

Department of Health and Human Services

**OFFICE OF
INSPECTOR GENERAL**

**REVIEW OF MONTANA MEDICAID
PROGRAM – NURSING HOMES AS
INSTITUTIONS FOR MENTAL
DISEASES**



**DECEMBER 2004
A-07-04-02018**

Office of Inspector General

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





Region VII
601 East 12th Street
Room 284A
Kansas City, Missouri 64106

December 8, 2004

Report Number: A-07-04-02018

Mr. John Chappuis, State Medicaid Director
Montana Department of Public Health
and Human Services
111 Sanders, P.O. Box 4210
Helena, Montana 59604

Dear Mr. Chappuis:

This report provides the results of an Office of Inspector General review of the Montana Medicaid program relating to nursing homes as institutions for mental diseases during Federal fiscal year 2003. The review was conducted at the request of the Centers for Medicare & Medicaid Services (CMS).

INTRODUCTION

BACKGROUND

Medicaid Program

The Medicaid program, established by Title XIX of the Social Security Act, was enacted in 1965. The program is jointly funded by the Federal and State government and is administered by each individual State to assist in the provision of medical care to needy individuals who are aged, blind or disabled, and to children and pregnant women.

Medicaid regulations prohibit Federal financial participation (FFP) for any services to residents under age 65 in an institution for mental disease (IMD) except for inpatient psychiatric services provided to individuals who are under the age of 22 and receiving inpatient psychiatric treatment. There is one facility in Montana that is designated as an IMD.

OBJECTIVES, SCOPE, AND METHODOLOGY

Objectives

The objectives of our review were to determine whether: 1) Montana was monitoring nursing homes to ensure compliance with IMD criteria; and 2) nursing homes participating in the Montana Medicaid program were IMDs.

Scope

We reviewed nursing homes participating in the Medicaid program during Federal fiscal year 2003. During that period, the Montana Medicaid program paid 105 nursing homes \$109 million.

We reviewed internal controls to the extent necessary to accomplish the review objectives. Fieldwork was performed at the Montana Department of Human Services office in Helena, Montana.

Methodology

To accomplish our objectives, we reviewed applicable laws and regulations, specifically, Federal regulations at 42 CFR §435.1008 and 435.1009; and the State Medicaid Manual guidelines for determining whether an institution is an IMD at part 4, section 4390.

We interviewed State Medicaid officials to aid in determining Medicaid program compliance with requirements pertaining to IMDs and to determine if Montana was monitoring nursing homes for compliance with IMD criteria.

We obtained data from the State agency pertaining to nursing homes participating in the Medicaid program. That data included the identity of Medicaid nursing home providers, Medicaid claim payments, licensed capacity, number of Medicaid residents, identity of Medicaid residents, diagnoses of the residents, and age of residents. We also obtained Medicaid prescription drug data from the Medicaid Statistical Information System. Using that data, we determined the percentage of Medicaid patients diagnosed with a mental illness, the array of patient ages, and the percentage of patients receiving antipsychotic drugs in each nursing home.

We also inquired as to whether the nursing homes were:

- licensed as a psychiatric facility
- accredited as a psychiatric facility
- under the jurisdiction of the State's mental health authority

Our review was conducted in accordance with generally accepted government auditing standards.

FINDINGS AND RECOMMENDATIONS

There were no specific controls in place to monitor Montana nursing homes for compliance with IMD criteria. We identified two nursing homes that may be IMDs. The two IMDs may have been overpaid \$484,855 by the Montana Medicaid program during the period of our review.

A review of the patients' records by qualified medical personnel would need to be conducted at the two nursing homes to determine whether they were, in fact, IMDs. However, this determination was outside the scope of our review.

Criteria

Medicaid regulations preclude FFP for certain patients in IMDs. The applicable regulations are at 42 CFR §435.1008:

“(a) FFP is not available in expenditures for services provided to—

“(2) Individuals under age 65 who are patients in an institution for mental diseases unless they are under age 22 and are receiving inpatient psychiatric services...”

Institutions for mental diseases are defined at 42 CFR §435.1009:

“Institution for mental diseases means a hospital, nursing facility, or other institution of more than 16 beds that is primarily engaged in providing diagnosis, treatment or care of persons with mental diseases, including medical attention, nursing care and related services. Whether an institution is an institution for mental diseases is determined by its overall character as that of a facility established and maintained primarily for the care and treatment of individuals with mental diseases, whether or not it is licensed as such. An institution for the mentally retarded is not an institution for mental disease.”

According to the State Medicaid Manual, part 4, section 4390, there are five guidelines to help determine if a facility is an IMD. They are:

- the facility is licensed as a psychiatric facility
- the facility is accredited as a psychiatric facility
- the facility is under the jurisdiction of the State's mental health authority
- the facility specializes in providing psychiatric/psychological care and treatment
- the current need for institutionalization for more than 50 percent of all the patients in the facility results from mental diseases

According to the CMS' State Medicaid Manual, if any of these guidelines are met, a thorough IMD assessment must be made by a team that includes qualified medical personnel. A final determination of a facility's IMD status depends on whether an evaluation of the information pertaining to the facility establishes that its overall character is that of a facility established and/or maintained primarily for the care and treatment of individuals with mental diseases.

Condition

Montana had no specific controls in place to monitor nursing homes for compliance with IMD criteria.

By using the IMD guidelines and performing our data analysis, we identified two nursing homes receiving payments from the Montana Medicaid program that may be IMDs because more than 50 percent of the Medicaid patients had a mental illness diagnosis (Guideline #5). The two nursing homes and results of their analyses are included in Appendix A.

Cause and Effect

As a result of no controls to monitor compliance with the IMD criteria, Medicaid may have overpaid the two nursing homes \$484,855. A review of the patients' records by qualified medical personnel would need to be conducted at the two nursing homes to determine whether they were, in fact, IMDs. However, this determination was outside the scope of our review.

Recommendations

We recommend Montana establish specific controls to monitor nursing homes for compliance with IMD criteria. We also recommend Montana further monitor and evaluate, with qualified medical personnel, the two nursing homes that may be IMDs.

Auditee Comments

Montana responded that it did have several controls in place to assist in monitoring for compliance, and provided further analysis to show that the nursing homes identified in our report are not IMDs at this time. They also agreed to institute procedures to routinely monitor for compliance with IMD criteria. Specific comments are as follows:

“Montana believes that it does have several controls or mechanisms in place that can assist the Medicaid program in its monitoring of Montana nursing homes for compliance with IMD criteria.”

“OIG determined that there were potentially two facilities that may be IMDs based on their analysis. . . . We have evaluated further the two facilities that were questioned by the OIG review and do not believe that either of the facilities meet the requirements or guidelines to be designated an IMD nor that an overpayment related to this determination exists.”

“Montana agrees that they need to evaluate these sources of information more routinely and will refer to qualified medical personnel any facility that they believe meets the IMD criteria for a more detailed evaluation. Montana will establish a process to routinely extract diagnosis and drug utilization data from the MDS information that is being utilized for reimbursement purposes and utilize this information to monitor nursing facilities for compliance with IMD criteria.”

The complete text of Montana’s response is included at Appendix B.

We accept Montana’s response and assurance that they will establish a procedure to routinely monitor for compliance.

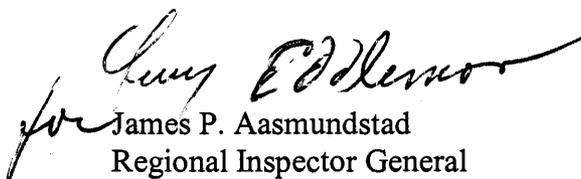
* * * * *

Final determination as to actions taken on all matters reported will be made by the HHS action official named below. We request that you respond to the HHS action official within 30 days from the date of this letter. Your response should present any comments or additional information that you believe may have a bearing on the final determination.

In accordance with the principles of the Freedom of Information Act (5 U.S.C. 552, as amended by Public Law 104-231), Office of Inspector General reports issued to the Department’s grantees and contractors are made available to members of the press and general public to the extent information contained therein is not subject to exemptions in the Act which the Department chooses to exercise. (See 45 CFR Part 5.)

To facilitate identification, please refer to Report Number A-07-04-02018 in all correspondence relating to this report. Questions on any aspect of the report are welcome. Please contact Terry Eddleman, Audit Manager, at (816) 426-3591.

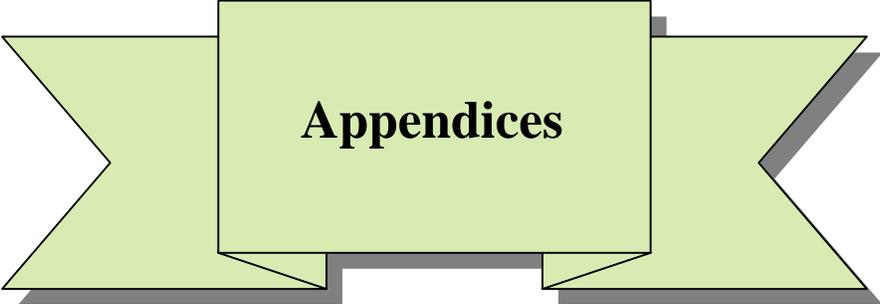
Sincerely,



James P. Aasmundstad
Regional Inspector General
for Audit Services

HHS Action Official:

Mr. Alex E. Trujillo
Regional Administrator
Centers for Medicare and Medicaid Services
1600 Broadway, Suite 700
Denver, CO 80202



Appendices

APPENDIX A

REVIEW OF MONTANA
NURSING HOMES AS
INSITUTIONS FOR MENTAL DISEASES

FEDERAL FISCAL YEAR 2003

<u>Provider Number</u>	<u>Percent of Patients with Mental Diagnosis</u>	<u>Percent of Patients with Antipsychotic Drugs</u>	<u>Percent of Patients Between the Ages of 21 and 65</u>	<u>Amount Medicaid Paid</u>	<u>Amount Medicaid may have Overpaid*</u>
310012	56%	70%	35%	\$1,007,615	\$352,665
310335	54%	64%	21%	<u>629,474</u>	<u>132,190</u>
Totals				<u>\$1,637,089</u>	<u>\$484,855</u>

*Amount Medicaid may have Overpaid was calculated by multiplying the Percentage of Patients Between the Ages of 21 and 65 and the Amount Medicaid Paid.

DEPARTMENT OF
PUBLIC HEALTH AND HUMAN SERVICES



JUDY MARTZ
GOVERNOR

GAIL GRAY, Ed.D.
DIRECTOR

STATE OF MONTANA

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November 12, 2004

SENIOR & LONG TERM CARE DIVISION
PO BOX 4210
HELENA, MT 59604-4210

James P. Aasmundstad
Regional Inspector General for Audit Services
Department of Health & Human Services, Region VII
601 East 12th Street- Room 284A
Kansas City MO 64106

Report Number: A-07-04-02018

Dear Mr. Aasmundstad:

Please accept this letter as Montana's response to the Office of Inspector General's review of the Montana Medicaid program related to nursing homes as institutions for mental diseases for the period federal fiscal year 2003.

The objective of the OIG review was to determine whether: 1) Montana was monitoring nursing homes to ensure compliance with IMD criteria; and 2) nursing homes participating in the Montana Medicaid program were IMDs.

OIG Findings:

- (a) Montana has no specific controls in place to monitor Montana nursing homes for compliance with IMD criteria.
- (b) Two nursing homes may be IMDs based on the OIG review. The two IMDs may have been overpaid \$484,855 by Montana Medicaid program during the period of the OIG review.

Montana Response:

(a) Montana believes that it does have several controls or mechanisms in place that can assist the Medicaid program in its monitoring of Montana nursing homes for compliance with IMD criteria.

(1) Montana through its survey and certification process has in place a process for ongoing monitoring of nursing facilities participating the Medicaid program, which would identify a facility that has had a change in the number and type of residents that are being served in a specific nursing facility. If there are concerns regarding the facility, its residents and the services

that are being provided, the survey process is one way the Medicaid program may be made aware of changes in a particular nursing facilities resident population and the services being delivered which would trigger us to review the facility further for the potential for being an IMD.

(2) Montana Medicaid enrolls facilities for participation in the Medicaid program and would, as part of the enrollment process, evaluate the type of facility that is enrolling in the program. A review of the licensure and certification of the facility would be necessary to determine the payment methodology that would be applicable for the services the provider would be providing through their enrollment in the Medicaid program. Nursing facilities are prospectively reimbursed using a price based, case mix methodology. IMD's are reimbursed using a cost based methodology in Montana. While this would be a control that is in place at the time the provider initially enrolls in the program it may not control for facilities that change their resident population mix or their service delivery but do not change their licensure or certification status. Because Montana has a small number of Medicaid participating nursing facilities, under one-hundred, the program can easily access information from participating providers in a timely manner should we have questions about their services or the resident population they are serving.

(3) Montana has a level of care screening process that is required for every Medicaid admission which determines the care needs of the individuals being placed and whether their on going medical need meets the nursing facility level of care criteria for Medicaid payment purposes. The Medicare Quality Improvement Organization (QIO) in Montana performs the level of care screening process. Additionally the federal preadmission screening and annual resident review (PASARR) process is required for every admission into a nursing facility regardless of payor source for the specific purpose of determining if an individual has a mental illness (MI) or mental retardation (MR) diagnosis and if they are in need of specialized services for their medical condition. This process would identify individuals that had an identified need for specialized services and treatment for a mental illness diagnosis. This information is also available for use by the nursing facility program staff in assessing if facilities meet the IMD guideline.

(4) Montana also utilizes minimum data set (MDS) data for its case mix reimbursement system which provides information on the residents being served in any given facility by payor classification, diagnoses, drug use and various other diagnosis and resource utilization groupings. Quarterly data extracts are taken from the CMS database, validated by nursing facility providers, and are subsequently utilized in the establishment of prospective reimbursement rates for nursing facilities. Montana can develop quarterly data extracts that identify the total residents in each facility with mental illness diagnoses, using antipsychotic drugs, under age 65 as well as payor classification for use in determining a facilities resident mix.

(b) OIG determined that there were potentially two facilities that may be IMDs based on their analysis. The two IMDs may have been overpaid \$484,855 by Montana Medicaid program during the period of the OIG review. We have evaluated further the two facilities that were questioned by the OIG review and do not believe that either of the facilities meet the requirements or guidelines to be designated an IMD nor that an overpayment related to this determination exists.

Montana has only one facility that is operated specifically as an IMD greater than 65, which is the State operated nursing facility, the Montana Mental Health Nursing Care Center in Lewistown.

The two facilities that OIG identified that may be IMDs based on their review, do not based on our analysis fit into the five guidelines that CMS has identified as criteria to be used to determine if a facility may be an IMD.

These facilities are not licensed as psychiatric facilities
They are not accredited as a psychiatric facility
They are not operated under the jurisdiction of the States mental health authority
The facilities do not hold themselves out as specializing in provision of psychiatric/psychological care and treatment
Nor do we believe that the current need for institutionalization of more than 50 percent of all of the patients in the facility results from mental diseases alone.

The overall character of these facilities and how they are operated do not lend themselves to be considered a facility established and or maintained primarily for the care and treatment of individuals with mental diseases. We believe that 4390 of the state Medicaid manual sets forth the guidelines for States to utilize in making such a determination, but that no single guideline by itself or combination of guidelines shall necessarily be determinative. When the 50 percent guideline is being applied in a NF, the guideline is met if more than 50 percent of the residents require specialized services for treatment of serious mental illnesses.

42 CFR 483.102(b) defines serious mental illness as schizophrenic, mood, paranoid, panic or other severe anxiety disorder, somatoform disorder; personality disorder; other psychotic disorder; or another mental disorder that may lead to chronic disability.

Additional Facility Analysis: Montana has extracted and evaluated current MDS data for the two facilities in question to determine if the characteristics of the current residents and their diagnosis would meet the 50% guideline.

(1) The facility identified as 31-0335 currently has twenty-three (23) residents in the facility that is certified for twenty-three (23) beds. Eighteen (18) residents are currently over the age of 65, while five (5) residents are under the age of 65. Of these twenty-three (23) residents three (3) have diagnosis of manic depression (bipolar); two (2) have diagnosis of anxiety disorder; two (2) have diagnosis of atypical psychosis*; one (1) has a diagnosis of paranoia*; and zero (0) residents have a diagnosis of schizophrenia. Eight (8) out of twenty-three (23) residents potentially meet the serious mental illness requirement or 35% of the residents. Five (5) of these eight (8) residents are over the age of 65 while three (3) are under the age of 65.

Thirteen (13) residents utilized antipsychotic drugs. Six (6) of these thirteen are included in the eight (8) that meet the serious mental illness test above. Excluding those six (6), seven (7) out of

twenty-three (23) utilized antipsychotic drugs or 30%. Of the thirteen (13) individuals utilizing antipsychotic drugs nine (9) of them are over the age of 65 while four (4) are under the age of 65.

(2) The facility identified as 31-0012 currently has fifty-four (54) residents in a facility that is certified for seventy (70) beds. Thirty-four (34) of the residents are over the age of 65, while twenty (20) of the residents are under the age of 65. Of these fifty-four (54) residents eight (8) have a diagnosis of schizophrenia; four (4) have a diagnosis of manic depression (bi polar); one (1) has a diagnosis of anxiety disorder; five (5) have a diagnosis of atypical psychosis*; two (2) have a diagnosis of unspecified personality disorder*; one (1) has a diagnosis of paranoid*; and (1) has a diagnosis of neurotic behavior*. Twenty-two (22) out of the fifty-four (54) residents potentially meet the serious mental illness requirement or 41% of the residents. Out of these twenty-two (22) residents twelve (12) are over the age of 65 while ten (10) are under the age of 65.

Thirty-six (36) residents utilized antipsychotic drugs. Twenty-one (21) out of these Thirty-six (36) are included in the Twenty-two (22) that meet the serious mental illness test above. Excluding those twenty-one (21), fifteen (15) out of fifty-four (54) utilized antipsychotic drugs or 28%. Of these fifteen (15) individuals utilizing antipsychotic drugs nine (9) are over the age of 65 while six (6) are under the age of 65.

* These diagnosis's **may or may** not fall under the definition of serious mental illness, but **were** included for this analysis.

Utilizing this analysis from a more current time period we do not believe that either of these facilities would meet the guidelines to be considered IMD facilities. Subsequently based on this analysis we do not believe that Montana Medicaid has overpaid these facilities during the audit period in question.

OIG Recommendation:

OIG recommends Montana establish specific controls to monitor nursing homes for compliance with IMD criteria. We also recommend that Montana further monitor and evaluate, with qualified medical personnel, the two nursing homes that may be IMDs.

Montana Response:

Montana has determined that we have available several sources of information that can be better utilized to analyze nursing facilities participating in the Medicaid program to determine if they meet the IMD guidelines, or to assess if these facilities warrant further analysis. Montana agrees that they need to evaluate these sources of information more routinely and will refer to qualified medical personnel any facility that they believe meets the IMD criteria for a more detailed evaluation. Montana will establish a process to routinely extract diagnosis and drug utilization data from the MDS information that is being utilizing for reimbursement purposes and utilize this information to monitor nursing facilities for compliance with IMD criteria. If a determination is made that a facility participating in the Medicaid nursing facility program meets

the criteria to be designated an IMD we will comply with the requirements for payment found at 42 CFR 435.1008.

If you have any questions concerning this response or information presented please feel free to contact Kelly Williams, Administrator of the Senior and Long Term Care Division at (406) 444-4147.

Sincerely,

A handwritten signature in cursive script that reads "John Chappuis".

John Chappuis
State Medicaid Director

C: Richard Norine
Marie Matthews