Department of Health and Human Services

OFFICE OF INSPECTOR GENERAL

OFFICE FOR CIVIL RIGHTS' OVERSIGHT OF THE HILL-BURTON PROGRAM

AUGUST 1992

OFFICE OF INSPECTOR GENERAL

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To obtain a copy of this report, call the Chicago Regional Office at (312) 353-4124.

Department of Health and Human Services

OFFICE OF INSPECTOR GENERAL

OFFICE FOR CIVIL RIGHTS' OVERSIGHT OF THE HILL-BURTON PROGRAM

AUGUST 1992 OEI-05-90-00261

EXECUTIVE SUMMARY

PURPOSE

This inspection examines the effectiveness of the processes used by the Office for Civil Rights (OCR) to monitor compliance with the community service obligation of health care facilities assisted by the Hill-Burton program.

BACKGROUND

In 1946, Congress passed the Hospital Survey and Construction Act, commonly known as the Hill-Burton Act. Since 1946, more than $4 billion in Hill-Burton funds have aided nearly 6,900 hospitals and other health care facilities in 4,000 communities across the United States.

Recipients of Hill-Burton grants agree to make available, in perpetuity, the services offered by the constructed facility to all persons residing in their service area. This agreement is commonly known as the Hill-Burton community service obligation and prohibits a facility from discriminating practices. Such practices include discrimination against patients when providing non-emergency services and denial of emergency services to persons unable to pay. The cooperation of facilities that have received Hill-Burton grants is important to achieving the Secretary's strategic goal to improve access to health care for all Americans.

The OCR has responsibility for ensuring compliance with several different civil rights and nondiscrimination statutes. In the 2-year period 1989 and 1990, OCR closed, under all of its authorities, 330 post-grant reviews involving discrimination against persons based on their medical condition, handicap, race, ability to pay or other factors. Thirty-six percent were specifically for Hill-Burton compliance. When OCR conducts a post-grant review, they can assess facility compliance with all of the statutory provisions binding on the facility for which they have jurisdiction. Although, for reporting purposes, post-grant reviews are categorized under only one authority.

During this same period, OCR received and processed 3,562 discrimination complaints. Less than 4 percent of the complaints received by OCR specifically involve allegations of Hill-Burton noncompliance.

METHODOLOGY

We interviewed OCR headquarters' staff and OCR staff in the eight regional offices that account for most of the Hill-Burton workload. Data on the number of facilities investigated and the number of compliance reviews conducted was obtained from OCR headquarters.

FINDINGS

Over the past 4 years, OCR has developed a comprehensive procedures manual for conduct of investigations and routine compliance reviews. These national guidelines, coupled with the checks and balances of supervisory review, have improved OCR investigative processes. Nevertheless, our inspection found that:

- Investigative procedures could be strengthened by using some unannounced visits.
- No formal or uniform follow-up procedures exist to ensure facilities take corrective action when they are found to be out of compliance.
- The OCR authority to enforce compliance with Hill-Burton regulations is limited.
- An opportunity exists for improving the investigative process by sharing staff expertise.

RECOMMENDATIONS

Medical facilities built with Hill-Burton funds are prohibited from discriminating through the community service obligation. The efforts of OCR to enforce Hill-Burton and other legislation intended to prevent discrimination helps ensure health care access to a significant segment of the American public.

To strengthen Hill-Burton enforcement efforts, OCR should:

1) consider unannounced visits whenever possible to validate systems that facilities use in complying with the community service obligation under the Hill-Burton program,

2) develop a follow-up system to monitor compliance agreements that ensures facilities take adequate and prompt action to bring their community service programs into compliance,

3) seek legislative authority that allows for administrative action against facilities that fail to comply with their Hill-Burton community service obligation or fail to take timely corrective action when their program is found to be out of compliance, and

4) determine whether technical assistance guides and methodologies developed in individual regions can be shared nationally.

An exit conference was held with OCR to discuss this inspection's findings and recommendations. At that meeting, OCR agreed in principle with the recommendations. Subsequently, OCR provided written, technical comments which we considered in preparing this final report.

The Assistant Secretary for Planning and Evaluation (ASPE) recommended that we delete recommendations calling for unannounced inspection visits unless they could be done cost effectively. We continue to believe that unannounced visits can be an effective enforcement tool. We do agree, and indeed had meant to emphasize, that their use should be selective. The ASPE was also not supportive of additional enforcement authority for OCR believing that Medicare funds could be suspended if Hill-Burton requirements were violated. We still believe that the various enforcement tools that we have recommended would be useful to OCR and provide the flexibility OCR needs to ensure compliance with Hill-Burton requirements. The complete text of OCR and ASPE comments can be found in Appendices A and B, respectively.

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INTRODUCTION

PURPOSE

This inspection examines the effectiveness of the processes used by the Office for Civil Rights (OCR) to monitor compliance with the community service obligation of health care facilities assisted by the Hill-Burton program.

BACKGROUND

Legislative Background

In 1946, Congress passed the Hospital Survey and Construction Act, commonly known as the Hill-Burton Act. Since 1946, more than $4 billion in Hill-Burton funds have aided nearly 6,900 hospitals and other health care facilities in 4,000 communities across the United States.

The Hill-Burton Act authorized Federal grants to assist States and communities in constructing needed hospital and public health centers. Hill-Burton recipients are required to:

- provide a reasonable amount of uncompensated care to persons unable to pay, and
- make available, in perpetuity, the services offered by the constructed facility to all persons residing in the territorial area of the applicant.

This second requirement is commonly referred to as the "community service obligation." If a facility continues operations without a change of status, OCR will continue to enforce the community service obligation even though the facility has completed its uncompensated care obligation. The OCR considers a change of status to occur when the initial Hill-Burton recipient transfers ownership or control to another entity. If control transfers to an ineligible entity (i.e., a for profit corporation) the obligation to provide community service terminates except under limited circumstances.

Today, the Hill-Burton community service obligation could play a vital role in ensuring access to the American health care system. The emergence of AIDS, the resurgence of other infectious diseases such as measles and tuberculosis coupled with efforts by government and private sector to control spiraling health care costs changed the health care environment in the United States. Limits on the amount paid for patient care, increased numbers of uninsured, misunderstandings of AIDS and inadequate resources to deal with the infectious disease epidemics has created the temptation for some facilities to transfer persons to publicly supported facilities or to refuse to

provide emergency and other medical care.

The Hill-Burton community service obligation prohibits a facility from:

- discriminating against patients when providing non-emergency services;
- denying emergency services to persons unable to pay;
- deciding not to participate in governmental (Federal, State, and local) third-party payer programs, if eligible to do so[1];
- discriminating against beneficiaries of governmental third-party payment programs;
- making exclusionary admissions policies, including the exclusion of patients who do not have a physician with staff privileges at the facility; and,
- requiring a cash deposit at time of service.

The cooperation of facilities that have received Hill-Burton grants is important to achieving the Secretary's strategic goal to improve access to health care for all Americans.

In December 1980, the HHS Secretary delegated to OCR the responsibility for ensuring facility compliance with all aspects of the community service obligation. In addition to their Hill-Burton responsibilities, OCR is also responsible for monitoring and ensuring compliance with Title VI of the Civil Rights Act of 1964, Section 504 of the Rehabilitation Act, the Age Discrimination Act and other laws designed to prevent discrimination. The OCR also coordinates its Hill-Burton activities with the patient dumping investigations conducted by the Health Care Financing Administration (HCFA) Office of Inspector General.

This study focuses on the processes used by OCR to monitor compliance with Hill-Burton obligations. The processes used by OCR to monitor Hill-Burton compliance are similar to the processes used to monitor all of the statutory provisions binding on facilities falling under OCR jurisdiction.

Description of Process

When OCR conducts a post-grant review, they can assess facility compliance with all of the statutory provisions binding on the facility but typically select the strongest

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[1] *Federal statutes require that physicians affiliated with Hill-Burton assisted facilities must also participate in governmental third-party payer programs. However, 42 C.F.R. § 124.603(d)(2) states that to be in compliance with this requirement "...a facility does not have to require all of its staff physicians to accept medicaid."*

statutes for which they have jurisdiction. For reporting purposes, post-grant reviews are categorized under only one statutory authority. Post-grant reviews are generated internally within OCR and can be targeted based on triennial survey results, media interest, frequency of complaints, and other factors. Complaint investigations result from specific allegations made by an individual or group of individuals. If a facility has been a Hill-Burton recipient, its compliance with the community service obligation can be examined whenever OCR has reason to conduct a civil rights or discrimination review.

The OCR mails all Hill-Burton assisted hospitals, nursing homes and other Hill-Burton assisted facilities providing health or social services a standard reporting form. The information obtained from this form is used to determine facilities that potentially are in noncompliance with Hill-Burton regulations. Facilities that are potentially in noncompliance can be targeted for further review. In addition, individual regional offices can, and often do, target facilities for compliance reviews based on the number of complaints and other factors.

The OCR uses a number of different techniques to validate facility compliance with the Hill-Burton community service obligation. During onsite reviews, OCR investigators attempt to visually observe the operations of specific areas of the facility. They also examine facility notices, documents and usually will select a random sample of emergency room or other hospital records for review. In addition to these onsite activities, investigators attempt to verify actual practice through third parties such a advocacy groups. Statements from facility staff, patients and other parties, coupled with documents, provide the primary evidence used by OCR to determine compliance.

In the 2 year period 1989 and 1990, OCR closed, under all of its authorities, 330 post-grant reviews involving discrimination against persons based on their medical condition, handicap, race, ability to pay or other factors. Thirty-six percent of the reviews were conducted specifically to ensure for Hill-Burton compliance. In addition to the post-grant reviews, OCR received and processed 3,562 discrimination complaints.

If a facility is found to be out of compliance, OCR undertakes negotiations with the facility to bring its program back into compliance. When OCR and the facility agree to a corrective plan of action, a written agreement between OCR and the facility is executed. When the facility has completed all of the corrective actions it notifies OCR and OCR officially closes the monitoring of the case. When an agreement cannot be reached or the corrective actions are not implemented, the case can be referred to the Department of Justice (DOJ) for action.

METHODOLOGY

The OCR has jurisdiction over civil rights and nondiscrimination codified in several statutes. This inspection is limited to OCR responsibility for the oversight and monitoring of the Hill-Burton community service obligation. This inspection did not look at how OCR handles each of the other authorities over which it has investigative jurisdiction.

We interviewed OCR headquarters' staff and OCR staff in the eight regional offices that account for most of the Hill-Burton workload. The eight regional offices visited during this study were Boston, New York, Philadelphia, Atlanta, Chicago, Dallas, Kansas City, and San Francisco.

During our visit to the regional offices we gathered information on the flow of data and the handling of complaints and routine compliance reviews. We analyzed the processes used by OCR to ensure compliance with Hill-Burton provisions.

Data on the number of facilities investigated by regional OCR offices was obtained. Similar data on the number of compliance reviews conducted by the regional offices was also obtained from OCR headquarters and from regional offices. The complaint and compliance review data collected from OCR systems were for the years 1989 and 1990.

FINDINGS

The OCR has developed a comprehensive procedures manual for conduct of investigations and post-grant reviews. These national guidelines, coupled with the checks and balances of supervisory review, have greatly improved OCR compliance and investigative processes.

Selection of facilities for post-grant reviews is made from each of the statutory areas over which OCR has investigative responsibility. While reviews are opened under specific authorities, OCR may find during the course of their investigation violations in areas other than the program under which the investigation was initiated. When this occurs, the case will be documented to reflect noncompliance with the appropriate statute. A case opened as a potential Hill-Burton violation may be closed indicating violations of Title VI of the Civil Rights Act of 1964; likewise, a case opened under Title VI could be closed with findings of noncompliance with the Hill-Burton community service obligation.

In 1989 and 1990, OCR completed 119 post-grant reviews specifically to ensure facility compliance under Hill-Burton. During this same period, less than 4 percent of the 3,562 complaints received and processed by OCR specifically involve allegations of Hill-Burton noncompliance. Hill-Burton violations may have been examined during the course of other investigations.

Each region has autonomy in the selection of facilities it will review. While criteria exists to identify facilities with high probability of being in violation of various civil rights and nondiscrimination statutes, each region can request deleting or adding facilities to reflect the critical issues affecting their region. For example, two regions have chosen to use complaint files and media articles to target facilities accused of using admissions policies that discriminate against AIDS patients. Another region is focusing on facilities that refuse to provide care to Medicaid patients while another is focusing on facilities that refuse to provide emergency care to uninsured patients.

Finding #1: The OCR investigative procedures could be strengthened by the use of some unannounced visits.

The investigative community and other oversight agencies have long recognized the deterrent effect of unannounced, random sight visits and audits. The mere possibility of being selected at random for verification of information previously provided to the government has a positive effect on compliance. The possibility of unannounced visits coupled with appropriate enforcement authority would provide an incentive for Hill-Burton facilities to monitor their operations to ensure compliance with civil rights' statutes at all times and not just during announced regulatory visits.

Once facilities have been selected for review, OCR typically conducts an announced onsite visit to investigate the community service programs operated by Hill-Burton grantees. The same procedure applies to complaints filed against facilities alleging community service noncompliance. As previously mentioned, OCR investigations frequently determine whether a facility might be in violation of other civil rights' nondiscrimination statutes.

According to OCR staff, most investigations and compliance reviews are conducted on site with visits to facilities scheduled in advance. This is done to ensure that administrative and other facility staff are present to answer any questions OCR staff may have regarding the way a facility implements its community service obligation under the Hill-Burton program. Advance scheduling of onsite visits enables facilities to collect documentation about their community service program and to have it available for OCR examination.

While we did not independently investigate this, OCR staff felt that announced visits can provide facilities with enough lead time to ensure that OCR investigators will find nothing wrong with their community service obligation program. Announced visits may alter the way a facility handles its community service obligation for that brief period when OCR is onsite.

Finding #2: No formal or uniform follow-up procedures exist to ensure facilities take corrective action when they are found to be out of compliance.

Facilities whose community service programs are found to be out of compliance are sent a letter of findings specifying the corrective actions to be taken. During 1989 and 1990, 46 percent (55 of 119) of the post-grant reviews required facilities to take some remedial action to bring their community service program into compliance. More often than not, corrective actions were discussed with these facilities before a formal letter of findings was issued by OCR. In many cases, OCR and facilities have negotiated settlement agreements designed to bring the facility's community service program back into compliance before an official notice of findings is sent to the facility. If a compromise cannot be reached or a facility refuses to take corrective action, OCR regional offices must refer the case to OCR headquarters for a decision on whether to pursue legal action through DOJ.

We found wide variance in how individual OCR staff monitor facilities that have agreed to take corrective action on findings of noncompliance. The data system maintained by OCR headquarters does enable the regional office to input a follow-up action date. However, regional office staff told us that untimely updating of data bases by the region, coupled with a lack of uniform definitions and standardized procedures, deterred them from using the system developed by OCR headquarters. Consequently, each region, and often individuals within the region, have developed their own personal systems that they use to remind themselves to follow up on a facility's efforts to bring their community service program into compliance.

It was our overall impression, from discussions with OCR staff, that while investigations were conducted conscientiously, follow-up actions were viewed as nonproductive, if not undesirable, work. In almost all cases, a letter or other documentation from the Hill-Burton facility was accepted as sufficient evidence that the facility had undertaken corrective action. Very few corrective actions are verified through third parties or by onsite visits.

Finding #3: The OCR authority to enforce compliance with Hill-Burton regulations is limited.

Unlike Civil Monetary Penalties and sanction authorities available to other Department programs, such as Medicare and Medicaid, the OCR has no such administrative remedies to ensure that recalcitrant facilities bring their community service programs into compliance. The Medicare program also has the authority to suspend government funds pending the resolution of investigations.

The lack of enforcement authority leaves OCR with two alternatives, either reach settlement with the noncompliant facility or refer the case for further action. Since OCR has little clout to force compliance, settlements between regional offices and facilities may not be sufficient to ensure that a facility does not discriminate against patients unable to pay for medical care. Further action against a facility requires that the regional office case be sent to OCR headquarters for consideration and referral to DOJ. The absence of sufficient internal enforcement options creates delays in resolving problems and hinders OCR's ability to force compliance.

Finding #4: An opportunity exists for improving the investigative process by sharing staff expertise.

During our regional office visits, we found individual staff members and regions that have developed techniques that augment the national procedures. Several have developed their own technical assistance guides and other investigative tools. They have also developed techniques to facilitate compliance reviews and complaint investigations. In the Philadelphia regional office, we found a system to coordinate complaints received by HCFA and OCR. In the San Francisco regional office we found a regional training manual. These guides and methodologies are not shared with other regional office staff and, in most cases, are confined to the region that developed them.

RECOMMENDATIONS

Medical facilities built with Hill-Burton funds are prohibited from discriminating through the community service obligation. If it were not for this and other legislation preventing discrimination and the efforts of OCR to enforce legislation a significant segment of the American public would find it even more difficult to obtain medical care.

To strengthen Hill-Burton enforcement efforts OCR should:

1) Consider unannounced visits whenever possible to validate systems that facilities use in complying with the community service obligation under the Hill-Burton program.

   Advance notice reduces the amount of time reviewers spend in the field and ensures that appropriate documentation will be available for reviewers. However, arriving a day early, or conducting an unannounced onsite visit at one facility while doing an announced visit at another, would not only provide a truer picture of facility operations but also have a deterrent effect on other facilities.

2) Develop a follow-up system to monitor compliance agreements that ensures facilities take adequate and prompt action to bring their community service programs into compliance.

   While the current system used by OCR has the capability of generating notices that follow-up action is needed, it is not currently used to do so because the monitoring section of the case information system may not be updated in a timely manner by all regional offices. The OCR should develop a uniform regional system, or update the current system more frequently, to ensure follow-up actions are taken.

3) Seek legislative authority that allows for administrative action against facilities that fail to comply with their Hill-Burton community service obligation or fail to take timely corrective action when their program is found to be out of compliance.

   The ability to assess civil monetary penalties, impose sanctions and restrict a facility's receipt of Federal grants and other payments would have a deterrent effect on facilities and strengthen OCR's ability to bring recalcitrant facilities and repeat offenders into compliance.

4) Determine whether technical assistance guides and methodologies developed in individual regions can be shared nationally.

Other investigative agencies share investigative tools and methodologies developed by peers. The OCR should explore methods that would enable them to share the expertise developed in one regional office with other regional office staff.

AGENCY COMMENTS

We received comments on our draft report from OCR and the Assistant Secretary for Planning and Evaluation (ASPE).

Prior to our finalizing this report we met with OCR to discuss our findings and recommendations. At that meeting, OCR agreed in principle with our report findings and recommendations.

The ASPE recommended that we delete our recommendation that OCR conduct unannounced inspection visits. They feel that unannounced visits are too costly to warrant their use. The ASPE also feels that our recommendation that OCR seek legislative authority that would allow them to take administrative action against facilities is premature since other options may already be available. The ASPE specifically mentions cutting off Medicare funds as an alternative. The full text of ASPE's comments can be found in Appendix B.

Our final report has been modified to incorporate the technical comments offered by both agencies. The full text of OCR's comments can be found in Appendix A.

OIG RESPONSE TO COMMENTS ON THE DRAFT REPORT

We have discussed with OCR how unannounced visits might be conducted using existing resources. We did not propose extensive use of unannounced visits by OCR. Our suggestion is that OCR staff conduct unannounced compliance visits to nearby facilities at the completion of regularly scheduled inspection visits. Such visits would not be an indepth analysis such as that conducted at scheduled inspections. The unannounced visits would be limited to time available. Compliance would be observed and if time permitted or severity of infractions warranted a more indepth investigation would be undertaken.

Unannounced visits play a key role in ensuring that facilities are vigilant in complying with their community service obligation. The IRS requires that tax returns be filed and that records be maintained to substantiate returns. No such provision exists that would require hospitals to document and maintain records on every person that may have sought, but not received, medical care from them. How then does one ensure

that persons in need of medical care have not been denied care or that a facility acted in such a way as to discourage a person from pursuing care at their facility? To deter would be violators the IRS uses random audits in addition to auditing records of taxpayers whose returns fail certain edit screens.

Regarding cutting off Medicare/Medicaid funds, we continue to believe that additional enforcement authority would be useful to OCR. We believe that such authority would provide the flexibility OCR needs to ensure compliance with Hill-Burton requirements.

APPENDIX A

OFFICE FOR CIVIL RIGHTS
COMMENTS ON THE DRAFT REPORT

DEPARTMENT OF HEALTH & HUMAN SERVICES

Office of the Secretary

Office for Civil Rights
Washington, D.C. 20201

RECEIVED 7/28/92

DATE : 24 JUL 1992

FROM : Edward Mercado
Director
Office for Civil Rights

SUBJECT: OIG Draft Report: Office for Civil Rights Oversight of the Hill-Burton Program, OEI-05-90-00261

TO : Emilie Baebel
Chief
Public Health and Human Services Branch
Office of the Inspector General

This is in reply to your July 8, 1992 request for OCR comments regarding the above-referenced report.

In both the Executive Summary and at page one, the report refers to the Hospital Survey and Construction Act, passed in 1946, and describes it as requiring provision of community services to all persons residing or employed in a facility's service area. This Act, commonly known as Hill-Burton, is codified in Title VI of the Public Health Service Act. Title VI does not require provision of community services to those employed in the service area. The community services requirement for those employed in the service area applies only to recipients of assistance under Title XVI of the Public Health Service Act, enacted in 1974.

The third paragraph of page one closes: "If control transfers to an (sic) noneligible entity... OCR will not require the new owner to honor the community service obligation...." This sentence may imply that OCR has discretion to excuse a new owner from honoring an obligation. Transfer to an ineligible entity terminates the obligation, except under limited circumstances.

The first sentence of the third paragraph on page two, which begins: "Since January 1980, pursuant to an MOA..., OCR has been responsible for monitoring," is misleading. This sentence should begin: "In December 1980, Secretary Patricia Harris delegated to OCR the responsibility of insuring compliance with all aspects of...."

On page two, the draft report lists a number of statutes which OCR monitors and enforces. This list includes "the Consolidated Omnibus Reconciliation Act of 1986 (patient dumping)." OCR is not responsible for monitoring and ensuring compliance with the Act, although OCR coordinates its Hill-Burton activities with the COBRA activities of HCFA and OIG.

Footnote one on page two states that "[p]hysicians affiliated with Hill-Burton assisted facilities must also participate in governmental third-party payer programs." This incorrectly suggests that all physicians are required to participate in these programs. See 42 C.F.R. § 124.603 (d)(2) ("To be in compliance a facility does not have to require all of its staff physicians to accept medicaid").

On page six, the phrase "to a compromise designed" in paragraph one, Finding #2, should be omitted. OCR does not compromise with enforcement of the law. We do negotiate settlement agreements.

In the next paragraph, still on page six, sentence three begins: "However, regional office staff told us that untimely updating." The phrase, "in the region," should be inserted after "untimely updating."

Related to this, in paragraph two of the second Recommendation, page eight, the phrase "it is not currently used to do so because the..." should continue with "monitoring section of the case information system may not be updated in a timely manner by all regional offices," instead of "system is not updated timely."

Finally, the last sentence of Finding #3, page seven, in discussing cases referred to DOJ for enforcement, states: "Historically, DOJ has accepted few cases, leaving OCR with few options to force compliance." This sentence inaccurately suggests that DOJ has routinely declined to enforce cases referred by OCR.

Please continue to apply our previous comments on the draft report, where appropriate.

You may contact Marcella Haynes at 619-0671 if you have any questions or comments.

Thank you for the opportunity to review the draft report.

APPENDIX B

ASSISTANT SECRETARY FOR PLANNING AND EVALUATION COMMENTS ON THE DRAFT REPORT

DEPARTMENT OF HEALTH & HUMAN SERVICES

Office of the Secretary

Washington, D.C. 20201

JUN 9 1992

TO: Richard P. Kusserow
Inspector General

FROM: Assistant Secretary for
Planning and Evaluation

SUBJECT: OIG Draft Report on OCR Hill-Burton Oversight

This report deals with OCR's enforcement of the Hill-Burton requirement that hospitals serve community residents. I am pleased that OIG has found such a considerable improvement in OCR investigative reviews. I agree with most findings. However, I recommend some changes, as follows:

- The draft report recommends unannounced inspection visits. A scheduled visit assures that hospital staff and records are readily available without delay. It is hard to believe that there is significant extra deterrent value if the visit is unscheduled. One analogy is tax compliance, where IRS audits are carefully scheduled in advance and rarely or never unannounced. Furthermore, unannounced inspections consume additional resources and decrease the total number of inspections possible. If a substantial cost-effectiveness rationale specific to frequent Hill Burton violations cannot be developed, this finding and recommendation should be dropped.

- The report finds that enforcement sanctions are limited, and recommends legislation to add civil money penalties. While I agree that the "H-bomb" of prosecution by the Justice Department is a weak sanction, it is my understanding that Medicare funds can be cut off if the institution does not comply. OCR and HCFA should develop procedures to enable effective use of this more practical sanction, and explore other options, before legislation is recommended. Nothing in this document suggests that such options have been fully explored.

The report states that "physicians affiliated with Hill-Burton assisted facilities must also participate in government third-party payer programs" such as Medicaid. This is incorrect. The facility must assure service to Medicaid patients, and the best method is to give some Medicaid participating physicians admitting privileges, but nothing requires any or all physicians affiliated with the hospital to participate in Medicaid.

Nicholas Hert for
Martin H. Gerry

cc: Ed Mercado