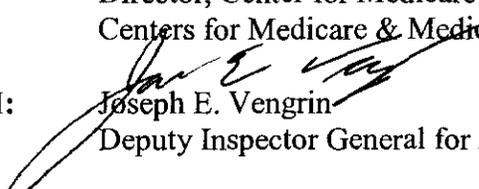




MAY - 9 2005

TO: Herb Kuhn
Director, Center for Medicare Management
Centers for Medicare & Medicaid Services

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

SUBJECT: Audit of Baylor University Medical Center's Organ Acquisition Costs Claimed for the Period July 1, 1996, Through June 30, 2001 (A-06-04-00017)

Attached is an advance copy of our final report on organ acquisition costs claimed by Baylor University Medical Center (Baylor). We will issue this report to TrailBlazer Health Enterprises within 5 business days.

The objective of this self-initiated audit was to determine whether organ acquisition costs claimed on the fiscal years (FYs) 1997 through 2001 Medicare cost reports by Baylor for its lung, kidney, liver, heart, and pancreas transplant programs were allowable. Specifically, did Baylor:

- Comply with Medicare law, regulations, and guidelines for claiming organ acquisition costs?
- Receive excess Medicare reimbursement for organ acquisition activities?

Baylor did not comply with Medicare law, regulations, and guidelines for claiming organ acquisition costs in the preparation of its Medicare Part A cost reports and received excess Medicare reimbursement for organ acquisition activities. Specifically, Baylor did not have systems to accumulate certain costs of organ acquisition separate from the costs of post-transplant and other hospital activities.

We limited our review of organ acquisition costs to \$25 million of the \$69.4 million claimed by Baylor on its FYs 1997 through 2001 Medicare cost reports. We found that Baylor claimed \$5,010,761 in unallowable costs, and \$13,633,200 in unsupported costs.

The unallowable costs of \$5,010,761 were (1) for medical director fees in excess of reasonable compensation equivalent limits, (2) associated with activities that did not comply with Medicare's definition of organ acquisition, or (3) incurred for departments unrelated to organ transplantation. Baylor officials told us they did not intentionally submit unallowable claims but agreed that they had made errors in the preparation of the cost reports. Based on the unallowable costs of \$5,010,761, Medicare overpaid Baylor an estimated \$4,195,303.

The unsupported costs of \$13,633,200 did not comply with Medicare's documentation requirements for reimbursement. Baylor officials agreed that not all of the unsupported costs complied with Medicare's documentation requirements for reimbursement. We recognize that some portion of the \$13,633,200 may have related to organ acquisition activities and would have been allowable if properly documented. However, based on Federal regulations and the Provider Reimbursement Manual, the unsupported costs were considered unallowable for Medicare reimbursement. Although Baylor was not able to provide necessary documentation to support \$13,633,200 of costs it claimed for FYs 1997 through 2001, when settling the audit findings, the Centers for Medicare & Medicaid Services (CMS) and the Medicare intermediary may elect to use an allowable alternative methodology to estimate unsupported costs related to organ acquisition. If Baylor cannot provide alternative support for the \$13,633,200, the result would be an estimated Medicare overpayment of \$9,157,378.

We recommend that the Medicare intermediary:

- recover the Medicare overpayment of \$4,195,303 for the unallowable costs claimed by Baylor as organ acquisition;
- work with Baylor to determine, if possible, what portion of the \$13,633,200 of unsupported costs and related Medicare payment of \$9,157,378 is associated with allowable organ acquisition activities, and recover that portion of the \$9,157,378 that Baylor is unable to support with allowable organ acquisition costs;
- review organ acquisition costs claimed by Baylor on its Medicare cost reports for any subsequent years for issues similar to those identified in FYs 1997 through 2001, and recover any Medicare overpayments;
- monitor future Medicare cost report claims for organ acquisition costs from Baylor to ensure compliance with Medicare requirements; and
- instruct Baylor to develop and maintain adequate time-and-effort reporting and accounting controls, and to provide clear direction to responsible personnel as to Medicare requirements for claiming and documenting organ acquisition costs.

In written response to the draft report, TrailBlazer Health Enterprises, the Medicare intermediary, agreed with all the findings and recommendations.

In its written comments on the draft report, Baylor did not specifically address the recommended recovery of \$4,195,303 but stated it has taken actions to ensure organ acquisition costs claimed are in compliance with Medicare laws, regulations, and guidelines. However, Baylor did not agree with our application of reasonable compensation equivalent limits. Baylor stated that, per the Provider Reimbursement Manual, Part II, section 3615, all medical directors were exempt from the reasonable compensation equivalent limits, and therefore the limits should not have been applied to its medical directors for transplantation.

In regard to the reasonable compensation equivalent limits, 42 CFR § 415.70 states that costs claimed for physicians on the Part A cost report must be limited to Medicare's reasonable compensation equivalents. While the Provider Reimbursement Manual, Part II, section 3615 states that the reasonable compensation equivalent limits are not applicable to a medical director or chief of medical staff, it is the opinion of CMS and the Medicare intermediary that this criteria only applies to the overall medical director of a facility. Further, the Federal Register (48 FR 8918) contains the CMS response to a commenter's question on this subject. CMS stated that the reasonable compensation equivalent limits apply to physicians who direct a provider department in which the physician's expertise is required or who furnish other services, such as participating in utilization review committee or quality control activities. Baylor's medical directors are physicians that direct transplant departments and furnish other services such as assisting hospitals in formulating, implementing, and monitoring policies and programs for patient care that includes quality assessment and utilization review. Therefore, Baylor should have applied the reasonable compensation equivalent limits to each transplantation department medical director.

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 Gordon Sato, Regional Inspector General for Audit Services, at (214) 767-8414. Please refer to report number A-06-04-00017 in all correspondence.

Attachment



DEPARTMENT OF HEALTH AND HUMAN SERVICES

Office of Inspector General

Office of Audit Services
1100 Commerce, Room 632
Dallas, Texas 75242

Report Number: A-06-04-00017

MAY 11 2005

Ms. Melissa S. Halstead
Regional Director
Provider Audit and Reimbursement
TrailBlazer Health Enterprises, LLC
8330 LBJ Freeway, Mail Stop 12.2438
Dallas, Texas 75243

Dear Ms. Halstead:

Enclosed are two copies of the Department of Health and Human Services (HHS), Office of Inspector General (OIG) final report entitled "Audit of Baylor University Medical Center's Organ Acquisition Costs Claimed for the Period July 1, 1996, Through June 30, 2001." A copy of this report will be forwarded to the action official noted below for review and any action deemed necessary.

The HHS action official named below will make final determination as to actions taken on all matters reported. We request that you respond to the HHS action official within 30 days. 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 reports issued to the Department's grantees and contractors are made available to members of the press and general public to the extent the information is not subject to exemptions in the Act that the Department chooses to exercise (see 45 CFR part 5).

Please refer to report number A-06-04-00017 in all correspondence.

Sincerely,

Gordon L. Sato
Regional Inspector General
for Audit Services

Enclosures – as stated

Direct Reply to HHS Action Official:

James R. Farris, M.D.
Regional Administrator
Centers for Medicare & Medicaid Services
Department of Health and Human Services
1301 Young Street, Room 714
Dallas, Texas 75202

Department of Health and Human Services

**OFFICE OF
INSPECTOR GENERAL**

**AUDIT OF BAYLOR UNIVERSITY
MEDICAL CENTER'S ORGAN
ACQUISITION COSTS CLAIMED FOR
THE PERIOD JULY 1, 1996,
THROUGH JUNE 30, 2001**



**MAY 2005
A-06-04-00017**

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:

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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.

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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

BACKGROUND

Baylor University Medical Center (Baylor), a 1,509-bed hospital and referral center in Dallas, TX, is comprised of 5 connecting hospitals and a cancer center. On its fiscal years (FYs) 1997 through 2001 Medicare cost reports, Baylor claimed \$69,364,082 for organ acquisition costs associated with lung, kidney, liver, heart, and pancreas transplants. Medicare reimburses certified transplant programs for their proportionate share of costs associated with the acquisition of organs for transplant to Medicare beneficiaries. Medicare's share of the \$69,364,082 claimed for FYs 1997 through 2001 was \$40,732,523.

OBJECTIVE

The objective of this self-initiated audit was to determine whether organ acquisition costs claimed on the FYs 1997 through 2001 Medicare cost reports by Baylor for its lung, kidney, liver, heart, and pancreas transplant programs were allowable. Specifically, did Baylor:

- Comply with Medicare law, regulations, and guidelines for claiming organ acquisition costs?
- Receive excess Medicare reimbursement for organ acquisition activities?

SUMMARY OF FINDINGS

Baylor did not comply with Medicare law, regulations, and guidelines for claiming organ acquisition costs in the preparation of its Medicare Part A cost reports, and received excess Medicare reimbursement for organ acquisition activities. Specifically, Baylor did not have systems to accumulate certain costs of organ acquisition separate from the costs of post-transplant and other hospital activities. The table below summarizes the results of the audit by cost category:

RESULTS OF AUDIT

<u>Cost Category</u>	<u>Claimed</u> ¹	<u>Allowable</u>	<u>Unallowable</u>	<u>Unsupported</u>	<u>Unaudited</u> ²
Salaries	\$10,814,779	\$3,214,052	\$ 0	\$ 7,600,727	\$ 0
Medical Directors	1,898,069	0	876,981	1,021,088	0
Floor Space	5,796,786	1,400,646	1,728,162	2,667,978	0
Other Costs ³	<u>50,854,448</u>	<u>1,744,113</u>	<u>2,405,618</u>	<u>2,343,407</u>	<u>44,361,310</u>
Total	<u>\$69,364,082</u>	<u>\$6,358,811</u>	<u>\$5,010,761</u>	<u>\$13,633,200</u>	<u>\$44,361,310</u>

¹We noted that the costs claimed for organ acquisitions did not include salary and other gastro-intestinal (GI) liver service costs, and medical director fees. Therefore, these costs may have been understated in the cost reports.

²We limited the scope of our audit based on our analysis of high risk cost categories and our survey work at Baylor. We do not express an opinion on the \$44.4 million not audited.

³Other costs included organ purchases, recipient and donor evaluations, laboratory and other tests, organ excision fees, costs for hospital inpatient stays for donors, overhead and other direct costs of the organ transplant program, and accounting errors.

We limited our review of organ acquisition costs to \$25 million of the \$69.4 million claimed by Baylor on its FYs 1997 through 2001 Medicare cost reports. We found that Baylor claimed \$5,010,761 in unallowable costs and \$13,633,200 in unsupported costs.

The unallowable costs of \$5,010,761 were for medical director fees in excess of Medicare's reasonable compensation equivalent limits, were associated with activities that did not comply with Medicare's definition of organ acquisition, or were incurred for departments unrelated to organ transplantation. Baylor officials told us they did not intentionally submit unallowable claims but agreed that they made errors in the preparation of the cost reports. Based on the unallowable costs of \$5,010,761, Medicare overpaid Baylor an estimated \$4,195,303.⁴

The unsupported costs of \$13,633,200 did not comply with Medicare's documentation requirements for reimbursement. Baylor officials agreed that not all of the unsupported costs complied with Medicare documentation requirements for reimbursement. We recognize that some portion of the \$13,633,200 may have related to organ acquisition activities and would have been allowable if properly documented. However, based on Federal regulations and the Provider Reimbursement Manual, the unsupported costs were considered unallowable for Medicare reimbursement. Although Baylor was unable to provide the necessary documentation to support \$13,633,200 of costs it claimed for FYs 1997 through 2001, when settling the audit findings, the Centers for Medicare & Medicaid Services (CMS) and the Medicare intermediary may elect to use an allowable alternative methodology to estimate unsupported costs related to organ acquisition. If Baylor cannot provide alternative support for the \$13,633,200, the result would be an estimated Medicare overpayment of \$9,157,378.⁴

RECOMMENDATIONS

We recommend that the Medicare intermediary:

- recover the Medicare overpayment of \$4,195,303 for the unallowable costs claimed by Baylor as organ acquisition;
- work with Baylor to determine, if possible, what portion of the \$13,633,200 of unsupported costs and related Medicare payment of \$9,157,378 is associated with allowable organ acquisition activities, and recover that portion of the \$9,157,378 that Baylor is unable to support with allowable organ acquisition costs;
- review organ acquisition costs claimed by Baylor on its Medicare cost reports for any subsequent years for issues similar to those identified in FYs 1997 through 2001, and recover any Medicare overpayments;
- monitor future Medicare cost report claims for organ acquisition costs from Baylor to ensure compliance with Medicare requirements; and

⁴The Medicare intermediary determined the estimated Medicare overpayment amounts associated with our findings by using proprietary software to adjust Baylor's Medicare cost reports.

- instruct Baylor to develop and maintain adequate time-and-effort reporting and accounting controls, and to provide clear direction to responsible personnel as to Medicare requirements for claiming and documenting organ acquisition costs.

COMMENTS ON DRAFT REPORT AND OFFICE OF INSPECTOR GENERAL RESPONSE

We obtained written comments on the draft report from TrailBlazer Health Enterprises, the Medicare intermediary, and Baylor. The comments and our response to them are summarized below.

Medicare Intermediary Comments

In its written comments on the draft report, TrailBlazer Health Enterprises agreed with the findings and recommendations. TrailBlazer Health Enterprises' comments are included in their entirety as Appendix B.

Baylor Comments

In its written comments on the draft report, Baylor did not specifically address the recommended recovery of \$4,195,303, but did go into the basis for the disallowance. Baylor stated that the majority of the unallowable costs were attributable to medical director fees in excess of reasonable compensation equivalent limits. Baylor did not agree with our application of reasonable compensation equivalent limits. Baylor stated that, per the Provider Reimbursement Manual, Part II, section 3615, all medical directors were exempt from the reasonable compensation equivalent limits, and therefore the limits should not have been applied to its medical directors for transplantation.

Baylor agreed to work with the Medicare intermediary to develop alternative approaches to determine what portion of the \$13,633,200 in unsupported costs were associated with pre-transplant services. Baylor also agreed to work with the Medicare intermediary to incorporate the Office of Inspector General (OIG) findings into cost report audits for years subsequent to FY 2001. In addition, Baylor stated it had incorporated the OIG recommendations in its recently filed FY 2004 Medicare cost report and will continue to do so in future cost reports. Baylor also stated it is implementing a new policy designed to better ensure that individuals who are involved in organ transplant services comply with all the applicable Medicare program requirements. Baylor's comments are included in their entirety as Appendix C.

Office of Inspector General Response

In regard to the reasonable compensation equivalent limits, 42 CFR § 415.70 states that costs claimed for physicians on the Part A cost report must be limited to Medicare's reasonable compensation equivalents. While the Provider Reimbursement Manual, Part II, section 3615 states that the reasonable compensation equivalent limits are not applicable to a medical director or chief of medical staff, it is the opinion of CMS and the Medicare intermediary that this criteria only applies to the overall medical director of a facility. The Medicare intermediary provided written correspondence to OIG that confirms this opinion. The correspondence is a dialogue between CMS and a consultant regarding the application of reasonable compensation equivalent

limits to medical directors. Further, the Federal Register (48 FR 8918 published March 2, 1983) contains the CMS response to a commenter's question on this subject. CMS stated that the reasonable compensation equivalent limits apply to physicians who direct a provider department in which the physician's expertise is required or who furnish other services, such as participating in utilization review committee or quality control activities. Baylor's medical directors are physicians that direct transplant departments and furnish other services such as assisting hospitals in formulating, implementing, and monitoring policies and programs for patient care that includes quality assessment and utilization review. Therefore, Baylor should have applied the reasonable compensation equivalent limits to each transplantation department medical director.

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A – AUDIT RESULTS BY CATEGORY AND FISCAL YEAR

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INTRODUCTION

BACKGROUND

Baylor University Medical Center

Baylor, a 1,509-bed hospital and referral center in Dallas, TX, is comprised of 5 connecting hospitals and a cancer center. Baylor is the second largest not-for-profit private hospital in the United States.

Our audit covered FYs 1997 through 2001 (July 1, 1996, through June 30, 2001). At the beginning of the audit period, Baylor operated kidney, heart, and liver transplant programs that Medicare certified on June 27, 1985, June 29, 1990, and July 11, 1991, respectively. In addition, Baylor operated a lung transplant program that Medicare certified on January 23, 1998, and a pancreas transplant program that Medicare approved on July 1, 1999.

Baylor claimed \$69,364,082 for organ acquisition costs associated with lung, kidney, liver, heart, and pancreas transplant programs during FYs 1997 through 2001. Of that amount, Medicare's share was \$40,732,523. Baylor classified an additional \$1,428,569 as nonreimbursable costs associated with lung and pancreas transplants for the costs incurred prior to the Medicare certification for the transplantation of these organs.

Medicare Reimbursement of Organ Acquisition and Transplant Costs

Medicare reimburses hospitals that are certified transplant centers for their reasonable costs associated with organ acquisition. Costs that qualify as organ acquisition are reimbursed outside of the Medicare prospective payment system and are in addition to the hospital's payment for the transplant itself.

Medicare reimbursed Baylor for organ acquisition costs as pass-through costs under Medicare Part A, based on the ratio of Medicare transplants to total transplants. Under this retrospective cost reimbursement system, Medicare makes interim payments to hospitals throughout the FY. At the end of the FY, each hospital files a cost report and its interim payments are reconciled with allowable costs, which are defined in Medicare regulations and policy.

The Medicare program also reimbursed Baylor for transplant surgery, inpatient, and post-transplant costs for the recipients, but through different payment systems. Medicare Part A paid for the cost of transplant surgeries and certain follow-up care through diagnosis-related group payments to the hospital. These payments were set at a predetermined rate per discharge for groups of patients that demonstrate similar resource consumption and length-of-stay patterns. Medicare Part B paid for the physician services furnished to a live donor or recipient during and after the transplant.

Medicare Allowable Organ Acquisition Costs

Medicare allows as organ acquisition costs all costs associated with the organ donor and recipient before admission to a hospital for the transplant operation (i.e., pre-transplant services) and the hospital inpatient costs associated with the donor. Allowable organ acquisition costs

include tissue typing, recipient registration fees, recipient and donor evaluations, organ purchases and transportation, and inpatient stays for organ donors.

Medicare also limits the allowable amounts of certain physician costs. The costs claimed for medical directors on the Part A cost report must be limited to Medicare's reasonable compensation equivalents as stated in 42 CFR § 415.70. Medicare's reasonable compensation equivalent calculation considers medical specialty and geographic area to determine allowable costs. The reasonable compensation equivalent rules require that these amounts be adjusted on a pro rata basis for part-time and more than full-time physicians. Amounts in excess of the reasonable compensation equivalents are considered unallowable.

Medicare's Supporting Documentation Rules

The Medicare rules require that hospitals maintain separate cost centers for each type of organ. Only the portion of salaries that relates to time spent on allowable organ acquisition activities may be included as organ acquisition costs on the Medicare cost report. If an employee performs both pre-transplant and other activities (post-transplant or non-transplant), the related salary should be allocated to the appropriate cost centers using a reasonable basis. The documentation must be current, accurate, and in sufficient detail to support payments made for services rendered to beneficiaries. This includes all ledgers, books, records, and original evidence of cost (e.g., labor timecards, payrolls, and bases for apportioning costs) that pertain to the determination of reasonable cost.

OBJECTIVE, SCOPE, AND METHODOLOGY

Objective

The objective of this self-initiated audit was to determine whether organ acquisition costs claimed on the FYs 1997 through 2001 Medicare cost reports by Baylor for its lung, kidney, liver, heart, and pancreas transplant programs were allowable. Specifically, did Baylor:

- Comply with Medicare law, regulations, and guidelines for claiming organ acquisition costs?
- Receive excess Medicare reimbursement for organ acquisition activities?

To the extent that the costs claimed were unallowable or unsupported, we disclosed the related estimated Medicare overpayment.

Scope

The scope of our audit included lung, kidney, liver, heart, and pancreas organ acquisition costs claimed by Baylor on its FYs 1997 through 2001 Medicare cost reports. Based on our survey work at Baylor, we identified higher risk cost categories and limited our scope to an audit of \$25,002,772 claimed for certain salaries and related costs, medical director fees, and space costs.

We did not review the remaining \$44,361,310 and do not express an opinion on this amount. In addition, we did not audit the total number of organs transplanted, the Medicare eligibility of the

recipients, inpatient days, or the ratio of costs-to-charges used on the Medicare Part A cost reports to determine certain costs. We did not audit the costs included in the indirect cost pools, but did review the reasonableness of the statistics used to allocate the indirect costs.

Our review of internal controls at Baylor was limited to a review of Baylor's procedures for claiming costs as organ acquisition and allocating costs between pre-transplant and other activities. We performed our fieldwork from December 1, 2003, to May 7, 2004, which included visits to Baylor Health Care Systems and Baylor University Medical Center.

Methodology

To accomplish our objective, we:

- obtained an understanding of Medicare reimbursement principles for organ acquisition costs;
- reviewed the documentation supporting organ acquisition costs claimed by Baylor for FYs 1997 through 2001;
- reviewed accounting records and reports;
- reviewed payroll records, which included time-and-effort reporting;
- interviewed Baylor employees, medical directors, and managers;
- toured the transplant center;
- obtained documentation from the Medicare intermediary; and
- discussed our findings with the Medicare intermediary.

The Medicare intermediary determined the estimated Medicare overpayment amounts associated with our findings by using proprietary software to adjust Baylor's Medicare cost reports. The Medicare intermediary determined the impact on Medicare reimbursement for each adjustment by compiling what is referred to as an Analysis of Proposed Adjustments. Since some adjustments can affect intermediate allocations within the cost report process, which in turn affect the overall amount reimbursed by Medicare, the cumulative effect on Medicare reimbursement will differ from the summation of the individual adjustments computed by the Analysis of Proposed Adjustments. We found that the differences between the cumulative effect of our adjustments and the effects of our individual adjustments in the Analysis of Proposed Adjustments were immaterial.

We conducted our audit in accordance with generally accepted government auditing standards.

FINDINGS AND RECOMMENDATIONS

Baylor did not comply with Medicare law, regulations, and guidelines for claiming organ acquisition costs in the preparation of its Medicare Part A cost reports and received excess reimbursement for organ acquisition activities. Specifically, Baylor did not have systems to accumulate certain costs of organ acquisition separate from the costs of post-transplant and other hospital activities. The table below summarizes the results of the audit by cost category:

RESULTS OF AUDIT

<u>Cost Category</u>	<u>Unallowable</u>	<u>Unsupported</u>
Salaries	\$ 0	\$ 7,600,727
Medical Directors	876,981	1,021,088
Floor Space	1,728,162	2,667,978
Other Costs	<u>2,405,618</u>	<u>2,343,407</u>
Total	<u>\$5,010,761</u>	<u>\$13,633,200</u>

The unallowable costs of \$5,010,761 were for medical director fees in excess of reasonable compensation equivalent limits, were associated with activities that did not comply with Medicare's definition of organ acquisition, or were incurred for departments unrelated to organ transplantation. Baylor officials told us, during our fieldwork, that they did not intentionally submit unallowable claims but also agreed that they made errors in the preparation of the cost reports. Based on the unallowable costs of \$5,010,761, Medicare overpaid Baylor an estimated \$4,195,303.

The unsupported costs of \$13,633,200 did not comply with Medicare's documentation requirements for reimbursement. During our fieldwork, Baylor agreed that not all of the unsupported costs complied with Medicare's documentation requirements. We recognize that some portion of the \$13,633,200 may have related to organ acquisition activities and would have been allowable if properly documented. However, based on Federal regulations and the Provider Reimbursement Manual, the unsupported costs did not meet Medicare reimbursement requirements. Although Baylor was unable to provide the necessary documentation needed to support \$13,633,200 of costs it claimed for FYs 1997 through 2001, when settling the audit findings, CMS and the Medicare intermediary may elect to use an allowable alternative methodology to estimate unsupported costs related to organ acquisition. If Baylor cannot provide alternative support for the \$13,633,200, the result would be an estimated Medicare overpayment of \$9,157,378.

UNALLOWABLE COSTS

Baylor's cost report included \$5,010,761 of unallowable costs that were (1) in excess of reasonable compensation equivalent limits, (2) associated with activities that did not comply with Medicare's definition of organ acquisition, or (3) incurred for departments unrelated to organ transplantation. These unallowable costs were for medical director fees in excess of reasonable compensation equivalent limits, were for activities not related to organ acquisition, or

resulted from accounting errors. The estimated Medicare overpayment for these unallowable costs is \$4,195,303. The balance of this section of the report details the unallowable costs as provided in the table below:

UNALLOWABLE COSTS

<u>Cost Category</u>	<u>Unallowable Costs</u>	<u>Estimated Medicare Overpayment</u>
Medical Directors	\$ 876,981	\$ 605,681
Floor Space	1,728,162	1,678,284
Other Costs	<u>2,405,618</u>	<u>1,911,338</u>
Total	<u>\$5,010,761</u>	<u>\$4,195,303</u>

Medical Director Fees

Baylor claimed \$876,981 in medical director fees that were unallowable as organ acquisition:

- \$767,737 for medical director fees that exceeded the reasonable compensation equivalent limits and
- \$109,244 for fees that were not incurred.

The claim for \$876,981 in unallowable costs resulted in an estimated Medicare overpayment of \$605,681.

Medical director fees totaling \$767,737 were unallowable because the salary costs for the medical directors over different organ transplant departments exceeded the reasonable compensation equivalent limits as contained in 42 CFR § 415.70. Medicare requires reasonable compensation equivalent limits be applied to physicians who (1) direct a provider department in which the physician’s expertise is required or (2) furnish other services, such as participating in a utilization review committee or quality control activities (e.g., a medical director over a hospital department). These limits are not applicable to the overall medical director of the entire facility or a medical director employed in the capacity not requiring the services of a physician (e.g., controller). Baylor officials told us during our fieldwork that they interpreted these criteria to mean that all medical directors are exempt from the reasonable compensation equivalent limits, instead of just the overall medical director.

In addition, medical director fees totaling \$109,244 were unallowable because Baylor claimed salary costs in excess of the actual salary costs incurred. Direct costs must be reasonable, incurred, and identifiable specifically with the cost center. Baylor officials used the salary amounts specified in several medical directors’ contracts rather than the actual salary costs paid to these directors.

Floor Space

Baylor claimed \$1,728,162 in unallowable organ acquisition costs for FYs 1997 through 2001 for floor space, which resulted in an estimated Medicare overpayment of \$1,678,284. Baylor used the amount of floor space occupied by each department as the basis for allocating certain overhead costs. Pursuant to the Provider Reimbursement Manual, Part II, section 3617, overhead costs that must be allocated using square footage of floor space include buildings and fixtures, movable equipment, maintenance and repairs, operation of plant, and housekeeping. Assigning excess square footage to organ acquisition resulted in an overcharge to Medicare.

Of the 121,366⁵ square feet that Baylor assigned as organ acquisition for FYs 1997 through 2001, 49,342 square feet were not related to organ acquisition costs as explained at 45 CFR, Part 74, Appendix E, iv and, therefore, were unallowable. We could identify only 72,024 square feet of space that were related to organ acquisition. The unallowable square footage included (1) 37,342 square feet for the intensive care unit, (2) 10,995 square feet for post-transplant activities, and (3) 1,005 square feet for organ transplants prior to Medicare certification. As a result, Baylor received an estimated Medicare overpayment of \$1,678,284. Baylor officials told us that they were unaware that certain floor space had been included in organ acquisition when the cost reports were filed. In addition, Baylor officials told us that they were unaware that certain transplant activities should not be claimed as organ acquisition.

Other Costs

Baylor claimed \$2,405,618 for “other” costs that were unallowable as organ acquisition. These unallowable costs included \$2,032,840 for transplant program costs and \$372,778 for other department costs. The claim for \$2,405,618 in “other” unallowable costs resulted in an estimated Medicare overpayment of \$1,911,338.

OTHER COSTS

Cost Category	Unallowable Costs	Estimated Medicare Overpayment
Transplant Program Costs:		
Transplant “Other” Costs	\$1,122,955	\$ 811,581
Immunology Lab Costs	944,864	904,406
Immunology & GI “Other”	<u>(34,979)</u>	<u>(19,995)</u>
Subtotal	2,032,840	1,695,992
Other Department Costs	<u>372,778</u>	<u>215,346</u>
Total	<u><u>\$2,405,618</u></u>	<u><u>\$1,911,338</u></u>

⁵Baylor claimed a combined total of 121,366 square feet of floor space for the 5 years: 54,138 for 1997, 16,796 for 1998, 16,832 for 1999, 16,596 for 2000, and 17,004 for 2001.

Transplant Program Costs

Baylor claimed \$2,032,840 of unallowable transplant costs as organ acquisition costs. These costs represent the net of an:

- overstatement of \$1,122,955 in transplant administration “other” costs in FYs 1997, 2000, and 2001;
- overstatement of \$944,864 in immunology transplant lab costs in FYs 1997 to 2001; and
- understatement of \$34,979 in immunology lab and GI liver services “other” costs in FY 2001.

Transplant administration “other” costs were overstated by \$1,122,955 in FYs 1997, 2000, and 2001 because Baylor claimed live donor costs twice as organ acquisition. These costs were claimed as direct costs on one cost report worksheet and as routine and ancillary costs on another cost report worksheet. A Baylor official confirmed that these costs were mistakenly claimed twice due to an accounting error, which resulted in a Medicare overpayment of \$811,581.

Baylor overstated immunology lab costs by \$944,864 in FYs 1997 through 2001. The costs associated with testing bone marrow were claimed as organ acquisition, even though they are not an allowable Medicare organ acquisition cost as cited in the Provider Reimbursement Manual, Part I, sections 2771.B and 2771.C, and the Intermediary Manual, Part 3, sections 3178.3 through 16. For FYs 1997 through 2001, Baylor claimed \$1,654,580 for the testing of bone marrow costs as organ acquisition. In FY 2001, Baylor made a \$709,716 adjustment to remove the testing of bone marrow costs from organ acquisition. Baylor officials confirmed that they should have removed these costs from the cost reports for the other years. Therefore, immunology lab costs were overstated by \$944,864 for FYs 1997 through 2001. As a result, Medicare overpaid Baylor an estimated \$904,406.

Baylor understated the immunology lab and GI liver “other” costs by \$34,979 in FY 2001 because it removed the same costs twice from organ acquisition. Baylor officials agreed that the adjustments were overstated and caused the same costs to be removed twice. As a result, Medicare underpaid Baylor an estimated \$19,995.

Other Department (Financial Review Staff)

Baylor claimed \$372,778 of financial review staff costs that were unallowable as organ acquisition. These costs consisted of costs already claimed as organ acquisition, as well as costs for activities that were not related to organ acquisition as explained at 45 CFR, Part 74, Appendix E, iv. Baylor’s supporting documentation showed that of the \$372,778, salary costs of \$175,997 and “other” costs of \$82,370 were claimed twice on the cost report. The remaining \$114,411 was claimed for activities unrelated to organ acquisition activities. A Baylor official confirmed that all of these costs were mistakenly

claimed as organ acquisition due to an accounting error. As a result of claiming the \$372,778 as organ acquisition, Medicare overpaid Baylor an estimated \$215,346.

UNSUPPORTED COSTS

Baylor’s cost reports included \$13,633,200 of costs that were not properly supported with current, accurate documentation that differentiated between pre-transplant and post-transplant activities as required by Medicare regulations. Pursuant to Provider Reimbursement Manual, Part I, section 2304; and 42 CFR §§ 413.24 and 413.9(a) and (b), costs claimed must be reasonable, properly allocated, and supported by proper documentation. Only the portion of salaries that relates to time spent on allowable organ acquisition activities may be included as organ acquisition costs on the cost report. If an employee performs both pre-transplant and other activities (post-transplant or non-transplant), the related salary should be allocated to the appropriate cost centers using a reasonable basis. Costs incurred to supervise or support organ transplant employees should be allocated on a basis consistent with the time allocation of the supervised and supported staff.

We recognize that some portion of the \$13,633,200 may have related to organ acquisition activities and would have been allowable if properly documented. However, based on 42 CFR §§ 413.24(a) and 413.24(c), and the Provider Reimbursement Manual, Part I, section 2304, these unsupported costs were considered unallowable for Medicare reimbursement. Although Baylor was unable to provide the necessary documentation to support \$13,633,200 of costs it claimed for FYs 1997 through 2001, when settling the audit findings, CMS and the Medicare intermediary may elect to use an alternative methodology to estimate unsupported costs related to organ acquisition. If Baylor does not provide alternative support for the \$13,633,200, the result would be a Medicare overpayment of \$9,157,378. The balance of this section of the report details the unsupported costs shown in the table below:

UNSUPPORTED COSTS

<u>Cost Category</u>	<u>Unsupported Costs</u>	<u>Estimated Medicare Overpayment</u>
Salaries	\$ 7,600,727	\$5,093,564
Medical Directors	1,021,088	740,703
Floor Space	2,667,978	1,858,458
Other Costs	<u>2,343,407</u>	<u>1,464,653</u>
Total	<u>\$13,633,200</u>	<u>\$9,157,378</u>

Salaries

Baylor claimed \$7,600,727 in salary costs that were not properly allocated between pre-transplant and post-transplant, which consisted of \$7,122,035 for transplant administration department staff and \$478,692 for financial review staff salaries. If Baylor does not provide alternative support for the unsupported salary costs, the result would be an estimated Medicare overpayment of \$5,093,564.

Baylor claimed \$7,122,035 in salary costs for transplant administration department staff that were not supported with documentation that differentiated between pre-transplant and post-transplant activities. Pursuant to Provider Reimbursement Manual, Part I, section 2771.1B; and 42 CFR §§ 413.9(a) and 413.24 (a) and (b)(1), Medicare requires that salaries be allocated to all benefiting activities using a reasonable basis that is supported by auditable documentation. Baylor officials were not aware that costs should be allocated between pre-transplant and post-transplant activities.

Baylor claimed \$478,692 in salary costs for financial review staff that were unsupported because Baylor did not provide documentation to support the allocations made to organ acquisition. Medicare cost reimbursement principles require that providers maintain sufficient financial records and statistical data for proper determination of costs payable under the Medicare program.

Medical Director Fees

Baylor claimed \$1,021,088 in medical director fees that were not allocated between pre-transplant and post-transplant, as required by Medicare regulations. Medicare regulations require that costs that benefit more than one program be allocated using a reasonable basis that is supported by auditable documentation. Baylor should have allocated the medical director fees between pre-transplant and post-transplant activities, using a reasonable basis that is supported by auditable documentation. Baylor officials said that they were not aware that these costs should be allocated between pre-transplant and post-transplant activities. If Baylor does not provide alternative allocation support for these costs, the result would be an estimated Medicare overpayment of \$740,703.

Floor Space

Baylor claimed \$2,667,978 for 47,570⁶ square feet of floor space for FYs 1997 through 2001 that was not properly allocated between pre-transplant and post-transplant activities. If Baylor does not provide alternative support for these costs, the result would be an estimated Medicare overpayment of \$1,858,458.

The amount of floor space used by each department is the basis used in the Medicare cost report to allocate certain overhead costs, such as buildings and fixtures, movable equipment, maintenance and repairs, operation of plant, and housekeeping. If excess floor space is assigned to a department, overhead costs allocated on the basis of floor space will also be overstated.

We determined that 47,570 square feet of floor space was for transplant administration and social work employees who provided services for the lung, kidney, liver, heart, and pancreas transplantation programs, which related to both pre-transplant and post-transplant activities. Baylor should have allocated this floor space between pre-transplant and post-transplant activities using a reasonable basis, such as the allocation of the transplant employee salaries.

⁶Baylor claimed 9,514 square feet of unsupported floor space for each of the 5 years for a combined total of 47,570 square feet.

Other Costs

Baylor claimed \$2,343,407 of “other” costs that were not properly allocated between pre-transplant and post-transplant activities, which included \$1,161,976 for transplant administration and \$1,181,431 for other departments. If Baylor does not provide alternative support for these costs, the result would be an estimated Medicare overpayment of \$1,464,653.

Transplant Administration Costs

Baylor claimed \$1,161,976 of other transplant administration costs that were not properly allocated between pre-transplant and post-transplant activities. These costs included expenses such as office supplies, retirement/health plans, transportation, and phone charges. The other transplant administration costs should be properly allocated between pre-transplant and post-transplant activities using a reasonable basis that is supported by auditable documentation. If Baylor does not provide alternative support for these costs, the result would be an estimated Medicare overpayment of \$783,036.

Other Departments

Baylor claimed \$1,181,431 of other department costs that were not properly allocated between pre-transplant and post-transplant activities. These costs, which included salary and other costs, were allocated from the following departments:

- \$935,978 for social services,
- \$115,645 for medical staff,
- \$82,370 for financial review staff, and
- \$47,438 for surgical education.

These other department costs should be properly allocated between pre-transplant and post-transplant activities, using a reasonable basis that is supported by auditable documentation.

Baylor provided documents that showed only some of the financial review staff costs were allocated to organ acquisition. However, Baylor did not provide necessary documentation to support the amounts claimed. No documentation was available for the other departments. If Baylor does not provide alternative support for these costs, the result would be an estimated Medicare overpayment of \$681,617.

SUMMARY OF ADJUSTMENTS AND MEDICARE OVERPAYMENTS

The following table summarizes the unallowable and unsupported costs and the related estimated Medicare overpayments:

SUMMARY OF ADJUSTMENTS AND MEDICARE OVERPAYMENTS

<u>Cost Category</u>	<u>Unallowable</u>		<u>Unsupported</u>	
	<u>Costs</u>	<u>Estimated Medicare Overpayment</u>	<u>Costs</u>	<u>Estimated Medicare Overpayment</u>
Salaries	\$ 0	\$ 0	\$ 7,600,727	\$5,093,564
Medical Directors	876,981	605,681	1,021,088	740,703
Floor Space	1,728,162	1,678,284	2,667,978	1,858,458
Other Costs	<u>2,405,618</u>	<u>1,911,338</u>	<u>2,343,407</u>	<u>1,464,653</u>
Total	<u>\$5,010,761</u>	<u>\$4,195,303</u>	<u>\$13,633,200</u>	<u>\$9,157,378</u>

Note: Baylor claimed unsupported costs of \$13,633,200 that did not comply with Medicare's documentation requirements. Some portion of this amount may have related to organ acquisition activities and would have been allowable if properly documented. If Baylor cannot provide alternative support for these costs, the Medicare intermediary should recover the entire Medicare overpayment of \$9,157,378.

RECOMMENDATIONS

We recommend that the Medicare intermediary:

- recover the Medicare overpayment of \$4,195,303 for the unallowable costs claimed by Baylor as organ acquisition;
- work with Baylor to determine, if possible, what portion of the \$13,633,200 of unsupported costs and related Medicare payment of \$9,157,378 is associated with allowable organ acquisition activities, and recover that portion of the \$9,157,378 that Baylor is unable to support with allowable organ acquisition costs;
- review organ acquisition costs claimed by Baylor on its Medicare cost reports for any subsequent years for issues similar to those identified in FYs 1997 through 2001, and recover any Medicare overpayments;
- monitor future Medicare cost report claims for organ acquisition costs from Baylor to ensure compliance with Medicare requirements; and
- instruct Baylor to develop and maintain adequate time-and-effort reporting and accounting controls, and to provide clear direction to responsible personnel as to Medicare requirements for claiming and documenting organ acquisition costs.

COMMENTS ON DRAFT REPORT AND OFFICE OF INSPECTOR GENERAL RESPONSE

We obtained written comments on the draft report from TrailBlazer Health Enterprises, the Medicare intermediary, and Baylor. The comments and our response to them are summarized below.

Medicare Intermediary Comments

In its written comments on the draft report, TrailBlazer Health Enterprises agreed with the findings and recommendations. TrailBlazer Health Enterprises' comments are included in their entirety as Appendix B.

Baylor Comments

In its written comments on the draft report, Baylor did not specifically address the recommended recovery of \$4,195,303, but did go into the basis for the disallowance. Baylor stated that the majority of the unallowable costs were attributable to medical director fees in excess of reasonable compensation equivalent limits. Baylor did not agree with our application of reasonable compensation equivalent limits. Baylor stated that, per the Provider Reimbursement Manual, Part II, section 3615, all medical directors were exempt from the reasonable compensation equivalent limits, and therefore the limits should not have been applied to its medical directors for transplantation. Baylor also noted that the majority of the unallowable floor space was attributable to an error in a single year.

Regarding our second recommendation, Baylor agreed to work with the Medicare intermediary to develop alternative approaches to determine what portion of the \$13,633,200 in unsupported costs were associated with pre-transplant services. Baylor stated it will work with the intermediary to develop a reasonable and equitable methodology to apportion costs between pre-transplant and post-transplant services. In addition, Baylor stated it has implemented corrective action, which includes establishing additional cost centers on the general ledger to segregate pre-transplant and post-transplant expenses.

Regarding our third recommendation, Baylor stated that it will work with the Medicare intermediary to incorporate the OIG findings into cost report audits for years subsequent to FY 2001. Baylor also stated it will work with the intermediary and incorporate the alternative approach to estimating organ acquisition costs into these audits.

Regarding our fourth recommendation, Baylor stated that it incorporated the OIG recommendations in its recently filed FY 2004 Medicare cost report and that it will continue to do so in future cost reports.

In response to our last recommendation, Baylor stated it is implementing the Baylor Health Care System Organ Transplant Billing and Cost Reporting Policy which is designed to better ensure that individuals who are involved in organ transplant services comply with all the applicable Medicare program requirements. Baylor also stated that as part of this new policy,

it has developed and implemented a template to be used for daily time studies, which has been submitted to the Medicare intermediary for approval.

Baylor's comments are included in their entirety as Appendix C.

Office of Inspector General Response

In regard to the reasonable compensation equivalent limits, 42 CFR § 415.70 states that costs claimed for physicians on the Part A cost report must be limited to Medicare's reasonable compensation equivalent limits. While the Provider Reimbursement Manual, Part II, section 3615 states that the reasonable compensation equivalent limits are not applicable to a medical director or chief of medical staff, it is the opinion of CMS and the Medicare intermediary that this criteria only applies to the overall medical director of a facility. The Medicare intermediary provided written correspondence to OIG that confirms this opinion. The correspondence is a dialogue between CMS and a consultant regarding the application of reasonable compensation equivalent limits to medical directors. Further, the Federal Register (48 FR 8918 published March 2, 1983) contains the CMS response to a commenter's question on this subject. CMS stated that the reasonable compensation equivalent limits apply to physicians who direct a provider department in which the physician's expertise is required or who furnish other services, such as participating in utilization review committee or quality control activities. Baylor's medical directors are physicians that direct transplant departments and furnish other services such as assisting hospitals in formulating, implementing, and monitoring policies and programs for patient care that includes quality assessment and utilization review. Therefore, Baylor should have applied the reasonable compensation equivalent limits to each transplantation department medical director.

APPENDIXES

AUDIT RESULTS BY CATEGORY AND FISCAL YEAR

Table A-1: Results of Audit (Note 1)

Cost Category	Claimed	Allowable	Unallowable	Unsupported	Unaudited	Medicare Overpayment		Notes
						Unallowable	Unsupported	
Salaries	\$10,814,779	\$3,214,052	\$ 0	\$ 7,600,727	\$ 0	\$ 0	\$5,093,564	2
Medical Directors	1,898,069	0	876,981	1,021,088	0	605,681	740,703	3
Floor Space	5,796,786	1,400,646	1,728,162	2,667,978	0	1,678,284	1,858,458	4
Other Costs	50,854,448	1,744,113	2,405,618	2,343,407	44,361,310	1,911,338	1,464,653	5
Total	\$69,364,082	\$6,358,811	\$5,010,761	\$13,633,200	\$44,361,310	\$4,195,303	\$9,157,378	

Notes

- 1: For totals by fiscal year see Table A-2
2: For Salaries detail see Table A-3
3: For Medical Directors detail see Table A-4
4: For Floor Space detail see Table A-5
5: For Other Costs detail see Table A-6

Table A-2: Totals by Fiscal Year

Fiscal Year	Claimed	Allowable	Unallowable	Unsupported	Unaudited	Medicare Overpayment	
						Unallowable	Unsupported
FY 1997	\$10,041,406	\$ 879,883	\$1,970,687	\$ 1,904,005	\$ 5,286,831	\$2,042,092	\$1,793,198
FY 1998	11,933,044	1,132,941	652,826	2,265,894	7,881,383	670,477	2,419,129
FY 1999	14,292,636	1,755,958	551,909	2,650,118	9,334,651	298,165	1,315,626
FY 2000	15,435,311	1,849,321	800,184	3,107,537	9,678,269	395,534	1,472,767
FY 2001	17,661,685	740,708	1,035,155	3,705,646	12,180,176	789,035	2,156,658
Total	\$69,364,082	\$6,358,811	\$5,010,761	\$13,633,200	\$44,361,310	\$4,195,303	\$9,157,378

Table A-3: Salaries Detail

Category and Fiscal Year	Claimed	Allowable	Unallowable	Unsupported	Unaudited	Medicare Overpayment	
						Unallowable	Unsupported
Transplant Employees:							
FY 1997	\$ 1,641,330	\$ 486,090	\$0	\$1,155,240	\$0	\$0	\$1,091,028
FY 1998	1,732,175	519,757	0	1,212,418	0	0	1,315,185
FY 1999	2,491,983	1,016,280	0	1,475,703	0	0	710,168
FY 2000	2,721,515	1,191,925	0	1,529,590	0	0	721,178
FY 2001	1,749,084	0	0	1,749,084	0	0	1,010,407
Subtotal	<u>10,336,087</u>	<u>3,214,052</u>	<u>0</u>	<u>7,122,035</u>	<u>0</u>	<u>0</u>	<u>4,847,966</u>
Other Departments:							
FY 1997	0	0	0	0	0	0	0
FY 1998	0	0	0	0	0	0	0
FY 1999	124,066	0	0	124,066	0	0	59,705
FY 2000	178,629	0	0	178,629	0	0	84,223
FY 2001	175,997	0	0	175,997	0	0	101,670
Subtotal	<u>478,692</u>	<u>0</u>	<u>0</u>	<u>478,692</u>	<u>0</u>	<u>0</u>	<u>245,598</u>
Total	<u>\$10,814,779</u>	<u>\$3,214,052</u>	<u>\$0</u>	<u>\$7,600,727</u>	<u>\$0</u>	<u>\$0</u>	<u>\$5,093,564</u>

Table A-4: Medical Directors Detail

Fiscal Year	Claimed	Allowable	Unallowable	Unsupported	Unaudited	Medicare Overpayment	
						Unallowable	Unsupported
FY 1997	\$ 53,519	\$0	\$ 0	\$ 53,519	\$0	\$ 0	\$ 50,663
FY 1998	487,840	0	247,762	240,078	0	252,727	253,161
FY 1999	246,480	0	106,262	140,218	0	86,210	111,420
FY 2000	371,155	0	84,541	286,614	0	50,973	149,490
FY 2001	739,075	0	438,416	300,659	0	215,771	175,969
Total	\$1,898,069	\$0	\$876,981	\$1,021,088	\$0	\$605,681	\$740,703

Table A-5: Floor Space Detail

Fiscal Year	Claimed	Allowable	Unallowable	Unsupported	Unaudited	Medicare Overpayment	
						Unallowable	Unsupported
FY 1997	\$1,569,272	\$ 118,206	\$1,175,288	\$ 275,778	0	\$1,307,732	\$ 269,497
FY 1998	923,925	279,601	120,965	523,359	0	125,645	539,952
FY 1999	1,061,815	322,957	138,679	600,179	0	68,373	294,766
FY 2000	1,043,498	307,024	138,266	598,208	0	71,611	307,017
FY 2001	1,198,276	372,858	154,964	670,454	0	104,923	447,226
Total	\$5,796,786	\$1,400,646	\$1,728,162	\$2,667,978	\$0	\$1,678,284	\$1,858,458

Table A-6: Other Costs Detail

Category and Fiscal Year	Claimed	Allowable	Unallowable	Unsupported	Unaudited	Medicare Overpayment	
						Unallowable	Unsupported
Transplant Program/ Administration Costs:							
FY 1997	\$ 5,213,661	\$ 275,587	\$ 795,399	\$ 246,011	\$ 3,896,664	\$ 467,516	\$ 232,336
FY 1998	6,233,233	333,583	284,099	114,913	5,500,638	0	124,653
FY 1999	8,162,497	416,721	306,968	90,195	7,348,613	0	43,409
FY 2000	8,573,511	350,372	577,377	263,747	7,382,015	93,246	124,355
FY 2001	10,961,431	367,850	68,997	447,110	10,077,474	252,995	258,283
Subtotal	<u>39,144,333</u>	<u>1,744,113</u>	<u>2,032,840</u>	<u>1,161,976</u>	<u>34,205,404</u>	<u>813,757</u>	<u>783,036</u>
Other Department:							
FY 1997	173,457	0	0	173,457	0	266,844	149,674
FY 1998	175,126	0	0	175,126	0	292,105	186,178
FY 1999	219,757	0	0	219,757	0	143,582	96,158
FY 2000	250,749	0	0	250,749	0	179,704	86,504
FY 2001	<u>735,120</u>	<u>0</u>	<u>372,778</u>	<u>362,342</u>	<u>0</u>	<u>215,346</u>	<u>163,103</u>
Subtotal	<u>1,554,209</u>	<u>0</u>	<u>372,778</u>	<u>1,181,431</u>	<u>0</u>	<u>1,097,581</u>	<u>681,617</u>
Unaudited:							
FY 1997	1,390,167	0	0	0	1,390,167	0	0
FY 1998	2,380,745	0	0	0	2,380,745	0	0
FY 1999	1,986,038	0	0	0	1,986,038	0	0
FY 2000	2,296,254	0	0	0	2,296,254	0	0
FY 2001	<u>2,102,702</u>	<u>0</u>	<u>0</u>	<u>0</u>	<u>2,102,702</u>	<u>0</u>	<u>0</u>
Subtotal	<u>10,155,906</u>	<u>0</u>	<u>0</u>	<u>0</u>	<u>10,155,906</u>	<u>0</u>	<u>0</u>
Total	<u>\$50,854,448</u>	<u>\$1,744,113</u>	<u>\$2,405,618</u>	<u>\$2,343,407</u>	<u>\$44,361,310</u>	<u>\$1,911,338</u>	<u>\$1,464,653</u>

**MEDICARE**Part A Intermediary
Part B Carrier

December 30, 2004

Sent via: E-mail and UPS NDA

Mr. Gordon L. Sato
Regional Inspector General for Audit Services
Department of Health and Human Services
Office of Audit Services
1100 Commerce, Room 632
Dallas TX 75242

RE: Medicare Fiscal Intermediary Response
"Audit of Baylor University Medical Center's Organ Acquisition Costs Claimed for the Period July 1, 1996 through June 30, 2001"
Report Number: A-06-04-00017

Dear Mr. Sato:

In response to the Department of Health and Human Services, Office of Inspector General (OIG), draft report entitled, "Audit of Baylor University Medical Center's Organ Acquisition Costs Claimed for the Period July 1, 1996 through June 30, 2001" (OIG report), we submit the following for your review.

We understand that your review was limited to the organ acquisition costs of \$25 million of the total \$69.4 million claimed by the provider for the period under review. The scope of your review was to determine whether the audited organ acquisition costs claimed by the provider for fiscal years (FY) 1997 through 2001 Medicare cost reports for its lung, kidney, liver, heart, and pancreas transplant programs were allowable and claimed in accordance with Medicare regulation. The findings of the above-referenced audit resulted in the determination that Baylor University Medical Center (Baylor) did not comply with Medicare laws, regulations, and guidelines for claiming the organ acquisition costs and received excess Medicare reimbursement for organ transplant services. Specifically, the audit found that Baylor University Medical Center claimed \$5,010,761 in unallowable costs and \$13,633,200 in unsupported costs for the years under review.

With respect to the audit work performed by the Medicare Fiscal Intermediary (FI) for the period referenced above, we have completed fieldwork on the Medicare cost report audits for FY 1997 through 2001. We have also completed the supervisory review and initiated corrective action as a result of these reviews for the audit work for FY 1997 and 1998. Further, we have begun the supervisory review process for the audit work on FY 1999 through 2001. We plan to complete the supervisory review and resulting corrective action for our audit work for all five years (FY 1997 – 2001) and have these cost reports available for settlement no later than September 30, 2005. Our initial audit work performed for these years included a review and related adjustments proposed for organ transplant services with respect to the charges and the accuracy of the number of Medicare organs reported on Worksheet D-6 of the Medicare cost report. We did not include in the scope of our audit work the review of organ transplant administrative costs or floor space overhead associated with the organ transplant services for the periods addressed in the OIG report. Therefore, as a part of finalizing the above referenced reports, we have incorporated the adjustments related to the unallowable and unsupported costs that are identified in the OIG report into the respective cost reporting period and plan to reflect these adjustments into the settlement of each of these cost reports. As recommended in the OIG report, we will provide Baylor with the opportunity to submit supporting documentation to substantiate the unsupported costs and will audit any information forwarded to us in these regards. The proposed adjustments that resulted from the OIG audit work will remain as a part of the settlement of the report for the portion of the \$13,633,200 that remains unsupported after our audit of the additionally submitted documentation.

TrailBlazer Health Enterprises, LLCSM
Medicare Part A Audit & Reimbursement
Pyramid Plaza · 3223 S. Loop 289, Suite 124 · Lubbock, Texas · 79423
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A CMS Contracted Intermediary and Carrier

Mr. Gordon Sato
December 30, 2004
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As a part of the OIG report, the agency has proposed the recommendations below for the Medicare Intermediary:

- Recover the Medicare overpayment of \$4,195,303 for the unallowable costs claimed by Baylor as organ acquisition;
- Work with Baylor to determine, if possible, what portion of the \$13,633,200 of unsupported costs and related Medicare payment of \$9,157,378 is associated with allowable organ acquisition activities and recover that portion of the \$9,157,378 that Baylor is unable to support with allowable organ acquisition costs;
- Review organ acquisition cost claimed by Baylor on its Medicare cost reports for any subsequent years for issues similar to those identified in FY 1997 through 2001, and recover any Medicare overpayments;
- Monitor future Medicare cost report claims for organ acquisition costs from Baylor to ensure compliance with Medicare requirements; and
- Instruct Baylor to develop and maintain adequate time-and-effort reporting and accounting controls, and to provide clear direction to responsible personnel as to Medicare requirements for claiming and documenting organ acquisition costs.

Consistent with the above recommendations, we will incorporate the proposed adjustments from the OIG report related to the unallowable organ acquisition costs claimed by Baylor into the settlement of the respective Medicare cost reports for FY 1997 through 2001. We will include audit adjustments into the settlement of the respective cost reports for FY 1997 through 2001 for the portion of the \$13,633,200 that remains unsupported through the finalization of the respective cost reports. However, as recommended, we will work with the Baylor representatives in auditing any supporting documentation to substantiate this cost and modify the adjustments accordingly.

Also consistent with the recommendations to the FI proposed in the OIG report, we will include in the scope of our review an audit of the organ acquisition costs and physical space claimed by Baylor in subsequent Medicare cost reports for issues similar to those identified in FY 1997 through 2001. We will recover any Medicare overpayments identified as a result of our review. Our inclusion of the review of the organ acquisition costs for future audit work will allow us to adequately monitor the claims for organ acquisition costs from Baylor to ensure compliance with Medicare requirements. In follow-up to our audit work, we will issue management letter instructions to Baylor to develop and maintain adequate time-and-effort reporting and accounting controls and provide clear direction to responsible personnel as to the Medicare requirements for claiming and documenting organ acquisition costs.

As noted above, we plan to complete the review and settlement of the FY 1997 through 2001 Medicare cost reports no later than September 30, 2005. We also plan to begin fieldwork on the June 30, 2002 Medicare cost report for Baylor during April 2005, resulting in an estimated settlement by September 30, 2005. Our audit for the FY 2002 Medicare cost report and subsequent periods are scheduled as full scope complex audits for this facility. Our scoping of these audits will include a detailed review of the organ acquisition costs as a primary area of focus for this provider as identified in the OIG report.

Please feel free to contact me at the letterhead telephone number below with any questions or further comments in these regards.

Sincerely,



Brent Fuller, CPA
Interim Regional Director
Provider Audit and Reimbursement

cc: Marti Mahaffey, Trailblazer
Scott J. Manning, Trailblazer
Jim Kernen, Trailblazer
Kevin Bidwell, Trailblazer
James Sigmund, CMS – Dallas Regional Office
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December 29, 2004

Mr. Gordon L. Sato
Regional Inspector General for Audit Services
Department of Health & Human Services
Office of Inspector General
Office of Audit Services
1100 Commerce Street, Room 632
Dallas, Texas 75242

RE: Baylor University Medical Center
OIG Report Number A-06-04-00017

Dear Mr. Sato:

We have received and reviewed the Office of Inspector General's ("OIG") draft report entitled "Audit of Baylor University Medical Center's Organ Acquisition Costs Claimed for the Period July 1, 1996 through June 30, 2001." The OIG determined that for the five-year period, we claimed \$5,010,761 of organ acquisition costs that were unallowable, and \$13,633,200 of organ acquisition costs that were unsupported. With respect to the unsupported costs, the OIG determined that we did not properly document the allocation of the costs between pre-transplant and post-transplant services. The OIG acknowledged that some of the costs may have related to organ acquisition activities and would be allowable if properly documented, and stated that when the Medicare fiscal intermediary settles the audit findings, the intermediary may use an alternative methodology to estimate the organ acquisition costs. We have prepared the comments herein in response to the recommendations and findings in the draft report.

We take our responsibility to the Medicare program very seriously and it has always been our objective to fully comply with all applicable Medicare laws, regulations, and guidelines. Prior to the OIG's review, we believed that we had prepared and filed our Medicare cost reports in compliance with the Medicare authorities governing organ acquisition costs. As part of our ongoing efforts to better ensure compliance with the Medicare cost reporting requirements, prior to filing the FY 1998 Medicare cost report, we engaged a consultant to review our treatment of organ acquisition costs. The consultant had previously been a director with Blue Cross and Blue Shield of Texas, the predecessor organization to our current Medicare fiscal intermediary, TrailBlazer Health Enterprises ("TrailBlazer"). The consultant prepared the sections of our FY 1998 and 1999 Medicare cost reports reflecting organ acquisition costs. We also note that all of our Medicare cost reports are audited by our intermediary, and our transplant program has always been subjected to an extensive and detailed audit.

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Moreover, we are implementing the "Baylor Health Care System Organ Transplant Billing and Cost Reporting Policy" in order to better ensure that all personnel who perform organ transplant services, perform administrative services relating to organ transplant services, or are involved in reporting organ transplant services or costs to the Medicare program for payment purposes are aware of, and comply with, all applicable Medicare program requirements. We will provide a copy of the Policy to the OIG for its review upon request.

Discussion of Recommendations

Recommendation 1.

The OIG recommended that the Medicare Intermediary recover the Medicare overpayment of \$4,195,303, related to the unallowable costs claimed on the cost report.

Response

The unallowable costs include medical director fees and floor space. With respect to the medical director fees, approximately 88 percent of the costs that the OIG determined to be unallowable was attributable to fees in excess of the reasonable compensation equivalent ("RCE") limits. The OIG has applied the RCE limits to each medical director, and exempted only the "overall" medical director from these limits. We have understood certain applicable Medicare guidance to provide that all hospital medical directors are exempt from the RCE limits. Provider Reimbursement Manual, Part II, § 3615, "Worksheet A-8-2, Provider-Based Physician Adjustments," simply explains that the "RCE limits are not applicable to a medical director, chief of medical staff, or to compensation of a physician employed in a capacity not requiring the services of a physician, *e.g.*, controller." Likewise, Provider Reimbursement Manual, Part II, § 2822 and Provider Reimbursement Manual, Part II, Transmittal 2 (Nov. 1, 1998) include similar language that the RCE limits do not apply to medical directors. These interpretive manual provisions do not appear to make any distinction between medical directors of a hospital department (purportedly subject to the RCE limits) and overall medical directors of hospitals (not subject to the RCE limits).

With respect to floor space, we would like to point out that the majority of the unallowable floor space was attributable to an error in a single year. Approximately 75 percent of the floor space that the OIG determined to be unallowable was attributable to inadvertently including the Transplant ICU floor space in the organ acquisition cost center on the FY 1997 Medicare cost report. This floor space has not been included in the organ acquisition cost center in any cost reports subsequent to the FY 97 cost report.

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Recommendation 2.

The OIG recommended that the Medicare Intermediary work with Baylor to determine, if possible, what portion of the \$13,633,200 of unsupported costs and related Medicare payment of \$9,157,378 is associated with allowable organ acquisition activities, and recover that portion of the \$9,157,378 that Baylor is unable to support with allowable organ acquisition costs.

Response

Prior to the OIG review, we believed that we had prepared and filed our Medicare cost reports in compliance with the Medicare law, regulations, and guidelines applicable to organ acquisition costs. Subsequent to this review, we have implemented corrective actions and incorporated these actions into our FY 2004 Medicare cost report. For example, we have established additional cost centers on the general ledger to assist us in segregating pre-transplant and post-transplant expenses. Additional corrective actions are discussed under our response to Recommendation 5.

We will work with TrailBlazer in order to develop a possible alternative approach or approaches to determine the amount of allowable organ acquisition costs for the cost periods at issue. We will work with intermediary representatives to develop a reasonable and equitable methodology to apportion the costs between pre-transplant and post-transplant services. Based upon our analysis thus far, it appears that approximately \$6,608,000, or 48.5 percent, of the \$13,633,200 of costs are related to pre-transplant services.

Recommendations 3, 4.

The OIG recommended that the Medicare Intermediary review organ acquisition costs claimed by Baylor on its Medicare cost reports for any subsequent years for issues similar to those identified in FY 1997 through 2001, and recover any Medicare overpayments and to monitor future Medicare cost report claims for organ acquisition costs from Baylor to ensure compliance with Medicare requirements.

Response

As Medicare cost reports for years subsequent to FY 2001 are audited, we will work with TrailBlazer to incorporate the OIG findings into the audits. We will also work with the intermediary to develop alternative methodologies to estimate the amount of organ acquisition costs and incorporate these alternative methodologies into the audits.

We included the OIG recommendations in our recently-filed FY 2004 Medicare cost report. We will incorporate all OIG findings in our future Medicare cost reports.

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Recommendation 5.

The OIG recommended that the Medicare Intermediary instruct Baylor to develop and maintain adequate time-and-effort reporting and accounting controls, and to provide clear direction to responsible personnel as to Medicare requirements for claiming and documenting organ acquisition costs.

Response

As previously described, we are implementing the "Baylor Health Care System Organ Transplant Billing and Cost Reporting Policy," the purpose of which is to better ensure that individuals who are involved in organ transplant services, including those who are involved in reporting services or costs to the Medicare program for payment purposes, comply with all the applicable Medicare program requirements.

As part of the Policy, we have developed and implemented a template to be used for daily time studies, and we have submitted the template to TrailBlazer for its review and approval. We believe that the template complies with the requirements of Provider Reimbursement Manual, Part I, § 2313.2.E, and it is our understanding that the OIG has approved the use of a similar template. We will provide a copy of the template to the OIG for its review upon request. In addition, we have conducted educational sessions with appropriate Baylor personnel regarding the pre-transplant and post-transplant allocation.

We have performed daily time studies for the months of February 2004 through June 2004. We used the results of these time studies to allocate salaries and benefits between pre-transplant and post-transplant services on the FY 2004 Medicare cost report. We are currently performing a one-week time study each month on alternating weeks. We will use the results of these monthly time studies to allocate salaries and benefits between pre-transplant and post-transplant services on future Medicare cost reports.

We will work with TrailBlazer and will be receptive to any instructions or guidance that the intermediary might provide regarding the Medicare requirements for claiming and documenting organ acquisition costs.

We appreciate the opportunity to respond to the OIG draft report. As set forth above, we intend to meet with TrailBlazer to discuss alternative approaches to estimate the amount of organ acquisition costs, and we will work with the intermediary in an attempt to develop a reasonable and equitable methodology to apportion the costs between pre-transplant and post-transplant services.

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We would also like to take this opportunity to compliment your staff on the professional and courteous manner in which they conducted themselves during the audit.

If you have any questions, please do not hesitate to contact me at (214) 820-7268.

Respectfully submitted,

A handwritten signature in cursive script that reads "Pam Barnes".

Pam Barnes
Vice President of Reimbursement