

Department of Health and Human Services

**OFFICE OF
INSPECTOR GENERAL**

**MISSOURI CLAIMED
UNALLOWABLE AND UNSUPPORTED
MEDICAID PAYMENTS FOR
GROUP HOME HABILITATION SERVICES**

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Office of Inspector General

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EXECUTIVE SUMMARY

Missouri claimed \$3 million of unallowable Medicaid payments and \$39.1 million of unsupported Medicaid payments for group home habilitation services under its home and community-based services developmental disabilities waiver program during State fiscal years 2011 through 2013.

WHY WE DID THIS REVIEW

According to Federal requirements, Medicaid does not generally cover room-and-board costs incurred by group homes under a State's home and community-based services (HCBS) waiver program. Previous Office of Inspector General reviews of payment rates for group home habilitation services provided under a developmental disabilities waiver program (which is one of several Medicaid HCBS waiver programs) have found that States may be incorrectly including room-and-board costs in their Medicaid payment rates.

The objective of this review was to determine whether Missouri's Medicaid payment rates for group home habilitation services provided and paid for during State fiscal years (SFYs) 2011 through 2013 were in accordance with Federal requirements.

BACKGROUND

Section 1915(c) of the Social Security Act (the Act) authorizes Medicaid HCBS waiver programs. A State's HCBS waiver, which must be approved by the Centers for Medicare & Medicaid Services (CMS), allows a State to claim Federal reimbursement for services not usually covered by Medicaid. HCBS are generally provided to Medicaid-eligible beneficiaries in the community rather than in an institutional setting.

The Department of Social Services, Missouri HealthNet Division (State agency), administers the provision and payment of Medicaid services in Missouri. In Missouri, the developmental disabilities waiver (referred to in Missouri as the developmental disabilities comprehensive waiver) program is 1 of 10 waiver programs covered under the HCBS waiver and is operated by the Missouri Department of Mental Health (DMH). The developmental disabilities waiver program includes group home habilitation services, which include care, supervision, and skills training in activities of daily living, home management, and community integration. These services are provided to groups of individuals in group homes, residential care centers, and semi-independent living situations (collectively referred to as "group homes" for this report).

The State agency pays providers of group home habilitation services (group home providers) at a per-diem payment rate that is specific to each provider. Missouri's developmental disabilities waiver states that as the first step in developing that payment rate, an approved group home provider submits to the State agency a proposed budget that itemizes the cost of providing group home habilitation services. The group home provider can then either accept a "profile rate" (a term the State agency uses to refer to a payment rate that it has specified based on the level of care that will be provided) or negotiate the payment rate with DMH staff. Under the latter

option, the State agency determines the payment rate after consideration of parameters such as staffing ratios based on the level-of-care needs of the population to be served, extraordinary circumstances beyond the facility's control, and a comparison of the provider-reported costs to known costs of other providers of similar services in the same region.

Missouri's developmental disabilities waiver states that payment rates for group home habilitation services do not include room-and-board costs. Rather, DMH should pay room-and-board costs directly to group home providers using State-only funds.

WHAT WE FOUND

The State agency's Medicaid payment rates for group home habilitation services provided and paid for during SFYs 2011 through 2013 were not always in accordance with Federal requirements. Specifically, the State agency included room-and-board costs in some of its payment rates for group home habilitation services. Because this practice is prohibited under Federal requirements, the associated payments were unallowable. In addition, the State agency could not provide supporting documentation for some of its payment rates, and as a result we could not determine whether those payment rates included room-and-board costs.

Because the State agency included unallowable room-and-board costs in some of its payment rates for group home habilitation services, it claimed unallowable Medicaid payments of \$4,636,719 (\$3,034,157 Federal share) during SFYs 2011 through 2013. This amount represents the difference between (1) the payment rates originally claimed by the State agency that improperly included room-and-board costs and (2) the payment rates that we recalculated without room-and-board costs. In addition, because the State agency could not provide supporting documentation for some of its payment rates for these services, we were unable to determine the allowability of Medicaid payments totaling \$59,073,055 (\$39,146,865 Federal share) that the State agency claimed during this same period.

WHAT WE RECOMMEND

We recommend that the State agency:

- refund \$3,034,157 to the Federal Government,
- obtain supporting documentation (that is, provider cost reports) from the group home providers for the unsupported Medicaid payments of \$39,146,865 and
 - recalculate any payment rates that include room-and-board costs and
 - apply any recalculated payment rates to actual claims and refund any additional unallowable amount to the Federal Government,
- follow Federal requirements by ensuring that room-and-board costs are excluded when determining the payment rates for group home habilitation services, and

- follow Federal requirements by maintaining supporting documentation to show how payment rates for group home habilitation services are calculated.

STATE AGENCY COMMENTS AND OUR RESPONSE

In written comments on our draft report, the State agency disagreed with our first and second recommendations and stated that it would continue to follow Federal requirements with respect to our third and fourth recommendations. Regarding our first recommendation, the State agency said that it reimbursed group homes for room and board through State-only payments, not through Medicaid payments. The State agency added that group home providers were reimbursed for group home habilitation services through a negotiated per diem rate or through a prospective payment system per diem rate based on costs in pre-enrollment cost reports. The State agency also stated that the costs we questioned that were based on information drawn from old provider cost reports are not necessarily unallowable room-and-board costs. Furthermore, the State agency asserted that these costs "... that are incurred solely because a group home functions as a provider are not room-and-board costs." (Emphasis in original.)

Regarding our second recommendation, the State agency said that it would be happy to forward the provider cost reports to CMS but is unable to find them. The State agency pointed out that State Medicaid programs are generally required to retain documentation only for 3 years (42 CFR §§ 433.32(b) and (c)) and added that most, if not all, of the cost reports in question are well over 3 years old.

After reviewing the State agency's comments, we maintain that our findings and recommendations remain valid.

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INTRODUCTION

WHY WE DID THIS REVIEW

According to Federal requirements, Medicaid does not generally cover room-and-board costs incurred by group homes under a State's home and community-based services (HCBS) waiver program. Previous Office of Inspector General (OIG) reviews of payment rates for group home habilitation services provided under a developmental disabilities waiver program (which is one of several Medicaid HCBS waiver programs) have found that States may be incorrectly including room-and-board costs in their Medicaid payment rates.¹

OBJECTIVE

Our objective was to determine whether Missouri's Medicaid payment rates for group home habilitation services provided and paid for during State fiscal years (SFYs) 2011 through 2013 were in accordance with Federal requirements.

BACKGROUND

Medicaid Program

The Medicaid program provides medical assistance to low-income individuals and individuals with disabilities (Title XIX of the Social Security Act (the Act)). The Federal and State Governments jointly fund and administer the Medicaid program. At the Federal level, the Centers for Medicare & Medicaid Services (CMS) administers the program. Each State administers its Medicaid program in accordance with a CMS-approved State plan. Although the State has considerable flexibility in designing and operating its Medicaid program, it must comply with applicable Federal requirements.

States use the standard Form CMS-64, Quarterly Medicaid Statement of Expenditures for the Medical Assistance Program (CMS-64 report), to report actual Medicaid expenditures for each quarter. CMS uses the CMS-64 reports to reimburse States for the Federal share of Medicaid expenditures. The amounts that States report on the CMS-64 report and its attachments must be actual expenditures with supporting documentation. The amount that the Federal Government reimburses to State Medicaid agencies, known as Federal financial participation (FFP) or Federal share, is determined by the Federal medical assistance percentage (FMAP), which varies based on a State's relative per capita income. Although FMAPs are adjusted annually for economic changes in the States, Congress may increase or decrease FMAPs at any time. During our audit period, Missouri's FMAP ranged from 63.29 percent to 74.43 percent.²

¹ *New York Claimed Unallowable Room-and-Board Costs Under Its Developmental Disabilities Waiver Program* (A-02-12-01031), issued May 6, 2014, and *South Carolina Claimed Some Unallowable Room-and-Board Costs Under the Intellectual and Related Disabilities Waiver* (A-04-11-04012), issued September 12, 2012.

² Under the provisions of the American Recovery and Reinvestment Act of 2009, P.L. No. 111-5 (Feb. 17, 2009), as amended by P.L. No. 111-226 (Aug. 10, 2010), States' FMAPs were temporarily increased for the period October 1, 2008, through June 30, 2011. Our review took the increased FMAPs into account for the portion of our audit period (four quarters) affected by Missouri's increased FMAPs.

Home and Community-Based Waivers

Section 1915(c) of the Act authorizes Medicaid HCBS waiver programs. A State’s HCBS waiver, which must be approved by CMS, allows a State to claim Federal reimbursement for services not usually covered by Medicaid. HCBS are generally provided to Medicaid-eligible beneficiaries in the community rather than in an institutional setting.

Missouri Medicaid Program

The Department of Social Services, Missouri HealthNet Division (State agency), administers the provision and payment of Medicaid services in Missouri. The State agency uses the Medicaid Management Information System (MMIS), a computerized payment and information reporting system, to process and pay Medicaid claims.

Missouri Developmental Disabilities Waiver Program

In Missouri, the developmental disabilities waiver program is 1 of 10 waiver programs³ covered under the HCBS waiver and is operated by DMH. The developmental disabilities waiver program includes group home habilitation services, which include care, supervision, and skills training in activities of daily living, home management, and community integration. These services are provided to groups of individuals in group homes, residential care centers, and semi-independent living situations (collectively referred to as “group homes” for this report).

Methodology for Setting Payment Rates for Group Home Habilitation Services

The State agency pays providers of group home habilitation services (group home providers) at a per-diem payment rate that is specific to each provider. Missouri’s CMS-approved developmental disabilities waiver⁴ states that as the first step in developing that payment rate, an approved group home provider submits to the State agency a proposed budget that itemizes the cost of providing group home habilitation services. The group home provider can then either accept a “profile rate” (a term the State agency uses to refer to a payment rate that it has specified based on the level of care that will be provided) or negotiate the payment rate with DMH staff. Under the latter option, the State agency determines the payment rate after consideration of several parameters,⁵ not all of which may be applicable to any particular group home provider:

- (1) staffing ratios based on the level-of-care needs of the population projected to be served;

³ There are a total of 10 waivers under Missouri’s HCBS waiver program. The Missouri Department of Mental Health (DMH) operates five of the HCBS waiver programs, including the developmental disabilities waiver program; the other five are operated by the Missouri Department of Health and Senior Services (DHSS). The State agency, DMH, and DHSS, are separate entities of the Missouri State Government.

⁴ Application for a §1915(c) Home and Community-Based Services Waiver, Developmental Disabilities Comprehensive Waiver [Missouri’s developmental disabilities waiver] (July 1, 2011).

⁵ Missouri’s developmental disabilities waiver, Appendix I-2, “Rates, Billing and Claims.”

- (2) extraordinary circumstances beyond the facility's control; and
- (3) a comparison of provider-reported costs, for categories such as staff, administrative services, fringe benefits, and ancillary costs, to known costs of other providers of similar services in the same region.

Missouri's developmental disabilities waiver states that payment rates for group home habilitation services do not include room-and-board costs.⁶ Rather, DMH should pay room-and-board costs directly to group home providers using State-only funds.

HOW WE CONDUCTED THIS REVIEW

We reviewed the State agency's supporting documentation (that is, the provider cost reports) for 100 providers' payment rates for group home habilitation services provided and paid for during SFYs 2011 through 2013.⁷ For the payment rates for which support was available, we identified room-and-board costs that were included in the payment rates. We then recalculated the payment rates excluding the room-and-board costs and applied the rates to the actual MMIS claims for group home habilitation services provided and paid for during SFYs 2011 through 2013.⁸ For the payment rates with no supporting documentation, we identified the amount paid in MMIS for the group home habilitation services claims provided and paid for in SFYs 2011 through 2013.

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 details of our audit scope and methodology.

FINDINGS

The State agency's Medicaid payment rates for group home habilitation services provided and paid for during SFYs 2011 through 2013 were not always in accordance with Federal requirements. Specifically, the State agency included room-and-board costs in some of its payment rates for group home habilitation services. Because this practice is prohibited under

⁶ Costs of room and board are allowable if they are part of respite care services in State-approved facilities that are not private residences or under waivers that allow personal caregivers to provide approved, designated services (42 CFR § 441.310(a)(2)). These types of allowable room-and-board costs are not a factor in the findings conveyed in this audit report.

⁷ The State agency normally contracts with group home providers for 3-year periods. During a provider's contract period, the contracted rate can change because of cost-of-living adjustments, contract amendments, or both. For this reason, our sample of 100 providers had a total of 313 payment rates during our audit period.

⁸ Some of our recalculated payment rates were higher than the actual rates that were paid to the providers. We applied the higher rates to the MMIS claims data when we recalculated the Medicaid payments.

Federal requirements, the associated payments were unallowable. In addition, the State agency could not provide supporting documentation for some of its payment rates, and as a result we could not determine whether those payment rates included room-and-board costs.

Because the State agency included unallowable room-and-board costs in some of its payment rates for group home habilitation services, it claimed unallowable Medicaid payments of \$4,636,719 (\$3,034,157 Federal share) during SFYs 2011 through 2013. This amount represents the difference between (1) the payment rates originally claimed by the State agency that improperly included room-and-board costs and (2) the payment rates that we recalculated without room-and-board costs. In addition, because the State agency could not provide supporting documentation for some of its payment rates for these services, we were unable to determine the allowability of Medicaid payments totaling \$59,073,055 (\$39,146,865 Federal share) that the State agency claimed during this same period.

FEDERAL REGULATIONS AND MISSOURI'S DEVELOPMENTAL DISABILITIES WAIVER REQUIREMENTS

Room-and-board⁹ costs are generally not allowable under an HCBS waiver (42 CFR § 441.310(a)(2)) (except as noted in footnote 6). In addition, a State's HCBS waiver services must meet certain requirements for the State to receive Medicaid reimbursement (42 CFR §§ 440.2(b) and 440.180).

Missouri's developmental disabilities waiver lists the parameters to be considered in negotiating the payment rates for group home habilitation services: (1) staffing ratios based on the level-of-care needs of the population projected to be served; (2) extraordinary circumstances beyond the facility's control; and (3) provider-reported costs, for categories such as staff, administrative services, fringe benefits, and ancillary costs, in comparison to known costs of other providers of similar services in the same region.

Missouri's developmental disabilities waiver also states that payment rates for group home habilitation services do not include room-and-board costs. Rather, DMH should pay room-and-board costs directly to group home providers using State-only funds. (Application for a § 1915(c) Home and Community-Based Services Waiver, Developmental Disabilities Comprehensive Waiver, Appendix I-2, "Rates, Billing and Claims" (July 1, 2011)).

States must assure financial accountability for funds expended under the HCBS waiver program and make available to the OIG appropriate financial records documenting the cost of services provided under the HCBS waiver (42 CFR § 441.302).

Details on the requirements of these Federal regulations and the developmental disabilities waiver with respect to Medicaid payments for group home habilitation services appear in Appendix B.

⁹ CMS's *State Medicaid Manual*, section 4442.3.B.12, defines "room" as hotel or shelter-type expenses, including all property-related costs (e.g., rental or purchase of real estate and furnishings, maintenance, utilities, and related administrative services) and defines "board" as three meals a day or any other full nutritional regimen.

THE STATE AGENCY’S MEDICAID PAYMENT RATES WERE NOT ALWAYS IN ACCORDANCE WITH FEDERAL REQUIREMENTS

The State Agency Included Unallowable Room-and-Board Costs in Some of Its Payment Rates

Some of the State agency’s Medicaid payment rates for group home habilitation services included room-and-board costs, which are unallowable under Federal requirements. Specifically, of the 313 payment rates (for 100 providers) that we reviewed (footnote 7), 212 of the payment rates had supporting documentation. Of these 212 payment rates, 136 payment rates included unallowable room-and-board costs, such as costs for repairs, maintenance, utilities, and other property-related issues. No discrepancies came to our attention with respect to the other 76 payment rates with supporting documentation.

During our fieldwork, State agency officials agreed with our categorization of unallowable room-and-board costs according to Federal regulations and the developmental disabilities waiver. However, these officials asserted that, according to the developmental disabilities waiver, a payment rate can be negotiated on the basis of a number of parameters that may or may not include costs indicated by the provider. These officials added that, therefore, the provider cost reports may or may not have been relevant to the payment rates that we reviewed because it was unclear whether the cost reports were used in the negotiation process.

When, in response to these statements, we asked the State agency to give us supporting documentation for the 136 payment rates in question, it gave us provider cost reports only. The State agency did not provide us with any other documentation to support that a negotiation process that considered parameters other than the provider cost reports had taken place in connection with these payment rates. In addition, we found that many of the payment rates accepted and used by the State agency matched the payment rates calculated on the provider cost reports—which suggests that it may not have used or considered other parameters in the negotiation process. The table below shows representative examples.

Table: Comparison of Some State Agency’s Payment Rates to Provider Cost Report Payment Rates

	State Agency’s Payment Rate	Provider’s Cost Report Payment Rate
Provider #1	\$130	\$130
Provider #2	\$114	\$115
Provider #3	\$163	\$165
Provider #4	\$370	\$370
Provider #5	\$143	\$144
Provider #6	\$284	\$288
Provider #7	\$430	\$430
Provider #8	\$178	\$175
Provider #9	\$202	\$202
Provider #10	\$423	\$423

Because the State agency included unallowable room-and-board costs in some of its payment rates for group home habilitation services, it claimed unallowable Medicaid payments of \$4,636,719 (\$3,034,157 Federal share) during SFYs 2011 through 2013. This amount represents the difference between (1) the payment rates originally claimed by the State agency that improperly included room-and-board costs and (2) the payment rates that we recalculated without room-and-board costs.

The State Agency Could Not Provide Supporting Documentation for Some of Its Payment Rates

The State agency could not provide supporting documentation for some of its Medicaid payment rates for group home habilitation services. Without supporting documentation to show what parameters DMH staff considered in negotiating the payment rates or to explain how the payment rates were calculated, we were unable to determine whether room-and-board costs were included in 101 of the 313 payment rates that we reviewed.

The fact that, as stated earlier, a significant number of the *supported* payment rates we reviewed (136 out of 212) included room-and-board costs substantially increases the likelihood that a significant number of the *unsupported* payment rates may also have included room-and-board costs. Resolution of this situation would require the State agency to obtain supporting documentation for the unsupported payment rates and use the documentation to determine the payment rates exclusive of room-and-board costs.

Because the State agency could not provide supporting documentation for some of its payment rates for group home habilitation services, it claimed unsupported Medicaid payments of \$59,073,055 (\$39,146,865 Federal share), whose allowability we could not determine, during SFYs 2011 through 2013.

RECOMMENDATIONS

We recommend that the State agency:

- refund \$3,034,157 to the Federal Government,
- obtain supporting documentation (that is, provider cost reports) from the group home providers for the unsupported Medicaid payments of \$39,146,865 and
 - recalculate any payment rates that include room-and-board costs and
 - apply any recalculated payment rates to actual claims and refund any additional unallowable amount to the Federal Government,
- follow Federal requirements by ensuring that room-and-board costs are excluded when determining the payment rates for group home habilitation services, and

- follow Federal requirements by maintaining supporting documentation to show how payment rates for group home habilitation services are calculated.

STATE AGENCY COMMENTS

In written comments on our draft report, the State agency disagreed with our first and second recommendations and stated that it would continue to follow Federal requirements with respect to our third and fourth recommendations.

Regarding our first recommendation, the State agency said that it reimbursed group homes for room and board through State-only payments, not through Medicaid payments. The State agency added that group home providers were reimbursed for group home habilitation services through a negotiated per diem rate or through a prospective payment system (PPS) per diem rate based on costs in pre-enrollment cost reports. The State agency also stated that the costs we questioned that were based on information drawn from old provider cost reports are not necessarily unallowable room-and-board costs. The costs at issue, according to the State agency, were associated with utilities, maintenance, repair, rent, property taxes, food, and household supplies that are permitted under the *State Medicaid Manual*, section 4442.3.B.15. The State agency further asserted that these costs "... that are incurred solely because a group home functions as a provider are not room-and-board costs." (Emphasis in original.)

Regarding our second recommendation, the State agency said that it would be happy to forward the provider cost reports to CMS but is unable to find them. The State agency pointed out that State Medicaid programs are generally required to retain documentation only for 3 years (42 CFR §§ 433.32(b) and (c)) and added that most, if not all, of the cost reports in question are well over 3 years old.

The State agency's comments appear in their entirety in Appendix C.

OFFICE OF INSPECTOR GENERAL RESPONSE

After reviewing the State agency's comments, we maintain that our findings and recommendations remain valid.

We acknowledge that the State agency separately calculated payment rates to reimburse group homes for room-and-board costs. Those payment rates were not included in the scope of our audit. Rather, the scope of our audit included only payment rates for group home habilitation services.

The State agency acknowledged that the starting point for developing provider-specific payment rates to reimburse group homes was the pre-enrollment cost reports. These cost reports included costs associated with room and board (e.g., expenses for utilities, maintenance, repair, rent, property taxes, food, and household supplies). As stated in the body of this report, when we asked the State agency to give us supporting documentation for the payment rates for the group home habilitation services in question, it gave us provider cost reports only. The State agency did not provide us with any other documentation to support that a negotiation process that

considered parameters other than the provider cost reports had taken place in connection with these payment rates. In addition, we found that many of the payment rates accepted and used by the State agency matched the payment rates calculated on the provider cost reports—which suggests that it did not use or consider other parameters in the negotiation process. Because room-and-board costs were used in the negotiation rate process, the prospective payment rate calculation process, or both, it is appropriate for us to question them after we had recalculated the payment rates.

In addition, while the *State Medicaid Manual*, section 4442.3.B.15, states that certain fixed costs may be taken into account when developing payment rates for providers, the language in the provision is at best ambiguous. Moreover, because room and board costs are statutorily prohibited, any policy that allows such costs to be allocated as a cost of habilitation services would not apply.¹⁰

Furthermore, while the State agency contended in its comments that the costs were incurred solely because a group home functioned as a provider and that these were not room-and-board costs, the nature of habilitation services necessitates provision in living spaces, “which the facility would have to have even if only room and board were being provided for these residents.”¹¹ In addition, the ordinary meaning of “room and board” means the provision of living space and meals, which clearly includes the costs at issue here. (See *Pennsylvania Department of Public Welfare v. United States HHS* [Department of Health and Human Services], 2010 U.S. Dist. LEXIS 31914, at *19-21 (M.D. Pa. 2010), *aff’d*, 647 F.3d 506 (3d Cir. 2011)). Therefore, the identified questioned costs conveyed in this audit report are unallowable room-and-board costs.

The State agency also cited 42 CFR §§ 433.32(b) and (c) to support its argument that it is required to retain documentation only for 3 years. However, this regulatory provision in its entirety actually states:

- (b) Retain records for 3 years from date of submission of a final expenditure report;
- (c) Retain records beyond the 3-year period if audit findings have not been resolved....

Because the expenditures in question were claimed in SFYs 2011 through 2013 and because we notified the State agency of this audit on May 21, 2014, the relevant documentation fell within the 3-year record retention period. This would include the requirement that the State agency provide support to show the parameters or other factors on which it had based those expenditures. Furthermore, the State agency is required to “maintain documentation of payment rates and make it available to HHS upon request” (42 CFR § 447.203(a)). This provision includes the requirement to maintain documentation of the underlying data on which the rates are based.¹² In addition to the Federal regulation, Missouri requires its Medicaid providers to retain

¹⁰ *Pennsylvania Department of Public Welfare*, DAB No. 2152, at 16 (2008), *rev’d*, 2010 U.S. Dist. LEXIS 31914 (M.D. Pa. 2010), *aff’d*, 647 F.3d 506 (3d Cir. 2011).

¹¹ *Id.*, at 13-14.

¹² See *Louisiana Department of Health and Hospitals*, DAB No. 1542 (1995).

all records for a minimum of 5 years from the date of service unless a more specific provider regulation applies (13 CSR [Code of State Regulations] 70-3.030(3)(A)(4)).

APPENDIX A: AUDIT SCOPE AND METHODOLOGY

SCOPE

During SFYs 2011 through 2013 (July 1, 2010, through June 30, 2013), the State agency claimed Medicaid reimbursement totaling \$428,462,731 (\$284,308,229 Federal share) for group home habilitation services provided by 546 different providers. We reviewed a sample of 100 providers that had 313 payment rates with associated Medicaid reimbursement of \$139,970,543 (\$92,670,063 Federal share) during the audit period.

We did not perform a detailed review of the State agency's internal controls because our objective did not require us to do so. We limited our review to the controls that pertained directly to our objective.

We conducted fieldwork at the State agency in Jefferson City, Missouri, and at State agency regional offices throughout Missouri, from August 2014 through January 2015.

METHODOLOGY

To accomplish our objective, we:

- reviewed applicable Federal requirements and the CMS-approved developmental disabilities waiver;
- held discussions with officials from the State agency and DMH to gain an understanding of the State agency's payment rate methodology for group home habilitation services;
- reviewed MMIS claim payment data for group home habilitation services provided and paid for in SFYs 2011 through 2013;
- reconciled the MMIS claim payment data for group home habilitation services to the Medicaid payments claimed on the State agency's CMS-64 reports for SFYs 2012 and 2013;
- identified, from the SFYs 2011 through 2013 MMIS claim payment data, the group home providers that provided and were paid for group home habilitation services;
- reviewed three providers' cost reports to determine whether costs reported were supported;¹³
- randomly selected 100 providers and reviewed the State agency's supporting documentation (that is, the provider cost reports) for the associated 313 payment rates for group home habilitation services provided and paid for during SFYs 2011 through 2013;

¹³ Two of the three provider cost reports that we reviewed had adequate support for their costs; we noted no major discrepancies with respect to these cost reports. However, the remaining provider did not have any support for its costs.

- removed unallowable room-and-board costs from the payment rates—when support was available—and recalculated the payment rates;
- determined, for the 212 payment rates that had supporting documentation, the allowable Medicaid payments for group home habilitation services by applying the recalculated payment rates to the actual MMIS claims for these services that were provided and paid for during SFYs 2011 through 2013;
- determined, for these 212 payment rates that had supporting documentation, the unallowable Medicaid payments for group home habilitation services by comparing the allowable Medicaid payments to the Medicaid payments that the State agency actually paid for these services for SFYs 2011 through 2013;
- determined, for the 101 payment rates that had no supporting documentation, the unsupported Medicaid payments for group home habilitation services by identifying the amount the State agency actually paid for these services during SFYs 2011 through 2013; and
- discussed the results of our review with State agency officials on January 28, 2015.

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 B: FEDERAL REQUIREMENTS AND MISSOURI'S
DEVELOPMENTAL DISABILITIES WAIVER REQUIREMENTS RELATED TO
MEDICAID PAYMENTS FOR GROUP HOME HABILITATION SERVICES**

FEDERAL REQUIREMENTS

Section 1915(c)(1) of the Act authorizes and allows payment for HCBS:

The Secretary [of HHS] may by waiver provide that a State plan approved under this title may include as “medical assistance” under such plan payment for part or all of the cost of home or community-based services (other than room and board) approved by the Secretary which are provided pursuant to a written plan of care to individuals with respect to whom there has been a determination that but for the provision of such services the individuals would require the level of care provided in a hospital or a nursing facility or intermediate care facility for the mentally retarded the cost of which could be reimbursed under the State [Medicaid] plan. For purposes of this subsection, the term “room and board” shall not include an amount established under a method determined by the State to reflect the portion of costs of rent and food attributable to an unrelated personal caregiver who is residing in the same household with an individual who, but for the assistance of such caregiver, would require admission to a hospital, nursing facility, or intermediate care facility for the mentally retarded.

Federal regulations (42 CFR § 441.310(a)(2)) state that Federal reimbursement for HCBS is not available for expenditures for the cost of room and board except when provided as:

- (i) Part of respite care services in a facility approved by the State that is not a private residence; or
- (ii) For waivers that allow personal caregivers as providers of approved waiver services, a portion of the rent and food that may be reasonably attributed to the unrelated caregiver who resides in the same household with the waiver beneficiary. FFP for a live-in caregiver is not available if the beneficiary lives in the caregiver’s home or in a residence that is owned or leased by the provider of Medicaid services (the caregiver). For purposes of this provision, “board” means 3 meals a day or any other full nutritional regimen and does not include meals provided as part of a program of adult day health services as long as the meals provided do not constitute a “full” nutritional regimen.

Federal regulations (42 CFR § 440.2(b)) state: “FFP is available in expenditures under the State plan for medical or remedial care and services as defined in this subpart.”

Federal regulations (42 CFR § 440.180(a)(3)) state: “The services are subject to the limits on FFP described in § 441.310....”

Federal regulations (42 CFR § 441.302(b)) regarding financial accountability for the HCBS waiver program state:

The [State] agency will assure financial accountability for funds expended for home and community-based services ... and it will maintain and make available to [HHS], the Comptroller General, or other designees, appropriate financial records documenting the cost of services provided under the waiver....

MISSOURI'S DEVELOPMENTAL DISABILITIES WAIVER REQUIREMENTS

Missouri's CMS-approved developmental disabilities waiver (footnote 4), Appendix I, "Financial Accountability," states: "The reported costs are reviewed by staff and a unit rate is negotiated. Each provider's rate is set based on reported costs with the condition the rate must not exceed the maximum allowable set by the state for that particular service code."

In addition, the developmental disabilities waiver lists the parameters that are considered in negotiating the payment rate: (1) staffing ratios required based on the level-of-care needs of prospective persons to be served; (2) extraordinary circumstances beyond the control of the facility, such as location; and (3) costs the provider reports for direct care staff, professional staff, administrative services, fringe benefits, ancillary costs, and other costs, in comparison with known costs of other providers in the region that provide similar services.

The developmental disabilities waiver also states that payment rates for group home habilitation services do not include room-and-board costs. Room and board is paid directly to the provider by DMH using State-only funds.

APPENDIX C: STATE AGENCY COMMENTS



JEREMIAH W. (JAY) NIXON, GOVERNOR • BRIAN KINKADE, DIRECTOR

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June 18, 2015

Patrick J. Cogley
Regional Inspector General for Audit Services
Office of Audit Services, Region VII
Office of Inspector General
U.S. Department of Health and Human Services
601 East 12th Street, Room 0429
Kansas City, MO 64106

Re: Draft Audit Report A-07-14-03201

Dear Mr. Cogley:

This letter is in response to the U.S. Department of Health and Human Services, Office of Inspector General (OIG), draft report entitled, *Missouri Claimed Unallowable and Unsupported Medicaid Payments for Group Home Habilitation Services*, A-07-14-03201 dated May 21, 2015.

For the reasons explained below, the Missouri Department of Social Services ("the State" or "Missouri") disagrees with the OIG's draft recommendations that the State should return \$3,034,157 to the federal government and obtain old cost reports for dozens of group homes.

1. The State Disagrees with the OIG's Draft Recommendation that the State Refund \$3,034,157 to the Federal Government.

The OIG asserts that Missouri claimed \$3,034,157 in federal financial participation (FFP) for the room-and-board costs of group homes providing residential habilitation services under Missouri's Section 1915(c) waiver for individuals with developmental disabilities.

The State disagrees with the OIG's recommendation. The State reimbursed the group homes for room-and-board through state-only payments, not through Medicaid payments. The state-only room-and-board payments were based on the room-and-board costs in a base year and negotiations between the State and the group homes, which often sought and received a higher state-only room-and-board payments. The state Medicaid program did not reimburse the group homes for any costs, let alone room-and-board costs. Rather, Medicaid paid group homes either through a negotiated per diem rate or through a prospective payment system per diem rate. To develop the prospective payment rate, the State first calculated a provider-specific per diem rate for the group home's first year

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in the program, based on the costs in a pre-enrollment cost reports. For example, if a group home became a waiver provider in 2003, its 2003 base rate might have been based on its 2001 cost report. The State then increased the group home's base rate annually by a cost of living adjustment. Group homes were paid a rate equal to the base rate increased by the cost of living adjustment, irrespective of their actual costs in that year. Although the original base rate was based on the group home's costs, the State did not actually reimburse group homes for their costs. To the contrary, if a group home's costs in a year exceed the rate, then the group home bore that loss.

The State also disagrees that the questioned costs on the old cost reports are necessarily unallowable room-and-board costs. The costs at issue are associated with utilities, maintenance, repair, rent, property taxes, food, and household supplies. States are permitted to reimburse waiver providers for "fixed costs such as rent, staff salaries, insurance, etc." See State Medicaid Manual § 4442.3.B.15. Not all of the occupancy costs of a building in which enrollees both live and receive services are room-and-board costs; some occupancy costs are attributable to the Medicaid-reimbursable waiver services provided by the group homes, *i.e.*, habilitation services involving sensory/motor development, interpersonal skills, communication, behavior shaping, mobility, socialization, and household responsibilities (among other things). For example, the group homes use more electricity, gas, and water than they would if their residents did not receive their services at the facility, but left each day for a day habilitation center. These costs that are incurred solely because a group home functions as a provider are not room-and-board costs. We recognize that the Departmental Appeals Board has rejected one State's effort to claim for certain occupancy costs incurred by residential waiver providers.¹ In that case, the State was "not claiming that the occupancy costs have increased in order to provide habilitation services." (Emphasis added.) In contrast, in this case, Missouri contends that providing waiver services does increase the group homes' occupancy costs.

2. The State Disagrees with the OIG's Recommendation that the State Should Obtain Cost Reports for Dozens of Group Home Providers.

The OIG recommends that the State provide cost reports for 101 group home payment rates for which it claims the State was unable to find supporting documentation.

The State disagrees with this recommendation. If the State had the cost reports, it would be happy to provide them to CMS. However, despite a diligent search, Missouri is simply unable to find the cost reports on which these rates may have been based (in whole or in part). While Missouri was not legally obligated to retain the requested documents, the state employee responsible for retaining the cost reports and calculating the original rates has long since retired, and many of the records he maintained may have been destroyed. To the extent group homes were reimbursed with a prospective payment system rate, as opposed to a negotiated rate, those rates are based on the cost report provided to the State when the provider first enrolled in the program, which in most cases was years ago. State Medicaid programs are generally only required to retain documentation for three years, 42 C.F.R. § 433.32(b)-(c), and most (if not all) of the cost reports sought are well over three years old.

¹ See *Pennsylvania Dep't of Pub. Welfare*, DAB No. 2152 (2008); see also *Pennsylvania Dep't of Pub. Welfare*, DAB No. 2391 (2011). The Board's decision was upheld on appeal. See *Pennsylvania Dep't of Pub. Welfare v. HHS*, No. 1:08-CV-791, 2010 WL 1390835 (D. Pa. Mar. 31, 2010), *aff'd* 647 F.3d 506 (3d Cir. 2011).

Patrick J. Cogley
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3. The State Will Follow Federal Requirements with Respect to Reimbursement for Room-and-Board Costs.

The State will continue to follow federal requirements and ensure that Medicaid does not reimburse waiver providers for room-and-board costs. Missouri has moved to an assessment-based methodology for setting rates, however until adequate funding is made available some historical rates for individuals are not based on the assessment.

4. The State Will Follow Federal Requirements for Maintaining Documentation.

The State will continue to comply with the document retention and maintenance requirements specified in federal regulations.

Please contact Patrick Luebbering, Director, Division of Finance and Administrative Services at (573) 751-7533 if you have further questions.

Sincerely,



Brian Kinkade
Director

BDK:PL:bsb

cc: James Scott
Greg Tambke