

Department of Health and Human Services

**OFFICE OF
INSPECTOR GENERAL**

**CMS'S RELIANCE ON NEW YORK
QUALIFICATION REQUIREMENTS
COULD NOT ENSURE THE QUALITY
OF CARE PROVIDED TO MEDICAID
BENEFICIARIES RECEIVING HOME
HEALTH SERVICES**

*Inquiries about this report may be addressed to the Office of Public Affairs at
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Gloria L. Jarmon
Deputy Inspector General
for Audit Services

May 2015
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Office of Inspector General

<http://oig.hhs.gov>

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

EXECUTIVE SUMMARY

CMS could not rely on New York's qualification requirements to ensure the quality of care provided to Medicaid beneficiaries receiving home health services during 2007 through 2009 because some home health agencies did not meet certain State requirements for employee health screenings and inservice training.

WHY WE DID THIS REVIEW

Home health services are provided to individuals in their place of residence on the basis of a physician's order as part of a written plan of care. These services include visits by registered nurses; physical, speech, and occupational therapists; and home health aides. Home health agencies (HHAs) must comply with Federal and State requirements to ensure that home health services are furnished by qualified workers. Prior Office of Inspector General reviews of personal care services (PCS) found that services were provided by PCS attendants who did not meet State qualification requirements. We are performing reviews in various States to determine whether similar vulnerabilities exist at HHAs.

The objective of this review was to determine whether the Centers for Medicare & Medicaid Services' (CMS) reliance on New York's qualification requirements for HHA workers ensured quality of care and that adequate protection was provided to Medicaid beneficiaries receiving home health services.

BACKGROUND

An HHA is a public agency, private organization, or a subdivision of either that is primarily engaged in providing skilled nursing and other therapeutic services, including physical therapy and speech therapy, to individuals in their place of residence.

In New York, the Department of Health (State agency) administers its Medicaid program in accordance with a CMS-approved State plan. The State plan establishes what services the Medicaid program will cover, including home health services provided by licensed HHAs.

CMS relies on the States to license HHAs within their jurisdictions. In New York, the State agency is responsible for overseeing the certification of HHA aides, while the Department of Education is responsible for issuing and renewing licenses for health care professionals, including registered nurses and physical, occupational, and speech therapists who provide home health services.

Among other requirements, HHAs in New York must document that all personnel who provide patient care are licensed or certified and have received annual health screenings, initial and annual tuberculosis screenings, and screenings for rubella. In addition, home health aides are required to complete a basic training program in home health aide services and receive a minimum of 12 hours of inservice education on an annual basis.

HOW WE CONDUCTED THIS REVIEW

We limited our review to Medicaid home health services claims for the period January 1, 2007, through December 31, 2009. From a total of 5,720,894 claim lines for which the State agency claimed Medicaid reimbursement, we reviewed a random sample of 150 claims. (In this report, we refer to these lines as “claims.”) For each of those 150 claims, we reviewed the qualifications of the corresponding HHA workers who provided direct care to Medicaid beneficiaries.

WHAT WE FOUND

CMS could not rely on New York’s qualification requirements to ensure quality of care and that adequate protection was provided to Medicaid beneficiaries receiving home health services. Specifically, we found that some HHAs did not meet certain State requirements for employee health screenings and training.

Of the 150 claims in our sample, HHA workers associated with 135 claims met Federal and State qualification requirements; however, workers associated with the remaining 15 claims did not. Specifically:

- HHAs could not document that seven workers were screened for tuberculosis and/or rubella.
- HHAs could not document that seven workers had annual health screenings.
- Four HHA workers did not meet minimum inservice education requirements.
- One HHA worker did not meet basic training requirements.

The total exceeds 15 because workers associated with 4 claims did not meet more than 1 State qualification requirement.

On the basis of our sample results, we estimated that 572,089 of the 5,720,894 claims covered by our review, resulting in \$27,856,940 in Federal Medicaid reimbursement, were associated with HHA workers who did not meet selected Federal and State requirements during our audit period.

WHAT WE RECOMMEND

To improve protection provided to Medicaid beneficiaries receiving home health services, we recommend that CMS:

- work with the State agency to reinforce guidance to HHAs regarding worker qualification requirements and
- direct the State agency to improve its monitoring of HHAs to ensure compliance with worker qualification requirements.

STATE AGENCY COMMENTS

In written comments on our draft report, State agency officials stated that they plan to issue guidance to HHAs that reinforces worker qualification requirements. The officials also stated that they will continue to review employee records for compliance with worker qualification requirements as part of the State agency's HHA survey protocols. Further, the State agency will consider implementing a minimum number of HHA employee records to review during its surveys based on HHA size. Finally, State agency officials stated that, subsequent to our audit period, the State agency has significantly improved its monitoring of compliance with basic training requirements by implementing a statutorily mandated Web-based registry of personal care aides, home health aides, and trainees. HHAs and State-licensed home care agencies are required to use the registry to ensure that individuals seeking employment have received the proper training and certification.

CMS COMMENTS

In written comments on our draft report, CMS concurred with our recommendations.

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INTRODUCTION

WHY WE DID THIS REVIEW

Home health services are provided to individuals in their place of residence on the basis of a physician's order as part of a written plan of care. These services include visits by registered nurses; physical, speech, and occupational therapists; and home health aides. Home health agencies (HHAs) must comply with Federal and State requirements to ensure that home health services are furnished by qualified workers. Prior Office of Inspector General (OIG) reviews of personal care services (PCS) found that services were provided by PCS attendants who did not meet State qualification requirements.¹ We are performing reviews in various States to determine whether similar vulnerabilities exist at HHAs.

OBJECTIVE

The objective of this review was to determine whether the Centers for Medicare & Medicaid Services' (CMS) reliance on New York's qualification requirements for HHA workers ensured quality of care and that adequate protection was provided to Medicaid beneficiaries receiving home health services.

BACKGROUND

The Medicaid Program: How It Is Administered

The Medicaid program provides medical assistance to low-income individuals and individuals with disabilities. The Federal and State Governments jointly fund and administer the Medicaid program. At the Federal level, CMS administers the Medicaid program. In New York, the Department of Health (State agency) administers its Medicaid program in accordance with a CMS-approved State plan. The State plan establishes which services the Medicaid program will cover, including home health services when they are provided by licensed HHAs.

An HHA is a public agency, private organization, or a subdivision of either that is primarily engaged in providing skilled nursing and other therapeutic services, including physical therapy and speech therapy, to individuals in their place of residence. CMS relies on the States to license HHAs within their jurisdictions. In New York, the State agency is responsible for overseeing the certification of HHA aides, while the Department of Education is responsible for issuing and renewing licenses for health care professionals, including registered nurses and physical, occupational, and speech therapists who provide home health services.²

¹ U.S. Department of Health and Human Services, OIG, portfolio entitled *Personal Care Services: Trends, Vulnerabilities, and Recommendations for Improvement*, issued November 15, 2012.

² Under the State agency's home health services program, HHAs known as Certified Home Health Agencies (CHHAs) provide therapeutic and/or rehabilitative services to Medicaid beneficiaries. CHHAs provide nursing care directly to beneficiaries and contract with one or more Licensed Home Care Services Agencies to provide other home health services. Medicaid reimbursement is available for home health services provided by CHHAs certified by the State agency.

Federal and State Qualification Requirements for Home Health Workers

Medicaid regulations require HHAs to meet applicable Medicare conditions of participation (42 CFR § 440.70(d)). Medicare conditions of participation require HHAs and their staffs to operate and provide services in compliance with all applicable Federal, State, and local laws and regulations (42 CFR § 484.12(a)). Among other State requirements, HHA workers must comply with the following:

- All HHA workers must receive health screenings as frequently as necessary, but no less than annually (Title 10, section 763.13(d), of the New York Compilation of Codes, Rules, & Regulations (NYCRR)).
- All HHA workers must receive a tuberculosis screening before assuming patient care and annual rescreening as applicable (10 NYCRR § 763.13(c)(4)).
- All HHA workers must receive a screening test for rubella (10 NYCRR § 763.13(c)(1)).
- Home health aides must complete a minimum of 12 hours of inservice education per year (10 NYCRR § 763.13(1)).
- Home health aides must complete a basic training program in home health aide services or an equivalent exam (10 NYCRR § 700.2(b)(9)).

HOW WE CONDUCTED THIS REVIEW

We limited our review to Medicaid home health services claims for the period January 1, 2007, through December 31, 2009. From a total of 5,720,894 claim lines for which the State agency claimed Medicaid reimbursement, we reviewed a random sample of 150 claims.³ (In this report, we refer to these lines as “claims.”) For each of those 150 claims, we reviewed the qualifications of the corresponding HHA workers who provided direct care to Medicaid beneficiaries.

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

Appendix A contains the details of our audit scope and methodology, Appendix B contains our statistical sampling methodology, and Appendix C contains our sample results and estimates.

³ We excluded claims submitted by providers in New York City, which we audited during a separate review. We used HHAs’ correspondence addresses and county codes on the Medicaid Management Information System (MMIS) to identify those located in the State outside the five counties that make up New York City. In addition, the sampling frame did not include claims submitted by 16 HHAs audited by the New York State Office of Medicaid Inspector General (OMIG) during our audit period.

FINDINGS

CMS could not rely on New York’s qualification requirements to ensure quality of care and that adequate protection was provided to Medicaid beneficiaries receiving home health services. Specifically, we found that some HHAs did not meet certain State requirements for employee health screenings and training.

Of the 150 claims in our sample, HHA workers associated with 135 claims met Federal and State qualification requirements; however, workers associated with the remaining 15 claims did not. The following table summarizes the requirements not met and the number of claims that did not meet these requirements.

Table: Summary of State Requirements Not Met

Type of Deficiency	Number of Claims ^a
Worker not screened for tuberculosis and/or rubella	7
No annual health screening performed on worker	7
Worker did not meet minimum inservice education requirements	4
Worker did not meet basic training requirements	1

^a The total exceeds 15 because workers associated with 4 claims did not meet more than 1 State requirement.

On the basis of our sample results, we estimated that 572,089 of the 5,720,894 claims covered by our review, resulting in \$27,856,940 in Federal Medicaid reimbursement, were associated with HHA workers who did not meet selected State requirements during our audit period.

HEALTH SCREENING REQUIREMENTS NOT MET

Of the HHA workers associated with our sample of 150 claims, we found that workers associated with 14 claims were not in compliance with State health screening requirements.

Home Health Workers Not Screened for Tuberculosis or Rubella

For 6 of the 150 claims, HHAs did not provide documentation that the workers received tuberculosis screenings. In addition, for one claim, the HHA did not provide documentation that the worker received a rubella screening.

No Annual Health Screening

For 7 of the 150 claims, HHAs did not provide documentation that the workers received an annual health screening.

EDUCATION AND TRAINING REQUIREMENTS NOT MET

Of the HHA workers associated with our sample of 150 claims, we found that workers associated with 5 claims were not in compliance with State education and training requirements.

Inservice Education Requirements Not Met

For 4 of the 150 claims, HHAs did not provide documentation that the workers met inservice education requirements.

Basic Training Requirements Not Met

For 1 of the 150 claims, the HHA did not provide documentation that the worker met basic training requirements. Specifically, the employee who provided the service was certified to provide personal care services—not home health aide services—on the sampled service date.

CMS COULD NOT RELY ON NEW YORK’S QUALIFICATION REQUIREMENTS TO ENSURE QUALITY OF CARE AND THAT ADEQUATE PROTECTION WAS PROVIDED TO MEDICAID BENEFICIARIES RECEIVING HOME HEALTH SERVICES

Of the 150 claims in our sample, HHA workers associated with 15 claims did not meet Federal and State qualification requirements. On the basis of our sample results, we estimated that 572,089 of the 5,720,894 claims covered by our review, resulting in \$27,856,940 in Federal Medicaid reimbursement, were associated with HHA workers who did not meet State requirements during our audit period. The details of our sample results and estimates are shown in Appendix C.

RECOMMENDATIONS

To improve protection provided to Medicaid beneficiaries receiving home health services, we recommend that CMS:

- work with the State agency to reinforce guidance to HHAs regarding worker qualification requirements and
- direct the State agency to improve its monitoring of HHAs to ensure compliance with worker qualification requirements.

STATE AGENCY COMMENTS

In written comments on our draft report, State agency officials stated that they plan to issue guidance to HHAs that reinforces worker qualification requirements. The officials also stated that they will continue to review employee records for compliance with worker qualification requirements as part of the State agency’s HHA survey protocols. Further, the State agency will consider implementing a minimum number of HHA employee records to review during its surveys based on HHA size. Finally, State agency officials stated that, subsequent to our audit period, the State agency has significantly improved its monitoring of compliance with basic training requirements by implementing a statutorily mandated Web-based registry of personal care aides, home health aides, and trainees. HHAs and State-licensed home care agencies are

required to use the registry to ensure that individuals seeking employment have received the proper training and certification.

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

CMS COMMENTS

In written comments on our draft report, CMS concurred with our recommendations. CMS's comments are included in their entirety as Appendix E.

APPENDIX A: AUDIT SCOPE AND METHODOLOGY

We limited our review to 5,720,894 Medicaid home health services claim lines (claims) for the period January 1, 2007, through December 31, 2009, totaling \$684,816,530 (\$342,425,306 Federal share).

We did not assess the overall internal control structure of the State agency or the Medicaid program. Rather, we limited our internal control review to those controls related to the objective of our audit. Our review allowed us to establish reasonable assurance of the authenticity and accuracy of the data obtained from the MMIS file for our audit period, but we did not assess the completeness of the file.

We performed fieldwork at the State agency's offices in Albany, New York; at the MMIS fiscal agent in Rensselaer, New York; and at 73 HHAs and 21 Licensed Home Care Services Agencies throughout the State.

Methodology

To accomplish our objective, we:

- reviewed applicable Federal and State requirements;
- held discussions with State agency officials to gain an understanding of the State's home health services program;
- ran computer programming applications that identified a sampling frame of 5,720,894 Medicaid home health services claim lines (claims), totaling \$684,816,530 (\$342,425,306 Federal share), submitted by HHAs in New York State;
- selected a simple random sample of 150 claims from our sampling frame,⁴ and for each claim, obtained and reviewed records for HHA workers who performed direct patient care on the associated beneficiaries to determine whether the workers met qualification requirements;
- estimated the total number of claims and associated dollars for which HHA workers did not meet qualification requirements in the sampling frame of 5,720,894 claims; and
- discussed our findings with State agency officials.

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

⁴ The 150 sample claims were composed of 67 home health aide claims, 49 nursing claims, 20 physical therapy claims, 8 occupational therapy claims, and 6 speech therapy claims.

based on our audit objectives. We believe that the evidence obtained provides a reasonable basis for our findings and conclusions based on our audit objectives.

APPENDIX B: STATISTICAL SAMPLING METHODOLOGY

POPULATION

The population consisted of Medicaid home health services claims submitted by HHAs in New York State (excluding those in New York City and 16 HHAs audited by the New York State OMIG) for the period January 1, 2007, through December 31, 2009, for which the State agency claimed Federal Medicaid reimbursement.

SAMPLING FRAME

The sampling frame was an Access file containing 5,720,894 Medicaid home health services claims for the period January 1, 2007, through December 31, 2009, totaling \$684,816,530 (\$342,425,306 Federal share). The Medicaid claims were extracted by our advanced audit techniques staff from the State agency's Medicaid payment files provided to us by staff of the State agency's MMIS fiscal agent.

SAMPLE UNIT

The sample unit was an individual Federal Medicaid claim.

SAMPLE DESIGN

We used a simple random sample.

SAMPLE SIZE

We selected a sample of 150 claims.

SOURCE OF RANDOM NUMBERS

We generated the random numbers with the Office of Inspector General, Office of Audit Services (OAS), statistical software.

METHOD FOR SELECTING SAMPLE ITEMS

We consecutively numbered the sample units in the sampling frame. After generating 150 random numbers, we selected the corresponding frame items.

ESTIMATION METHODOLOGY

We used the OAS statistical software to calculate the point estimates and 90-percent confidence intervals for the target sample results. We estimated the total number of Medicaid payments made to HHAs with home health services that did not comply with certification requirements for home health workers. In addition, we estimated the total amount of Federal Medicaid reimbursement associated with the noncompliant services.

APPENDIX C: SAMPLE RESULTS AND ESTIMATES

Sample Details and Results

Claims in Frame	Value of Frame (Federal Share)	Sample Size	Value of Sample (Federal Share)	No. of Claims with Deficient Services	Value of Deficient Services (Federal Share)
5,720,894	\$342,425,306	150	\$8,707	15	\$730

Estimated Number of Deficient Claims and Value of Deficient Services
(Limits Calculated for a 90-Percent Confidence Interval)

	Total Number of Deficient Claims	Total Value of Deficient Services
Point estimate	572,089	\$27,856,940
Lower limit	358,458	15,577,913
Upper limit	856,995	40,135,967

APPENDIX D: STATE AGENCY COMMENTS



ANDREW M. CUOMO
Governor

Department
of Health

HOWARD A. ZUCKER, M.D., J.D.
Acting Commissioner

SALLY DRESLIN, M.S., R.N.
Executive Deputy Commissioner

February 4, 2015

Mr. James P. Edert
Regional Inspector General for Audit Services
Department of Health and Human Services - Region II
Jacob Javitz Federal Building
26 Federal Plaza
New York, New York 10278

Ref. No: A-02-11-01013

Dear Mr. Edert:

Enclosed are the New York State Department of Health's comments on the United States Department of Health and Human Services, Office of Inspector General's Draft Audit Report A-02-11-01013 entitled, "CMS's Reliance on New York Qualification Requirements Could Not Ensure the Quality of Care Provided to Medicaid Beneficiaries Receiving Home Health Services."

Thank you for the opportunity to comment.

Sincerely,

Sally Dreslin

Sally Dreslin, M.S., R.N.
Executive Deputy Commissioner

Enclosure

cc: Michael J. Nazarko
Robert W. LoCicero, Esq.
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**New York State Department of Health
Comments on the
Department of Health and Human Services
Office of Inspector General
Draft Audit Report A-02-11-01013 entitled
“CMS’s Reliance on New York Qualification Requirements Could Not
Ensure the Quality of Care Provided to Medicaid Beneficiaries
Receiving Home Health Services”**

The following are the New York State Department of Health’s (Department) comments in response to the Department of Health and Human Services, Office of Inspector General (OIG) Draft Audit Report A-02-11-01013 entitled, “CMS’s Reliance on New York Qualification Requirements Could Not Ensure the Quality of Care Provided to Medicaid Beneficiaries Receiving Home Health Services.”

Recommendation:

To improve protection provided to Medicaid beneficiaries receiving home health services, we recommend that CMS:

- work with the State agency to reinforce guidance to HHAs regarding worker qualification requirements and
- direct the State agency to improve its monitoring of HHAs to ensure compliance with worker qualification requirements.

Response:

The Department appreciates the opportunity to comment on this draft audit and thanks the OIG for bringing these issues to our attention. The Department is dedicated to ensuring that patients receiving home health services from Certified Home Health Agencies (CHHAs) receive quality care. The Department is committed to working with CMS on any remedies that are deemed appropriate relative to these audit findings. In response to these audit recommendations, by March 1, 2015, the Department will issue a “Dear Administrator” letter to all CHHAs to reinforce the worker qualification requirements related to employee health screenings and training. The Department, through its survey process of CHHAs, will also continue to review employee records to screen for the required health screenings and training. Although not specified or mandated in CMS survey protocols, as part of its surveys of CHHAs, the Department will also consider implementing a minimum number of employee record reviews based on agency size.

This audit focused on claims for the period January 1, 2007 through December 31, 2009. Since then, the Department has significantly improved its monitoring of compliance with basic training requirements. On September 25, 2009, New York implemented a statutorily-mandated Home Care Registry (HCR). This is a web-based registry of all personal care, home health aides and trainees. CHHAs, as well as the State’s licensed home care services agencies, are required to use this registry to ensure that individuals seeking employment as personal care aides or home health aides have received the proper training and certification. The Department monitors the HCR to ensure compliance.

APPENDIX E: CMS COMMENTS



DEPARTMENT OF HEALTH & HUMAN SERVICES

Centers for Medicare & Medicaid Services

APR 21 2015

200 Independence Avenue SW
Washington, DC 20201

To: Daniel R. Levinson
Inspector General
Office of the Inspector General

From: Andrew M. Slavitt 
Acting Administrator
Centers for Medicare & Medicaid Services

Subject: CMS's Reliance on New York Qualification Requirements Could Not Ensure the Quality of Care Provided to Medicaid Beneficiaries Receiving Home Health Services (A-02-11-01013)

The Centers for Medicare & Medicaid Services (CMS) appreciates the opportunity to review and comment on the Office of the Inspector General's (OIG) draft report. CMS is committed to ensuring Medicare and Medicaid beneficiaries receive high quality health care.

Home Health Agencies (HHA) must meet certain conditions of participation in order to participate in the Medicare and Medicaid programs. These conditions include qualifications for personnel. States may add additional qualifications that go beyond the Federal requirements that HHAs are required to meet.

During its review period of January 1, 2007 through December 31, 2009, OIG found that of the 150 sample claims, HHA workers associated with 135 claims met Federal and State qualification requirements. Only HHA workers associated with 15 claims did not meet all qualification requirements.

CMS continues to work with states to provide technical assistance and tools in support of their compliance with HHA requirements. On October 9, 2014, CMS issued a proposed rule titled "Medicare and Medicaid Program: Conditions of Participation for Home Health Agencies" (79 FR 61163) that would modernize Medicare's Home Health Agency Conditions of Participation to ensure safe delivery of quality care to home health patients. The proposed rule included home health aide qualifications and standards for content and duration of classroom and supervised practical training, competency evaluation, and continuing education.

Examples of additional guidance CMS sent to states include materials such as a February 11, 2011 communication with state survey agency directors concerning revised home health survey protocols and the Partners in Integrity Booklet titled: "Preventing Fraud, Waste, and Abuse in Medicaid Home Health Services and Durable Medical Equipment."

OIG Recommendation

The OIG recommends that CMS work with the State agency to reinforce guidance to HHAs regarding working qualification requirements.

CMS Response

CMS concurs with this recommendation. CMS will continue to work with the State agency to reinforce guidance on worker qualification. CMS recognizes that the New York has taken steps to improve its oversight and monitoring of HHA worker qualifications. As stated in its response to the audit recommendations, New York will issue guidance to reinforce the worker qualification requirements related to employee health screenings and training. CMS will continue to monitor implementation of these additional actions.

OIG Recommendation

The OIG recommends that CMS direct the State agency to improve its monitoring of HHAs to ensure compliance with worker qualification requirements.

CMS Response

CMS concurs with this recommendation. As noted in its response to this report, in September 2009, New York implemented a statutorily mandated Home Care Registry to ensure compliance that individuals seeking employment as personal care aides or home health aides have received the proper training and certification. Information about every home care services worker and training program must be entered into a web based registry that is accessible to the public and to employers and prospective employers of such workers. CMS will continue to monitor implementation of these additional actions.