

Department of Health and Human Services

**OFFICE OF  
INSPECTOR GENERAL**

**PUBLIC HEALTH SERVICE'S OVERSIGHT  
OF THE HILL-BURTON PROGRAM**



AUGUST 1992

## **OFFICE OF INSPECTOR GENERAL**

The mission of the Office of Inspector General (OIG), as mandated by Public Law 95-452, as amended, is to protect the integrity of the Department of Health and Human Services' (HHS) programs as well as the health and welfare of beneficiaries served by those programs. This statutory mission is carried out through a nationwide network of audits, investigations, and inspections conducted by three OIG operating components: the Office of Audit Services, the Office of Investigations, and the Office of Evaluation and Inspections. The OIG also informs the Secretary of HHS of program and management problems and recommends courses to correct them.

### **OFFICE OF AUDIT SERVICES**

The OIG's Office of Audit Services (OAS) provides all auditing services for HHS, either by conducting audits with its own audit resources or by overseeing audit work done by others. Audits examine the performance of HHS programs and/or its grantees and contractors in carrying out their respective responsibilities and are intended to provide independent assessments of HHS programs and operations in order to reduce waste, abuse, and mismanagement and to promote economy and efficiency throughout the Department.

### **OFFICE OF INVESTIGATIONS**

The OIG's Office of Investigations (OI) conducts criminal, civil, and administrative investigations of allegations of wrongdoing in HHS programs or to HHS beneficiaries and of unjust enrichment by providers. The investigative efforts of OI lead to criminal convictions, administrative sanctions, or civil money penalties. The OI also oversees State Medicaid fraud control units which investigate and prosecute fraud and patient abuse in the Medicaid program.

### **OFFICE OF EVALUATION AND INSPECTIONS**

The OIG's Office of Evaluation and Inspections (OEI) conducts short-term management and program evaluations (called inspections) that focus on issues of concern to the Department, the Congress, and the public. The findings and recommendations contained in these inspection reports generate rapid, accurate, and up-to-date information on the efficiency, vulnerability, and effectiveness of departmental programs. This report was prepared in the Chicago Regional Office under the direction of William C. Moran, Regional Inspector General and Natalie Coen, Deputy Regional Inspector General. Project staff:

#### **REGION**

John M. Traczyk (Project Leader)  
Thomas F. Komaniecki  
Margaret Shell

#### **HEADQUARTERS**

Ruth Folchman

To obtain a copy of this report, call the Chicago Regional Office at (312) 353-4124.

Department of Health and Human Services

**OFFICE OF  
INSPECTOR GENERAL**

**PUBLIC HEALTH SERVICE'S OVERSIGHT  
OF THE HILL-BURTON PROGRAM**



AUGUST 1992    OEI-05-90-00260

# EXECUTIVE SUMMARY

---

## PURPOSE

This inspection examines the processes used by the Public Health Service (PHS) to evaluate and monitor the uncompensated care obligations of health care facilities assisted by the Hill-Burton program.

## BACKGROUND

The Hospital Survey and Construction Act, commonly known as the Hill-Burton Act, authorized Federal grants, loans and loan guarantees to assist States and communities in constructing needed hospital and public health centers.

To be eligible for Hill-Burton funds, the applicant had to be a public or not-for-profit entity. The Hill-Burton Act required that the applicant maintain this status for a period of 20 years. These facilities were to make available a reasonable volume of free services to persons unable to pay (uncompensated care obligation).

Since 1946, more than \$4 billion in Hill-Burton funds have aided nearly 6,900 hospitals and other health care facilities in 4,000 communities across the United States. As of April 1991, 2,610 Hill-Burton facilities remain obligated and must provide a reasonable amount of uncompensated care each year. The cooperation of facilities that have received Hill-Burton grants is important to achieving the Department's strategic goal to improve access to health care for all Americans.

## METHODOLOGY

We interviewed PHS headquarters' staff and staff in the 8 regional offices which account for 92 percent of the remaining Hill-Burton workload. We gathered and analyzed financial and other data provided by PHS headquarters and regional offices.

## FINDINGS

- Fifty-three percent of Hill-Burton facilities currently obligated are not providing sufficient uncompensated care to meet their annual obligation.
- Reliance on self-reported data and inadequate record retention compromise PHS monitoring efforts.
- Complaint investigations resolve individual problems but do not ensure facility compliance with the Hill-Burton requirement to provide uncompensated care.

- The PHS lacks authority to directly enforce compliance with Hill-Burton regulations.
- Facilities transferring ownership after 20 years may cause the Hill-Burton program to lose a portion of the uncompensated care available.
- Nearly \$50 million recovered from Hill-Burton facilities was not available to pay for free medical care.

## RECOMMENDATIONS

We are recommending the following improvements to further strengthen the processes used by PHS. The PHS should:

- 1) develop methods for independent verification of information provided by facilities during substantial compliance audits and complaint investigations.
- 2) expand their investigation when a complaint alleging noncompliance is substantiated or revise the *Guide to Conducting Substantial Compliance Reviews and Audits* to ensure that auditors clearly understand that an expanded compliance review should be conducted on facilities found to have substantiated complaints.
- 3) ensure that regional offices maintain records for a minimum of 5 years after the close of a substantial compliance audit or complaint investigation.
- 4) seek legislative authority to enforce compliance through administrative remedies.
- 5) seek legislation that would allow for recovery of the uncompensated care obligation if a deficit remains at the time of a post 20 year transfer.
- 6) seek legislation that would allow for the return of monies recovered from facilities back into PHS grant programs.

The PHS has informed us that it has taken action on five of our recommendations. They will not seek legislative authority to enforce compliance until they have had time to study why facilities are in deficit and to develop alternatives that would assist facilities in achieving compliance. If progress is not made in developing alternatives to assist facilities in achieving compliance at the end of 1 year, PHS will seek legislative authority to enforce compliance through administrative remedies as suggested in this report.

# TABLE OF CONTENTS

---

	PAGE
<b>EXECUTIVE SUMMARY</b> .....	i
<b>INTRODUCTION</b> .....	1
<b>FINDINGS</b> .....	5
Fifty-three percent of Hill-Burton facilities currently obligated are not providing sufficient uncompensated care to meet their annual compliance level. ....	5
Reliance on self-reported data and inadequate record retention compromise PHS monitoring efforts .....	5
Complaint investigations resolve individual problems but do not ensure facility compliance with the Hill-Burton requirement to provide uncompensated care. ....	7
The PHS lacks authority to directly enforce compliance with Hill-Burton regulations .....	8
Facilities transferring ownership after 20 years may cause the Hill-Burton program to lose a portion of the uncompensated care available. ....	8
Nearly \$50 million recovered from Hill-Burton facilities was not available to pay for free medical care. ....	9
<b>RECOMMENDATIONS</b> .....	11
<b>APPENDICES</b>	
<b>A: PHS Comments</b> .....	A-1
<b>B: OCR Comments</b> .....	B-1

# INTRODUCTION

---

## PURPOSE

This inspection examines the processes used by the Public Health Service (PHS) to evaluate and monitor the uncompensated care obligations of health care facilities assisted by the Hill-Burton program.

## BACKGROUND

In 1946, Congress passed the Hospital Survey and Construction Act, commonly known as the Hill-Burton Act. Since 1946, more than \$4 billion in Hill-Burton funds have aided nearly 6,900 hospitals and other health care facilities in 4,000 communities across the United States. These other health care facilities include public health centers, nursing homes, chronic disease hospitals and other types of facilities. The Hill-Burton program provided funds to facilities through 1978. As of April 1991, 2,610 facilities continued to be obligated under the Hill-Burton program.

To be eligible for Hill-Burton funds, the applicant had to be a public or not-for-profit entity. The Hill-Burton Act required that the applicant maintain this status for a period of 20 years. These facilities were to make available a reasonable volume of free services to persons unable to pay (uncompensated care obligation).

Each Hill-Burton assisted facility is required to develop an uncompensated care allocation plan, indicating the type of services available to persons unable to pay. These facilities must also publish a notice of their obligation to provide free medical care in a local newspaper, post notices within their facility, and provide individual notices of the availability of free care to all patients. Hill-Burton recipients are required to report to the Department of Health and Human Services (HHS) the level of uncompensated services they have provided at least once every 3 years.

The amount of uncompensated care a Hill-Burton recipient must provide is calculated by PHS. The obligation is prorated over 20 years, dating from the completion of construction of any facility built with Hill-Burton funds. If a facility does not provide the required level of uncompensated services in a given year, it must make up the deficit, even if it takes longer than 20 years. Facilities that provide more than the required level of uncompensated services may have the excess credited to future years of obligation. This means that a facility may fulfill its uncompensated services obligation in less than 20 years.

For a person to be eligible for Hill-Burton coverage, they must not be covered under a third party insurer or government program and fall into one of two income categories. Persons whose income falls below the poverty line are entitled to receive services without charge. Hill-Burton facilities are not required to provide uncompensated

services to persons whose incomes are more than the poverty level. If a facility chooses to provide services to persons whose incomes are greater but not more than double the poverty level, they may do so at no charge or at a reduced charge.

Facilities may be certified under the public facility compliance alternative. To qualify as a public facility, the facility must be owned by a unit of State or local government. It must receive, on average, 10 percent of its operating revenue from State or local government or provide uncompensated services in an amount not less than twice its annual compliance level. Currently, there are 591 facilities certified under this alternative, many of which are located in impoverished areas of cities and provide a substantial amount of free care.

The PHS monitors Hill-Burton facilities to assure that the obligations are discharged and that the correct amounts of uncompensated care have been rendered. They also conduct routine compliance monitoring, handle complaints and monitor facilities for events that might change the terms under which the facility received Hill-Burton assistance.

Monitoring Hill-Burton facilities involves a desk review of patient accounts, patient eligibility information, individual notices and facility published allocation plans. A letter is sent to the facility at the end of its fiscal year informing them of PHS's intent to assess their compliance with Hill-Burton uncompensated services obligations. The letter requests that the facility submit information concerning its Hill-Burton free care program within 90 days of the close of its fiscal year.

The PHS uses the information provided by the facility to verify the amount of uncompensated care the facility claims to have provided. This is done by reviewing a random sample of 10 approved patient accounts. If fewer than two mistakes are found, then a facility receives full credit for the amount of uncompensated care claimed. If two or more mistakes are found, then PHS will review a random sample of 100 approved patient accounts. A percentage of correct determinations will then be applied to the amount of uncompensated care claimed. The PHS also reviews copies of the facility's policies, notices and other information on how its uncompensated care program operates.

The Federal Government can recover Hill-Burton grant funds under certain circumstances. These circumstances include situations where the facility is sold or transferred to an ineligible entity, or ceases to be used for an eligible purpose at any time within 20 years following the completion of construction.

Sales and transfers of obligated facilities also affect their obligation to provide uncompensated care. When the sale or transfer is to an eligible not-for-profit entity, a waiver can be granted. When a waiver is granted, the purchasing or controlling not-for-profit entity agrees to assume any remaining uncompensated care liability of the original Hill-Burton grantee. If the sale is to a for-profit entity within the 20 year obligation period, a waiver can be granted if an irrevocable trust is established to



provide for uncompensated care. Twenty years following the completion of construction, for-profit entities or nonprofit entities purchasing or assuming control of Hill-Burton facilities are not required to provide any remaining uncompensated care obligations.

Facilities may terminate their Hill-Burton obligation for one of several reasons:

- They have provided the required level of uncompensated services.
- There has been a recovery of funds due to the sale or transfer of the grant assisted facility to an ineligible entity, or due to the cessation of use for eligible purposes during the 20-year period of obligation.
- They have met another requirement that allows their release from obligation.

The Secretary has established seven strategic goals for HHS. One strategic goal is to improve access to health care for all Americans. The effective implementation of the Hill-Burton program is an important element in achieving this strategic goal.

## METHODOLOGY

We interviewed PHS headquarters' staff and staff in 8 regional offices that account for 92 percent of the current Hill-Burton workload. Regional office staff in Boston, New York, Philadelphia, Atlanta, Chicago, Dallas, Kansas City, and San Francisco were interviewed. We asked them to provide information on how they evaluate and monitor the uncompensated care obligations of health care facilities assisted by Hill-Burton program grants. We did not inquire as to procedures and policies pertaining to Hill-Burton loan guarantees or other programs under PHS jurisdiction.

We received information from PHS that identified all obligated facilities. We also received information that identified those facilities within their 20 year obligation period and those facilities that received waivers or were released from the Hill-Burton program. The databases provided information concerning the type of facility, ownership and current status in the Hill-Burton program. We also received written reports, financial and other information about facilities from regional office investigative and audit files and from PHS headquarters.

We spoke with regional office staff responsible for monitoring facilities with outstanding Hill-Burton obligations. We spoke with staff responsible for monitoring changes in ownership and management that might result in a recovery of Hill-Burton funds. We also spoke with personnel responsible for determining the amount of uncompensated care credit facilities would receive. The method described by regional staff for conducting substantial compliance audits and complaint investigations were compared to operating procedure manuals issued by PHS.

The figures used throughout this report refer to facilities currently obligated under the Hill-Burton program.

Our review was conducted in accordance with the *Interim Standards for Inspections* issued by the President's Council on Integrity and Efficiency.

# FINDINGS

---

**Finding #1: Fifty-three percent of Hill-Burton facilities currently obligated are not providing sufficient uncompensated care to meet their annual compliance level.**

As of April 1991, 2,610 facilities were to provide approximately \$350 million in uncompensated care to the American public. These facilities received almost \$1.7 billion in Federal assistance to aid in constructing needed hospitals and other health care facilities. According to PHS data, 1,318 facilities have not provided sufficient uncompensated care to indigent persons to fulfill their obligation under the Hill-Burton program. The total amount of uncompensated care owed by these 1,318 facilities exceeds \$816.6 million.<sup>1</sup>

Many (1,169) of these 1,372 facilities have provided some uncompensated care. A few have provided no evidence that they are operating an uncompensated care program for those unable to pay. As of October 1, 1990, there were 203 facilities that received zero certifications from PHS. A zero certification means that a facility failed to provide any uncompensated care creditable toward completion of its Hill-Burton obligation. Some of the facilities, that have received zero credit, are nursing homes and rehabilitation facilities. Some facilities are unable to fulfill their uncompensated care obligation because they cannot attract persons unable to pay to their facility. Other facilities have no problem attracting indigent patients, they provide uncompensated services to all without taking an application or have a philanthropic organization that pays for much of the care; consequently, they have difficulty meeting their annual uncompensated care obligation. Recently, PHS organized a task force to assess the problems faced by these facilities in meeting the requirement of the regulations.

**Finding #2: Reliance on self-reported data and inadequate record retention compromise PHS monitoring efforts.**

## Self-Reported Data

Each year PHS requests that all facilities in deficit submit an Uncompensated Services Assurance Report (USAR). The primary purpose of the USAR is to track the status of uncompensated service programs operated by facilities in deficit. It enables PHS to provide early feedback where problems may be indicated. The USAR is also used by

---

<sup>1</sup> Total deficit calculated from PHS data provided on July 13, 1992. This total breaks down as follows \$1,835,476 due from 10 facilities beyond their 20 year period and \$814,833,098 due from facilities within their 20 year obligation period.

PHS to review and approve:

- facility plans to make up deficits, and
- claims of facility financial inability.

The USAR is also used to solicit information concerning changes in facility management that might trigger the recovery of Hill-Burton funds.

The USAR is primarily a PHS headquarters' monitoring tool used for providing technical assistance to facilities and is seldom, if ever, used by regional PHS staff who feel the USAR information is often obsolete or inaccurate. The information on free medical care reported by a facility on the USAR can differ substantially from the actual performance, which is determined by PHS regional staff when conducting a substantial compliance audit of the facility's records.

Substantial compliance audits involve a desk review of patient accounts, patient eligibility information, individual notices and facility published allocation plans. Information for these reviews is provided by the facilities and onsite reviews are rare. A letter is sent to the facility at the end of its fiscal year informing them of PHS's intent to assess their compliance with Hill-Burton uncompensated services obligations. The letter requests that the facility submit information concerning its Hill-Burton uncompensated care program within 90 days of the close of its fiscal year.

The facility provides financial information that PHS uses to verify the amount of uncompensated care the facility claims to have provided. The facility also provides PHS with copies of its policies, notices and other information on how its uncompensated care program operates. There are no instructions in PHS procedure manuals that require compliance auditors to verify the authenticity of the documents and information provided by the facility. The PHS does not require affidavits or other sworn statements attesting to the authenticity of the documents being submitted. No random calls are made to applicants to verify their actual application and no contacts are made with patients whose applications for Hill-Burton assistance were denied.

Self-reported information is also used by PHS to resolve complaints. Many complaints of Hill-Burton violations are received and investigated by telephone and involve little or no documentation. The PHS case files may contain the complaint and a written record of the telephone contact. Other investigations are resolved by asking the facility to provide billing and other information about the patient filing the complaint.

These investigations and substantial compliance audits are vulnerable because they depend almost exclusively on information supplied by the facility. There is no independent validation of the information being supplied. Dependence on this self-reported information may compromise PHS's compliance and complaint processes.

## Record Retention

Inadequate record retention policies do not permit independent validation of Hill-Burton investigations and audits. We were unable to validate whether self-reported information may have resulted in any erroneous decisions concerning compliance with Hill-Burton requirements. We attempted to pull a sample of recently completed substantial compliance audits to independently verify the information provided to PHS by facilities. We could not conduct a verification of recently closed Hill-Burton cases because documents and other information used by some regional offices to determine facility compliance had been purged. Many of the documents we requested were purged by some regional offices less than a year after the compliance audits were conducted. During the course of our inspection, PHS instituted a new record retention policy that requires all compliance and complaint records be maintained for a 5-year period.

**Finding #3: Complaint investigations resolve individual problems but do not ensure facility compliance with the Hill-Burton requirement to provide uncompensated care.**

Since October 1, 1985, PHS has received 340 complaints against Hill-Burton obligated facilities. Of these, 313 or 92 percent have been closed, and 27 are pending action. Of the 313 closed complaints, 177 were dismissed, and 136 required decisions to be rendered based upon the results of investigations or were settled by negotiation between the parties. The PHS does not maintain in their records whether the decision was resolved in favor of the complainant or the facility.

Complaints are analyzed and prioritized to determine whether they can be resolved informally, require investigation without an onsite visit, or require onsite investigation. Informal resolutions usually involve a telephone call to a facility requesting details of a particular patient's denial of uncompensated care. Investigations without an onsite visit usually involve examining documents and other evidence presented by the patient and the facility. Investigations requiring an onsite visit are usually arranged in advance. This ensures that documents and staff pertinent to the investigation will be available during the onsite visit.

Investigations are conducted using PHS prescribed procedures for recording, investigating and resolving complaints. When a violation is found to have occurred, PHS will work with the facility to resolve the complaint. If the facility refuses to take corrective action, PHS can request the Department of Justice (DOJ) to take legal action to force the facility to take corrective action.

The narrow focus of PHS complaint investigations does not provide assurance that a uncompensated care program is being properly operated by a facility. The investigative procedures used by PHS differ considerably from those used by HHS agencies such as the Health Care Financing Administration (HCFA) and the Office

for Civil Rights (OCR). According to PHS procedures, PHS only investigates to determine whether the complainant was wrongfully denied uncompensated care. Unlike other HHS agencies, PHS does not expand its investigations when an allegation of noncompliance is found to exist. The investigations do not verify whether other individuals were improperly denied uncompensated care during the same period. Consequently, PHS investigations do not determine if the violation was an isolated occurrence or a pattern of noncompliance which should require additional action.

In December 1991, PHS issued a revised *Guide to Conducting Substantial Compliance Reviews and Audits*. We have examined the revised guidelines. We find no clear instructions to auditors to expand the size of compliance samples so that a more in-depth review can be conducted for the time frame surrounding substantiated complaints.

**Finding #4: The PHS lacks authority to directly enforce compliance with Hill-Burton regulations.**

Noncompliant facilities are sent a letter of findings specifying the corrective actions to be taken. If corrective action is not taken within a certain time frame then the facility will receive zero credit for any of the uncompensated care services they claim to have provided during the period under review. Facilities that fail to submit required documents and other evidence to support their claim for uncompensated care credit are also considered to be out of compliance and receive zero credit. The PHS will review those facilities during the next audit cycle.

When an obligated facility refuses to cooperate with PHS in bringing its uncompensated care program into compliance, PHS is without adequate recourse. The only remedy readily available to PHS is the threat of zero credit for the free care program a facility operates. Unlike other HHS agencies that can levy fines and/or suspend receipt of government funds, the PHS has no administrative authority or other powers to compel compliance. The only remedial action available to PHS is to litigate with noncompliant facilities through DOJ. There has never been a case referred to DOJ for litigation.

**Finding #5: Facilities transferring ownership after 20 years may cause the Hill-Burton program to lose a portion of the uncompensated care available.**

According to regulations published in 1987, if a facility fails to provide sufficient uncompensated care to meet its annual compliance level, the facility must make up the deficit in subsequent years. The regulations state that a facility's "period of obligation shall be extended until the deficit is made up."<sup>2</sup> However, according to

---

<sup>2</sup> 42 CFR §124.503 (b)

advice given by the Office of General Counsel in 1986, if a facility transfers ownership after the 20 year recovery period, no action may be taken to recover the uncompensated care deficit even if the facility was in deficit at the time of transfer. Consequently, the American public has lost millions of dollars intended to provide free medical care for persons unable to pay.

Currently, more than half of the facilities required to operate uncompensated care programs are not providing sufficient services to persons unable to pay to fulfill their obligation under the Hill-Burton program. If these facilities were to transfer after 20 years, the American public would lose a portion of the free medical care available. In 1990, nearly a million dollars worth of uncompensated care owed to the American public was lost. A review of the seven facilities that transferred ownership in 1990 after their 20 year recovery period showed that all seven facilities were not providing sufficient uncompensated care to persons unable to pay to fulfill their obligation under the Hill-Burton program at the time of transfer. These facilities had remaining uncompensated care obligations totalling \$865,699 at the time of their transfer. In 1990 alone the American public lost more than \$850,000 in free medical care. If all of the facilities currently operating in deficit were to transfer ownership at the end of their 20 year obligation more than \$1 billion in free medical care will be lost by the year 2000.

**Finding #6: Nearly \$50 million recovered from Hill-Burton facilities was not available to pay for free medical care.**

As of March 31, 1991, PHS had completed 195 recovery actions. Nearly \$50 million in interest and principle has been recovered and returned to the general treasury. In contrast, as of that date, 14 trusts, valued at more than \$21 million, have been established by hospitals that changed their status from a not-for-profit facility to a for-profit facility. Unlike the 195 recovery actions, these 14 trusts continue to ensure free medical care for persons unable to pay.

Whenever a Hill-Burton facility has a transfer of ownership or management, it is considered to have a "change of status." When this happens within the 20 year obligation period, an evaluation must be made whether the transferee or new owner would have been qualified to file an application under Hill-Burton. If the facility is transferred to any person, agency or organization not qualified to file a Hill-Burton grant application, the government is entitled to recover the amount of the grant. However, if the facility agrees to establish an irrevocable trust, then a waiver may also be granted. The amount of the irrevocable trust is the greater of twice the amount of the remaining uncompensated services obligation or what would have been due under recovery.

When an eligible entity assumes control and agrees to assume the Hill-Burton obligations, a waiver can be granted and no recovery is necessary. The waiver is granted because the change in control of the Hill-Burton facility is to another public

or not-for-profit facility that would have been eligible under the Hill-Burton program.

Hill-Burton funds recovered from facilities are deposited into the general treasury and are not available for free medical care. This differs from funds recovered through the waiver process. When a waiver is granted to the new operator of a Hill-Burton assisted facility, the operator either agrees to fulfill the remaining uncompensated care obligation, or to establish a trust to provide medical care to those unable to pay.



## RECOMMENDATIONS

---

We believe the following recommendations will improve PHS efforts to monitor Hill-Burton compliance. The PHS should:

- 1) **develop methods for independent verification of information provided by facilities during substantial compliance audits and complaint investigations.**

Independent verification of information and procedures used by a facility, coupled with occasional unannounced onsite visits, would ensure that facilities comply with their Hill-Burton obligations. Unannounced visits would also serve to validate a facility's system of notices, recordkeeping practices and day-to-day operations. Advance notices provide time for facilities to create or clean up their records; enable staff to be tutored to ensure proper responses; and, can result in changes in procedures that ostensibly show compliance. The PHS should explore coordination with HCFA, OCR and others in obtaining independent verification. Both HCFA and OCR have pertinent information about facilities that have received Hill-Burton assistance. Both have experience in developing independent verification of information.

- 2) **expand their investigation when a complaint alleging noncompliance is substantiated or revise the *Guide to Conducting Substantial Compliance Reviews and Audits* to ensure that auditors clearly understand that an expanded compliance review should be conducted on facilities found to have substantiated complaints.**

Expanding either the investigation or compliance review to focus on time periods surrounding substantiated complaints provides greater assurance that the problem was an isolated problem and not indicative of more serious noncompliance problems.

- 3) **ensure that regional offices maintain records for a minimum of 5 years after the close of a substantial compliance audit or complaint investigation.**

During the course of our inspection, PHS issued a new policy requiring 5-year retention of all compliance audit and investigative records. This is consistent with the retention periods used by other HHS agencies.

- 4) **seek legislative authority to enforce compliance through administrative remedies.**

Garnishment of some Medicare/Medicaid funds, levying fines or withholding of Federal grants and other Federal funds until a facility brings its uncompensated care program into compliance are examples of administrative remedies that would strengthen PHS's ability to enforce compliance with the Hill-Burton uncompensated care requirements.

- 5) **seek legislation that would allow for recovery of the uncompensated care obligation if a deficit remains at the time of a post 20 year transfer.**

This would allow for the recovery of funds from facilities transferring after the 20th year. These funds would also be used in some manner to provide uncompensated care.

- 6) **seek legislation that would allow for the return of monies recovered from facilities back into PHS grant programs.**

This would allow for the continued funding of health related programs. These funds could be used to sponsor immunization programs, well baby programs and other community health services.

## **AGENCY COMMENTS**

The PHS has informed us that it has taken action on five of our six recommendations. They felt that seeking legislative authority to enforce compliance was inappropriate at this time because legitimate reasons may exist to explain why some facilities have received little or no credit for uncompensated care. The PHS is currently studying this issue and would like to develop alternatives that would assist facilities in achieving compliance. If progress is not made in developing alternatives to assist facilities in achieving compliance at the end of one year, PHS will seek legislative authority to enforce compliance through administrative remedies as suggested in this report.

The report has been modified to reflect technical comments received from PHS and OCR. The full text of the PHS's comments can be found in Appendix A. The full text of the OCR's comments is contained in Appendix B.

## **OIG RESPONSE TO COMMENTS**

We agree that legitimate reasons may exist that explain why a facility is unable to fulfill their uncompensated care obligation. The PHS should work to develop appropriate alternatives for such facilities. We would encourage PHS not to delay in seeking legislative authority to administrative remedies since such remedies should be available for use on recalcitrant facilities.

# APPENDIX A

---

## PUBLIC HEALTH SERVICE COMMENTS ON THE DRAFT REPORT



## Memorandum

JUL 28 1992

Date

From Assistant Secretary for Health

Subject Office of Inspector General (OIG) Draft Reports "PHS' Oversight of the Hill-Burton Program," and "Office for Civil Rights' Oversight of the Hill-Burton Program"

To Inspector General, OS

Attached are PHS' comments on the subject OIG draft reports. Concerning the report on PHS' oversight of the Hill-Burton program, we provide responses to each of the recommendations, as well as technical comments. We have one technical comment on the report dealing with the Office for Civil Rights' (OCR) oversight.

We concur with the recommendations directed to PHS and have taken or plan to take actions to implement them. The Health Resources and Services Administration (HRSA) will coordinate information gathering with other organizations such as OCR and the Health Care Financing Administration; revise its complaint investigation manual to require expanded compliance reviews once a complaint has been substantiated; maintain records for a minimum of 5 years; review with the Office of the General Counsel issues relevant to the recovery of uncompensated care obligations if these remain at the time of a post 20-year transfer of ownership; and seek legislative authority to return funds recovered from facilities back into PHS grant programs.

For reasons delineated in the attached comments, we do not believe that now is the appropriate time to implement the recommendation calling for legislative authority to enforce compliance through administrative remedies. HRSA has an initiative underway which should address many of the issues underlying this recommendation. If, at the end of 1 year, the results of this initiative prove unsatisfactory, HRSA will take actions to implement this recommendation.

James O. Mason, M.D., Dr.P.H.

Attachment

PUBLIC HEALTH SERVICE (PHS) COMMENTS ON THE OFFICE OF  
INSPECTOR GENERAL (OIG) DRAFT REPORTS "PUBLIC HEALTH SERVICE'S  
OVERSIGHT OF THE HILL-BURTON PROGRAM," OEI-05-90-00260, AND  
"OFFICE FOR CIVIL RIGHTS' OVERSIGHT OF THE HILL-BURTON  
PROGRAM," OEI-05-90-00261

General Comments

The PHS has reviewed the two OIG reports on oversight of the Hill-Burton program. The bulk of our comments concern the report dealing with PHS oversight.

We have only one technical comment on the report dealing with Office for Civil Rights' oversight. We recommend that the third paragraph, first sentence on page 1 be revised to read "[T]he Hill-Burton Act authorized Federal grants to assist States and communities in constructing needed hospitals and other health care facilities." This revised statement correctly notes that the Hill-Burton program funded health care facilities other than hospitals and public health centers.

Our comments on each of the recommendations directed to PHS, and technical comments, follow:

OIG Recommendation

PHS should:

1. Develop methods for independent verification of information provided by facilities during substantial compliance audits and complaint investigations.

PHS Comment

We agree that we can broaden our information gathering through coordination with other Federal organizations that may conduct site visits of Hill-Burton obligated facilities. To that end, PHS' Health Resources and Services Administration (HRSA) will coordinate these efforts with the Office for Civil Rights, the Health Care Financing Administration, and other relevant organizations.

OIG Recommendation

2. Expand their investigation when a complaint alleging noncompliance is substantiated or revise the "Guide to Conducting Substantial Compliance Reviews and Audits" to ensure that auditors clearly understand that an expanded compliance review should be conducted on facilities found to have substantiated complaints.

PHS Comment

We concur. HRSA is currently revising the complaint investigation manual. One change in the revised manual will be the requirement to expand compliance reviews when complaints against a facility have been substantiated. HRSA expects to have the revision completed in January 1993.

In addition, HRSA is now tracking whether complaint decisions are resolved in favor of the complainant or the facility. This procedure became effective in March 1992.

OIG Recommendation

3. Ensure that regional offices maintain records for a minimum of 5 years after the close of a substantiated compliance audit or complaint investigation.

PHS Comment

We concur. As the OIG report acknowledges, HRSA has already established a policy to retain records for 5 years. This policy became effective in March 1992.

OIG Recommendation

4. Seek legislative authority to enforce compliance through administrative remedies.

PHS Comment

We concur in principle but believe that this is not appropriate at this time.

There are legitimate reasons why some facilities have received little, if any, credit for uncompensated care:

- o lack of community need, e.g., patients are fully covered by third-party insurance or under a governmental program, or there is a lack of financially eligible applicants;
- o financial inability to provide uncompensated services at the required level; and
- o some facilities do not charge patients for services provided, but lack eligibility or billing documentation required by the regulations to establish credit.

HRSA is studying these facilities to determine the need for increased technical assistance, and will develop appropriate alternatives to assist facilities in achieving compliance.

In addition, the threat of legal action has been an effective deterrent from deliberate noncompliance. No legal action has been necessary to date.

Lastly, it is possible that the actions proposed in this report (e.g., fines or loss of Medicare/Medicaid funding) could result in the closure of some facilities, thereby resulting in the total loss of health services in those communities.

At the end of one year, if there is not progress in the development of alternatives to assist facilities in achieving compliance, HRSA will seek legislative authority to enforce compliance through administrative remedies.

#### OIG Recommendation

5. Seek legislation that would allow for recovery of the uncompensated care obligation if a deficit remains at the time of a post year transfer.

#### PHS Comment

We agree to contact the Office of the General Counsel (OGC) to discuss the issues relevant to the enactment of such legislation and the applicable legal implications. In preliminary discussions to date, OGC has expressed strong concerns about the constitutional implications of retroactive application of this new legislation.

#### OIG Recommendation

6. Seek legislation that would allow for the return of monies recovered from facilities back into PHS grant programs.

#### PHS Comment

We concur. HRSA will initiate actions to develop a request for legislative authority to implement this recommendation.



Technical Comments

- 1. The introduction on page 1 states, "Those persons whose incomes are greater than the poverty line but not more than twice the poverty line are entitled to receive services without charge or in accordance with a schedule of charges."

This statement needs clarification. Hill-Burton facilities are not required to provide uncompensated services to persons whose incomes are more than the poverty level. If these facilities choose to provide services to persons whose incomes are greater but not more than double the poverty level, they may do so at no charge or at a reduced charge.

- 2. Page 2, paragraph 2 states, "Monitoring Hill-Burton facilities involves a desk review of patient accounts, individual notices and facility published allocation plans."

This sentence should be modified to include the review of Hill-Burton patient eligibility information. Since this same statement is included on page 6, paragraph 2 of the OIG report, it should also be modified accordingly.

- 3. Page 2, paragraph 6 states, "If the sale is to a for-profit entity, a waiver can be granted if an irrevocable trust is established to provide for uncompensated care. Twenty years following the completion of construction, for-profit entities purchasing or assuming control of Hill-Burton facilities are not required to provide any remaining uncompensated care obligations."

These two sentences should be modified as follows: "If the sale is to a for-profit entity within the 20-year obligation period, a waiver can be granted if an irrevocable trust is established to provide for uncompensated care. Twenty years following the completion of construction, for-profit or nonprofit entities purchasing or assuming control of Hill-Burton facilities are not required to provide any remaining uncompensated care obligations."

- 4. Page 5, finding number 1 states, "Many (1,169) of these facilities have provided some uncompensated care."

We suggest that this statement be clarified as follows: "Many (1,169) of the 1,372 facilities have provided some uncompensated care."

- 5. Page 5, finding number 2 states, "Each year PHS mails Uncompensated Services Assurance Report (USAR) forms to approximately one-third of the 2,600 facilities with

outstanding Hill-Burton obligations. The primary purpose of the USAR, according to PHS, is to remind facilities of their obligation to provide free care to persons unable to pay. Facilities unable to complete their annual obligation are required to complete and return the USAR."

We suggest that OIG substitute the following language to accurately reflect the use and purpose of the USAR:

"Each year PHS requests that all facilities in deficit submit an Uncompensated Services Assurance Report (USAR). The primary purpose of the USAR is to track the status of uncompensated services claimed by facilities and provide early feedback where problems may be indicated. In addition, the USAR is used to review and approve both plans designed to make up deficits and financial inability claims."

The rationale behind this suggested change is that when HRSA detects deficiencies in facilities' uncompensated services programs, the facilities can correct them in a timely manner instead of waiting up to 3 years until a review is conducted at which time they may lose all credit for a correctable deficiency.

# APPENDIX B

---

## OFFICE FOR CIVIL RIGHTS COMMENTS ON THE DRAFT REPORT



DEPARTMENT OF HEALTH & HUMAN SERVICES

Office of the Secretary

Office for Civil Rights  
Washington, D.C. 20201

DATE : 12 JUN 1992

FROM : Edward Mercado  
Director  
Office for Civil Rights

SUBJECT: OIG Draft Report: "Public Health Service's Oversight  
of the Hill-Burton Program"

TO : Richard P. Kusserow  
Inspector General

The Office for Civil Rights reviewed your draft report on Public Health Service's oversight of the Hill-Burton program and renders the following comments/recommendations:

- In order to put the contents of the report in the proper context, language should be added outlining the Hill-Burton responsibilities of all involved Departmental components, including OCR and HCFA.
- On page 5, Finding #1 indicates that some nursing homes and rehabilitation facilities do not fulfill their uncompensated care obligations because they are unable to attract patients who are unable to pay. An additional recommendation for dealing with this finding is for PHS to encourage recipients to institute a vigorous outreach program to distribute information about the facility's uncompensated care obligation to hospitals from which indigent patients might be referred.
- The report contains a recommendation that unannounced site visits be conducted. It is our experience that while such visits may provide useful data, they often cause delays in the investigative process because the data needed and potential interviewees are not readily available. We endorse the portion of this recommendation which encourages PHS to coordinate with OCR and HCFA in obtaining pertinent information. Such an interchange of information would be of value to all three agencies and would reduce the overlap in responsibilities and activities.
- In addition, PHS and OCR should establish a mechanism through which OCR is informed when facilities are found to be out of compliance for the uncompensated care obligation. These cases may have potential civil rights violations which fall under OCR's authorities.

Thank you for the opportunity to review and comment on this draft report.