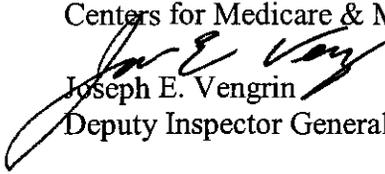




FEB - 9 2005

TO: Dennis G. Smith
Director, Center for Medicaid and State Operations
Centers for Medicare & Medicaid Services

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

SUBJECT: Audit of Oregon's Medicaid Upper Payment Limits for Non-State Government Inpatient Hospitals for State Fiscal Year 2003 (A-09-04-00023)

Attached is an advance copy of our final report on Oregon's Medicaid upper payment limits (UPLs) for non-State government inpatient hospitals for State fiscal year (SFY) 2003.¹ We will issue this report to the Oregon Medicaid agency within 5 business days. We conducted the audit as part of a multistate review of UPL calculations requested by the Centers for Medicare & Medicaid Services (CMS).

The UPL is an estimate of the amount that would be paid for Medicaid services under Medicare payment principles. Several years ago, CMS revised Medicaid regulations to require that States calculate a separate UPL for each of the following categories of providers: private facilities, State facilities, and non-State government facilities. Federal matching funds generally are not available for State expenditures that exceed the UPL. However, for non-State government hospitals, Federal regulations allowed Medicaid payments up to 150 percent of the UPL from March 13, 2001, through May 14, 2002. Oregon adopted the Federal UPL requirements in its CMS-approved State plan amendment.

Section 1923 of the Social Security Act requires States to make disproportionate share hospital (DSH) payments to hospitals that serve disproportionate numbers of low-income patients with special needs. Section 1923 prohibits these payments from exceeding the hospital-specific DSH limit, which is generally defined as the cost of uncompensated care. States must consider UPL payments and other payments received on behalf of Medicaid and uninsured patients when calculating hospital-specific DSH payment limits. Oregon adopted the DSH requirements in its CMS-approved State plan amendment.

Our objectives were to determine, for SFY 2003, whether Oregon (1) calculated UPLs for non-State government inpatient hospitals in accordance with Federal regulations and the approved State plan amendment and (2) properly included UPL payments in the calculation of hospital-specific DSH limits. We expanded our audit to include a UPL recalculation for the third quarter of SFY 2001 because Oregon implemented the 150-percent UPL before its effective date.

Oregon's UPL calculations generally complied with Federal regulations and its State plan amendment. However, Medicaid payments exceeded the UPLs by \$5,721,109 (\$3,412,987

¹Oregon's SFY 2003 began on July 1, 2002, and ended on June 30, 2003.

Federal share) because Oregon applied the 150-percent UPL before its effective date (\$2,732,134 Federal share), did not refund a Medicaid overpayment (\$175,844 Federal share), and used outdated Medicare rates in its UPL calculations (\$505,009 Federal share).

Oregon made UPL payments to one non-State government inpatient hospital eligible for DSH payments but did not calculate a DSH limit for that hospital. Without calculating a DSH limit, Oregon could not ensure that DSH payments complied with the Federal statute and State plan amendment.

We recommend that Oregon:

- refund to the Federal Government \$3,412,987 in overpayments,
- monitor Medicaid payments to ensure that payments do not exceed the UPL and refund the Federal share of any overpayment,
- use applicable Medicare rates in future UPL calculations,
- calculate DSH limits from SFY 2001 through SFY 2003 in accordance with Federal and State requirements and refund the Federal share of any overpayment, and
- calculate DSH limits for future periods in accordance with Federal and State requirements.

In written comments on our draft report, Oregon disagreed that its Medicaid payments exceeded the UPLs. Oregon believed that it:

- could have calculated an aggregate UPL that combined non-State government with private facilities for the third quarter of SFY 2001,
- could have calculated a higher UPL if it had included a factor for Medicare DSH in its SFY 2003 UPL calculations, and
- used the appropriate Medicare rates in its SFY 2003 UPL calculations.

However, Oregon agreed to monitor Medicaid payments to ensure that they do not exceed the UPL, refund the Federal share of any overpayment, and use current Medicare rates in future UPL calculations.

Oregon agreed to calculate DSH limits for SFYs 2001 through 2003 but did not comment on our recommendation to refund the Federal share of any overpayment identified. Although Oregon did not believe that it was required to calculate DSH limits for each year, it agreed to calculate DSH limits for future periods.

Contrary to Oregon's assertion, Federal Medicaid payments exceeded the UPLs by \$3,412,987. In calculating the UPLs, Oregon:

- did not have State plan authorization to calculate an aggregate UPL that combined non-State government and private facilities for the third quarter of SFY 2001,
- could not have included a DSH factor retroactively in the SFY 2003 UPL calculations because Oregon's State plan did not specify its inclusion and Oregon did not include the factor in its calculation, and
- inappropriately used the Federal fiscal year (FFY) 2002 Medicare rates when the FFY 2003 Medicare rates were readily available.

Accordingly, we continue to believe that Oregon should refund Medicaid overpayments of \$3,412,987.

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 Lori A. Ahlstrand, Regional Inspector General for Audit Services, Region IX, at (415) 437-8360. Please refer to report number A-09-04-00023 in all correspondence.

Attachment



FEB 16 2005

Office of Audit Services
Region IX
50 United Nations Plaza, Room 171
San Francisco, CA 94102

Report Number: A-09-04-00023

Ms. Lynn Read
Administrator
Office of Medical Assistance Programs
Oregon Department of Human Services
500 Summer Street NE, E49
Salem, Oregon 97301-1079

Dear Ms. Read:

Enclosed are two copies of the Department of Health and Human Services (HHS), Office of Inspector General (OIG) final report entitled "Audit of Oregon's Medicaid Upper Payment Limits for Non-State Government Inpatient Hospitals for State Fiscal Year 2003." A copy of this report will be forwarded to the HHS 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 from the date of this letter. Your response should present any comments or additional information that you believe may have a bearing on the final determination.

In accordance with the principles of the Freedom of Information Act, 5 U.S.C. § 552, as amended by Public Law 104-231, OIG 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-09-04-00023 in all correspondence.

Sincerely,

Lori A. Ahlstrand
Regional Inspector General
for Audit Services

Enclosures

Page 2 – Ms. Lynn Read

Direct Reply to HHS Action Official:

Mr. R. J. Ruff, Jr.
Regional Administrator, Region X
Centers for Medicare & Medicaid Services
2201 Sixth Avenue, MS/RX-40
Blanchard Plaza Building
Seattle, Washington 98121

Department of Health and Human Services

**OFFICE OF
INSPECTOR GENERAL**

**AUDIT OF OREGON'S MEDICAID
UPPER PAYMENT LIMITS FOR
NON-STATE GOVERNMENT
INPATIENT HOSPITALS
FOR STATE FISCAL YEAR 2003**



**FEBRUARY 2005
A-09-04-0023**

Office of Inspector General

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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

Upper Payment Limits

The upper payment limit (UPL) is an estimate of the amount that would be paid for Medicaid services under Medicare payment principles. Several years ago, the Centers for Medicare & Medicaid Services (CMS) revised Medicaid's UPL regulations for inpatient hospitals and certain other types of providers.

The revised regulations changed the manner in which States calculate the UPL for various categories of providers. Under the former rule, States were required to calculate a UPL for all facilities and another UPL for State-owned facilities. The revised regulations instead require States to calculate a separate UPL for each of the following categories of providers: private facilities, State facilities, and non-State government facilities. Federal matching funds generally are not available for State expenditures that exceed the UPL. However, for non-State government hospitals, Federal regulations allowed Medicaid payments up to 150 percent of the UPL from March 13, 2001, through May 14, 2002. Oregon adopted the Federal UPL requirements in its CMS-approved State plan amendment.

Disproportionate Share Hospital Program

Section 1923 of the Social Security Act (the Act) requires States to make disproportionate share hospital (DSH) payments to hospitals that serve disproportionate numbers of low-income patients with special needs. Section 1923 prohibits these payments from exceeding the hospital-specific DSH limit, generally defined as the cost of uncompensated care. States must consider UPL payments and other payments received on behalf of Medicaid and uninsured patients when calculating hospital-specific DSH payment limits. Oregon adopted the DSH requirements in its CMS-approved State plan amendment.

OBJECTIVES

Our objectives were to determine, for State fiscal year (SFY) 2003, whether Oregon:

- calculated UPLs for non-State government inpatient hospitals in accordance with Federal regulations and the approved State plan amendment and
- properly included UPL payments in the calculation of hospital-specific DSH limits.

We expanded our audit to include a UPL recalculation for the third quarter of SFY 2001 because Oregon implemented the 150-percent UPL before its effective date.

SUMMARY OF FINDINGS

Oregon's UPL calculations generally complied with Federal regulations and its State plan amendment. However, Medicaid payments exceeded the UPLs by \$5,721,109 (\$3,412,987

Federal share) because Oregon applied the 150-percent UPL before its effective date (\$2,732,134 Federal share), did not refund a Medicaid overpayment (\$175,844 Federal share), and used outdated Medicare rates in its UPL calculations (\$505,009 Federal share).

Oregon made UPL payments to one non-State government inpatient hospital eligible for DSH payments but did not calculate a DSH limit for that hospital. Without calculating a DSH limit, Oregon could not ensure that DSH payments complied with the Federal statute and State plan amendment.

RECOMMENDATIONS

We recommend that Oregon:

- refund to the Federal Government \$3,412,987 in overpayments,
- monitor Medicaid payments to ensure that payments do not exceed the UPL and refund the Federal share of any overpayment,
- use applicable Medicare rates in future UPL calculations,
- calculate DSH limits from SFY 2001 through SFY 2003 in accordance with Federal and State requirements and refund the Federal share of any overpayment, and
- calculate DSH limits for future periods in accordance with Federal and State requirements.

OREGON COMMENTS

Oregon disagreed that its Medicaid payments exceeded the UPLs. Oregon believed that it:

- could have calculated an aggregate UPL that combined non-State government with private facilities for the third quarter of SFY 2001,
- could have calculated a higher UPL if it had included a factor for Medicare DSH in its SFY 2003 UPL calculations, and
- used the appropriate Medicare rates in its SFY 2003 UPL calculations.

However, Oregon agreed to monitor Medicaid payments to ensure that they do not exceed the UPL, refund the Federal share of any overpayment, and use current Medicare rates in future UPL calculations.

Oregon agreed to calculate DSH limits for SFYs 2001 through 2003 but did not comment on our recommendation to refund the Federal share of any overpayment identified. Although Oregon did not believe that it was required to calculate DSH limits for each year, it agreed to calculate DSH limits for future periods.

The full text of Oregon's comments on our draft report is included as an appendix to this report.

OFFICE OF INSPECTOR GENERAL RESPONSE

Contrary to Oregon's assertion, Federal Medicaid payments exceeded the UPLs by \$3,412,987. In calculating the UPLs, Oregon:

- did not have State plan authorization to calculate an aggregate UPL that combined non-State government and private facilities for the third quarter of SFY 2001,
- could not have included a DSH factor retroactively in the SFY 2003 UPL calculations because Oregon's State plan did not specify its inclusion and Oregon did not include the factor in its calculation, and
- inappropriately used the Federal fiscal year (FFY) 2002 Medicare rates when the FFY 2003 Medicare rates were readily available.

Accordingly, we continue to believe that Oregon should refund Medicaid overpayments of \$3,412,987.

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INTRODUCTION

BACKGROUND

Our audit was part of a multistate effort conducted at the request of CMS.

Medicaid Program

Title XIX of the Act authorizes Federal grants to States for Medicaid programs that provide medical assistance to needy persons. Each State Medicaid program is jointly financed by the Federal and State Governments and administered by the State in accordance with a State plan approved by CMS. While the State has considerable flexibility in designing its plan and operating its Medicaid program, it must comply with Federal requirements. The Federal Government pays its share of Medicaid expenditures to a State according to a formula shown in section 1905(b) of the Act. CMS administers the program at the Federal level.

Upper Payment Limits

State Medicaid programs have flexibility in determining payment rates for Medicaid providers. CMS has allowed States to pay inpatient hospitals at different rates as long as the payments, in total, do not exceed the UPL. The UPL is an estimate of the amount that would be paid for Medicaid services under Medicare payment principles. Regulations (42 CFR § 447.257) state that Federal matching funds are not available for State expenditures that exceed the UPL.

To limit abuses in the application of UPL requirements, CMS revised its regulations (42 CFR § 447.272). Effective March 13, 2001, the revised regulations required States to calculate a separate UPL for each category of provider.¹ In addition, for non-State government hospitals, Federal regulations allowed Medicaid payments up to 150 percent of the UPL from March 13, 2001, through May 14, 2002. Oregon adopted these requirements in its State plan amendment.

Oregon's Department of Human Services is responsible for administering its Medicaid UPL program, known as Proportionate Share payments for public academic teaching hospitals. The State plan amendment stipulated that Oregon make quarterly UPL payments to public (State or non-State government) academic teaching hospitals with 200 or more interns or residents and calculate a quarterly UPL for each category of eligible hospitals. From the program's inception on January 1, 2001, through June 30, 2003, only one hospital qualified for UPL payments: Oregon Health & Science University. Oregon calculated a UPL for this hospital as required by its State plan amendment. For SFY 2003, Oregon made \$1,022,758 in UPL payments to the hospital, in addition to basic Medicaid payments and other supplemental program payments.²

¹The three categories are privately owned and operated, State government owned or operated, and non-State government owned or operated facilities.

²Other supplemental program payments included Capital, Graduate Medical Education, Direct Medical Education, and Indirect Medical Education.

Disproportionate Share Hospital Program

Section 1923 of the Act requires States to make DSH payments to hospitals serving disproportionate numbers of low-income patients with special needs. Section 1923 prohibits these payments from exceeding the hospital-specific DSH limit, which generally is defined as the cost of uncompensated care. Uncompensated care costs are the costs of medical services provided to Medicaid and uninsured patients, less payments received for those patients. States must consider UPL payments and other payments received on behalf of Medicaid and uninsured patients when calculating hospital-specific DSH payment limits. Oregon adopted these requirements in its State plan amendment.

For SFY 2003, Oregon made DSH payments to nine inpatient hospitals. However, only Oregon Health & Science University received both UPL payments and DSH payments.

OBJECTIVES, SCOPE, AND METHODOLOGY

Objectives

Our objectives were to determine, for SFY 2003, whether Oregon:

- calculated UPLs for non-State government inpatient hospitals in accordance with Federal regulations and the approved State plan amendment and
- properly included UPL payments in the calculation of hospital-specific DSH limits.

Scope

Our audit covered SFY 2003 UPL calculations for non-State government inpatient hospitals under State plan amendment 01-05. However, we determined that Oregon applied the 150-percent UPL before its effective date (March 13, 2001). Accordingly, we requested that Oregon recalculate its UPL for the third quarter of SFY 2001 to comply with Federal regulations and its State plan amendment. For SFY 2003, Oregon made UPL payments of \$1,022,758, and for the third quarter of SFY 2001, Oregon made UPL payments of \$7,973,631.

Because the objectives of our audit did not require an understanding or assessment of the overall internal control structure of Oregon or Oregon Health & Science University, we did not perform such a review.

We performed fieldwork at State offices in Salem, OR. In response to Oregon's comments on our June 2004 draft report, we performed additional fieldwork with Oregon and CMS officials.

Methodology

To accomplish our objectives, we:

- held discussions with CMS staff;
- reviewed Oregon's State plan amendments for the inpatient hospital UPL and DSH programs;
- interviewed Oregon's key personnel involved in the UPL and DSH limit calculations;
- reviewed Oregon's SFY 2003 UPL calculations, UPL payments, and supporting documentation to determine compliance with Federal regulations and the State plan amendment;
- reviewed Oregon's documentation to determine whether UPL payments were included in the DSH limit calculations; and
- traced UPL payments to the CMS-64 quarterly expenditure reports to determine whether the payments were claimed for Federal reimbursement.

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

FINDINGS AND RECOMMENDATIONS

Oregon's UPL calculations generally complied with Federal regulations and its State plan amendment. However, Medicaid payments exceeded the UPLs by \$5,721,109 (\$3,412,987 Federal share), including:

- \$4,614,935 (\$2,732,134 Federal share) for the third quarter of SFY 2001 because Oregon applied the 150-percent UPL before its effective date;
- \$292,295 (\$175,844 Federal share) for the first quarter of SFY 2003 because Oregon did not refund a Medicaid overpayment; and
- \$813,879 (\$505,009 Federal share) for the second, third, and fourth quarters of SFY 2003 because Oregon used outdated Medicare rates in its UPL calculations.

Oregon made UPL payments to one inpatient hospital eligible for DSH payments but did not calculate a DSH limit for that hospital. Without a DSH limit, Oregon could not ensure that DSH payments complied with the Federal statute and State plan amendment.

OREGON'S UPL CALCULATIONS

Medicaid payments exceeded the UPLs by \$5,721,109 because Oregon applied the 150-percent UPL before its effective date, did not refund a Medicaid overpayment, and used outdated Medicare rates in its UPL calculations.

UPL of 150 Percent Applied Before Effective Date

For SFY 2001, Oregon's third-quarter Medicaid payments exceeded the UPL by \$4,614,935 because Oregon applied the 150-percent UPL before its effective date. Revised Federal regulations, effective March 13, 2001, allowed States to make Medicaid payments up to 150 percent of the UPL for the non-State government category. Before that date, Medicaid payments were limited to the 100-percent UPL.

Contrary to the regulations, Oregon applied the 150-percent UPL beginning January 1, 2001. At our request, Oregon recalculated the UPL for the third quarter of SFY 2001 (January through March 2001) and identified excess Medicaid payments of \$4,614,935 due to the early application of the 150-percent UPL. (See Table 1.)

Table 1: Excess Medicaid Payments Due to Early Application of 150-Percent UPL

SFY 2001 Quarter	Total Medicaid Payments	Less Recalculated UPL	Medicaid Payments That Exceeded UPL
Third	\$17,600,502	\$12,985,567	\$4,614,935

Oregon's recalculation appropriately applied the 100-percent UPL to the period January 1 through March 12, 2001, and the 150-percent UPL to the period March 13 through March 31, 2001. To determine the Medicaid payments that exceeded the UPL, Oregon subtracted the recalculated UPL from the total Medicaid payments for the third quarter.

Overpayment Not Refunded

For the first quarter of SFY 2003, Oregon recognized that its Medicaid basic and other supplemental payments exceeded the UPL by \$292,295.³ Oregon officials informed us that because of the excess payments, they did not make UPL payments for the quarter. However, they did not refund the excess Medicaid payments because they did not consider the excess an overpayment.

The State plan amendment stipulates that Medicaid payments not exceed the quarterly UPL. When we informed Oregon officials that the excess was an overpayment, they said that they would review the payments and refund the Federal share if an overpayment occurred. Table 2 shows Oregon's Medicaid overpayment for the first quarter of SFY 2003.

³Oregon calculated an excess Medicaid payment of \$333,839. After we corrected a transposition error and an incorrect ratio, the excess was \$292,295.

Table 2: Medicaid Overpayment Not Refunded

SFY 2003 Quarter	Total Medicaid Payments	Less UPL Per Federal Regulations	Medicaid Payments That Exceeded UPL
First	\$7,784,090	\$7,491,795	\$292,295

Outdated Medicare Rates Used in UPL Calculations

Oregon used outdated Medicare payment rates in its UPL calculations for SFY 2003. For the second, third, and fourth quarters of SFY 2003, Oregon used Medicare rates for FFY 2002 even though FFY 2003 rates were available.⁴ As a result, Oregon overstated its UPLs by \$813,879. Oregon officials told us that they did not realize that the FFY 2003 rates were available, but were willing to change their future UPL calculations to match Medicare rates to the appropriate periods.

To recalculate the quarterly UPLs for SFY 2003, we used data that Oregon provided but made the necessary Medicare rate adjustments. Specifically, we used FFY 2003 Medicare rates that were available to Oregon to estimate the UPLs for the second, third, and fourth quarters of SFY 2003.⁵ In addition, we corrected two errors in Oregon’s calculations that understated the UPLs.⁶ Table 3 shows Oregon’s total excess Medicaid payments for the second, third, and fourth quarters of SFY 2003.

Table 3: Excess Medicaid Payments Due to Use of Outdated Rates

SFY 2003 Quarter	Total Medicaid Payments⁷	Less UPL Per Federal Regulations	Medicaid Payments That Exceeded UPL
Second	\$8,253,047	\$7,960,476	\$292,571
Third	7,600,354	7,330,914	269,440
Fourth	7,104,761	6,852,893	251,868
	Total		\$813,879

⁴For one of the rates, Direct Medical Education, Oregon used amounts from Oregon Health & Science University’s 2000 Medicare cost report.

⁵For direct medical education, we used amounts from Oregon Health & Science University’s 2000 Medicare cost report (as used by Oregon).

⁶Oregon made a transposition error and used an incorrect ratio.

⁷Total Medicaid payments consisted of basic Medicaid, UPL, and other supplemental program payments.

DSH LIMITS NOT CALCULATED FOR SFYs 2001 THROUGH 2003

Section 1923(g)(1)(A) of the Act and the State plan amendment require that DSH payments not exceed the hospital-specific DSH limit (the cost for medical services less payments received). For SFY 2000, Oregon calculated a DSH limit for Oregon Health & Science University but not for any of the other hospitals in the DSH program. According to Oregon officials, because payments to Oregon Health & Science University in SFY 2000 did not exceed its DSH limit, Oregon did not need to calculate DSH limits for the other hospitals or continue to calculate limits for Oregon Health & Science University. Because Oregon did not calculate DSH limits, it could not ensure that DSH payments complied with the Federal statute and State plan amendment.

Starting in November 2001, Oregon made UPL payments to Oregon Health & Science University. The UPL payments must be included in the hospital's DSH limit calculation.

RECOMMENDATIONS

We recommend that Oregon:

- refund to the Federal Government \$3,412,987 in overpayments,
- monitor Medicaid payments to ensure that payments do not exceed the UPL and refund the Federal share of any overpayment,
- use applicable Medicare rates in future UPL calculations,
- calculate DSH limits from SFY 2001 through SFY 2003 in accordance with Federal and State requirements and refund the Federal share of any overpayment, and
- calculate DSH limits for future periods in accordance with Federal and State requirements.

OREGON COMMENTS AND OFFICE OF INSPECTOR GENERAL RESPONSE

We summarized and addressed Oregon's comments relating to our findings below. We included the full text of Oregon's comments on our draft report as an appendix.

General Summary

Oregon Comments

Oregon disagreed that its Medicaid payments exceeded the UPLs by \$3,412,987 (Federal share) or by any other amount. However, Oregon agreed to monitor Medicaid payments to ensure that they do not exceed the UPL, refund the Federal share of any overpayment, and use current Medicare rates in future UPL calculations.

Oregon agreed to calculate DSH limits for SFYs 2001 through 2003 but did not comment on our recommendation to refund the Federal share of any overpayment identified. Although Oregon did not believe that it was required to calculate DSH limits for each year, it agreed to calculate DSH limits for future periods.

Office of Inspector General Response

As explained below, we continue to believe that Oregon should refund Medicaid overpayments of \$3,412,987.

UPL of 150 Percent

Oregon Comments

Oregon agreed that the 150-percent UPL did not become effective until March 13, 2001, the effective date of the Federal regulations. However, Oregon disagreed that payments exceeded the UPL for the third quarter of SFY 2001. Oregon believed that it could have calculated a higher UPL composed of non-State government and private hospitals, thereby eliminating the excess payments to the only qualifying hospital, Oregon Health & Science University. Oregon noted that the regulations effective before March 13, 2001, permitted States to calculate such an aggregate UPL. Although only Oregon Health & Science University received UPL payments, Oregon believed that the UPL applied to all non-State hospitals and that, as a result, payments would not have exceeded the UPL.

Office of Inspector General Response

Contrary to Oregon's assertion, the State plan did not authorize Oregon to calculate an aggregate UPL composed of non-State government and private hospitals.⁸ The State plan specified that eligible hospitals, which did not include private hospitals, would be grouped into two classifications, State and non-State government. The UPL was to be "determined in accordance with the specific requirements for each hospital classification for all eligible hospitals" Accordingly, the non-State government hospital UPL classification included only Oregon Health & Science University.

Medicare DSH Factor

Oregon Comments

Oregon said that it understated the UPLs for SFY 2003 by not including a factor for Medicare DSH in the UPL calculations. Oregon claimed the inclusion would have raised the UPLs and "likely eliminated any excess payment."

⁸Amendment Transmittal Number 01-05, effective January 1, 2001.

Office of Inspector General Response

Oregon could not have included a DSH factor retroactively in the SFY 2003 UPL calculations because its State plan did not specify the inclusion of a DSH factor and Oregon did not include the DSH factor in its UPL calculations. Additionally, Oregon did not provide any data to support the inclusion of the DSH factor. Therefore, we continue to recommend that Oregon refund the amount in excess of its UPLs.

Medicare Rates

Oregon Comments

Oregon stated that it properly applied the Medicare rates in its UPL calculations for SFY 2003. Oregon said that (1) CMS provided guidance allowing Oregon to continue to use the prior year's Medicare rates through the end of SFY 2003 and (2) the revised regulations provided flexibility in estimating the amount Medicare would have paid for services provided. Despite its disagreement, Oregon agreed to use the most current Medicare rate information in the Federal Register to calculate future UPLs.

Office of Inspector General Response

Oregon did not properly apply the Medicare rates in its UPL calculations for SFY 2003 and could not provide documentation to support its assertion that CMS provided guidance to use the prior year's rates through the end of SFY 2003. In addition, an official of CMS's National Institutional Reimbursement Team informed us that he was not aware of any support for Oregon's assertion. Moreover, the flexibility provided in the revised regulations did not extend to the use of outdated rates. The regulations (42 CFR § 447.272(b)) state that a UPL is a reasonable estimate of what Medicare would have paid for services provided. It was unreasonable for Oregon to use outdated rates when current rates were available.

DSH Limit Calculations

Oregon Comments

Oregon agreed to calculate DSH limits for SFYs 2001 through 2003 but did not comment on our recommendation to refund the Federal share of any overpayments identified. Although Oregon did not believe that it was required to calculate DSH limits for each year, it agreed to calculate DSH limits for Oregon Health & Science University and for all DSH-eligible hospitals for future periods.

In addition, Oregon stated, "It is not disputed that the hospitals that received DSH payments met all of the requirements to qualify as DSH facilities under Oregon's State Plan Amendment."

Office of Inspector General Response

Contrary to Oregon's assertion, section 1923 of the Act and the State plan required Oregon to ensure that DSH payments during a fiscal year did not exceed the DSH limit for that year. Because Oregon did not calculate DSH limits, it could not ensure that DSH payments complied with the Federal statute and State plan. We continue to believe that Oregon should refund the Federal share of any overpayments identified.

Our audit did not include a review of hospital eligibility for DSH payments because the objective of the audit did not include a determination on whether hospitals qualified for DSH payments.

OTHER MATTER: DSH LIMITS FOR MENTAL HEALTH FACILITIES

Oregon's SFY 2003 DSH limits for mental health facilities included costs and payments for ineligible payers (e.g., private insurance). Section 1923(g)(1)(A) of the Act and the State plan amendment require that the DSH limit include costs and payments only for the Medicaid and uninsured populations.

Oregon officials stated that they did not have a system to segregate costs by payer type. By including ineligible payers, Oregon could not ensure that DSH payments did not exceed mandated limits.

APPENDIX



Oregon

Theodore R. Kulongoski, Governor

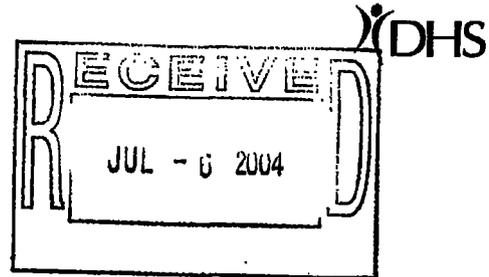
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July 2, 2004

Lori A. Ahlstrand
Regional Inspector General for Audit Services
Office of Inspector General
Office of Audit Services
Region IX
50 United Nations Plaza, Room 171
San Francisco CA 94102

Re: Report Number A-09-04-00023

Dear Ms. Ahlstrand:



We appreciate the opportunity to comment on the Office of Inspector General's draft report, "Audit of Oregon's Medicaid Upper Payment Limits for Inpatient Hospitals for State Fiscal Year 2003," Report Number A-09-04-00023, a copy of which we received on June 3, 2004. This letter will respond to the findings and recommendations contained in the draft audit report.

Summary of OIG Findings and Recommendations:

The draft report finds that Oregon's Department of Human Services' (DHS) Upper Payment Limit ("UPL") calculations "generally complied with Federal regulations and its State plan amendment." (Draft Audit Report at i). However, the draft report concluded that Medicaid payments exceeded the UPL by \$3,412,987 (federal share) based on findings that Oregon (1) applied Medicare rates from SFY 2002 in the last three quarters of SFY 2003 when, according to the report, Oregon should have used 2003 rates; (2) did not refund an allegedly excess payment made to Oregon Health & Science University ("OHSU"); and (3) applied the 150 percent UPL before its effective date. The draft report also found that Oregon should have calculated DSH limits for OHSU for SFY 2001 through SFY 2003. The report recommends that Oregon (1) refund the Federal Government \$3,412,987; (2) use the current available Medicare rates in future UPL calculations; (3) ensure future Medicaid payments do not exceed the UPL; (4) calculate DSH limits for OHSU from SFY 2001 through SFY 2003 and refund any overpayment; and (5) calculate hospital-specific DSH limits for OHSU for future periods.

Response of Oregon's Department of Human Services (DHS):

DHS disagrees with the draft report's finding that Medicaid payments exceeded the UPL by \$3,412,987 in federal share, or by any other amount. Specifically, DHS properly applied the 2002 Medicare rates when it calculated its inpatient hospital UPL for SFY 2003, and is committed to applying the current Medicare rates for future periods. In addition, the two alleged overpayments to OHSU did not actually result in overpayments because they were more than



offset by other amounts that could have been paid to OHSU but were not. Finally, DHS will continue to ensure that Medicaid payments do not exceed the UPL, and agrees to calculate DSH limits for OHSU for SFY 2001 through 2003 and to continue to calculate these limits going forward. DHS provides fuller responses to each of OIG's findings and recommendations below.

Medicare Rates Used in UPL Calculations

For SFY 2003, DHS applied the 2002 Medicare rates to calculate the UPL for inpatient hospital services. According to the draft report, DHS's use of 2002 rates was incorrect for all but the first quarter because 2003 rates were available in the federal register. The draft report finds that the use of 2002 rates throughout 2003 resulted in an excess payment of \$680,853 (federal share) and recommends that DHS refund this amount.

DHS disagrees with OIG's recommendation because DHS's use of 2002 Medicare rates to calculate its SFY 2003 UPL was consistent with its understanding, prior CMS guidance, and the State's Medicaid Plan. Although the draft audit report contends that the 2003 Medicare rates were available after the first quarter of SFY 2003, DHS was not aware that they were available when it performed its UPL calculations. Nor did DHS have a reason to apply the 2003 rates. In earlier guidance to DHS, CMS indicated that it was appropriate to continue using the prior year's Medicare rates through the end of the current fiscal year. Moreover, the UPL regulations provide the states with flexibility in estimating the amount that Medicare would have paid, 66 Fed. Reg. 3153 (2001), and the State's Medicaid Plan does not specify how the UPL should be calculated. See SPA Transmittal Number 01-05, effective January 1, 2001. Even if DHS should have applied the 2003 rates, it is unlikely that the use of 2002 rates caused any overpayment because DHS understated the UPL by failing to include Medicare DSH payments in its calculations.

DHS has attempted to use the most current Medicare information available when calculating its UPL. For the reasons set forth in the preceding paragraphs, DHS does not agree that there has been an overpayment from DHS's use of 2002 Medicare rates in SFY 2003. Going forward, however, DHS will obtain the most current Medicare rate information available in the federal register for use in calculating the UPL for future periods.

Excess Payment to OHSU

The draft report finds that DHS made an overpayment of \$292,295¹ (federal share) to OHSU in the first quarter of SFY 2002. 42 C.F.R. § 447.257 provides that FFP is not available for a State's expenditures that exceed the applicable UPL. The UPL for inpatient hospital services is based on the aggregate amount that reasonably can be estimated would have been paid to that group of facilities under Medicare payment principles. 42 C.F.R. § 447.272. For the period cited in the report, DHS calculated that its Medicaid and supplemental payments to OHSU would exceed OHSU's costs so the State withheld UPL supplemental payments for that quarter.

¹ DHS originally calculated this amount to be \$333,838.97. After minor errors in DHS's calculations were corrected, this amount was adjusted to \$292,295.

The draft report concludes that the Medicaid and supplemental payments in excess of the UPL are an overpayment that should be refunded. CMS regulations define overpayment as the “amount paid by a Medicaid agency to a provider which is in excess of the amount that is allowable for services furnished under § 1902 of the Act and which is required to be refunded under § 1903 of the Act.” 42 C.F.R. § 433.304.

DHS does not agree that the “excess” payment identified for July to September 2002 was an overpayment to OHSU because DHS understated the UPL by failing to include Medicare DSH payments in its calculations. Had the Medicare DSH payments been included in the UPL calculations, it would have raised the Medicare UPL and likely eliminated any excess payment. DHS therefore does not agree with OIG’s recommendation that DHS refund the amount of \$292,295.

Going forward, however, DHS accepts OIG’s recommendation that DHS continue to monitor Medicaid payments to ensure that payments do not exceed the UPL and to refund the federal share of any overpayment.

Application of 150 Percent UPL On January 1, 2001

Effective March 13, 2001, CMS replaced the prior overall aggregate upper payment limits for state versus all non-state hospitals with three separate upper payment limits for state hospitals, non-state public hospitals, and private hospitals. 42 C.F.R. §§ 447.272(a), 447.321(a). The UPL for non-State public hospitals could reach “150 percent of a reasonable estimate of the amount that would be paid for the services furnished by these hospitals under Medicare payment principles.” See 66 FR 3148 (Jan. 12, 2001), codified at 42 C.F.R. §§ 447.272(c), 447.321(c) (2001).²

Oregon’s State Plan Amendment (SPA) Transmittal 01-005, effective January 1, 2001, provides that Proportional Share (Pro-Share) UPL payments will be made to “public academic teaching hospitals in the State of Oregon with 200 or more interns or residents. Proportionate Share payments are subject to the Medicare upper payment limit for inpatient hospital payments.” This SPA is limited to non-state public hospitals, of which only OHSU has qualified for Pro-Share payments.

The draft report finds that DHS made an overpayment to OHSU in the third quarter of SFY 2001 by applying the 150 percent UPL on January 1, 2001 instead of March 13, 2001. The draft audit report calculated an excess payment of \$2,732,134 and recommends that DHS refund this amount.

² The 150 percent UPL was repealed effective May 14, 2002. See 67 Fed. Reg. 2602, 2602-03 (Jan. 18, 2002). Under the 2002 revision to the UPL rule, Medicaid reimbursements to non-State government-owned or operated facilities in the aggregate may no longer exceed 100 percent of what may be reimbursed using Medicare payment principles. *Id.* at 2610, codified at 42 C.F.R. §§ 447.272 and 447.321.

DHS disagrees with this recommendation. Although the draft audit report is correct that that 150 percent UPL did not become effective until March 13, 2001, OIG fails to address the fact that in its place were the old UPL rules, under which there was an aggregate UPL limit that applied to all non-state owned and operated public and private hospitals (which encompasses virtually all of the hospitals in the State, including OHSU). Under this aggregate rule, payments made to individual hospitals could exceed 100 percent of costs as long as payments to all non-state public and private hospitals, in the aggregate, did not exceed the Medicare UPL. *See Ashley County Med. Ctr. v. Thompson*, 205 F. Supp. 2d 1026, 1065-66 (E.D. Ark. 2002) (citing Secretary's Memorandum in Support of Motion for Summary Judgment). Thus, the fact that OHSU's Pro-Share payment for the third quarter of FY 2001 exceeded 100 percent of the UPL for its own costs does not support the draft audit report's finding that OHSU's payment violated the UPL rules. Because the aggregate limits applied to all non-state hospitals, of which OHSU was the only one to receive UPL payments, the payments to OHSU would not have exceeded the amount available for all non-state hospitals. To the contrary, it is likely that the State could have made even higher UPL payments to OHSU for the third quarter and still remained comfortably within the aggregate limits.

DHS's UPL payments to OHSU were also consistent with its State Medicaid Plan. Under SPA Transmittal Number 01-05, which was approved by CMS effective January 1, 2001, DHS agreed to pay Pro-Share payments to facilities up to the amount permitted by federal Medicare UPL regulations, without reference to specific percentages.

Because there was no UPL overpayment made to OHSU in the third quarter of 2001, DHS disagrees with OIG's recommendation that it refund \$2,732,134 to the federal government.

Calculation of DSH Limits for OHSU

Section 1923 of the Social Security Act ("the Act") requires states to provide supplemental payments to hospitals that serve a disproportionate number of Medicaid and uninsured patients. *See* 42 U.S.C. § 1396r-4. Section 1923(f)(2) establishes specific DSH allotments for each state, and the federal share of overall DSH payments may not exceed the statewide allotment. *Id.* § 1396r-4(f).

In addition to the statewide cap, section 1923(g) of the Act limits a hospital's DSH payment to the amount of that hospital's uncompensated cost of providing "hospital services . . . to individuals who either are eligible for medical assistance under the State plan or have no health insurance (or other source of third party coverage) . . ." *Id.* § 1396r-4(g)(1)(A). As long as states meet the broad requirements set forth in Section 1923 for determining which hospitals qualify as DSH facilities, and they stay under their state and hospital specific caps as set forth in Sections 1923(f) and (g), states have considerable latitude in defining DSH facilities and setting payment amounts.

Oregon's State Plan Amendment, Transmittal Number 01-09, effective April 1, 2001, contains mechanisms to ensure that DSH payments do not exceed the statewide DSH allotment or the hospital DSH limits. Transmittal Number 00-05, effective July 1, 2000, contains a provision

ensuring that UPL supplemental payments are included when calculating DSH limits. In order to ensure that DSH payments did not exceed the costs of providing uncompensated care, DHS payments were based on the most recent cost reports from the facilities. It is not disputed that the hospitals that received DSH payments met all of the requirements to qualify as DSH facilities under Oregon's State Plan Amendment. Instead, the OIG's sole objection is that the State did not calculate hospital-specific DSH limits during SFY 2001 through SFY 2003.

DHS calculated a DSH limit in SFY 2000 for OHSU, the only facility that was eligible to receive both DSH and UPL supplemental payments. After these initial calculations and payments, it was evident that the low DSH payments to OHSU would not exceed the facility's DSH limits in future years, even after accounting for UPL payments. Moreover, for the other facilities that received only DSH payments, there was no need to factor in UPL payments before making DSH payments because these other facilities were not eligible to receive Pro-Share payments.

DHS does not agree with the draft report's finding that it was required annually to calculate DSH limits for all of the facilities that receive DSH payments, particularly when there was no basis for believing the limit was ever in danger of being reached. Going forward, however, DHS agrees to calculate DSH limits annually for all facilities that are eligible to receive DSH payments. In addition, DHS will include OHSU's Pro-Share payments when calculating that facility's DSH limits.

We appreciate the opportunity to review and comment on the draft report. If you have any questions or require additional information, please contact Joan M. Kapowich at 503 945-6500.

Sincerely,



Lynn Read
Administrator

C: Gary K. Weeks, DHS
Cindy Becker, DHS
Cindy Scheick, DHS
Joan Kapowich, OMAP