



Office of Audit Services, Region IV
61 Forsyth Street, SW, Suite 3T41
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May 12, 2011

Report Number: A-04-07-00034

Mr. William Wells
Deputy Director of Finance and Administration
South Carolina Department of Health and Human Services
Post Office Box 8206
Columbia, SC 29202

Dear Mr. Wells:

Enclosed is the U.S. Department of Health & Human Services (HHS), Office of Inspector General (OIG), final report entitled *Review of Medicaid Services to Incarcerated Juveniles in the State of South Carolina During Federal Fiscal Years 2004 and 2005*. We will forward a copy of this report to the HHS action official noted on the following page for review and any action deemed necessary.

The HHS action official will make final determination as to actions taken on all matters reported. We request that you respond to this 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.

Section 8L of the Inspector General Act, 5 U.S.C. App., requires that OIG post its publicly available reports on the OIG Web site. Accordingly, this report will be posted at <http://oig.hhs.gov>.

If you have any questions or comments about this report, please do not hesitate to call me at (404) 562-7800, or contact Eric Bowen, Audit Manager, at (404) 562-7789 or through email at Eric.Bowen@oig.hhs.gov. Please refer to report number A-04-07-00034 in all correspondence.

Sincerely,

/Peter J. Barbera/
Regional Inspector General
for Audit Services

Enclosure

Direct Reply to HHS Action Official:

Jackie Garner
Consortium Administrator
Consortium for Medicaid and Children's Health Operations (CMCHO)
Centers for Medicare & Medicaid Services
233 North Michigan Avenue, Suite 600
Chicago, IL 60601

Department of Health & Human Services

**OFFICE OF
INSPECTOR GENERAL**

**REVIEW OF MEDICAID SERVICES TO
INCARCERATED JUVENILES IN
THE STATE OF SOUTH CAROLINA
DURING FEDERAL FISCAL YEARS 2004
AND 2005**



Daniel R. Levinson
Inspector General

May 2011
A-04-07-00034

Office of Inspector General

<http://oig.hhs.gov>

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OFFICE OF AUDIT SERVICES FINDINGS AND OPINIONS

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

BACKGROUND

Section 1905(a) of the Social Security Act (the Act) authorizes State Medicaid agencies to provide medical services to eligible Medicaid beneficiaries. However, subparagraph (A) of section 1905(a) of the Act specifically excludes Federal financial participation (FFP) for care or services provided to inmates of a public institution, except when inmates are patients in a medical institution.

During prior reviews of Medicaid services (A-04-06-00022 and A-04-06-00026), the Office of the Inspector General found that certain Medicaid agencies inappropriately claimed FFP for non-inpatient services to juveniles involuntarily residing in public institutions. These individuals (juvenile inmates of public institutions) were awaiting criminal proceedings, penal dispositions, or other involuntary detention determinations. The Centers for Medicare & Medicaid Services considers such individuals to be “inmates of public institutions,” and non-inpatient medical services provided to them are ineligible for FFP pursuant to section 1905(a)(A) of the Act.

OBJECTIVE

Our objective was to determine whether the South Carolina Department of Health & Human Services (the Medicaid agency) claimed FFP for certain non-inpatient medical services provided to juvenile inmates of public institutions.

SUMMARY OF FINDINGS

For Federal fiscal years (FY) 2004 and 2005, the Medicaid agency claimed \$881,346 (\$617,731 Federal share) in costs relating to non-inpatient medical services provided to juvenile inmates of public institutions. The Medicaid agency inappropriately claimed these costs because neither the South Carolina Department of Juvenile Justice (DJJ) nor the Medicaid agency had adequate controls to ensure that services to inmates of public institutions were excluded from FFP, in compliance with Federal requirements.

RECOMMENDATIONS

We recommend that the Medicaid agency:

- refund to the Federal Government the \$617,731 overpayment for Federal FYs 2004 and 2005 and
- establish monitoring procedures to provide reasonable assurance that DJJ complies with Federal and State requirements.

MEDICAID AGENCY COMMENTS

In written comments on our draft report, the Medicaid agency agreed with our findings and recommendations and described corrective actions that it and DJJ had implemented or planned to implement.

The Medicaid agency's comments are included in their entirety as the Appendix.

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INTRODUCTION

BACKGROUND

Title XIX of the Social Security Act (the Act) authorizes Federal grants to States for Medicaid programs that provide medical assistance to low-income individuals and persons with disabilities. The Centers for Medicare & Medicaid Services (CMS) administers the Medicaid program for the Federal Government. Each State administers its Medicaid program in accordance with a CMS-approved State plan. While the State has considerable flexibility in designing its State plan and operating its Medicaid program, it must comply with applicable Federal requirements.

During prior reviews of Medicaid services (A-04-06-00022 and A-04-06-00026), the Office of the Inspector General found that certain Medicaid agencies inappropriately claimed Federal financial participation (FFP) for non-inpatient services to juveniles involuntarily residing in public institutions. These individuals (juvenile inmates of public institutions) were awaiting criminal proceedings, penal dispositions, or other involuntary detainment determinations. CMS considers such individuals to be “inmates of public institutions,” and non-inpatient medical services provided to them are ineligible for FFP pursuant to section 1905(a)(A) of the Act.

Medicaid Medical Assistance Programs

Section 1905(a) of the Act offers grants to State Medicaid agencies for medical assistance to provide medical services to Medicaid beneficiaries. However, subparagraph (A) of section 1905(a) of the Act states that medical assistance does not include “any such payments with respect to care or services for any individual who is an inmate of a public institution (except as a patient in a medical institution)....”

South Carolina Department of Health & Human Services

The South Carolina Department of Health & Human Services (the Medicaid agency) administers the Medicaid program in South Carolina. The Medicaid agency makes payments to Medicaid providers for medical services¹ and claims the payments as costs for FFP on its “Quarterly Medicaid Statement of Expenditures for the Medical Assistance Program” (Form CMS-64). The Medicaid agency works together with the South Carolina Department of Juvenile Justice (DJJ) to provide Medicaid reimbursable medical services to eligible juveniles.

¹ Medical services include inpatient hospital services and non-inpatient services.

South Carolina Department of Juvenile Justice

DJJ is responsible for providing rehabilitation and custodial care for the State's juveniles who are on probation, incarcerated, or on parole. The DJJ supports the Governor by "protecting the public and reclaiming juveniles through prevention, community programs, education, and rehabilitative services in the least restrictive environment."

In South Carolina, juveniles usually enter the juvenile justice system when taken into custody by law enforcement or when referred to DJJ by a Circuit Solicitor or a school. At this stage, personnel at a DJJ county office usually interview the juvenile. Law enforcement might also elect to send the juvenile to a South Carolina juvenile detention center, pending a hearing. The Solicitor may choose to divert a juvenile to a community program or require the juvenile to make restitution for the offense. Solicitors may also choose to proceed with prosecution or dismiss the case entirely.

If found delinquent, the juvenile may be put on probation or given a "determinant" (fixed amount of time) or an "indeterminate" commitment. If a juvenile receives an indeterminate commitment, he will be held for an indefinite period of time, up to age 21. Upon commitment, the State Board of Juvenile Parole gives the juvenile a time range or "guideline." The guideline may run from a period of 1 to 3 months to a period of 36 to 54 months.

The Board of Juvenile Parole may also grant juveniles conditional or unconditional releases. A conditional release might involve requiring the juvenile to complete a local aftercare program or a program at a wilderness camp or group home. A conditional release also involves a period of parole supervision. DJJ county officers supervise juveniles on parole, much as they supervise juveniles on probation.

OBJECTIVE, SCOPE, AND METHODOLOGY

Objective

Our objective was to determine whether the Medicaid agency claimed FFP for certain non-inpatient medical services provided to juvenile inmates of public institutions.

Scope

We reviewed paid Medicaid payments totaling \$881,346 for non-inpatient medical services provided to juvenile inmates of public institutions from October 1, 2003, through September 30, 2005. We relied on Medicaid payment information provided by the Medicaid agency.

We limited consideration of the Medicaid agency and DJJ internal control structures to those controls concerning claims processing because the objective of our review did not require an understanding or assessment of the complete internal control structure. Further, we concluded that our review of the Medicaid agency's internal control structure could be conducted more efficiently by substantive testing.

We performed our fieldwork at the Medicaid agency and DJJ headquarters in Columbia, South Carolina.

Methodology

To accomplish our objective, we:

- reviewed Federal laws, regulations, CMS policy notices, and other requirements regarding Medicaid reimbursement for medical services to inmates of a public institution;
- interviewed Medicaid agency and DJJ officials;
- obtained from the DJJ Management Information Juvenile Tracking System² a list of juveniles incarcerated in juvenile detention centers from October 1, 2003, through September 30, 2005;
- obtained an extract from the Medicaid agency's billing system identifying unduplicated payments totaling \$2,259,709 for all medical services provided to juveniles who were inmates of public institutions from October 1, 2003, through September 30, 2005;
- eliminated from the extract payments totaling \$1,378,363 for medical services provided to juveniles who were residents of group homes, for room and board services, and for claims with incorrect dates of incarceration; and
- reconciled the remaining \$881,346 in payments for all non-inpatient medical services provided to juvenile inmates of public institutions to the costs claimed by the Medicaid agency on the Form CMS-64.

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 objective.

FINDINGS AND RECOMMENDATIONS

For Federal fiscal years (FY) 2004 and 2005, the Medicaid agency claimed \$881,346 (\$617,731 Federal share) in costs relating to non-inpatient medical services provided to juvenile inmates of public institutions. The Medicaid agency inappropriately claimed these costs because neither the DJJ nor the Medicaid agency had adequate controls to ensure that services to inmates of public institutions were excluded from FFP, in compliance with Federal requirements.

² The Management Information Juvenile Tracking System is an electronic system used by DJJ to record all pertinent information on juveniles committed to DJJ custody and to track them until their release from custody.

PROGRAM REQUIREMENTS

Federal Medicaid requirements are contained in Federal law and CMS policy notices to State Medicaid directors.

Federal Law

Section 1905(a) of the Act offers grants to State Medicaid agencies for medical assistance to provide medical services to Medicaid beneficiaries. The term “medical assistance” is defined as payment for part or all of the cost of certain types of services and care listed under section 1905(a) of the Act. Medical services include inpatient hospital services, non-inpatient services, and laboratory and x-ray services, in addition to several other categories of services.

Non-inpatient services include but are not limited to outpatient hospital services; rural health clinic services; physicians’ services; medical and surgical services furnished by a dentist; medical care or any type of remedial care furnished by a licensed practitioner; and prescription drugs, dentures, prosthetic devices, and eyeglasses prescribed by a physician. However, subparagraph (A) following section 1905(a) of the Act states that medical assistance does not include “any such payments with respect to care or services for any individual who is an inmate of a public institution (except as a patient in a medical institution)....” Pursuant to 42 CFR § 435.1008(a)(1),³ FFP is not available for services to “[i]ndividuals who are inmates of public institutions....”⁴

Federal regulations (42 CFR § 435.1009)⁵ define an inmate of a public institution as “a person who is living in a public institution.” They further state that “public institution” means “an institution that is the responsibility of a governmental unit or over which the governmental unit exercises administrative control.”

Centers for Medicare & Medicaid Services Medicaid Coverage Policy Notice

On March 6, 1998, CMS issued a Program Issuance Transmittal Notice (Medicaid policy notice) to all States in Region IV, which included South Carolina, to clarify Medicaid coverage policy for inmates of a public institution. This Medicaid policy notice replicates the statement of Medicaid coverage policy for inmates of a public institution issued by CMS to all Associate Regional Administrators on December 12, 1997.

The Medicaid policy notice states that, for purposes of excluding FFP for services provided to inmates of a public institution, there is no difference in application of the policy to juveniles or

³ This citation is applicable to our audit period: October 1, 2003, through September 30, 2005. On October 1, 2007, this citation was moved to 42 CFR § 435.1009(a)(1).

⁴ The final rule (50 Fed. Reg. 13196 (April 3, 1985)) implementing this regulation effective May 3, 1985, states: “Under the policy set forth in this rule, FFP will not be available for Medicaid services provided from the date of admission until the date of discharge.”

⁵ This citation is applicable to our audit period: October 1, 2003, through September 30, 2005. On October 1, 2007, this citation was moved to 42 CFR § 435.1010.

adults. Also, CMS's policy clarifies that for FFP to be prohibited, two criteria must be satisfied: (1) the individual must be an inmate and (2) the inmate must reside in a public institution. To be classified as an inmate, an individual must be serving time for a criminal offense or confined involuntarily in State or Federal prisons, jails, detention facilities, or other penal facilities. It further notes that the exception to inmate status in which "other living arrangements appropriate to the individual's needs are being made" does not apply when an individual is involuntarily residing in a public institution awaiting criminal proceedings, penal dispositions, or other involuntary detainment determinations. A facility is deemed a public institution when it is under the responsibility or administrative control of a governmental unit.

An exception to the prohibition of FFP, as clarified by CMS in the Medicaid policy, is available when an inmate is admitted as an inpatient in a hospital, nursing facility, juvenile psychiatric facility, or intermediate care facility for covered Medicaid services. However, this exception does not apply for services provided at such facilities when provided to the inmate on an outpatient basis. Furthermore, CMS distinguishes prison hospitals or dispensaries from inpatient institutions and concludes that FFP is not available for medical services provided to inmates in such settings as the inmate would not be considered a patient in a medical institution.

UNALLOWABLE MEDICAL ASSISTANCE COSTS

Unallowable Costs for Non-Inpatient Services

For Federal FYs 2004 and 2005, the Medicaid agency claimed \$881,346 (\$617,731 Federal share) in costs relating to non-inpatient medical services provided to juvenile inmates of a public institution. The amount claimed included payments for non-inpatient services such as outpatient hospital services; clinical services; physician and osteopath services; dental services; optometric services; durable medical equipment; independent lab/x-ray services; ambulance and medical transportation services; and prescription drugs.

Some examples of non-inpatient medical services provided to juvenile inmates of a public institution were:

- physician services on September 15, 2004, for a forearm splint application provided to an individual incarcerated in a public long term commitment facility from August 26, 2004, through September 17, 2004;
- physician services on February 23, 2005, for an office consultation provided to an individual incarcerated in a public detention facility from November 18, 2004, through March 1, 2005;
- dental services on December 6, 2004, provided to an individual incarcerated in a public evaluation and admission center from November 30, 2004, through January 19, 2005; and
- pharmacy services on May 15, 2005, provided to an individual incarcerated in a public detention facility from May 4, 2005, through June 30, 2005.

Inadequate Controls

The Medicaid agency inappropriately claimed unallowable costs for non-inpatient services because neither DJJ nor the Medicaid agency had adequate controls to ensure that, pursuant to Federal requirements, services to inmates of public institutions were excluded from FFP. The Medicaid agency had no monitoring procedures in place to ensure that the amounts claimed for FFP excluded services to incarcerated juveniles considered to be inmates of a public institution. Furthermore, DJJ did not properly identify incarcerated juveniles who were ineligible for FFP.

Overpayments Related to Unallowable Costs

As a result of inadequate controls, the Medicaid agency erroneously made Medicaid payments for non-inpatient medical services provided to juvenile inmates of a public institution and claimed these payments as costs for FFP on its Form CMS-64. Based on the results of our review, CMS overpaid the Medicaid agency \$617,731 (Federal share) for these ineligible services.

RECOMMENDATIONS

We recommend that the Medicaid agency:

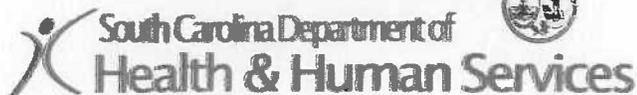
- refund to the Federal Government the \$617,731 overpayment for Federal FYs 2004 and 2005 and
- establish monitoring procedures to provide reasonable assurance that DJJ complies with Federal and State requirements.

MEDICAID AGENCY COMMENTS

In written comments on our draft report, the Medicaid agency agreed with our findings and recommendations and described corrective actions that it and DJJ had implemented or planned to implement.

The Medicaid agency's comments are included in their entirety as the Appendix.

APPENDIX



Anthony E. Keck, Director
Nikki R. Haley, Governor

April 20, 2011

Mr. Peter J. Barbera
Regional Inspector General for Audit Services
Office of Inspector General
61 Forsythe Street, SW, Suite 3T41
Atlanta, GA 30303

RE: Report Number A-04-07-00034

Dear Mr. Barbera:

This is the response from the South Carolina Department of Health and Human Services to the Office of Inspector General (OIG) draft audit report entitled "Review of Medicaid Services to Incarcerated Juveniles in the State of South Carolina during Federal Fiscal Years 2004 and 2005" (Report #: A-04-07-00034).

The South Carolina Department of Health and Human Services (SCDHHS) agrees with the findings and recommendations of the report. Our response also incorporates the response of the South Carolina Department of Juvenile Justice (DJJ). As requested, listed below are the agencies' joint responses and corrective actions to the recommendations noted in this review.

1. **OIG Recommendation:** Refund the Federal Government the \$617,731 overpayment for the Federal FYs 2004 and 2005.

SCDHHS and SCDJJS Response: Both SCDHHS and SCDJJ concur with the repayment of this amount. The SCDHHS will transmit the funds to CMS as soon as the final report is received. Please note that after the OIG audit fieldwork was concluded, SCDHHS conducted its own audit of Medicaid claims paid on behalf of juveniles under the jurisdiction of DJJ. We reviewed Medicaid children's treatment services rendered from July 1, 2005, to June 30, 2006, and concluded that all services were provided in a community-based setting to juveniles who were not incarcerated and therefore eligible for Medicaid services. All, we would like to emphasize that a significant portion of the services that were billed to Medicaid for incarcerated juveniles were not billed by DJJ but by private and other State agency providers. A number of these inappropriate billings were provided when juveniles were incarcerated in local county-operated detention facilities that are not under the control of DJJ.

2. **OIG Recommendation:** Establish monitoring procedures to provide reasonable assurance that DJJ complies with Federal and State Requirements.

SCDHHS and SCDJJS Response: SCDJJS has established written procedures for incarcerated juveniles that are under DJJ control / supervision who may need medical services outside of what the DJJ infirmary and health services can provide.

Mr. Peter J. Barbera
April 20, 2011
Page Two

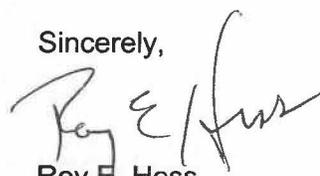
In these situations, a referral form is sent with the juvenile to the specialty care provider. That form instructs the service provider to bill DJJ for all services rendered and not to bill Medicaid, because of the exclusion that exists in the Medicaid law for non-inpatient medical services for detained or incarcerated youth.

DJJ will instruct other State agencies both orally and in writing that any service they provide to a juvenile who is located in a secure facility such as a jail, detention center, evaluation center or the DJJ Broad River Road Complex can neither be billed to, nor reimbursed by, Medicaid.

SCDHHS has also made some changes to the Medicaid Eligibility Determination System (MEDS) in 2006 and 2007 that better identify SCDHHS juveniles who are incarcerated and not eligible for services. In addition, the agency has sponsored DJJ eligibility workers who coordinate in-take and Medicaid eligibility processing for juveniles under the jurisdiction of DJJ. For example, if the child enters DJJ "behind the fence" (into a secure facility) and the inmate indicator is needed in MEDS, the application is shaded in pink to alert the sponsored worker. Upon approval/processing, the sponsored worker updates MEDS with this inmate indicator. DJJ state office staff provides information to the on-site sponsored worker as to which months the inmate indicator is needed. The sponsored worker will update MEDS for the months requested by DJJ. If the MEDS status changes with a child in custody of DJJ, the sponsored worker is alerted by DJJ state office staff who provides a new application.

Again, we thank you for the opportunity to comment on the draft report. If you have any further questions, please do not hesitate to call Kathleen Snider, SCDHHS, at (803) 898-1050, or Joan Barber, SCDJJ, (803) 896-9477.

Sincerely,



Roy E. Hess
Interim Deputy Director
Finance and Administration

REH/sh

- C. G. Randall Grant, Deputy Director, SCDJJ,
Financial Services Division
Joan Barber, SCDJJ
Kathleen Snider, SCDHHS
Kathy Bass, SCDHHS
John Supra, SCDHHS