the period January 1, 1998 through December 31, 2000. This report consolidates the results of our audits of 9 States and our analysis of the 41 other States and the District of Columbia.

Our objective was to determine whether State Medicaid programs reimbursed providers in excess of Medicare payment limits for DME and supplies used to provide oxygen.

We reviewed approximately 850,000 paid claims, totaling \$90 million, for oxygen-related DME and supplies in the 9 audited States. Medicaid paid providers in six of the nine States approximately \$12.7 million (\$7.3 million Federal share) more than Medicare would have paid.

More specifically, four States with a State plan requirement that Medicaid rates for oxygen-related DME and supplies not exceed the Medicare fee schedule overpaid Medicaid providers \$10 million (\$5.9 million Federal share). Two States without that requirement could have saved approximately \$2.7 million (\$1.4 million Federal share) if Medicaid rates had been limited to amounts allowable under the Medicare program. For the four States that limited Medicaid rates to Medicare reimbursement levels, the overpayments occurred because the State agencies did not adjust their reimbursement limits to amounts equal to or less than the Medicare-allowable amounts or adjust their rates on a timely basis. Our reports to the nine audited States included recommendations, where appropriate, to reduce Medicaid rates and to refund excessive Medicaid reimbursements.

In addition, our analysis of data from the 41 other States and the District of Columbia determined that 22 States and the District of Columbia could achieve significant savings by limiting Medicaid rates for oxygen-related DME and supplies to the Medicare-allowable amounts.

We recommend that the Centers for Medicare & Medicaid Services (CMS):

- instruct those State agencies that limit Medicaid rates to Medicare reimbursement levels to apply Medicaid payment limits for oxygen-related DME and supplies correctly and in a timely manner
- alert the remaining State agencies to the opportunity to reduce Medicaid payments by limiting reimbursement rates for oxygen-related DME and supplies to the Medicare-allowable amounts

In comments dated April 15, 2004, CMS officials agreed with the first recommendation in our draft report but did not agree with the second recommendation, which was to encourage States to consider limiting payment rates for oxygen-related DME and supplies. We considered CMS's comments and revised the recommendation. CMS's comments are summarized in the report and are included as an appendix.

Please send us your final management decision, including any action plan, as appropriate, within 60 days. If you have any questions or comments about this report, please do not hesitate to call me or your staff may contact 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](mailto:george.reeb@oig.hhs.gov). Please refer to report number A-05-03-00018 in all correspondence.

Attachment

**Department of Health and Human Services**

**OFFICE OF  
INSPECTOR GENERAL**

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



**JULY 2004  
A-05-03-00018**

# *Office of Inspector General*

<http://oig.hhs.gov>

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## **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**

### **OBJECTIVE**

Our objective was to determine whether State Medicaid programs reimbursed providers in excess of Medicare payment limits for durable medical equipment (DME) and supplies used to provide oxygen. We audited 9 States and performed additional analysis of paid claims for oxygen-related DME from the 41 other States and the District of Columbia.

### **SUMMARY OF FINDINGS**

We reviewed approximately 850,000 paid claims, totaling \$90 million, for oxygen-related DME and supplies in the 9 audited States. Medicaid paid providers in six of the nine States approximately \$12.7 million (\$7.3 million Federal share) more than Medicare would have paid.

Four States with a State plan requirement that Medicaid rates for oxygen-related DME and supplies not exceed the Medicare fee schedule overpaid Medicaid providers approximately \$10 million (\$5.9 million Federal share) for oxygen-related DME and supplies. Two States without that requirement could have saved approximately \$2.7 million (\$1.4 million Federal share) if Medicaid rates had been limited to amounts allowable under the Medicare program. For the four States that limited Medicaid rates to Medicare reimbursement levels, the overpayments occurred because the State agencies did not adjust their reimbursement limits to amounts equal to or less than the Medicare-allowable amounts or adjust their rates on a timely basis. Our reports to the nine audited States included recommendations, where appropriate, to reduce Medicaid rates and to refund excessive Medicaid reimbursements.

In addition, our analysis of data from the 41 other States and the District of Columbia determined that 22 States and the District of Columbia could achieve significant savings by limiting Medicaid rates for oxygen-related DME and supplies to the Medicare-allowable amounts.

### **RECOMMENDATIONS**

We recommend that the Centers for Medicare & Medicaid Services (CMS):

- instruct those State agencies that limit Medicaid rates to Medicare reimbursement levels to apply Medicaid payment limits for oxygen-related DME and supplies correctly and in a timely manner
- alert the remaining State agencies to the opportunity to reduce Medicaid payments by limiting reimbursement rates for oxygen-related DME and supplies to the Medicare-allowable amounts

## **AUDITEE COMMENTS**

In comments dated April 15, 2004, CMS officials agreed with the first recommendation in our draft report but did not agree with the second recommendation, which was to encourage States to consider limiting payment rates for oxygen-related DME and supplies.

## **OFFICE OF INSPECTOR GENERAL RESPONSE**

We considered CMS's comments and revised our second recommendation. CMS's comments are included as an appendix.

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## **INTRODUCTION**

### **BACKGROUND**

#### **Medicaid Program**

The Federal Government, through CMS, and the States, through their designated State agencies, jointly administer the Medicaid program. Within broad guidelines established by Title XIX of the Social Security Act and regulations contained in Title 42 of the Code of Federal Regulations, each State establishes its own eligibility standards; determines the type, amount, duration, and scope of services; sets the payment rates for services; and administers its own program.

States may receive Federal matching funds to provide certain optional services, such as DME and supplies, that are specified in their approved State plans. State plans for 12 States and the District of Columbia require that Medicaid rates for DME and supplies not exceed the Medicare fee schedule.

#### **Medicare Program**

CMS also administers the Medicare program, which generally provides medical care for the elderly. CMS has established fee schedules for DME, prosthetics, orthotics, and supplies provided under the Medicare program. The fee schedules are updated annually and organized by Healthcare Common Procedure Coding System (HCPCS) numbers, which are grouped by specific categories of services. The oxygen category contains 18 specific HCPCS numbers.<sup>1</sup>

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 limited the 1998 payments for DME and supplies to 75 percent of the 1997 limit and the payments for subsequent years to 70 percent of the 1997 limit.

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

#### **Objective**

Our objective was to determine whether State Medicaid programs reimbursed providers in excess of Medicare payment limits for DME and supplies used to provide oxygen.

#### **Scope**

This report consolidates the results of our audits in 9 States, along with our analysis of the rates charged for oxygen-related equipment in the 41 other States and the District of Columbia. The 9 audits covered oxygen-related DME and supply claims for all 18 HCPCS numbers with dates of service from January 1, 1998 through December 31, 1999. Audits in two States (Indiana and

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<sup>1</sup> A4619, A4621, E0424, E0431, E0434, E0439, E0441, E0442, E0443, E0444, E1390, E1400, E1401, E1402, E1403, E1404, E1405, and E1406.

Wisconsin) also included the last quarter of calendar year 1997. In addition, audits in the last four States reviewed (Indiana, Kentucky, Pennsylvania, and Texas) included an additional year because the claim data were available. We reviewed the entire population of approximately 850,000 paid claims, totaling \$90 million, for oxygen-related DME and supplies in the 9 States. Our analysis of the 41 other States and the District of Columbia included a review of Medicaid reimbursement for 11 oxygen-related DME and supply codes.<sup>2</sup>

We did not assess internal controls.

## **Methodology**

To accomplish our objective, we:

- identified the codes used to claim reimbursement for oxygen-related DME and supplies provided to Medicaid beneficiaries
- obtained the Medicare and Medicaid payment limits for oxygen-related DME and supplies
- obtained Medicaid claim data for HCPCS numbers identified as oxygen-related DME and supplies on the Medicare fee schedules
- calculated the overpayments or potential for savings associated with limiting Medicaid payments to the applicable Medicare payment limit

We initially conducted individual audits in the six States located in Region V: Illinois, Indiana, Michigan, Minnesota, Ohio, and Wisconsin. We reviewed State plans to determine whether Medicare rates were used as a limiting factor in setting Medicaid rates, and we used data analysis techniques to identify other States with significant Medicaid reimbursements for oxygen-related DME and supplies. Based on these analyses and our tests of claims during one quarter of Federal fiscal year 1999, we selected the three additional States (Kentucky, Pennsylvania, and Texas) that had the highest potential for overpayments and a State plan requirement that Medicaid DME rates not exceed the Medicare rates. For the purpose of our reviews, the State plan requirements provided the basis for determining whether amounts paid in excess of the Medicare rates were questioned as overpayments or reported as potential cost savings.

During our additional analysis of the 41 other States and the District of Columbia, we performed limited data extractions from the Medicaid Statistical Information System to determine whether States allowed amounts greater than the Medicare rates. We determined the potential for cost savings by comparing, for one quarter of Federal fiscal year 1999, the State Medicare payment levels with Medicaid reimbursements for 11 oxygen-related DME and supply codes having high-dollar claim amounts.

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<sup>2</sup> E0424, E0431, E0434, E0439, E1400, E1401, E1402, E1403, E1404, E1405, and E1406.

We performed audit work at the State agency offices in Illinois, Indiana, Kentucky, Michigan, Minnesota, Ohio, Pennsylvania, Texas, and Wisconsin. We conducted our audit in accordance with generally accepted government auditing standards.

## FINDINGS AND RECOMMENDATIONS

In six of the nine audited States, Medicaid paid providers approximately \$12.7 million more for oxygen-related DME and supplies than Medicare would have paid. Our data analysis in the 41 other States and the District of Columbia indicated that significant additional savings were possible in 22 States and the District of Columbia by limiting Medicaid rates to the Medicare-allowable amounts.

### AUDITS OF OXYGEN DME RATES IN NINE STATES

Providers in six audited States received Medicaid reimbursement for oxygen-related DME and supplies that exceeded the amounts allowed for similar items under the Medicare program. Four States that limited Medicaid rates to the Medicare fee schedule overpaid Medicaid providers approximately \$10 million (\$5.9 million Federal share), and two States without this requirement could have saved approximately \$2.7 million (\$1.4 million Federal share) if they had limited Medicaid rates to Medicare-allowable amounts. The following table provides the State plan requirements and the combined Federal and State overpayment or cost savings per State.

**Medicaid Payments in Excess of Medicare Amounts in Audited States  
(Listed by Dollar Value)**

State	Report Number	State Plan Requirement on DME Rates	Overpayment	Cost Savings
Pennsylvania	A-05-01-00105	Not to exceed Medicare fee schedule	\$3,378,481	-
Texas	A-05-02-00048	Not to exceed Medicare fee schedule	3,181,518	-
Indiana	A-05-01-00052	Not to exceed Medicare fee schedule	2,667,790	-
Michigan	A-05-00-00083	Not limited to Medicare rates	-	\$2,005,991
Kentucky	A-05-02-00063	Not to exceed Medicare fee schedule	727,000	-
Wisconsin	A-05-01-00031	Not limited to Medicare rates	-	685,500
<b>Total</b>			<b>\$9,954,789</b>	<b>\$2,691,491</b>

The overpayments occurred because the State agencies did not adjust their Medicaid reimbursement limits to amounts equal to or less than the Medicare-allowable amounts or did not adjust their rates on a timely basis.

Our audits in the three remaining States identified Medicaid rates that were equal to or less than the Medicare rates. In fact, Minnesota achieved significant savings by obtaining competitive bids and setting the Medicaid rates much lower than the Medicare-allowable rates. For example, the Medicaid rates for oxygen concentrators, by regions within the State, ranged from a low of \$39 to a high of \$72 per month. The comparable Medicare rate for oxygen concentrators in Minnesota was \$194.48 per month.

## ANALYSIS OF OXYGEN DME RATES IN 41 STATES

Our analysis of the 41 other States and the District of Columbia found that in 22 States and the District of Columbia, the Medicaid rates for oxygen-related DME exceeded the amounts allowed under the Medicare program. During the quarter reviewed, the 22 States and the District of Columbia could have saved more than \$1.2 million if they had limited Medicaid rates to amounts allowable by Medicare. The quarterly savings associated with 6 of the 22 States would have been greater than \$100,000 per State.

While some of the States with potential savings had State plans that limited the Medicaid rate to the associated Medicare-allowable rate, the requirements of other States varied. The following schedule shows the individual State plan requirements and the combined Federal and State quarterly cost savings.

### Available Medicaid Savings in Other States (Listed by Dollar Value)

State	State Plan Requirement on DME Rates	Quarterly Cost Savings
Maryland	Not described in State plan	\$271,805
Nebraska	Not based on Medicare rates	151,386
Washington	Not described in State plan	127,339
West Virginia	Not described in State plan	123,073
Kansas	Not based on Medicare rates	119,800
New York	Not based on Medicare rates	101,400
New Jersey	Not described in State plan	91,498
Georgia	Not based on Medicare rates	57,660
Florida	Not described in State plan	52,020
Montana	Not to exceed Medicare fee schedule	30,220
Arkansas	Not to exceed Medicare fee schedule	27,854
Arizona	Not described in State plan	21,068
Oregon	Not based on Medicare rates	17,723
Alaska	Not based on Medicare rates	16,778
Colorado	Not based on Medicare rates	15,341
Wyoming	Not based on Medicare rates	13,704
New Mexico	Not based on Medicare rates	5,746
New Hampshire	Not to exceed Medicare fee schedule	4,780
Alabama	Not to exceed Medicare fee schedule	3,714
California	Not described in State plan	3,631
District of Columbia	Not to exceed Medicare fee schedule	3,321
South Dakota	Medicare fee schedule if no State rate	2,344
Rhode Island	Not to exceed Medicare fee schedule	1,019
<b>Total</b>		<b>\$1,263,224</b>

According to section 1902(a)(30)(A) of the Social Security Act, each State has broad discretion in determining the payment rates for services but also has responsibility for ensuring that the rates meet the general Medicaid requirement that costs be consistent with efficiency, economy, and quality of care. States and the Federal Government could achieve significant savings by applying Medicare payment rates to oxygen-related DME and supplies.

## **RECOMMENDATIONS**

We recommend that CMS:

- instruct those State agencies that limit Medicaid rates to Medicare reimbursement levels to apply Medicaid payment limits for oxygen-related DME and supplies correctly and in a timely manner
- alert the remaining State agencies to the opportunity to reduce Medicaid payments by limiting reimbursement rates for oxygen-related DME and supplies to the Medicare-allowable amounts

## **AUDITEE COMMENTS**

CMS officials agreed with the first recommendation in our draft report but did not agree with the second recommendation, which was to encourage States to consider limiting payment rates for oxygen-related DME and supplies to the Medicare-allowable amounts. The officials stated that CMS did not dictate or prescribe Medicaid payment rates. Instead, CMS was responsible for ensuring that States used an adequate methodology to derive the payment.

CMS's comments are included in their entirety as an appendix.

## **OFFICE OF INSPECTOR GENERAL RESPONSE**

In light of CMS's comments, we revised our second recommendation to address potential savings available to the States.

# **APPENDIX**



DEPARTMENT OF HEALTH & HUMAN SERVICES

Centers for Medicare & Medicaid Services

Administrator  
Washington, DC 20201

APR 15 2004

**DATE:**

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

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

A handwritten signature in black ink, appearing to read "Mark B. McClellan", written over the printed name of the sender.

**SUBJECT:** Office of Inspector General (OIG) Draft Report: "Audit of Medicaid Payments for Oxygen-Related Durable Medical Equipment and Supplies" (A-05-03-00018)

Thank you for the opportunity to review and comment on the above-referenced OIG draft report, which determined whether state Medicaid programs reimbursed providers in excess of Medicare payment limits for durable medical equipment (DME) and supplies used to provide oxygen.

Under Federal regulation at 42 CFR 430.0, it is stated that the program (Medicaid) is jointly financed by the Federal and state governments and administered by the states. Within broad Federal rules, each state decides eligible groups, types, and range of services, payment levels for services, and administrative and operating procedures. The Federal government does not establish payment rates for services under Medicaid.

The Centers for Medicare & Medicaid Services (CMS) appreciates the effort that went into this report. Our comments to the specific recommendations are outlined below.

OIG Recommendation

Instruct those state agencies that limit Medicaid rates to Medicare reimbursement levels to apply Medicaid payment limits for oxygen-related DME and supplies correctly and in a timely manner.

CMS Response

The CMS concurs with the first recommendation. Once a state has adopted payment limits in a state plan, the state must comply with those limits until the state chooses to revise its plan.

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**OIG Recommendation**

Consider issuing a letter to state agencies encouraging them to limit payment rates for oxygen-related DME and supplies to no more than the Medicare-allowable amounts.

**CMS Response**

The CMS does not concur with the second recommendation. Unlike the Medicare program, states have considerable latitude in establishing Medicaid payment rates because this program is state administered as noted above. These rates are not dictated or prescribed by CMS. Instead, CMS is responsible for ensuring the adequacy and reasonableness of the methodology used to derive the payment. Therefore, CMS cannot accept the OIG's recommendation.