



August 1, 2011

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

FROM: /Daniel R. Levinson/
Inspector General

SUBJECT: Review of Select Medicaid Inpatient Psychiatric Hospital Service Requirements for One Illinois State-Owned Psychiatric Hospital During the Period January 1, 2000, Through December 31, 2009 (A-05-10-00046)

Attached, for your information, is an advance copy of our final report on select Medicaid inpatient hospital service requirements for one Illinois State-owned psychiatric hospital. We will issue this report to the Illinois Department of Healthcare and Family Services within 5 business days.

If you have any questions or comments about this report, please do not hesitate to call me, or your staff may 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 or Stephen Slamar, Acting Regional Inspector General for Audit Services, Region V, at (312) 353-7905 or through email at Stephen.Slamar@oig.hhs.gov. Please refer to report number A-05-10-00046.

Attachment



DEPARTMENT OF HEALTH & HUMAN SERVICES

Office of Inspector General

Office of Audit Services, Region V
233 North Michigan Avenue
Suite 1360
Chicago, IL 60601

August 3, 2011

Report Number: A-05-10-00046

Ms. Julie Hamos
Director
Illinois Department of Healthcare and Family Services
Prescott E. Bloom Building
201 South Grand Avenue East, 3rd Floor
Springfield, IL 62763-0002

Dear Ms. Hamos:

Enclosed is the U.S. Department of Health & Human Services (HHS), Office of Inspector General (OIG), final report entitled *Review of Select Medicaid Inpatient Psychiatric Hospital Service Requirements for One Illinois State-Owned Psychiatric Hospital During the Period January 1, 2000, Through December 31, 2009*. 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 David Markulin, Audit Manager, at (312) 353-1644 or through email at David.Markulin@oig.hhs.gov. Please refer to report number A-05-10-00046 in all correspondence.

Sincerely,

/Stephen Slamar/
Acting 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 SELECT MEDICAID
INPATIENT PSYCHIATRIC HOSPITAL
SERVICE REQUIREMENTS FOR
ONE ILLINOIS STATE-OWNED
PSYCHIATRIC HOSPITAL
DURING THE PERIOD
JANUARY 1, 2000, THROUGH
DECEMBER 31, 2009**



Daniel R. Levinson
Inspector General

August 2011
A-05-10-00046

Office of Inspector General

<http://oig.hhs.gov>

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The Office of Evaluation and Inspections (OEI) conducts national evaluations to provide HHS, Congress, and the public with timely, useful, and reliable information on significant issues. These evaluations focus on preventing fraud, waste, or abuse and promoting economy, efficiency, and effectiveness of departmental programs. To promote impact, OEI reports also present practical recommendations for improving program operations.

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Section 8L of the Inspector General Act, 5 U.S.C. App., requires that OIG post its publicly available reports on the OIG Web site.

OFFICE OF AUDIT SERVICES FINDINGS AND OPINIONS

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

EXECUTIVE SUMMARY

BACKGROUND

Medicaid Program

Pursuant to Title XIX of the Social Security 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.

Illinois Medicaid Program

The Illinois Department of Healthcare and Family Services (the State agency) administers the Illinois Medicaid program. Pursuant to the CMS-approved State plan, the State agency provides federally matched Medicaid funding to eligible hospitals. The State agency works with the Illinois Department of Human Services, Division of Mental Health, to operate nine State-owned psychiatric hospitals that provide inpatient treatment for mental health conditions. Hospital A is a State-owned institution for mental diseases and psychiatric hospital that provides inpatient psychiatric services primarily to individuals referred through the court system. Hospital A participates in the Medicaid, but not the Medicare, program.

Federal Requirements

For States to claim Federal matching funds for their inpatient psychiatric service and disproportionate share hospital (DSH) payments to a psychiatric hospital, the hospital's inpatient services must meet the Federal definitions of such services. These definitions require the provider to demonstrate compliance with the basic Medicare Conditions of Participation (CoP) generally applicable to all hospitals and two special Medicare CoP applicable to psychiatric hospitals. The basic Medicare CoP address issues such as licensing, quality of care, safety, patient rights, self assessment and performance improvement, and service availability. The special Medicare CoP specify staffing and medical record requirements.

A psychiatric hospital must undergo review by appropriate health care professionals to demonstrate compliance with the basic and special Medicare CoP. Medicare-participating psychiatric hospitals are generally deemed to meet both the basic and special Medicare CoP for Medicaid purposes. If psychiatric hospitals do not participate in Medicare, they can generally demonstrate compliance with the basic, but not the special, Medicare CoP through hospital accreditation by CMS-approved organizations, such as the Joint Commission. For such hospitals to demonstrate compliance with the special Medicare CoP, they must be specially surveyed. Accreditation or survey by appropriate health care professionals is necessary to provide CMS with reasonable assurance that participating facilities are improving the health and protecting the safety of Medicaid beneficiaries.

For periods during which a psychiatric hospital does not demonstrate compliance with the basic and special Medicare CoP, all inpatient psychiatric service and DSH payments received from the State agency are ineligible for Federal matching funds.

CMS made a technical error when it issued Medicare transplant center CoP regulations in 2007. Effective June 28, 2007, it inadvertently omitted certain Medicare psychiatric hospital CoP regulations that were relevant to this audit. CMS formally reinstated the omitted regulations effective October 26, 2007. Despite the omission, CMS's subregulatory guidance remained in effect during the period from June 28, 2007, through October 25, 2007 (the regulatory gap period).

OBJECTIVE

Our objective was to determine whether the State agency claimed Federal matching funds for inpatient psychiatric service and DSH payments made to hospital A in accordance with select Federal inpatient psychiatric hospital service requirements.

SUMMARY OF FINDING

The State agency claimed \$82,929,010 in Federal matching funds for inpatient psychiatric service and DSH payments made to hospital A that were not in accordance with select Federal inpatient psychiatric hospital service requirements. We have set aside \$12,590,126 in Federal matching funds for payments made to hospital A for claims with dates of service during the regulatory gap period. During the audit period, hospital A did not demonstrate compliance with the special Medicare CoP because the State agency did not believe that such demonstration was necessary.

RECOMMENDATIONS

We recommend that the State agency:

- refund \$82,929,010 to the Federal Government for its share of inpatient psychiatric service and DSH payments made to hospital A for claims with dates of service outside the regulatory gap period,
- work with CMS to determine whether the State agency should refund an additional \$12,590,126 to the Federal Government for its share of payments made to hospital A for claims with dates of service during the regulatory gap period,
- identify and refund the Federal share of any additional payments made to hospital A for claims with dates of service after the audit period if neither the State agency nor hospital A can demonstrate the hospital's compliance with Federal inpatient psychiatric hospital service requirements, and

- ensure that Federal matching funds for inpatient psychiatric service and DSH payments are claimed only for psychiatric hospitals that can demonstrate compliance with the special Medicare CoP.

STATE AGENCY COMMENTS AND OFFICE OF INSPECTOR GENERAL RESPONSE

In its comments on our draft report, the State agency disagreed with our recommendations. The State agency indicated that the CMS-approved Illinois State plan includes State-owned facilities with Joint Commission accreditation in its definition of DSH-eligible hospitals and concluded that our finding and recommendations conflict with that definition. The State agency's comments are included in their entirety as the Appendix.

After reviewing the State agency's comments on our draft report, we maintain that our finding and recommendations are valid. Federal requirements mandate that Federal matching funds for inpatient psychiatric service and DSH payments to psychiatric hospitals can be claimed only for those facilities that demonstrate compliance with the special Medicare CoP.

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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.

Illinois Medicaid Program

The Illinois Department of Healthcare and Family Services (the State agency) administers the Illinois Medicaid program. According to the CMS-approved State plan, the State agency provides federally matched Medicaid funding to eligible hospitals. The State agency works with the Illinois Department of Human Services, Division of Mental Health, to operate nine State-owned psychiatric hospitals that provide inpatient treatment for mental health conditions.

Hospital A is a State-owned institution for mental diseases (IMD) and psychiatric hospital that provides inpatient psychiatric services primarily to individuals referred through the court system. Hospital A participates in the Medicaid, but not the Medicare, program.

Federal Requirements

For States to claim Federal matching funds for their inpatient psychiatric service and disproportionate share hospital (DSH) payments to a psychiatric hospital, the hospital's inpatient services must meet the Federal definitions of such services. These definitions require the provider to demonstrate compliance with the basic Medicare Conditions of Participation (CoP) generally applicable to all hospitals and two special Medicare CoP applicable to psychiatric hospitals.

Medicaid Payments

Pursuant to section 1903(a)(1) of the Act, States can claim Federal matching funds for their Medicaid medical assistance and DSH payments. For patients in IMDs, a category that generally includes psychiatric hospitals, medical assistance includes inpatient hospital services for individuals aged 65 or older but excludes care or services for younger individuals except for inpatient psychiatric hospital services for individuals under age 21 (section 1905(a) of the Act).¹ In addition, if a certain percentage of a psychiatric hospital's inpatient days are attributable to

¹ Pursuant to 42 CFR § 441.151(a)(3), medical assistance also includes necessary inpatient psychiatric hospital services for individuals aged 21 if they were receiving such services immediately before reaching age 21.

Medicaid-eligible patients, the hospital may be a DSH and entitled to DSH payments pursuant to section 1923 of the Act.

Definitions of Medicaid Inpatient Psychiatric Hospital Services

The Federal definitions of Medicaid inpatient psychiatric hospital services require the hospitals providing such services to comply with Medicare CoP, including two special Medicare CoP.

CMS explained that it made a technical error when it issued Medicare transplant center CoP regulations effective June 28, 2007 (72 Fed. Reg. 60787 (October 26, 2007)). When it amended 42 CFR part 482, subpart E, in 72 Fed. Reg. 15198 (March 30, 2007), CMS inadvertently omitted 42 CFR §§ 482.60–482.62, which are Medicare psychiatric hospital CoP regulations relevant to this audit. The *Federal Register* notice that explained the error reinstated the omitted regulations effective October 26, 2007. Despite the omission, CMS's subregulatory guidance (e.g., manuals) remained in effect and was used from June 28, 2007, through October 25, 2007 (the regulatory gap period).

Demonstrating Compliance With Medicare Conditions of Participation

To demonstrate compliance with the basic and special Medicare CoP, a psychiatric hospital must undergo review by appropriate health care professionals. Medicare-participating psychiatric hospitals are generally deemed to meet both the basic and special Medicare CoP for Medicaid purposes (42 CFR § 488.5(b)). If psychiatric hospitals do not participate in Medicare, they can generally demonstrate compliance with the basic, but not the special, Medicare CoP² through hospital accreditation by CMS-approved organizations, such as the Joint Commission³ (42 CFR § 488.5(a)). However, accreditation by such CMS-approved organizations does not demonstrate compliance with the special Medicare CoP. According to the CMS *State Operations Manual*, section 2718A, psychiatric hospitals must be specially surveyed by qualified psychiatric health care professionals to demonstrate compliance with the special Medicare CoP. Accreditation or survey by appropriate health care professionals is necessary to provide CMS with reasonable assurance that participating facilities are improving the health and protecting the safety of Medicaid beneficiaries.

For periods during which a psychiatric hospital does not demonstrate compliance with the basic and special Medicare CoP, all inpatient psychiatric service and DSH payments received from the State agency are ineligible for Federal matching funds.

² One exception is the utilization review requirement in 42 CFR § 482.30; however, compliance with the utilization review requirement was outside the scope of our audit.

³ The Joint Commission was previously known as the Joint Commission on Accreditation of Healthcare Organizations and is so referenced in 42 CFR § 488.5(a).

OBJECTIVE, SCOPE, AND METHODOLOGY

Objective

Our objective was to determine whether the State agency claimed Federal matching funds for inpatient psychiatric service and DSH payments made to hospital A in accordance with select Federal inpatient psychiatric hospital service requirements.

Scope

For the period from January 1, 2000, through December 31, 2009, we reviewed hospital A's compliance with select Federal inpatient psychiatric hospital service requirements. We identified \$95,519,136 in inpatient psychiatric service and DSH payments made to hospital A for claims with dates of service in periods during which it did not demonstrate such compliance. We limited our review of the State agency's internal controls to those significant to the objective of our audit.

We performed our fieldwork from February 2010 to December 2010.

Methodology

To accomplish our objective, we:

- examined Federal and State Medicaid requirements regarding inpatient psychiatric hospital services,
- identified periods for which neither the State agency nor hospital A could demonstrate hospital A's compliance with select Federal inpatient psychiatric hospital service requirements,
- held discussions with State agency officials and reviewed their Medicaid payment records, and
- quantified the Federal matching funds for inpatient psychiatric service and DSH payments made to hospital A for claims with dates of service during periods when it did not demonstrate compliance.

We conducted this performance audit in accordance with generally accepted government auditing standards. Those standards require that we plan and perform the audit to obtain sufficient, appropriate evidence to provide a reasonable basis for our findings and conclusions based on our audit objectives. We believe that the evidence obtained provides a reasonable basis for our finding and conclusions based on our audit objective.

FINDING AND RECOMMENDATIONS

The State agency claimed \$82,929,010 in Federal matching funds for inpatient psychiatric service and DSH payments made to hospital A that were not in accordance with select Federal inpatient psychiatric hospital service requirements. We have set aside \$12,590,126 in Federal matching funds for payments made to hospital A for claims with dates of service during the regulatory gap period. During the audit period, hospital A did not demonstrate compliance with the special Medicare CoP because the State agency did not believe that such demonstration was necessary.

FEDERAL REQUIREMENTS

Pursuant to 42 CFR §§ 440.140(a) and 482.60, an IMD in which individuals aged 65 or older receive Medicaid inpatient hospital services must meet the basic Medicare CoP (42 CFR §§ 482.1–482.23 and 42 CFR §§ 482.25–482.57) applicable to all hospitals and two special Medicare CoP applicable to psychiatric hospitals (42 CFR §§ 482.61 and 482.62). Pursuant to sections 1905(h)(1) and 1861(f) of the Act, if inpatient psychiatric services furnished to individuals under age 21 are provided in a psychiatric hospital, the psychiatric hospital must also meet the basic and special Medicare CoP. Psychiatric hospitals that provide Medicaid inpatient psychiatric services must meet the same Medicare CoP for their DSH payments to be eligible for Federal matching funds.

The Medicare CoP for psychiatric hospitals are minimum standards that provide a basis for improving quality of care and protecting the health and safety of Medicaid beneficiaries. The basic Medicare CoP address issues such as licensing, quality of care, safety, patient rights, self assessment and performance improvement, and service availability (42 CFR §§ 482.1–482.23 and 42 CFR §§ 482.25–482.57). The special staffing Medicare CoP require that psychiatric hospitals “have adequate numbers of qualified professional and supportive staff to evaluate patients, formulate written, individualized comprehensive treatment plans, provide active treatment measures, and engage in discharge planning” (42 CFR § 482.62). The special medical record Medicare CoP require that “medical records maintained by a psychiatric hospital ... permit determination of the degree and intensity of the treatment provided to individuals who are furnished services in the institution” (42 CFR § 482.61).

FAILURE TO DEMONSTRATE COMPLIANCE WITH SPECIAL CONDITIONS OF PARTICIPATION

The State agency improperly claimed \$82,929,010 in Federal matching funds for inpatient psychiatric service and DSH payments made to hospital A for claims with dates of service outside the regulatory gap period. Hospital A did not participate in Medicare but was accredited by the Joint Commission during the audit period. That accreditation generally demonstrated hospital A’s compliance with the basic Medicare CoP. However, hospital A was never specially surveyed to demonstrate compliance with the special Medicare CoP because the State agency did not believe that such a survey was necessary.

We have set aside for further review by CMS and the State agency \$12,590,126 in Federal matching funds for payments made to hospital A for claims with dates of service during the regulatory gap period. Despite CMS’s inadvertent omission of 42 CFR §§ 482.60 through 482.62 in 72 Fed. Reg. 15198 (March 30, 2007), CMS’s subregulatory guidance remained in effect during this period. The table shows improperly claimed and set-aside Federal matching funds by payment type and period.

Improperly Claimed and Set-Aside Federal Matching Funds by Payment Type and Period

Payment Type	Payments for Claims With Dates of Service From			Total
	January 1, 2000–June 27, 2007	June 28–October 25, 2007	October 26, 2007–December 31, 2009	
Service	\$4,960,459	\$212,041	\$1,402,189	\$6,574,689
DSH	47,144,442	12,378,085	29,421,920	\$88,944,447
Total	52,104,901	12,590,126	30,824,109	\$95,519,136
Improperly Claimed	\$52,104,901		\$30,824,109	\$82,929,010
Set Aside		\$12,590,126		\$12,590,126
			Grand Total	\$95,519,136

RECOMMENDATIONS

We recommend that the State agency:

- refund \$82,929,010 to the Federal Government for its share of inpatient psychiatric service and DSH payments made to hospital A for claims with dates of service outside the regulatory gap period,
- work with CMS to determine whether the State agency should refund an additional \$12,590,126 to the Federal Government for its share of payments made to hospital A for claims with dates of service during the regulatory gap period,
- identify and refund the Federal share of any additional payments made to hospital A for claims with dates of service after the audit period if neither the State agency nor hospital A can demonstrate the hospital’s compliance with Federal inpatient psychiatric hospital service requirements, and
- ensure that Federal matching funds for inpatient psychiatric service and DSH payments are claimed only for psychiatric hospitals that can demonstrate compliance with the special Medicare CoP.

STATE AGENCY COMMENTS

In its comments on our draft report, the State agency disagreed with our recommendations. The State agency indicated that the CMS-approved Illinois State plan includes State-owned facilities

with Joint Commission accreditation in its definition of DSH-eligible hospitals and concluded that our finding and recommendations conflict with that definition. While the State agency agreed to prospectively require hospital A to demonstrate compliance with the special Medicare CoP, it disagreed with the retrospective nature of our recommendations in the absence of Federal guidance requiring changes to the Illinois State plan. The State agency also interpreted the absence of recommendations for hospital A in a previous Office of Inspector General (OIG) audit report as an OIG opinion regarding Medicare certification requirements.

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

OFFICE OF INSPECTOR GENERAL RESPONSE

After reviewing the State agency's comments on our draft report, we maintain that our finding and recommendations are valid. Federal requirements mandate that Federal matching funds for inpatient psychiatric service and DSH payments to psychiatric hospitals can be claimed for only those facilities that demonstrate compliance with the special Medicare CoP. The CMS *State Operations Manual*, section 2718A, states, "To participate in ... Medicaid, a psychiatric hospital must meet the special medical records and special staffing requirements." The OIG audit report referenced by the State agency (A-05-01-00059, August 25, 2004) addressed neither Medicare certification nor the special Medicare CoP.

APPENDIX

APPENDIX: STATE AGENCY COMMENTS



Pat Quinn, Governor
Julie Hamos, Director

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Springfield, Illinois 62763-0002

Telephone: (217) 782-1200
TTY: (800) 526-5812

May 20, 2011

Department of Health and Human Services
Office of Audit Services, Region V
Attn: James C. Cox, Regional Inspector General for Audit Services
233 North Michigan Avenue, Suite 1360
Chicago, Illinois 60601

Re: Draft Audit Report Number A-05-10-00046

Dear Mr. Cox:

Thank you for providing the opportunity to comment on your draft audit report entitled "*Review of Select Medicaid Inpatient Psychiatric Hospital Service Requirements for One Illinois State-Owned Psychiatric Hospital During the Period January 1, 2000, Through December 31, 2009.*"

Illinois does not concur with any of the recommendations in the draft audit report. All four of the recommendations are based upon the principle that the State-owned Chester Mental Health Center, an institution for mental diseases (IMD), must meet the Medicare special conditions of participation (CoPs) regarding staffing and record keeping, applicable to psychiatric facilities, in order to be eligible to receive Medicaid service and disproportionate share hospital adjustment (DSH) payments.

Since March 1, 1995, the approved Illinois State plan has defined the qualifications of a DSH-eligible Hospital to include a State-owned facility with JCAHO accreditation. The State Plan never required Medicare certification nor has CMS ever provided Illinois any guidance to indicate that our approved requirements were lacking in any way. CMS reviewed this State plan language again in 1998 and the methodology for the IMD DSH payments in 2000.

During the late 1990s and early 2000s, CMS reviewed Illinois' IMD DSH payments, which included payments to the Chester facility. During these reviews, CMS requested copies of the facilities' JCAHO accreditation. Not once did CMS request any information that would relate to Medicare staffing or recordkeeping requirements. Therefore, in the numerous reviews, CMS never indicated that hospitals needed to comply with the additional Medicare certification requirements beyond JCAHO accreditation.

E-mail: hfs.webmaster@illinois.gov

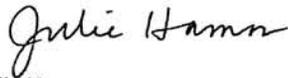
Internet: <http://www.hfs.illinois.gov/>

In August 2004, your office released an audit of Illinois' IMD DSH program in which one of the stated audit objectives was to determine whether, "State-owned IMD facilities were qualified to receive DSH payments." During the audit fieldwork, your staff requested JCAHO accreditation letters for all of the State-owned IMDs, but never requested proof of Medicare certification nor mentioned that special Medicare conditions of participation must be met. The audit report did not question any DSH payments made to the Chester facility in fiscal year 2000.

This current audit conflicts with your office's previous opinions in interpreting the applicability of requiring Medicare certification, as well as CMS State Plan approvals and guidance. Further, by concluding that the Chester facility did not meet such standards from 2000 through 2009, it is also directly overlapping your previous audit that raised no such concerns. If this audit is now clarifying the requirement of Medicare certification, we can agree to apply this standard prospectively. However, we cannot agree to any such retrospective interpretation of policy, particularly when it is applied over a 10-year period and lies in stark contrast to the interpretations and guidance provided by both CMS and your office during that period.

Thank you for the opportunity to review the draft audit report and provide this response. If you have any questions or comments about our response to the audit, please contact Jamie Nardulli, External Audit Liaison, at (217) 558-2527 or through email at jamic.nardulli@illinois.gov.

Sincerely,



Julie Hamos
Director