Department of Health and Human Services

# OFFICE OF INSPECTOR GENERAL

# AUDIT OF TITLE II FUNDING UNDER THE RYAN WHITE COMPREHENSIVE AIDS RESOURCES EMERGENCY (CARE) ACT IN INDIANA

# INDIANA STATE DEPARTMENT OF HEATLH INDIANAPOLIS, INDIANA

**JANET REHNQUIST**
*Inspector General*

**MAY 2002**
**A-05-01-00073**

DEPARTMENT OF HEALTH AND HUMAN SERVICES
OFFICE OF AUDIT SERVICES
233 NORTH MICHIGAN AVENUE
CHICAGO, ILLINOIS 60601

REGION V
OFFICE OF
INSPECTOR GENERAL

May 31, 2002

Common Identification Number A-05-01-00073

Gregory A. Wilson, M.D.
State Health Commissioner
Indiana State Department of Health
2 North Meridian St., Section 3A
Indianapolis, Indiana 46204

Dear Dr. Wilson:

Enclosed are two copies of the U.S. Department of Health and Human Services, Office of Inspector General, Office of Audit Services' (OAS) report entitled "Audit of Indiana's Title II Funding under the Ryan White CARE Act" for the period April 1, 1998 through March 31, 2001. A copy of this report will be forwarded to the action official noted below for his/her review and any action deemed necessary.

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

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

To facilitate identification, please refer to Common Identification Number A-05-01-00073 in all correspondence relating to this report.

Sincerely,

Paul Swanson

Paul Swanson
Regional Inspector General
for Audit Services

Enclosures – as stated

**Direct Reply to HHS Action Official:**
Chief, Cost Advisory and Audit Resolution Branch
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Health Resources and Services Administration
Parklawn Building, Room 13A-27
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Gregory A. Wilson, M.D.
State Health Commissioner
Indiana State Department of Health
2 North Meridian St., Section 3A
Indianapolis, Indiana 46204

Dear Dr. Wilson:

This final report, which resulted from a request by the Acting Administrator of Health Resources and Services Administration (HRSA), presents the results of our Audit of Title II Funding under the Ryan White Comprehensive AIDS Resources Emergency (CARE) Act in Indiana. The Title II program was administered by the Indiana State Department of Health (ISDH) and its terminated sub-grantee, AIDServe Indiana, Inc. (AIDServe). For the three year period ending March 31, 2001, ISDH claimed costs, amounting to $18,425,641, for the AIDServe operation of the Title II and related programs, which included unallowable, unallocable, and unapproved claims, amounting to $784,499, and inadequately supported claims of $5,337,802.

We identified: (i) $92,495 in duplicate claims for medical services, (ii) $75,007 in refunded premiums that were not credited against program costs, (iii) $533,123 in unallocable drug and medical assistance service costs related to another Federal program, and (iv) $83,874 in indirect costs based on an unapproved rate. Because adequate documentation was not available from the now bankrupt organization, we were unable to express an opinion on the allowability and allocability of significant amounts of salary and wages ($946,905), associated fringe benefits ($150,033), medical service costs ($1,607,634), and prescription drug costs ($2,633,230). Although the ISDH was actively involved in the administration of the Title II program, increased oversight and involvement could have assured that required audits were performed and corrective actions were taken to prevent or alleviate many of the conditions disclosed during the audit.

We are recommending that ISDH refund unallowable, unallocable and unapproved costs amounting to $784,499. We are setting aside inadequately supported costs amounting to $5,337,802 for HRSA's adjudication. We are also recommending that ISDH increase its oversight of other sub-grantees and ensure that required audits are performed in a timely manner.

In a written response dated May 3, 2002, ISDH officials requested that the recommendations be amended to reflect the elimination of required refunds or to reduce questioned costs and apply carryover funds available from prior grants against the

remaining unallowable recommendation. We did not revise our recommendations for refunds to the awarding agency. The response is summarized in the body of our report with the full text being included as Appendix A to this report.

## BACKGROUND

The HRSA administers the Ryan White CARE Act, enacted in 1990 and reauthorized in May 1996. The CARE Act is the largest source of Federal funding specifically directed toward providing primary care and support services for persons with HIV disease. Under Title II of the CARE Act, formula grants are awarded to States and other eligible entities to improve the quality, availability, and organization of HIV health care and support services.

States can use a variety of service delivery mechanisms, such as providing some or all of the services directly or entering into agreements with local HIV care consortia, health care associations, or community-based organizations. From April 1, 1998 until November 16, 2000, the ISDH maintained a number of agreements with AIDServe to provide most of its HRSA Title II services in Indiana. These agreements included a sub-grantee relationship to monitor the basic operations of the HRSA Title II program and contracts to administer and manage the State's Health Insurance Assistance Program (HIAP) and AIDS Drug Assistance Program (ADAP) activities. Services included determining client eligibility, enrolling eligible clients into private health insurance plans, performing administrative functions for the Title II program and administering and monitoring the HIAP and ADAP activities. In a separate agreement with the Substance Abuse and Mental Health Services Administration (SAMHSA), AIDServe received additional funding for AIDS Substance Abuse Program (ASAP) activities. Although not a part of this audit, ISDH also entered into contracts with other organizations to provide AIDS related services.

The ISDH terminated the contracts with AIDServe on November 16, 2000. The termination was based on improper use of funds for specific agreements, inappropriate invoicing procedures, and failure to expend funds in accordance with the agreements. Subsequent to the termination, AIDServe filed for bankruptcy and ceased operations.

## OBJECTIVES, SCOPE AND METHODOLOGY

We conducted our audit in accordance with generally accepted government auditing standards. The objectives of our review were to determine the adequacy of ISDH's oversight and whether Ryan White CARE Act grant funds were expended in accordance with applicable regulations. Our audit covered the period of the grants, April 1, 1998 through March 31, 2001.

For the three year period ending March 31, 2001, ISDH claimed costs, amounting to $18,425,641, for the AIDServe operation of the Title II and related programs. Additional costs of $1,325,406 for AIDS related activities were incurred under contracts with other organizations and were not a part of this audit.

Because of weaknesses cited in this report and the subsequent bankruptcy of AIDServe, we encountered substantial difficulty supporting the allowability and allocability of costs claimed. We did not perform a review of the internal controls at AIDServe as the organization had ceased operations. We did consider these deficiencies in determining the nature, timing and extent of our audit tests.

The AIDServe files, containing records and supporting documentation that were transferred to ISDH, were not complete or well organized. Some files were moved intact from the AIDServe offices to ISDH. Other files were haphazardly placed in moving boxes and stored at ISDH. There were no inventory records itemizing the information contained in the moving boxes. Therefore, we could not ascertain how much documentation was missing.

We did note that numerous batches of claims were missing. As part of our initial audit steps, we organized the information to the extent necessary to perform our audit.

To accomplish our objectives, we:

- Met with and maintained ongoing discussions with officials from ISDH and HRSA. We also met with officials from the public accounting firm contracted by ISDH to conduct an audit of AIDServe.

- Reviewed AIDServe's accounting records, computer files, and supporting documents.

- Examined ISDH's accounting records and documents of correspondence between ISDH and AIDServe.

We performed our audit work at ISDH offices in Indianapolis, Indiana and HRSA offices in Chicago, Illinois during the period April 2001 through December 2001 and discussed the results of our audit with auditee officials on February 5, 2002.

## FINDINGS AND RECOMMENDATIONS

For the three year period ending March 31, 2001, ISDH claimed costs, amounting to $18,425,641, for the AIDServe operation of the Title II and related programs, which included unallowable, unallocable, and unapproved claims, amounting to $784,499, and inadequately supported claims of $5,337,802. Details are presented in the following paragraphs.

### QUESTIONED CLAIMS

We identified a total of $784,499 in questioned claims. The questioned amounts include: (i) $92,495 in duplicate claims for medical services, (ii) $75,007 in refunded premiums that were not credited against program costs, (iii) $533,123 in unallocable drug and

medical assistance service costs related to another Federal program, and (iv) $83,874 in indirect costs based on an unapproved rate.

**Duplicate Claims for Medical Services.** The ISDH claimed $92,495 in payments made to AIDServe for medical services by providers that were not paid by AIDServe and a duplicate amount for its direct payment to the providers to rectify the situation. Medical services were provided under contract with AIDServe through the Early Intervention Program (EIP) to persons who tested positive for HIV. Although funds were made available on a cost reimbursable basis, AIDServe sometimes claimed reimbursement before it paid the providers. In some cases, providers were not paid for the services. To ensure that future medical treatment would be available to AIDServe clients, ISDH paid the providers for the service already reimbursed to AIDServe, but for which the provider had not been paid. AIDServe's failure to follow the cost-reimbursement requirements which required that it pay for the services, then claim reimbursement from ISDH, resulted in the duplicate claim.

For the period December 1999 through March 2000, AIDServe's accounting records showed claims totaling $175,601. To determine the amount of the duplicate payments claimed by ISDH, we requested a listing of AIDServe payments to providers and compared it to the larger listing of payments made to AIDServe for provider services. Since ISDH directly paid some providers, ISDH reimbursement to AIDServe for $92,495 in claims for unpaid services represents a duplicate payment for the same services. The payments to AIDServe and the payments by ISDH to the provider were both claimed. As a result, duplicate Title II claims amounted to $92,495. We provided ISDH officials with a listing of duplicate payments for EIP claims.

In April 2000, the payment procedure was changed to eliminate duplicate payments. The new procedures required AIDServe to receive and forward medical invoices to ISDH. Instead of paying AIDServe, ISDH wrote a check payable to the provider for distribution by AIDServe. Later in December 2000, just after the contract with AIDServe was terminated, the providers began sending the invoices directly to ISDH for payment.

**Health Insurance Premiums.** AIDServe paid $6.8 million for health insurance premiums during the audit period. The Indiana Comprehensive Health Insurance Association (ICHIA) refunded premiums totaling $196,647, however only $121,640 was credited to the program. OMB Circular A-122 requires that credits accruing or received by an organization, that relate to allowable costs, be credited to the Federal government as a cost reduction or cash refund. AIDServe did not properly credit the program costs for all refunds of health insurance premiums amounting to $75,007. Although the refunds were returned to AIDServe for premiums not used to buy health insurance, the total amount was not credited to the program.

The Health Insurance Assistance Program (HIAP) assists persons who have tested positive for HIV to obtain comprehensive health insurance. HIAP paid the premiums, deductibles and co-insurance through ICHIA. AIDServe was contracted to administer the HIAP program for ISDH. AIDServe was responsible for enrolling clients, making sure

that premiums were paid on time, and managing accounts. The program cost reduction was not reflected in a claim reduction.

A listing of refunds that were not returned to the program or used to offset the HIAP premiums was provided to ISDH officials. We are questioning the balance of $75,007 that was not returned to the program or used as an offset to the HIAP premiums.

**ASAP Services Charged to ADAP.** During the period, April 1, 1998 to March 31, 2001, ISDH inappropriately charged the ADAP program with $533,123 in drug and medical assistance service costs related to another Federal grant program, ASAP. Section 2617(b) of the Ryan White CARE Act states that the State will ensure that grant funds are not utilized to make payments for any item or service to the extent that payment has been made, or can reasonably be expected to be made, for that item or service. Although AIDServe submitted vouchers for $458,563 in costs classified as ASAP related, ISDH reclassified these costs and charged them against the ADAP. An additional amount of $74,560 was transferred to ADAP activities by a journal entry.

The ADAP, funded by HRSA, assists persons who have tested positive for HIV to have access to limited medications. ADAP pays for certain FDA-approved therapeutic medications through participating pharmacies. The ASAP also provides access to certain prescriptions, in addition to medical services. The ASAP activity is funded by SAMHSA and is not a Title II program. The eligibility requirements set by ISDH were very similar for both programs. AIDServe was contracted to administer the ADAP program for ISDH, while separately managing the SAMHSA funded ASAP program for ISDH.

In addition to being allocable and chargeable to the ASAP activity, the $458,563 in costs included prescription drugs and other services, which were only partially allowable under the ADAP program. The ADAP program pays only for drugs identified in the ADAP Formulary and only as a "payor of last resort." Therefore, other prescription drugs and services not included in the formulary were unallowable. These costs, along with the $74,560 transfer, were allowable under ASAP. We provided ISDH officials with a listing of all ASAP services that were inappropriately charged to ADAP.

**Indirect Costs.** AIDServe inappropriately claimed indirect costs in the amount of $83,874. For the three program contracts; Pediatric & Women's Issues, Special Projects, and Consumer Advisory Board, AIDServe claimed indirect costs at rates of 15 percent for personnel and 13.75 percent for non-personnel costs. The projects were primarily for consulting activities performed off-site. The indirect rates were applicable to a previous organization, not AIDServe. As a result, the indirect costs of $83,874 are questioned.

**Oversight/Monitoring/Audit.** Although ISDH provided a significant amount of oversight for services contracted to AIDServe, additional oversight, monitoring and audit, with emphasis on responsive corrective action, would have helped to alleviate problems cited in this report and emphasize areas needing corrective action. Adherence to audit requirements would have identified the financial management and claim documentation

problems and required AIDServe to address problems and initiate corrective action while it was still in operation.

The Code of Federal Regulations (CFR), Title 45, Section 92.40 and the OMB Circular A-133, Compliance Supplement, provide requirements for monitoring and reporting program performance. The CFR states that the grant recipients and pass-through entities are responsible for managing the day-to-day operations of sub-grant and sub-recipient activities. The monitoring activities may take various forms, such as reviewing reports submitted by the sub-recipient, performing site visits to review financial and programmatic records and observing operations. OMB Circular A-133 requires non-Federal entities, that expend $300,000 or more in a year in Federal awards to conduct an annual single or program-specific audit. Annual audits are required.

We did identify extensive correspondence between ISDH and AIDServe regarding the allowability of claims and problems with program operations. Several memos in 1998 reminded AIDServe that claims should be for actual expenditures. Officials met in January 1999 to resolve problems with claims processing and reporting. Discussions were later held regarding claims for medical services for which providers were not reimbursed by AIDServe. By April 2000, ISDH staff were making visits on a weekly basis to address delays and inaccuracies in reporting and in the processing of claims. Correspondence from the HIV Grants Department was frequent and the ISDH Title II Grants Coordinator did disallow many claims. When problems with AIDServe's cash flow surfaced in early January 1998, the Auditor of State of Indiana began issuing checks to the ADAP providers, which was followed by direct payment to providers for insurance premiums and co-insurance and deductibles in December 1999 and May 2000. These problems culminated with the termination of AIDServe contracts, effective November 16, 2000.

In spite of the annual audit requirement, the first, and only, audit of AIDServe's financial statements and compliance with the OMB Circular A-133 Compliance Supplement was completed for the year ended December 31, 1998. The auditors reported that the accounting controls to monitor compliance and document the allowability of costs were inadequate and that they were not able to express an opinion on AIDServe's compliance with the Circular. Although the report was supposed to be issued within 9 months of the end of the audit period, it was actually issued about a year late. No audits have been completed for subsequent periods. Enforcement of the audit requirements would have emphasized the financial management and claims documentation weaknesses needing corrective action while AIDServe was still in operation.

**Recommendation**

We recommend that the ISDH:

- Refund $92,495 for duplicate claims related to Early Intervention Program medical services.

- Refund $75,007 for refunded HIAP premiums that were not credited against the program costs.
- Refund $533,123 for unallocable drug and medical assistance service costs related to another federal program, ASAP.
- Refund $83,874 for unapproved indirect costs claimed.
- Improve its oversight of sub-grantees and ensure that required audits are performed in a timely manner.

**ISDH Comments and Office of Audit Services Response**

Duplicate Claims for Medical Services. The ISDH correctly stated that we did not conclude that providers were paid twice and that questioned costs related to some provider services were not charged to the grant. ISDH also stated that they could not determine the amount of duplicate charges.

Although we agree that the payment for provider services and the subsequent charge to the subcontractor accounting records was a problem, we were able to determine that ISDH and AIDServe each received reimbursement for the same EIP services. These duplicate claims of $92,495 related to EIP medical services are unallowable.

To establish the duplicate reimbursement, we reviewed over 50 percent of the reversing entries that AIDServe identified as adjustments for unpaid EIP services claimed for Title II reimbursement. Matching these reversing entries to warrants issued by the State established that the reversing entry agreed with the amount on the AIDServe invoice and on the state warrant. The dollar amounts per the AIDServe invoice and the state warrant were separately identified on the State's ledgers as claims under the Title II program. The duplicate reimbursement did occur.

Health Insurance Premiums. The ISDH agreed that $75,007 in refunded HIAP premiums were not credited against program costs.

ASAP Services Charged to ADAP. The ISDH agreed with questioned costs relating to non-ADAP drugs and services and other claims, totaling $193,924, but disagreed with questioned costs of $339,199, associated with drugs that they believe were allowable under either the ADAP or ASAP program. The ISDH contends that ASAP regulations require the ASAP program to be a payer of last resort and that Title II charges for drugs approvable under the ADAP program should be allowed. .

Regarding the drugs that are allowable under both programs, we only questioned the drug costs that were classified by AIDServe as ASAP services. The claim vouchers submitted to ISDH generally contain a cover sheet stating that attached documents substantiate charges for services provided to ASAP clients. We believe that the person or entity initializing the claim is in the optimal position to identify the appropriate program to be charged.

Claims totaling $533,123 for drug and medical assistance service costs related to the ASAP program are unallocable and unallowable.

Indirect Costs. Although the ISDH agreed that the indirect cost rate used was previously approved for a predecessor of AIDServe, it disagreed with our questioning unapproved indirect costs claimed. The ISDH points out that we did not identify the specific items questioned and categories of cost charged and reimbursed as both direct and indirect but ignores the absence of adequate support for its indirect costs claimed. Although the unavailability of prior indirect cost proposals prevented us from identifying the methodology for determining the indirect rates, we did note that charges for expense items such as rent and utilities were not claimed directly on contracts charged with indirect costs.

The PHS Grants Policy Manual states that reimbursement of indirect costs is based on the application of the appropriate indirect cost rate in effect during the period in which the allowable and allocable direct costs are incurred. The manual goes on to state that indirect cost proposals will be prepared in accordance with applicable cost principles. The overriding reason for questioning the indirect costs is that an indirect rate was never approved for AIDServe.

Claims totaling $83,874 for unapproved indirect costs are unallowable.

Oversight.

The ISDH agreed that they are responsible for stewardship of the Title II funds and had requested audits at the completion of each contract and grant. They were working in good faith to secure audits from AIDServe.

**INADEQUATE DOUMENTATION FOR COSTS CLAIMED**

We identified claims totaling $5,337,802 that were not adequately supported. Based on inadequate documentation available from the now bankrupt AIDServe, we were unable to express an opinion on the allowability and allocability of significant amounts of salary and wages ($946,905), associated fringe benefits ($150,033), medical service costs ($1,607,634), and prescription drug costs ($2,633,230). As previously indicated, increased oversight and involvement by ISDH, to assure that required financial management systems were in place and audits were performed, would have provided the needed documentation or noted the need for corrective action. Many of the cited findings of unsupported costs could have been prevented or alleviated. This became more important when AIDServe went bankrupt and ceased operations. The absence of AIDServe personnel made it more difficult to reconstruct the documentation to support the claims.

Code of Federal Regulations Title 45, Section 74.21, requires that financial management systems, used by non-profit organizations, provide accurate, current and complete

disclosure of the financial results of each HHS-sponsored project or program. It also provides that accounting records be supported by source documentation. Although we believe that employees were on the payroll and provided contracted services and that medical services and prescription drugs were provided to eligible recipients, we could not offer an opinion on the accuracy of the amounts charged in the following areas.

**Salaries, Wages, and Fringe Benefits.** There was insufficient documentation to support the allocability of salary and wages of $946,905 paid to AIDServe. OMB Circular A-122 states that reports reflecting the distribution of activity of each employee must be maintained for all staff members whose compensation is charged, in whole or in part, directly to awards. The reports must reflect an after-the-fact determination of the actual activity of each employee.

ISDH officials did not have effort distribution schedules to support the actual activity of AIDServe employees. Accordingly, we are unable to express an opinion as to the allowability and allocability of the salaries and wages amounting to $946,905 or the related fringe benefit costs of $150,033.

**Medical Services.** Claims amounting to $1,607,634 for reimbursement of medical services or co-insurance and deductible payment costs could not be traced to documentation supporting that services were provided or co-insurance and deductible costs were incurred. We could not determine that medical service related costs submitted by AIDServe and subsequently claimed by ISDH were allowable charges to the program. As a result, we express no opinion as to the allowability of $797,339 in medical claims and $810,295 in co-insurance and deductibles. Inadequately supported co-insurance of $70,828 and deductibles of $54,396 were included in Title II claims for the period April 1998 through March 2000, while unsupported HIAP claims for coinsurance and deductibles during the period April 2000 through December 2000 amounted to $685,071.

Beginning in December 2000, ISDH assumed responsibility for processing medical claims and health insurance documents and adequately supported Title II claims submitted thereafter.

**Prescription Drug Claims.** ISDH entered into a contract with AIDServe to administer the ADAP, designed to provide certain FDA-approved therapeutic medications to persons who have tested positive for HIV. Under the contract, AIDServe was responsible for receiving and processing claims for ADAP allowable drugs. Although the vouchers submitted by AIDServe initially included sufficient information necessary to determine the allowability of the claimed cost, confidentiality concerns resulted in an agreement in March 1999 to reduce the amount of documentation required from AIDServe. Pharmacy information sheets, copies of actual prescriptions, and billing statement summaries supporting the claimed costs were to be kept on file at AIDServe offices. After AIDServe instituted a new process for filing ADAP invoices, in January 2000, we were not able to trace ADAP claimed amounts to the supporting documentation and could not express an opinion as to the allowability and allocability of ADAP prescription drug claims, totaling $2,633,230.

**Recommendation**

We recommend that the ISDH work with HRSA officials to provide additional documentation to support the set aside costs claimed of $5,337,802.

**ISDH Comments and Office of Audit Services Response**

The ISDH concurred with the recommendation.

Paul Swanson
Regional Inspector General
for Audit Services

**EXHIBIT**

**INDIANA STATE DEPARTMENT OF HEALTH**
**INDIANAPOLIS, INDIANA**

**STATEMENT OF COSTS CLAIMED UNDER TITLE II GRANTS**
**AND THE AUDITOR'S RELATED RECOMMENDATIONS**

**FOR THE PERIOD APRIL 1, 1998 THRU MARCH 31, 2001**

| COST CATEGORY | CLAIMED COSTS | ALLOWABLE COSTS | QUESTIONED COSTS | NO OPINION COSTS | NOT AUDITED |
|---|---|---|---|---|---|
| Personnel | $946,905 | | | $946,905 | |
| Fringe Benefits | 150,033 | | | 150,033 | |
| Supplies | 21,729 | $21,729 | | | |
| Postage | 12,585 | 12,585 | | | |
| Travel | 172,710 | 172,710 | | | |
| Rent | 54,433 | 54,433 | | | |
| Utilities | 11,073 | 11,073 | | | |
| Consultant | 198,003 | 198,003 | | | |
| Contractual | 793,161 | 793,161 | | | |
| Printing | 45,269 | 45,269 | | | |
| Co-insurance | 70,828 | 0 | | 70,828 | |
| Deductibles | 54,396 | 0 | | 54,396 | |
| Premiums | 1,278,124 | 1,278,124 | | | |
| Refunds | (33,686) | (108,693) | 75,007 | | |
| Medical Claims | 889,834 | 0 | 92,495 | 797,339 | |
| Indirect Costs | 83,874 | 0 | 83,874 | 0 | |
| **AIDSERVE TOTALS** | **$4,749,271** | **$2,478,394** | **$251,376** | **$2,019,501** | |
| **AIDSERVE TOTALS** | $4,749,271 | $2,478,394 | $251,376 | $2,019,501 | |
| **ADAP** | 7,202,054 | 4,035,701 | 533,123 | 2,633,230 | |
| **HIAP** | 6,474,316 | 5,789,245 | | 685,071 | |
| **NON AID SERVE CONTRACTS** | 1,325,406 | | | | $1,325,406 |
| **TOTALS** | **$19,751,047** | **$12,303,340** | **$784,499** | **$5,337,802** | **$1,325,406** |

# APPENDIX

Frank L. O'Bannon
*Governor*

Gregory A. Wilson, M.D.
*State Health Commissioner*

# Indiana State Department of Health

*An Equal Opportunity Employer*

May 3, 2002

Common Identification Number A-05-01-00073

Mr. Paul Swanson
Regional Inspector General for Audit Services
Office of the Inspector General, Region V
United States Department of Health and Human Services
233 North Michigan Avenue
Chicago, Illinois 60601

*Re: Audit of Title II Funding under the Ryan White Comprehensive AIDS Resources Emergency (CARE) Act in Indiana*

Dear Mr. Swanson:

We are in receipt of the draft report in the above-referenced matter. Thank you for the opportunity to respond.

The draft report and audit covered a three-year period during which the Indiana State Department of Health (ISDH) made claims on its Title II grants totaling $18,425,641. Of that amount, the Office of the Inspector General (OIG) determined that $784,499 in claims were unallowable, unallocable, or unapproved. The OIG recommended that the ISDH refund that amount to HRSA. The OIG further concluded that $5,337,802 in claims should be accompanied by additional supporting documentation, and recommended that the ISDH work with HRSA to secure and provide additional documentation for those claims. Those claims are not questioned by the OIG, and the ISDH is currently working with HRSA to identify and secure existing documentation from the files of its prior sub-grantee and from providers and care sites across the state to further support those claims.

The term of the audit covered the time period during which the ISDH was sub-contracting with AIDServe Indiana, Inc. (ASI), to assist with the administration of the state's Title II program. The OIG noted that, upon termination of the relationship between the ISDH and ASI and the closure of ASI, ASI's voluminous records were delivered to the ISDH in complete disarray and ASI had destroyed some of the records.

For the reasons set forth below, and particularly because the OIG found no evidence that the Title II money was spent on anything other than services to persons living with HIV and AIDS and concluded just the opposite, the ISDH respectfully requests that the questioned claims be forgiven in their entirety. In the alternative, the ISDH respectfully requests that the questioned claims be reduced by $339,198.95, and that any remaining refund that is requested be taken from carryover funds available from prior grants. This will enable the ISDH in partnership with HRSA to continue to provide essential public health services to Indiana citizens living with AIDS and HIV while avoiding any reduction in those services.

**History and Grant Oversight**

As you know, during all times relevant to the audit, the ISDH contracted with ASI to assist with the administration of the State's Title II program. On November 16, 2000, in conjunction with the Indiana Department of Administration and after multiple discussions with HRSA and ASI, the ISDH terminated all contracts or grants between the ISDH and ASI. The termination letter cited ASI's incorrect use of funds between specific grants and contracts, ASI's inappropriate billing procedures, and ASI's failure to expend funds in accordance with the grants and contracts. That correspondence also cited ASI's breach of the confidentiality provisions of the grant agreements based on ASI's open discussion of a client's medical condition without that client's authorization. The letter referenced the good faith attempts by the ISDH to work with ASI over the previous several months to help ASI overcome its administrative deficiencies, and ASI's failure to improve in response to those efforts.

Upon termination of the contracts with ASI, the ISDH began to administer the Title II program directly and ensured that no clients were without services and that all providers were paid as appropriate. The ISDH has since that time continued the direct administration of enrollment and eligibility of clients, and has contracted with another outside entity to handle claims processing. In its December 2001 site visit report, HRSA lauded the ISDH for the significant progress it had made in administering the Title II program despite and since the termination of ASI's contracts. HRSA commended the ISDH and specifically Michael Butler, the Director of the Division of HIV/STD, and Shawn Carney, the Title II Administrator, for addressing the situation in a proactive manner by putting in place a program that is assuring the delivery of services to Indiana citizens living with AIDS and HIV.

The draft report from the audit conducted by the OIG also supports the ISDH's good stewardship of the Title II funding. Indeed, the draft report finds that the ISDH was "actively involved in the administration of the Title II program," and that the ISDH "provided a significant amount of oversight for services contracted to AIDServe." The OIG noted that the ISDH issued written reminders to ASI that claims should be for actual expenditures, and that officials from the ISDH were actively meeting with ASI to resolve ASI's problems with claims processing and reporting. The OIG also noted that the ISDH was actively involved in reconciling ASI's failure to reimburse providers on claims for medical services, and that in the months prior to the termination of ASI's contracts, the

ISDH was making visits to ASI on a weekly basis to address ASI's delays and inaccuracies in reporting and in the processing of claims. The OIG further noted that at that time the ISDH was appropriately disallowing many claims for reimbursement being submitted by ASI.

Moreover, although not referenced by the OIG, the ISDH was also in communication with HRSA and was working under the guidance of HRSA in addressing the problems it was having with ASI. During the period that the ISDH was contracting with ASI, the Ryan White Title II program was experiencing tremendous growth. At the same time, the ISDH worked with four different HRSA project officers, and HRSA approved and increased each subsequent grant application made by the ISDH with the knowledge that the ISDH was sub-contracting with ASI. HRSA staff even visited ASI on a routine site visit and thereafter met and corresponded with ISDH staff regarding ASI's status. HRSA staff made no requests that ASI's contracts be terminated, and asked to be updated and copied on all ASI correspondence. HRSA specifically asked for weekly calls for this update. The ISDH complied with all HRSA requests and recommendations as they related to ASI.

To the extent that the OIG finds any fault with the ISDH, it is with regard to the ISDH's inability to successfully secure annual audit reports from ASI. On that point, the OIG concluded that "[e]nforcement of the audit requirements would have emphasized the financial management and claims documentation weaknesses needing corrective action while AIDServe was still in operation." Of course, as noted above and as specifically found by the OIG, the ISDH was identifying timely those deficiencies with ASI and was working actively with ASI to resolve them while ASI was still in business and was still acting as the third-party administrator for the Title II funding. Moreover, each of the contracts and grants the ISDH had with ASI required that ASI provide the ISDH with an annual audit, and the ISDH did seek to enforce that provision by requesting the audits at the completion of each contract and grant. ASI came into existence in 1998, and the ISDH did obtain an audit for that year. While the ISDH did not terminate existing contracts and did not otherwise discontinue its relationship with ASI based solely on ASI's failure to thereafter timely submit the annual audits, there is no question that the ISDH was working in good faith to assist ASI in correcting its deficiencies and in securing audits from ASI, and that HRSA was aware of the issues involving ASI.

In this context, terminating the contracts with ASI for the reason that it failed to complete its annual audits would have been reckless and irresponsible, as it would have left a void in the supply of public health services to Indiana citizens with HIV and AIDS. Indeed, the ISDH was actively meeting with ASI at the initiation of the ISDH, and those meetings were for the purpose of working through the cash flow issues being experienced by ASI and to ensure a continuation of client services. The issues ASI was experiencing suggested that it was making payments for client services without correctly charging the appropriate contracts with the ISDH, and that it was spending more money on client services than was awarded under its contracts. As steward of the federal money and as provider of the public health services it funded, the ISDH sought to work with ASI and provide it an opportunity to resolve its deficiencies before ultimately terminating the

contracts when ASI was unable to do so. Finally, when audits from ASI were not forthcoming, the ISDH directly contracted with auditors to conduct the annual audits of ASI and worked with those auditors to complete the record.

While the draft report identifies "questioned" claims against the Title II grant and concludes with recommendations seeking repayment of those questioned amounts, it does so based on errors in ASI's billing procedures, cost allocation practices, and the expenditure of funds between grants. Those errors are among the issues discovered by the ISDH and that led to the ISDH terminating ASI contracts and ultimately to HRSA's request for this audit. With regard to the OIG request that the ISDH improve its oversight of sub-grantees by ensuring that annual audits are performed in a timely manner, the ISDH offers the foregoing explanation and further notes HRSA's recent site visit report from December 2001, and the HRSA inspectors' conclusions that the ISDH staff "have implemented a rigorous review of Title II contracts and its protocol for monitoring grantees." Of course, as the direct grantee and steward of the Title II funds, the ISDH acknowledges its responsibility to the federal funder and to the clients it is being funded to serve, and pledges to continue to work with HRSA in reconciling ASI's errors while continuing to provide essential public health services to the citizens of Indiana.

**Duplicate Charges Against the Grants for Medical Services**

The OIG determined that $92,495 in payments for medical services were charged twice against the Title II grants. The OIG did not conclude that ASI or providers were actually paid twice. ASI worked on a cost-reimbursement basis. The contract was set up to provide for ASI to incur the charge from a provider, pay the provider, and then charge the ISDH against the grant for reimbursement. The OIG determined that in some instances ASI was charging against the grant before they paid the provider, and then ASI would either not pay the provider or, because of ASI's cash flow problems, would issue checks that were returned for insufficient funds. The ISDH was not in a position to discover this practice until providers began to complain about not being reimbursed. ASI failed to correct this situation, and providers began to contact the ISDH directly for reimbursement. When questioned by the ISDH about this, officials from ASI admitted that ASI was not using the money claimed for medical bills to pay those bills, but rather ASI was using that money to pay other expenses related to the administration of the Title II program. When the ISDH learned this was occurring, it immediately notified ASI that it was in violation of the contract with the ISDH and instructed ASI to correct the violation. The ISDH also notified HRSA, and changed the payment procedure to eliminate the possibility of duplicate charges. In order to avoid a lapse in medical services, the ISDH paid the medical providers directly. With regard to provider claims that were among those included in the initial charge by ASI, this constituted a second charge against the grant.

As the OIG concluded, ASI's "failure to follow the cost-reimbursement requirements which required that it pay for the services, then claim reimbursement from [the] ISDH, resulted in the duplicate claim." ASI's destruction of records and poor record-keeping, and ASI's subsequent demise precluded the ISDH from identifying the

specific claims that were charged twice against the grant, and from recouping those first charges from ASI. Moreover, the ISDH cannot now determine the extent to which duplicate charges were made. While the ISDH cannot identify the exact amount of duplicate charges against the grant, it is not likely that the amount is as high as the amount determined by the OIG. The OIG determined the amount of duplicate charges by comparing a list of ASI's payments to providers against a larger list of payments the ISDH made to ASI for provider services. Because the same providers provided services on multiple claims, a process of identification that is based on the provider and not on specific claims would be certain to include claims by a provider that were not charged twice against the grant. The ISDH respectfully requests that this finding and the OIG recommendation be amended to reflect that no refund is required or, in the alternative, that the amount of the refund be reduced to reflect only those duplicate charges that are based on the same claim for services.

**Health Insurance Premiums**

The OIG determined that ASI failed to credit the grant for $75,007 in refunded health insurance premiums. Under its grant agreements with the ISDH, ASI was responsible for enrolling clients in the Indiana Comprehensive Health Insurance Association (ICHIA). The insurance premiums were paid for out of Title II funds. Over the course of the audit period, ICHIA refunded to ASI premiums totaling $196,647. Federal regulations require that all such refunds should be credited to the federal grant, and the ISDH required ASI to follow all federal regulations pursuant to the terms of the contracts ASI had with the ISDH. ASI credited only $121,640 to the grant. ASI did not alert the ISDH to the total amount of ICHIA refunds, and the ISDH was otherwise not in a position to know the total amount ICHIA was refunding to ASI or to monitor for ASI's failure to fully credit the federal grant. The OIG concluded that ASI was responsible for crediting the refunds to the federal grant, and that it did not properly do so. The ISDH is unable to contest this finding, and ASI is no longer in business and is not a viable entity for purposes of HRSA or the ISDH to recoup these premium refunds on behalf of the grant. However, because the ISDH was not in a position to monitor for ASI's failure to refund all of the premiums in accordance with federal law, and because the OIG did not identify any misuse of the federal money as part of the audit, the ISDH respectfully requests that this finding and the OIG recommendation be amended to reflect that no refund is required.

**ASAP Services Charged to ADAP**

The OIG determined that the ISDH inappropriately charged $533,123 in drug and medical assistance service costs to the AIDS Drug Assistance Program (ADAP). ADAP funds are administered under Title II. The OIG concluded that the questioned charges should have been charged to the AIDS Substance Abuse Program (ASAP). ASAP funds were awarded to the state through the Department of Mental Health as a sub-grant from the Substance Abuse and Mental Health Services Administration (SAMHSA). The OIG determination that the questioned charges were inappropriately charged to Title II ADAP funds rests upon the Title II requirement that grant funds not be utilized to make payments for any item or service to the extent that payment can be made from another

source. The OIG concluded that the charges at issue could have been charged to ASAP and charged to SAMHSA funds. The ISDH respectfully requests that this finding and the OIG recommendation be amended to reflect that no refund is required or, in the alternative, that the amount of the recommended refund be reduced.

The OIG recommendation does not identify the specific basis upon which the charges were inappropriate under ADAP. The OIG notes that the ADAP program pays only for drugs identified in the ADAP Formulary and then only as payer of last resort. The OIG does not identify how the drugs that are the subject of the charges at issue fail to fall into the ADAP Formulary. While these two programs were funded by separate sources, the eligibility requirements and the covered services were very similar. ADAP provided for a wide variety of HIV-related pharmaceuticals. ASAP provided for the same HIV medicines and added a number of psychotropic medications and substance abuse treatment drugs. ASAP also paid for a limited set of medical services, including physician office visits. Clients with HIV who were eligible for ASAP should have been dually enrolled in ADAP. To the extent that the drugs at issue were covered under the ADAP Formulary and would have been appropriately charged to ADAP on that basis, the OIG should allow those charges under Title II. With regard to the issue of Title II being a "payer of last resort," the ISDH respectfully requests that the OIG note the inequity of disallowing the charges at issue on that basis because the ASAP funding also requires that ASAP be a payer of last resort. This puts the ISDH in the untenable position of not being able to rely on either of the funding sources to pay for AIDS and HIV drugs that are appropriately covered under both of them. Ultimately, the state's ASAP funds were exhausted, and the ISDH should not be penalized for maximizing services to clients infected with HIV by using ADAP funds for those clients who were eligible under both programs.

That said, the ISDH agrees that not all of the charges were appropriate under ADAP. Vouchers submitted by ASI to ISDH for reimbursement were to be coded with the appropriate program name (ADAP or ASAP) and the appropriate fund center for tracking through our Finance Division. However, as a result of your audit, it has come to our attention that some ASAP claims were erroneously submitted or posted to the ADAP fund center. An erroneous submission may have occurred if ASI used the wrong pre-formatted voucher form (showing the wrong fund center). Similarly, an erroneous posting may have occurred if the ISDH used the supporting documentation to decide the correct fund center since average ASAP claim documentation would appear to be nearly identical to that of ADAP claims.

The ISDH provided services to people living with HIV or AIDS under both programs. We accept that $193,924.21 of the $533,123.16 that was charged to the ADAP program was not for approved ADAP formulary pharmaceuticals. **(See Appendix A).** The ISDH respectfully requests that the OIG amend its findings and recommendation to allow $339,198.95 that was spent on ADAP approved formulary pharmaceuticals.

**Indirect Costs**

The OIG determined that ASI inappropriately claimed $83,874 in indirect costs. The OIG noted that ASI utilized indirect cost rates that were previously approved and used by a prior third-party administrator. The OIG found that this was inappropriate because the rate was not approved for ASI. Further, the OIG found that ASI claimed items as indirect costs that it should have claimed as direct costs. The draft report does not identify the specific items the OIG has questioned as incorrectly charged, nor does it indicate how the amount was derived. The ISDH respectfully requests that the OIG recommendation be amended to reflect that no refund is required or, in the alternative, that the amount of the recommended refund be reduced following clarification and further review.

As to the items charged, the OIG does not find that they were charged and reimbursed as both direct and indirect costs, only that they were charged as indirect rather than direct. While a justification may be available for the manner in which the items were charged, that justification cannot be provided without additional information on what charges are being questioned. Regardless, because there is no finding that the items were not properly charged to the Title II program as eligible expenses, the ISDH should not be required to refund the charges to the federal grant.

To the extent that ASI was using rates previously approved for a predecessor third-party administrator, the ISDH notes that the prior party was one of two entities that ultimately became ASI. The ISDH would not have had reason to believe that the rates were not appropriate.

If you have any questions or comments regarding this response, or if the ISDH can provide further assistance with the completion of the audit, please do not hesitate to contact me. Thank you for your consideration of these comments and our request for modification and amendment of your findings.

Very truly yours,

Michael A. Hurst
Deputy Health Commissioner
317-233-7200

# ASAP DRUG CHARGES ON UNALLOWABLE CLAIMS

| ISDH PAYMENT DOCUMENT NO. | DATE PAID | AMOUNT OF CLAIM | UNALLOWABLE CLAIMS | NON-ADAP DRUGS PAID IN TITLE II ON UNALLOWABLE CLAIMS | NON-ADAP SERVICES PAID IN TITLE II ON UNALLOWABLE CLAIMS | INDETERMINAL | ASKING FOR CONSIDERTION ON ADAP ALLOWABLE DRUGS |
|---|---|---|---|---|---|---|---|
| C400H01610 | 03/08/01 | 171,948.65 | 37,956.08 | 1,148.18 | 395.52 | | 36,412.38 |
| C400H01770 | 04/07/00 | 423,660.44 | 90,719.30 | 3,031.10 | 248.50 | | 87,439.70 |
| C400H01935 | 05/04/00 | 71,281.27 | 28,033.10 | 283.96 | 5.99 | | 27,743.15 |
| C400J00069 | 07/05/00 | 87,539.28 | 12,675.30 | 320.72 | 126.14 | | 12,228.44 |
| C400J00172 | 07/19/00 | 229,328.79 | 25,886.69 | 734.25 | 67.65 | | 25,084.79 |
| C400J00208 | 07/25/00 | 105,123.00 | 13,106.56 | 213.35 | 60.06 | | 12,833.15 |
| C400J00221 | 07/28/00 | 28,710.65 | 7,235.68 | 0.00 | 7,235.68 | | 0.00 |
| C400J00248 | 08/01/00 | 17,732.89 | 15,432.89 | 0.00 | 15,338.89 | | 94.00 |
| C400J00265 | 08/04/00 | 82,205.11 | 24,235.74 | 724.42 | 7,308.50 | | 16,202.82 |
| C400J00309 | 08/11/00 | 173,528.64 | 5,041.80 | 0.00 | 5,041.80 | | 0.00 |
| C400J00382 | 08/23/00 | 11,551.48 | 3,364.33 | 80.96 | 3,255.58 | | 27.79 |
| C400J00474 | 09/07/00 | 7,127.35 | 6,902.35 | 0.00 | 6,902.35 | | 0.00 |
| C400J00527 | 09/14/00 | 27,406.07 | 3,944.20 | 0.00 | 772.00 | | 3,172.20 |
| C400J00612 | 09/26/00 | 40,129.02 | 7,725.47 | 320.00 | 7,405.47 | | 0.00 |
| C400J00623 | 09/27/00 | 50,468.89 | 13,439.97 | 0.00 | 13,439.97 | | 0.00 |
| C400J00766 | 10/26/00 | 210,728.76 | 18,763.65 | 533.23 | 2,865.75 | | 15,364.67 |
| C400J00778 | 10/25/00 | 44,159.77 | 1,786.72 | 0.00 | 1,192.81 | | 593.91 |
| C400J00834 | 11/03/00 | 2,690.10 | 2,690.10 | 0.00 | 2,690.10 | | 0.00 |
| C400J00834 | 11/03/00 | 8,114.09 | 8,114.09 | -- | -- | 8,114.09 | -- |
| C400J00982 | 12/07/00 | 219,198.19 | 2,598.13 | 79.06 | 0.00 | | 2,519.07 |
| C400J00983 | 12/07/00 | 44,182.63 | 44,182.63 | 8,932.81 | 8,196.25 | | 27,053.57 |
| C400J01119 | 01/05/01 | 36,655.96 | 2,021.14 | 0.00 | 1,388.46 | | 632.68 |
| C400J01302 | 02/06/01 | 73,938.00 | 73,938.00 | 3,056.83 | 4,847.39 | | 66,033.78 |
| C400J01369 | 02/26/01 | 29,632.75 | 1,027.92 | 0.00 | 1,027.92 | | 0.00 |
| C400J01456 | 03/13/01 | 3,115.42 | 1,060.48 | 0.00 | 604.60 | | 455.88 |
| C400J01479 | 03/16/01 | 6,680.68 | 6,680.68 | 103.82 | 1,269.89 | | 5,306.97 |
| JV191 | 02/24/00 | 74,560.16 | 74,560.16 | -- | -- | 74,560.16 | -- |
| **Total** | | **2,281,398.04** | **533,123.16** | **19,562.69** | **91,687.27** | **82,674.25** | **339,198.95** |
| | | | | | 193,924.21 | | |