

Department of Health and Human Services

**OFFICE OF
INSPECTOR GENERAL**

**Routine Prenatal and Postpartum Care
for Undocumented Aliens**



JUNE GIBBS BROWN
Inspector General

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OFFICE OF INSPECTOR GENERAL

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EXECUTIVE SUMMARY

PURPOSE

To determine if States are claiming Federal reimbursement for routine prenatal and postpartum care for undocumented alien women.

BACKGROUND

The Omnibus Budget Reconciliation Act of 1986 amended the Social Security Act to limit Federal payment for emergency medical services under the Medicaid program to undocumented aliens except in certain circumstances. The amendment explains that an emergency medical condition occurs when the patient's health would be in serious jeopardy caused by serious impairment to bodily functions, or serious dysfunction of any bodily organ or part without immediate medical attention. This includes labor and delivery but does not include routine prenatal and postpartum care, generally referred to as those periods "preceding birth" and "after childbirth."

This review is a follow-up to a prior inspection which found that two States covered and claimed Federal funds for routine postpartum care for undocumented alien women.

We surveyed the Health Care Financing Administration's (HCFA) Central Office and regional offices to determine the extent of directives they had released to States covering specific policies on claiming Federal funds for non-emergency medical treatment. We also surveyed all Medicaid State and territorial agencies to determine if they cover and claim Federal funds for routine prenatal and postpartum care. Further, we requested copies of their policies and procedures regarding coverage for undocumented aliens.

FINDINGS

Six States Have Claimed Federal Funds for Routine Prenatal and Postpartum Care for Undocumented Alien Women. Three Still Do.

We found that Nebraska, New York, and West Virginia cover both routine prenatal and postpartum care and claim Federal funds for these services. Nebraska has a global obstetric package that covers prenatal, delivery, and postpartum care. New York is claiming Federal funds for prenatal services pursuant to an order from the United States District Court for the Eastern District of New York (reference our third Finding) and continues to claim postpartum care as part of a Medicaid benefit package. West Virginia covers visits during both the prenatal and postpartum periods. These States are presently claiming Federal funds.

We also found that three other States have covered some of these services. Minnesota claimed Federal funds only on routine prenatal care from July 1994 to July 1997. Oklahoma and Vermont, although not routinely claiming Federal funds for prenatal and postpartum care, indicated that they have in the past been claimed for undocumented alien women in limited instances (i.e., citizenship status of the undocumented alien was not known to the provider at the time the services were rendered).

Survey Respondents in 31 States and Territories Indicated They Were Not Aware of HCFA's Guidance on this Subject. Two HCFA Regional Offices Did Not Send Guidance to States.

Respondents in Nebraska, Vermont, and West Virginia, along with 28 other States and territories noted that they were not aware of HCFA's guidance which addressed routine prenatal and postpartum care for alien women. This was despite HCFA's various efforts to make States aware of policy provisions.

Two HCFA Regional Offices (Denver and Kansas City) did not send guidance to the States in their region subsequent to HCFA Central Office's issuance of the October 12, 1994 memorandum.

A Federal Court Has Ordered Continuation of Benefits in New York

As noted earlier, New York continues to claim, and HCFA continues to pay, Federal funds pursuant to an order of the United States District Court for the Eastern District of New York in Lewis v. Grinker.

It is our understanding that the Department of Health and Human Services, acting through the Department of Justice, has recently petitioned the New York Federal court to vacate this order based on the Personal Responsibility and Work Opportunity Reconciliation Act, Public Law 104-193 (1996). In the meantime, and until the order is vacated, HCFA is authorized by its own regulations to pay for Medicaid services provided pursuant to court order.

RECOMMENDATIONS

In an earlier inspection we found two States were improperly claiming Federal funds for routine postpartum medical care for undocumented alien women. Since misinterpretation or misunderstanding of the law on this matter continues to exist in some States, we recommend that HCFA:

- identify and recover Federal funds that Minnesota, Nebraska, Oklahoma, Vermont, and West Virginia inappropriately claimed for routine prenatal and postpartum care for undocumented alien women;

- assure States and territories are aware of and implementing policy provisions applicable to claiming Federal funds for routine prenatal and/or postpartum services; and
- continue to monitor and support the Justice Department's efforts to resolve the legal issues involving New York.

AGENCY COMMENTS

The HCFA agrees with our recommendations in the report and will take appropriate action to implement them. The HCFA also noted the positive aspects of our inspection - that there were only six States in which we detected inappropriate claims, and that these States have comparatively few undocumented aliens compared to other States. The full text of the HCFA comments are shown in Appendix D.

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INTRODUCTION

PURPOSE

To determine if States are claiming Federal reimbursement for routine prenatal and postpartum care for undocumented alien women.

BACKGROUND

Definitions

Prenatal is defined as the period "preceding birth" and postpartum is defined as the period "after childbirth." Undocumented aliens are immigrants who entered as temporary residents and overstayed their visas or are engaged in activities forbidden by their visas, or who entered illegally into this country.

Guideline Perspectives

The Omnibus Budget Reconciliation Act of 1986 (Public Law 99-509, §9406) amended the Social Security Act, effective January 1, 1987 by adding §1903(v) which limits Federal payment for undocumented aliens' emergency medical care under the Medicaid program. The Act and Federal Regulations define an emergency medical condition as "after sudden onset, manifesting itself by acute symptoms of sufficient severity (including severe pain) that the absence of immediate medical attention could reasonably be expected to result in--

- (a) placing the patient's health in serious jeopardy;
- (b) serious impairment to bodily functions; or
- (c) serious dysfunction of any bodily organ or part."

Under the Personal Responsibility and Work Opportunity Reconciliation Act (Public Law 104-193) enacted August 22, 1996, Medicaid eligibility for aliens is based on whether they are qualified or non-qualified. Qualified aliens include lawful permanent residents, refugees, asylees, aliens whose deportation has been withheld, parolees, aliens granted conditional entry, and battered immigrants. Qualified aliens who are members of certain designated groups as specified in the law are eligible for Medicaid. Non-qualified aliens, which include illegal and also ineligible (e.g., temporary workers or foreign exchange visitors) aliens are eligible only for treatment of emergency medical conditions. Illegal aliens either were never legally admitted to the United States for any period of time or were admitted for a limited period of time and did not leave the United States when that time expired.

The Health Care Financing Administration's (HCFA) State Medicaid Manual specifically indicates that Federal payment for medical services for qualified aliens whom the State has not elected to cover or non-qualified aliens will be available only for treatment of emergency medical

conditions (including emergency labor and delivery), "provided such care and services are not related to routine prenatal or postpartum care."

HCFA Central Office Guidance Issuances

HCFA issued guidance to both the regional offices and the States which addressed emergency services for undocumented aliens.

- HCFA Memorandum to Regional Offices "OIG Investigation of Services Provided to and FFP Claims for Non-Emergency Post Partum Care Provided to Aliens Eligible under 1903(v)-ACTION" issued October 12, 1994
- State Medicaid Manual: Revision 29, issued November 1988
Transmittal 66, issued April 1995
Transmittal 67, issued February 1997
- Federal Regulation: 42 CFR 440.255, issued September 7, 1990

Problem Identification

We reviewed four States as part of our 1994 inspection of the Systematic Alien Verification for Entitlements program,¹ a process for the States to validate an alien's immigration status. In the course of gathering data for that study we discovered that in two of those States their Medicaid policy covered routine postpartum care for undocumented alien women for which Federal funds were claimed. In our report on this, we requested HCFA to identify Medicaid overpayments and to provide guidance to all States to assure their correct interpretation of the law.

Action Taken by HCFA to Correct the Problem

The HCFA indicated that it issued a policy memorandum to all regional offices October 12, 1994. This memorandum requested regional offices to advise States that routine postpartum services, or any other non-emergency services, provided to illegal aliens are not eligible for Federal funds under Medicaid. In addition, HCFA regions were notified to monitor this issue and assure compliance with Federal provisions (Appendix A).

Needless to say, States and local governments are not precluded from providing, at their own expense, medical care or financial assistance for prenatal and postpartum care for undocumented aliens.

¹Medicaid Overpayments for Postpartum Care to Undocumented Aliens, (OEI-07-95-00010), November 4, 1994.

METHODOLOGY

We requested copies of coverage and operational guidelines established by HCFA (regulations, manuals, memoranda, and letters) that it has provided to its regional offices and to the various Medicaid State and territorial agencies. We also requested copies of related policy guidance the HCFA regional offices have provided to the States and territories.

We surveyed all 56 Medicaid State and territorial agencies inquiring about policy guidance from HCFA on non-emergency routine prenatal and postpartum medical services for undocumented alien women. We requested copies of policies and procedures covering emergency labor and delivery, and asked about any action taken upon receipt of HCFA guidelines.

We received responses from all Medicaid State and territorial agencies. We analyzed the information received, specifically evaluating their receipt of HCFA guidelines, coverage policies and compliance with guidelines for claiming Federal funds.

We conducted our review in accordance with the *Quality Standards for Inspections* issued by the President's Council on Integrity and Efficiency.

FINDINGS

Six States Have Claimed Federal Funds for Routine Prenatal and Postpartum Care for Undocumented Alien Women. Three Still Do.

Six of the 56 State and territorial agencies surveyed covered routine prenatal and/or postpartum care for undocumented alien women, and have claimed Federal funds. Three of these States continue to pay for routine prenatal and postpartum care.

- Nebraska, New York, and West Virginia cover both routine prenatal and postpartum care and continue to claim Federal funds for these services.
 - Nebraska has established a global obstetric package that always covers prenatal and postpartum care when delivery is billed.
 - New York Medicaid policy covers prenatal care as a result of an order from the United States District Court for the Eastern District of New York in the Lewis v. Grinker case and continues to claim postpartum care as part of a Medicaid benefit package. New York case workers do not ask applicants for their status, with full coverage provided for prenatal and postpartum care as well as delivery (see Finding on page 5).
 - West Virginia limits prenatal visits to 20 for the nine month pregnancy period unless prior authorization is obtained for more. Postpartum care has a limitation of one visit in six months.
- Minnesota does not cover postpartum care. However, it has provided prenatal coverage for undocumented alien women and claimed Federal funds for the period July 1994 to July 1997.
- Oklahoma and Vermont, although not routinely claiming Federal funds for such prenatal and postpartum care, indicated that Federal funds have in the past been claimed for undocumented alien women in limited instances. (i.e., citizenship status of the undocumented alien was not known to the provider at the time the services were rendered).

Survey Respondents in 31 States and Territories Indicated They Were Not Aware of HCFA's Guidance. Two HCFA Regional Offices Did Not Send Guidance to States.

Respondents in Nebraska, Vermont, and West Virginia along with 28 other States and territories noted that they were not aware of HCFA's guidance which addressed routine prenatal and postpartum care for alien women (see Appendix B). States expressed this lack of awareness despite HCFA's various efforts to communicate policy provisions, which included release of Central Office guidance issuances supplemented by regional offices' instructions to the States

addressing non-emergency medical services for undocumented aliens. Regional office issuances are shown in Appendix C.

We found that two HCFA regional offices (Denver and Kansas City) did not send out instructions to the States in their regions subsequent to the October 12, 1994 HCFA Central Office memorandum.

A Federal Court Has Ordered Continuation of Benefits in New York

New York continues to claim, and HCFA continues to pay, Federal funds pursuant to an order of the United States District Court for the Eastern District of New York. In Lewis v. Grinker, 794 F. Supp. 1193, 1200 (E.D.N.Y. 1991), a class action challenging Department and parallel New York regulations denying Medicaid-sponsored prenatal care to undocumented aliens, the district court held that the Medicaid statute required that the unborn fetuses of these aliens were entitled to prenatal care. The district court thus enjoined the Department and the State of New York from denying prenatal services benefitting these future American citizens. This order was affirmed on appeal by the United States Court of Appeals for the Second Circuit. See Lewis v. Grinker, 965 F.2d 1206 (2d Cir. 1992). The Second Circuit held that Congress, in enacting the Omnibus Budget Reconciliation Act of 1986, did not intend to exclude these future citizens from Medicaid-sponsored prenatal care.

It is our understanding that the Department of Health and Human Services, acting through the Department of Justice, has recently petitioned the New York Federal court to vacate its order based on the Personal Responsibility and Work Opportunity Reconciliation Act, Public Law 104-193 (1996). In the meantime, and until the order is vacated, HCFA is authorized by its own regulations to pay for Medicaid services provided pursuant to court order. See 42 CFR § 431.250.

RECOMMENDATIONS

In an earlier inspection we found two States were improperly claiming Federal funds for routine postpartum medical care for undocumented alien women. Since misinterpretation of the law and/or its application continues to exist in States as to the claiming of Federal funds for routine prenatal and postpartum care for undocumented alien women, we recommend that HCFA:

- identify and recover Federal funds that Minnesota, Nebraska, Oklahoma, Vermont, and West Virginia inappropriately claimed for routine prenatal and postpartum care for undocumented alien women;
- assure States and territories are aware of and implementing policy provisions applicable to claiming Federal funds for routine prenatal and/or postpartum services. It should also assure that States' determine Medicaid applicants' citizenship status to avoid payment for other than emergency medical services for undocumented aliens; and
- continue to monitor and support the Justice Department's efforts to resolve the legal issues involving New York.

AGENCY COMMENTS

The HCFA agrees with our recommendations in the report and will take appropriate action to implement them. The HCFA also noted the positive aspects of our inspection - that there were only six States in which we detected inappropriate claims, and that these States have comparatively few undocumented aliens compared to other States. The full text of the HCFA comments are shown in Appendix D.

APPENDIX A

HCFA's October 12, 1994 Memorandum



DEPARTMENT OF HEALTH & HUMAN SERVICES

Health Care Financing Administration

Refer To: FME 32

Memorandum

DATE: OCT 12 1994

FROM: Director
Medicaid Bureau

SUBJECT: OIG Investigation of Services Provided to and FFP
Claims for Non-Emergency Post Partum Care Provided to
Aliens Eligible Under 1903(v)--ACTION

TO: Associate Regional Administrators
Division of Medicaid
Regions I-X

The Office of the Inspector General (OIG) has asked several States for their policies on the coverage of pregnant women who are illegal aliens. As a result of this investigation, OIG has brought to our attention that some States may be claiming FFP for the cost of routine post partum care provided to aliens eligible for Medicaid under §1903(v).

The Social Security Act in the last sentence of section 1902(a) says: "Notwithstanding paragraph (10)(B) or any other provision of this subsection, a State plan shall provide medical assistance with respect to an alien who is not lawfully admitted for permanent residence or otherwise permanently residing in the United States under color of law only in accordance with section 1903(v)."

Please advise all States in your region that under section 1903(v) routine post-partum services, or any other non-emergency services, provided to otherwise eligible illegal aliens are not eligible for FFP under Medicaid. In addition, you should continue to monitor this issue to assure compliance with Federal law.

If you have any questions about the policy on eligibility of illegal aliens for Medicaid, please contact Bob Tomlinson at (410) 956-4463.

Sally K. Richardson

APPENDIX B

STATES WHOSE RESPONDENTS SAID THEY WERE NOT AWARE OF HCFA POLICY GUIDANCE

Alaska	No. Mariana Islands
California	Nebraska
Colorado	Nevada
Connecticut	New Jersey
Dist. of Col.	North Dakota
Georgia	Ohio
Guam	Pennsylvania
Hawaii	Puerto Rico
Indiana	South Carolina
Iowa	South Dakota
Kansas	Texas
Louisiana	Vermont
Massachusetts	Virginia
Mississippi	Washington
Missouri	West Virginia
Montana	

APPENDIX C

HCFA REGIONAL OFFICE GUIDANCE ISSUANCES

Boston: State Medicaid Agency Regional Bulletin No. 95-04, January 13, 1995

New York: State Operations Letter No. 93-68, September 27, 1993

Philadelphia: Medicaid Letter No. 94-112, November 14, 1994

Atlanta: HCFA Program Issuance Transmittal Notice MCD-68-94,
January 19, 1995

Chicago: Regional State Letter No. 38-95, July 1995

Dallas: Regional Medical Services Letter No. 94-80, November 7, 1994

Kansas City: No instructions issued to States

Denver: No instructions issued to States

San Francisco: HCFA Regional Memorandum No. 94-76, November 2, 1994

Seattle: Title XIX State Agency Letter No. 94-48, October 27, 1994

APPENDIX D

AGENCY COMMENTS



DATE: APR 6 1998

TO: June Gibbs Brown
Inspector General

FROM: Nancy-Ann Min DeParle
Administrator

SUBJECT: Office of Inspector General (OIG) Draft Report: "Routine Prenatal and Postpartum Care for Undocumented Aliens" (OEI-07-96-00310)

We reviewed the above-referenced report that examines if states are claiming Federal reimbursement for routine prenatal and postpartum care for undocumented alien women. The OIG inspection found that Minnesota claimed Federal funds from July 1994 to July 1997. Oklahoma and Vermont claimed Federal funds in limited instances, and Nebraska, New York, and West Virginia continue to claim Federal funds.

We would like to point out the positive aspect of this inspection - that there were only six states in which OIG detected inappropriate claims - and these states have insignificant numbers of undocumented aliens. OIG did not report problems in other states, including those with the vast majority of undocumented aliens in which claiming problems could have major financial ramifications. We view this as evidence of the Health Care Financing Administration's (HCFA's) and the states' success in implementing the law limiting Medicaid services to undocumented aliens to emergency services.

We concur with the report recommendations. Our detailed comments follow.

OIG Recommendation

HCFA should identify and recover Federal funds that Minnesota, Nebraska, Oklahoma, Vermont, and West Virginia inappropriately claim for routine prenatal and postpartum care for undocumented alien women.

HCFA Response

HCFA concurs. We will ask the regional offices to follow up with the above-cited states to recover the potential overpayments of Federal funds associated with the payment of routine prenatal and postpartum care for undocumented alien women.

OIG Recommendation

HCFA should ensure states and territories are aware of and are implementing policy provisions applicable to claiming Federal funds for routine prenatal and/or postpartum services. It should also ensure that states determine Medicaid applicants' citizenship status to avoid payment for other than emergency medical services for undocumented aliens.

HCFA Response

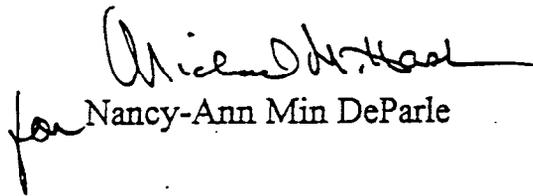
HCFA concurs. We will ask the regional offices to remind states and territories of the policy provisions applicable to claiming Federal funds for routine prenatal and/or postpartum care services to undocumented aliens.

OIG Recommendation

HCFA should continue to monitor and support the Justice Department's efforts to resolve the legal issues involving New York.

HCFA Response

HCFA concurs. We will continue to actively support the Justice Department in resolving the issues raised by this lawsuit.


for Nancy-Ann Min DeParle