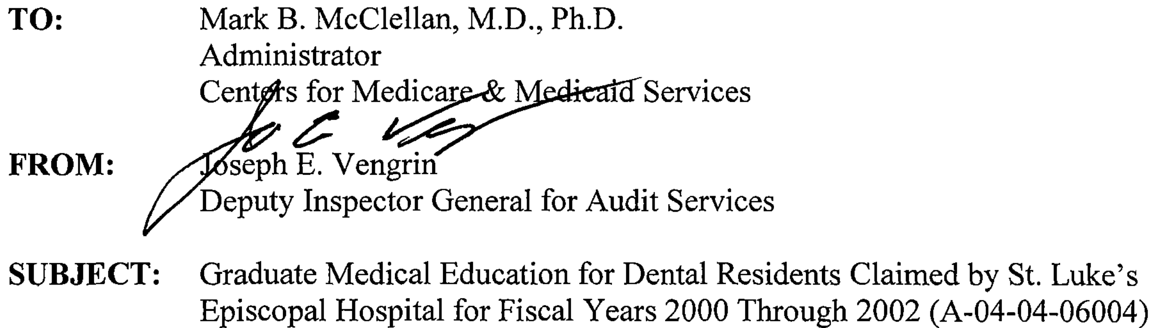
DEPARTMENT OF HEALTH & HUMAN SERVICES

Office of Inspector General

Washington, D.C. 20201

SEP 26 2006



TO: Mark B. McClellan, M.D., Ph.D.
Administrator
Centers for Medicare & Medicaid Services

FROM: Joseph E. Vengrin
Deputy Inspector General for Audit Services

SUBJECT: Graduate Medical Education for Dental Residents Claimed by St. Luke's Episcopal Hospital for Fiscal Years 2000 Through 2002 (A-04-04-06004)

Attached is an advance copy of our final report on Medicare graduate medical education (GME) payments for dental residents claimed by St. Luke's Episcopal Hospital (the Hospital) in Houston, Texas. We will issue this report to the Hospital within 5 business days.

Because of congressional interest, we reviewed 10 hospitals to determine the effect of the Balanced Budget Act of 1997 on direct and indirect GME payments for dental residents included in hospitals' counts of full-time equivalent (FTE) residents. That legislation permitted hospitals to count FTE residents who train in nonhospital settings in their calculations of indirect, in addition to direct, GME payments. This review focused on the Hospital's arrangements with the University of Texas Health Science Center at Houston, Dental Branch, which is a nonhospital setting.

Our objective was to determine whether the Hospital included the appropriate number of dental residents in its FTE counts when computing Medicare GME payments for fiscal years (FY) 2000 through 2002.

The Hospital inappropriately included dental residents in its direct and indirect FTE counts used to compute FY 2002 GME payments. Contrary to Federal regulations, the Hospital included FTEs (1) for dental residents not in an approved residency program and (2) for dental residents who had exceeded their initial residency period. The Hospital did not have written procedures to prevent the inclusion of these FTEs. As a result, the Hospital overstated its direct and indirect GME claims by $19,528 for FY 2002.

We recommend that the Hospital: (1) file amended cost reports that will result in a refund of $19,528, including $13,639 associated with FY 2002 FTEs for residents not enrolled in an approved program and $5,889 associated with FY 2002 FTEs for residents beyond their initial residency period; (2) establish and follow written procedures to ensure that the FTE counts for residents in nonhospital settings include only those FTEs

in approved programs and that the FTE counts for residents who exceed their initial residency period are weighted; (3) determine whether errors similar to those identified in our review occurred in Medicare cost reports after FY 2002 and refund any overpayments; and (4) work with the Centers for Medicare & Medicaid Services to resolve the $103,843 related to FY 2002 FTEs for the didactic time of residents assigned to nonhospital settings.

In written comments on the draft report, Hospital officials agreed with the above recommendations. The officials did not agree with the draft report's finding and associated recommendations on training costs not incurred by the Hospital. After reviewing the Hospital's comments and additional supporting documentation provided, we deleted that finding and the associated recommendations from our final report.

If you have any questions or comments about this report, please do not hesitate to call me, or your staff may contact George M. Reeb, Assistant Inspector General for the Centers for Medicare & Medicaid Audits, at (410) 786-7104 or Peter J. Barbera, Regional Inspector General for Audit Services, Region IV, at (404) 562-7750. Please refer to report number A-04-04-06004.

Attachment

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Office of Inspector General
Office of Audit Services

REGION IV
61 Forsyth Street, S.W., Suite 3T41
Atlanta, Georgia 30303

SEP 27 2006

Report Number: A-04-04-06004

Mr. Jack Lynch
Chief Executive Officer
St. Luke's Episcopal Hospital
P. O. Box 20269
Houston, Texas 77225-0269

Dear Mr. Lynch:

Enclosed are two copies of the U.S. Department of Health and Human Services (HHS), Office of Inspector General (OIG) final report entitled "Graduate Medical Education for Dental Residents Claimed by St. Luke's Episcopal Hospital for Fiscal Years 2000 Through 2002." We will forward a copy of this report to the HHS action official named on the next page for review and any action deemed necessary.

The HHS action official will make final determination as to actions taken on all matters reported. We request that you respond to 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 reports issued to the Department's grantees and contractors are made available to the public to the extent the information is not subject to exemptions in the Act that the Department chooses to exercise (see 45 CFR part 5).

Please refer to report number A-04-04-06004 in all correspondence.

Sincerely,

Peter J. Barbera

Peter J. Barbera
Regional Inspector General
for Audit Services

Enclosures

cc:
Mr. Gary Ermis
Manager of Governmental Reporting
St. Luke's Episcopal Hospital
6900 Fannin, Suite 918
Houston, Texas 77030

Direct Reply to HHS Action Official:

James R. Farris, M.D.
Regional Administrator
Centers for Medicare & Medicaid Services, Region VI
Department of Health and Human Services
1301 Young Street, Room 714
Dallas, Texas 75202

Department of Health and Human Services

OFFICE OF INSPECTOR GENERAL

GRADUATE MEDICAL EDUCATION FOR DENTAL RESIDENTS CLAIMED BY ST. LUKE'S EPISCOPAL HOSPITAL FOR FISCAL YEARS 2000 THROUGH 2002

Daniel R. Levinson
Inspector General

September 2006
A-04-04-06004

Office of Inspector General

http://oig.hhs.gov

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In accordance with the principles of the Freedom of Information Act (5 U.S.C. 552, as amended by Public Law 104-231), Office of Inspector General, Office of Audit Services reports are made available to members of the public to the extent the information is not subject to exemptions in the act. (See 45 CFR part 5.)

OAS FINDINGS AND OPINIONS

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

EXECUTIVE SUMMARY

BACKGROUND

The Medicare program makes two types of payments to teaching hospitals to support graduate medical education (GME) programs for physicians and other practitioners. Direct GME payments are Medicare's share of the direct costs of training residents, such as salaries and fringe benefits of residents and faculty and hospital overhead expenses. Indirect GME payments cover the additional operating costs that teaching hospitals incur in treating inpatients, such as the costs associated with using more intensive treatments, treating sicker patients, using a costlier staff mix, and ordering more tests. Payments for both direct and indirect GME are based, in part, on the number of full-time equivalent (FTE) residents trained by the hospital. The number of FTEs used for the current year's payments is the 3-year "rolling average" of the FTE count for the current year and the preceding 2 cost-reporting years.

Because of congressional interest, we undertook a review of 10 hospitals to determine the effect of the Balanced Budget Act of 1997 on direct and indirect GME payments for dental residents included in hospitals' counts of FTE residents. That legislation permitted hospitals to count FTE residents who train in nonhospital settings in their calculations of indirect, in addition to direct, GME payments.

This report focuses on St. Luke's Episcopal Hospital (the Hospital) and its arrangements with the University of Texas Health Science Center at Houston, Dental Branch (the Dental School). The Dental School is a nonhospital setting. In July 1999, the Hospital entered into an agreement with the Dental School to allow the Hospital to claim GME payments for dental residents in return for reimbursing the Dental School for residents' salaries and related teaching faculty costs. For all FTEs, including dental FTEs, the Hospital claimed more than $34 million in direct ($6 million) and indirect ($28 million) GME payments for the 3-year period that ended June 30, 2002. FTEs used to calculate reimbursable GME costs averaged 89 per year.

OBJECTIVE

Our objective was to determine whether the Hospital included the appropriate number of dental residents in its FTE counts when computing Medicare GME payments for fiscal years (FY) 2000 through 2002.

SUMMARY OF FINDINGS

The Hospital inappropriately included dental residents in its direct and indirect FTE counts used to compute FY 2002 GME payments. Contrary to Federal regulations, the Hospital included FTEs (1) for dental residents not in an approved residency program and (2) for dental residents who had exceeded their initial residency period. The Hospital did not have written procedures to prevent the inclusion of these FTEs. As a result, the Hospital overstated its direct and indirect GME claims by a total of $19,528 for FY 2002.

The number of FTE residents claimed by the Hospital included didactic, i.e., classroom, time for the residents when working in nonhospital settings. We have set aside $103,843 as the amount that the Hospital claimed corresponding to this didactic time for the Centers for Medicare & Medicaid Services (CMS) to determine whether there is a basis to disallow this claimed amount based on current CMS guidance.

RECOMMENDATIONS

We recommend that the Hospital:

- file amended cost reports that will result in a refund of $19,528, including:
    - $13,639 associated with FY 2002 FTEs for residents not enrolled in an approved program and
    - $5,889 associated with FY 2002 FTEs for residents beyond their initial residency period;
- establish and follow written procedures to ensure that the FTE counts for residents in nonhospital settings include only those FTEs in approved programs and that the FTE counts for residents who exceed their initial residency period are weighted;
- determine whether errors similar to those identified in our review occurred in Medicare cost reports after FY 2002 and refund any overpayments; and
- work with CMS to resolve the $103,843 related to FY 2002 FTEs for the didactic time of residents assigned to nonhospital settings.

HOSPITAL COMMENTS AND OFFICE OF INSPECTOR GENERAL RESPONSE

In written comments on the draft report, Hospital officials agreed with the above recommendations. The officials did not agree with the draft report's finding and associated recommendations on training costs not incurred by the Hospital. After reviewing the Hospital's comments and additional supporting documentation provided, we deleted that finding and the associated recommendations from our final report.

The Hospital's comments are included as an appendix. The exhibits referenced in the comments are not appended because they contain personally identifiable information.

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HOSPITAL COMMENTS

INTRODUCTION

BACKGROUND

Medicare Payments for Graduate Medical Education

Since its inception in 1965, the Medicare program has shared in the costs of educational activities incurred by participating providers. Medicare makes two types of payments to teaching hospitals to support graduate medical education (GME) programs for physicians and other practitioners. Direct GME payments are Medicare's share of the direct costs of training residents, such as salaries and fringe benefits of residents and faculty and hospital overhead expenses. Indirect GME payments cover the additional operating costs that teaching hospitals incur in treating inpatients, such as the costs associated with using more intensive treatments, treating sicker patients, using a costlier staff mix, and ordering more tests. Payments for both direct and indirect GME are based, in part, on the number of full-time equivalent (FTE) residents trained by the hospital. The number of FTEs used for the current year's payments is the 3-year "rolling average" of the FTE count for the current year and the preceding 2 cost-reporting years.

Balanced Budget Act of 1997

The Balanced Budget Act of 1997 placed some controls on the continuing growth of GME reimbursement by imposing caps on the number of residents that hospitals are allowed to count for the purpose of direct and indirect GME payments. Dental FTEs are not included in the caps. The legislation also created incentives for hospitals to train residents in freestanding nonhospital settings, such as clinics and ambulatory surgical centers, by permitting hospitals to count FTE residents who train in nonhospital settings in their calculations of indirect, in addition to direct, GME payments.

Because of congressional interest, we undertook a review of 10 hospitals to determine the effect of the Balanced Budget Act on direct and indirect GME payments for dental residents included in hospitals' counts of FTE residents.

St. Luke's Episcopal Hospital

St. Luke's Episcopal Hospital (the Hospital) is a 686-bed teaching hospital in Houston, Texas. The Hospital participates in training dental residents affiliated with the University of Texas Health Science Center at Houston, Dental Branch (the Dental School). The Dental School is a nonhospital setting. In July 1999, the Hospital entered into an agreement with the Dental School to allow the Hospital to claim GME payments for dental residents in return for reimbursing the Dental School for residents' salaries and related teaching faculty costs.

For all FTEs, including dental FTEs, the Hospital claimed more than $34 million in direct ($6 million) and indirect ($28 million) GME payments for the 3-year period that ended June 30, 2002. FTEs used to calculate reimbursable GME costs averaged 89 per year.

OBJECTIVE, SCOPE, AND METHODOLOGY

Objective

Our objective was to determine whether the Hospital included the appropriate number of dental residents in its FTE counts when computing Medicare GME payments for fiscal years (FY) 2000 through 2002.

Scope

Our review of the Hospital's internal control structure was limited to understanding those controls used to determine the number of residents counted for direct and indirect GME payments. We neither assessed the completeness of the Hospital's data files nor evaluated the adequacy of the input controls, except for limited testing of data from computer-based systems. The objective of our review did not require a complete understanding or assessment of the Hospital's internal control structure. We restricted our review to dental residents.

We performed the audit at both the Hospital and the Dental School in Houston, Texas. We obtained information documenting the dental FTEs reported on the Hospital's Medicare cost reports from the Hospital, the Dental School, and the fiscal intermediary.

Methodology

To accomplish our objective, we:

- reviewed applicable Federal criteria, including section 1886 of the Social Security Act (the Act) and 42 CFR parts 412 and 413;
- gained an understanding of the Hospital's procedures for identifying, counting, and reporting dental resident FTEs on the Medicare cost reports;
- reconciled the dental resident FTEs reported on the Hospital's FYs 2000 through 2002 Medicare cost reports to supporting documentation;
- reviewed supporting documentation to determine whether the Hospital appropriately included dental residents in the FTE resident counts when computing direct and indirect GME payments on the Medicare cost reports;
- verified, through a review of accreditation letters and through contact with the American Dental Association (ADA), that the dental residents were enrolled in approved residency programs;
- reviewed financial records at the Hospital and the Dental School to determine whether the Hospital incurred all of the costs of training dental residents in nonhospital settings; and
- summarized the audit results and provided them to the fiscal intermediary to recompute GME payments on the FYs 2000 through 2002 cost reports.

We conducted this audit in accordance with generally accepted government auditing standards.

FINDINGS AND RECOMMENDATIONS

The Hospital inappropriately included dental residents in its FTE counts used to compute FY 2002 GME payments. Contrary to Federal regulations, the Hospital included FTEs (1) for dental residents not in an approved residency program and (2) for dental residents who had exceeded their initial residency period. The Hospital did not have written procedures to prevent the inclusion of these FTEs. As a result, the Hospital overstated its direct and indirect GME claims by $19,528 for FY 2002.

The number of FTE residents claimed by the Hospital included didactic, i.e., classroom, time for the residents when working in nonhospital settings. We have set aside $103,843 as the amount that the Hospital claimed corresponding to this didactic time for the Centers for Medicare & Medicaid Services (CMS) to determine whether there is a basis to disallow this claimed amount based on current CMS guidance.

OVERSTATED FULL-TIME EQUIVALENTS

Of the total $19,528, $13,639 related to FTEs for residents in an unapproved program and $5,889 related to residents who had exceeded their initial residency period.

Residents Not Enrolled in an Approved Program

In computing FY 2002 GME payments, the Hospital did not comply with Federal regulations requiring that residents included in the FTE count be enrolled in approved residency programs.

Pursuant to 42 CFR § 413.75(c), Medicare allows payments to hospitals "for the costs of approved GME programs." An approved GME program is a program accredited by the American Medical Association's Accreditation Council for Graduate Medical Education or by the approving body of the American Osteopathic Association, ADA, or the American Podiatric Medical Association (42 CFR § 415.152).

The Hospital inappropriately included 0.75 FTEs in its FY 2002 direct and indirect GME counts for residents enrolled in an optional second year of the Advanced Education in General Dentistry residency program. ADA had approved only a 12-month program.

According to a Dental School official, ADA was aware that the Dental School recently had added the optional second year. The official believed that the ADA accrediting body's knowledge of the extended program signified approval. Therefore, the Dental School included second-year residents in the FTEs reported to the Hospital. The Dental School could not provide us with an approval letter or written acknowledgement of the expanded program from ADA. Moreover, ADA confirmed to us that it had approved only the 12-month program. The Hospital did not have written procedures to ensure that it reported only FTEs for residents enrolled in an approved program.

As a result, Medicare overpaid the Hospital $13,639 for FY 2002.

Residents Exceeding Initial Residency Period

In computing FY 2002 direct GME payments, the Hospital did not comply with Federal regulations requiring that FTEs for residents exceeding their initial residency period be weighted by 0.5.

An initial residency period is "the minimum number of years required for board eligibility" (42 CFR § 413.79(a)). For purposes of direct GME payments, residents in their initial residency period are counted at a full weighting factor of 1. Residents who have exceeded their initial residency period are weighted at a reduced 0.5 factor. Payments for indirect GME are not affected by weighting factors.

For FY 2002, the Hospital inappropriately reported 0.57 direct FTEs at a weighting factor of 1 rather than 0.5 for residents who were in the third year of the endodontics and orthodontics programs. ADA limits the initial residency period for both programs to 2 years.

The Hospital did not have written procedures to ensure that it appropriately weighted dental FTEs for residents exceeding their initial residency period. According to a Hospital official, the Hospital relied on the Dental School's list of residents to determine the FTE counts. The official stated that it was the Hospital's understanding that each dental resident should be reported as one FTE.

As a result, Medicare overpaid the Hospital $5,889 for FY 2002.

NON-PATIENT-CARE ACTIVITIES

The number of FTE residents claimed by the Hospital included didactic, i.e., classroom, time for the residents when working in nonhospital settings. We have set aside $103,843 as the amount that the hospital claimed corresponding to this didactic time for CMS to determine whether there is a basis to disallow this claimed amount based on current CMS guidance.

RECOMMENDATIONS

We recommend that the Hospital:

- file amended cost reports that will result in a refund of $19,528, including:
    - $13,639 associated with FY 2002 FTEs for residents not enrolled in an approved program and
    - $5,889 associated with FY 2002 FTEs for residents beyond their initial residency period;
- establish and follow written procedures to ensure that the FTE counts for residents in nonhospital settings include only those FTEs in approved programs and that the FTE counts for residents who exceed their initial residency period are weighted;

- determine whether errors similar to those identified in our review occurred in Medicare cost reports after FY 2002 and refund any overpayments; and

- work with CMS to resolve the $103,843 related to FY 2002 FTEs for the didactic time of residents assigned to nonhospital settings.

HOSPITAL COMMENTS AND OFFICE OF INSPECTOR GENERAL RESPONSE

In written comments on the draft report, Hospital officials agreed with the above recommendations. The officials did not agree with the draft report's finding and associated recommendations on training costs not incurred by the Hospital. After reviewing the Hospital's comments and additional supporting documentation provided, we deleted that finding and the associated recommendations from our final report.

The Hospital's comments are included as an appendix. The exhibits referenced in the comments are not appended because they contain personally identifiable information.

APPENDIX

EPISCOPAL
HOSPITAL

March 15, 2006

Lori S. Pilcher
Regional Inspector General for Audit Services, Region IV
Office of Inspector General
Office of Audit Services
61 Forsyth Street, S.W., Suite 3T41
Atlanta, Georgia 30303

Re: St. Luke's Episcopal Hospital, Houston, Texas
Medicare Provider No. 45-0193
Draft Audit Report Number: A-04-04-06004

Dear Ms. Pilcher:

St. Luke's Episcopal Hospital (the "Hospital") has received and reviewed (1) the draft audit report prepared by the Department of Health and Human Services, Office of Inspector General, Office of Audit Services ("OIG") entitled "Graduate Medical Education for Dental Residents Claimed by St. Luke's Episcopal Hospital for Fiscal Years 2000 through 2002" (Report Number: A-04-04-06004) ("Draft Audit Report") and (2) the OIG auditor's workpapers related to the OIG's onsite audit ("Audit Workpapers") (Exhibit A, attached). The Hospital's responses to the Draft Audit Report Findings and Recommendations are set forth below and organized by the headings set forth in the Draft Audit Report.

1. <u>Training Costs Not Incurred by the Hospital</u>

Draft Audit Report Findings and Recommendations:

The Draft Audit Report concludes that for FYs 2000 and 2001 the Hospital did not incur all or substantially all of the costs for the dental training program. The OIG defines this as the residents' salaries and fringe benefits and the portion of the cost of teaching physicians' salaries and fringe benefits attributable to direct graduate medical education (GME). Specifically, the Draft Audit Report concludes as follows:

- For FY 2000, the Hospital did not pay any of the training costs for dental residents.

- For FY 2001, the Hospital paid only the residents' salaries and fringe benefits; the dental school, rather than the Hospital, paid the supervisory teaching physicians' costs.

- For FY 2002, the Hospital appropriately claimed the dental residents for which it had incurred all the training costs.

As a result, the Draft Audit Report concludes that the Hospital inappropriately included 26.21 direct and 26.71 indirect FTEs in the GME counts for FY 2000 and 22.47 direct and 23.22 indirect FTEs in the GME counts for FY 2001. The Draft Audit Report concludes that the Hospital claimed the appropriate FTEs in its GME counts for FY 2002.

The OIG recommends that the Hospital's cost reports be amended to remove the FTEs that it believes were inappropriately included in the GME counts as discussed above. The OIG also recommends that written procedures be established to ensure that the Hospital is including the appropriate residents in its FTE counts.

Hospital Response:

The Hospital respectfully disagrees with the Draft Audit Report findings regarding training costs for FY 2000 and FY 2001. The Hospital believes that the Draft Audit Report does not consider or, the auditors misinterpreted, information provided during the on-site audits conducted in January 2004. Further, it appears that the Draft Audit Report's conclusions were not consistent with Medicare guidance at the time of entering into the agreement with The University of Texas Health Science Center at Houston (Dental School).

<u>The Hospital Paid the Dental School for Resident Salaries and for Supervisory Teaching Physicians' Costs.</u>

For all relevant periods, the dental residency programs operated under the same "Agreement for Dental Resident Training Between St. Luke's Episcopal Hospital and The University of Texas Health Science Center at Houston," with annual amendments addressing the number of resident positions and related financial terms (collectively the "Dental Program Affiliation Agreement") (Exhibit B, attached). As described above, the Draft Audit Report reached dramatically different conclusions for FYs 2000, 2001, and 2002 regarding whether the dental residency program arrangement memorialized in the Dental Program Affiliation Agreement met the underlying regulatory standards.

Based on a review of the Dental Program Affiliation Agreement and supporting financial records furnished to the OIG auditors during the on-site audit (as referenced in the Audit Workpapers), the Hospital submits that:

(1) The Hospital paid all the dental residents' salaries and fringe benefits for FY 2000. Therefore, the Draft Audit Report statement that the hospital did not pay any of the cost for dental residents is inaccurate and we respectfully request that this be revised for FY 2000.

(2) The Hospital paid the Dental School the amounts set forth in the Dental Program Affiliation Agreement for supervisory teaching physicians' costs for FYs 2000 and 2001. Thus, the Draft Audit Report statements to the contrary are inaccurate and should be revised.

(3) Except as discussed in Sections 2. and 3. below, the Hospital appropriately claimed FTEs for which it had incurred all or substantially all of the training costs in FYs 2000, 2001, and 2002.

Accordingly, the Draft Audit Report's conclusions that the Hospital did not pay the costs of the residents or any of the supervisory teaching physicians' costs are inconsistent with the Dental Program Affiliation Agreement, Audit Workpapers, invoices and payment data.

The Hospital Paid all the Dental Residents' Salaries and Fringe Benefits.

The Hospital incurred the total cost of the dental residents salary and fringe benefits for FY 2000 and all other years of the contract period as reflected in the Dental Program Affiliation Agreement and Audit Workpapers. See Audit Workpapers, FY00 GME Program Costs, Col H, Line 8.

The Hospital Incurred All or Substantially All of the Supervisory Teaching Physicians' Costs.

In addition to paying the Dental School for the residents' salaries and fringe benefits, the Hospital paid certain negotiated amounts each year to the Dental School to cover supervisory teaching physicians' costs. Such payments were negotiated in good faith with the Dental School in arms length transactions. See Dental Program Affiliation Agreement Section 3(b) for each fiscal year

The premise of the Draft Audit Report findings appears to be that, in hindsight, the amount paid by the Hospital to the Dental School for supervisory teaching physicians' costs was not "all or substantially all of the costs for the training program in the nonhospital setting". The Hospital paid \$275,656 as the negotiated payment to the Dental School for supervisory teaching physicians' costs in FY 2000. The next year, in FY 2001, the Hospital paid \$509,509 as the negotiated payment to the Dental School for supervisory teaching physicians' costs. Based on the Audit Workpapers, it is the Hospital's understanding that the OIG believes that the Hospital should have paid \$696,205 in FY 2000 and \$957,843 in FY 2001 for supervisory teaching physicians' costs.

The Hospital contends that the OIG's findings are not consistent with Medicare guidance published during the relevant timeframe. In December 1998, HCFA (now CMS) stated that:

> *The determination of what constitutes reasonable compensation is a matter between the hospital and nonhospital site . . . [CMS] does not expect fiscal intermediaries to do a detailed cost finding as to each party's respective costs.* However, if there is evidence that a hospital is not incurring costs consistent with the written agreement, the fiscal intermediary should not allow the resident to be included in hospital FTE counts for indirect and direct graduate medical education.

See Transmittal No. A-98-44 (emphasis added). Similar language was also published by the Hospital's fiscal intermediary, TrailBlazer Health Enterprises, in Medicare Part A Newsletter, No. 001-99, February 1999 (Exhibit C, attached).

When the Medicare rule for supervisory teaching physicians' costs was implemented one commenter noted that "it is difficult to isolate and quantify costs other than resident salaries and fringe benefits [that] are incurred in non-hospital settings". CMS responded:

> For hospitals seeking to count the time of residents training in the non-hospital site, we are requiring a written agreement between the hospital and the non-hospital site stating that the hospital will incur "all or substantially all" of the costs. *The written agreement must indicate that the hospital is* incurring the cost of the resident salaries and *providing compensation for supervisory teaching physician costs.* The written agreement must also *specify the amounts paid to the non-hospital site. These agreements and amounts paid by the hospital to the non-hospital site may be the product of negotiation between the hospital and non-hospital site. The hospital does not have to report the non-hospital site's GME costs.* We anticipate that in the course of any negotiation between the hospital and non-hospital site, the non-hospital site may need to identify its training costs. *However, this is a matter between the hospital and non-hospital site.*

63 Fed. Reg. 40,993, 41,005 (July 31, 1998) (emphasis added) (Exhibit C, attached). CMS further stated, "We are not requiring hospitals to submit cost data to Medicare as a precondition to counting the resident for indirect and direct GME". 63 Fed. Reg. at 40,994.

Therefore, the amount paid from the Hospital to the Dental School is a matter of negotiation and agreement between the Hospital and the Dental School. The Dental Program Affiliation Agreement reflects annual good faith, arms length negotiations between the Hospital and the Dental School regarding the amount of supervisory teaching physicians' costs. The Hospital paid the Dental School in accordance with its Dental Program Affiliation Agreement. Paraphrasing the language of Transmittal No. A-98-44 above, there is no evidence that the Hospital failed to incur costs consistent with the written Dental Program Affiliation Agreement. The Medicare regulations and instructions do not require that actual supervisory teaching physicians' costs be identified or reviewed, reconciled, and/or paid. The Hospital complied with the Medicare instructions regarding payment of supervisory teaching physicians' costs that were published at the time.

"Supervision of Clinical Training of Residents" Time as Defined in the Draft Audit Report and Audit Workpapers.

The Draft Audit Report and Audit Workpapers appear to include the supervisory teaching physicians' costs, which was a category of time identified by the dental school as "Supervision of Clinical Training of Residents." The Dental School has clarified that *this category of time includes the time when the faculty dentists are involved with residents in furnishing direct,*

billable patient care services that were billed by the Dental School[1] (Exhibit D, attached). Medicare guidance states that:

> With respect to compensation for teaching physicians, the hospital is required to compensate the nonhospital site for the *costs of the teaching physician's activities* provided in connection with an approved residency program *other than the supervision of residents while furnishing billable patient care services*. That is, only the costs associated with teaching time spent on activities within the scope of the GME program, *but not in billable patient care activities*, would be considered direct GME costs that would need to be incurred by the hospital.

See Medicare Policy Clarifications on Graduate Medical Education Payments for Residents Training in Non-Hospital Settings, published by CMS (April 8, 2005). Accordingly, this category of time should not have been included in the OIG's calculation of supervisory teaching physicians' costs and should be removed from its calculations. After applying the Medicare guidance above, the Hospital anticipates that the OIG's calculation of supervisory teaching physicians' costs would be reduced to $434,645 in FY 2000 and to $518,185 in FY 2001.[2]

The OIG's Proposed Disallowance of All Residents Is Inappropriate.

Finally, the Dental Program Affiliation Agreement encompasses four separate dental residency programs. Even if the Draft Audit Report's findings were accurate (which the Hospital contends they are not), after adjusting for billable service time, the exclusion of FTEs for all the residents in every program is an overstatement of the potential impact. The payments made by the Hospital were actually adequate to pay the costs for at least three programs (AEGD, Endodontics, Periodontics) in FY 2000 and the costs for all four programs (AEGD, Endodontics, Periodontics, Orthodontics) in FY 2001. Accordingly, the proposed adjustments should in no event exceed 12 FTEs in the GME counts for FY 2000. See Audit Workpapers.

It is the Hospital's position that the amounts paid for dental residents training costs and supervisory teaching physicians' costs in FY 2000 and FY 2001 are consistent with the Medicare regulations and instructions. Accordingly, the Draft Audit Report findings and recommendations regarding FTE adjustments to the GME counts discussed under the heading "Training Costs Not Incurred by the Hospital" should be withdrawn.

The Hospital similarly does not agree with the recommendation to adjust the relevant cost reports for this issue. In addition, due to the interpretive changes regarding dental residents published in the Federal Register on August 1, 2003, the dental affiliation agreement is no longer in operation. Consequently, the recommendation regarding a written procedure for the dental residency

[1] The Hospital also confirmed with the Dental School that faculty physicians' time recorded under this category of time resulted in significant net revenues to the Dental School for billable patient care services for FY 2000 and FY 2001.

[2] The Draft Audit Report also suggests that the Hospital should not count didactic time as part of the FTE counts. Assuming that the didactic time should be removed from the FTE counts, the corresponding supervisory teaching time associated with the didactic time must also be removed from the OIG's calculation of supervisory teaching physicians' costs. Consequently, the OIG's calculation of supervisory teaching physicians' costs would be further reduced.

program is no longer necessary. Nonetheless, the Hospital has reviewed its written procedures related to this issue with respect to other residency programs and has implemented necessary corrective action.

2. Residents Not Enrolled in Approved Program

Draft Audit Report Findings and Recommendations:

The Draft Audit Report concludes that the Hospital had incorrectly included 0.75 FTEs in its FY 2002 direct and indirect GME counts for residents enrolled in an optional second year of Advanced Education in General Dentistry when the second year was not part of an approved program. The Draft Audit Report recommends that the Hospital's cost reports be amended to reflect the removal of the 0.75 FTE from the GME counts. The Draft Audit Report also recommends that written procedures be established to ensure that the Hospital only includes residents in approved programs.

Hospital Response:

The Hospital agrees with this Draft Audit Report finding and will make necessary adjustments to the applicable cost reports. As the dental residency program is no longer in operation, the recommendation regarding a written procedure for the dental residency program is no longer necessary. Nonetheless, the Hospital has reviewed its written procedures to address this issue in the context of other residency programs.

3. Residents Exceeding Initial Residency Period

Draft Audit Report Findings and Recommendations:

The Draft Audit Report concludes that the Hospital had incorrectly included residents beyond the initial residency period in its FTE counts for FY 2002. The Draft Audit Report recommends that the Hospital's cost reports be amended to reflect the removal of the 0.57 FTE from the GME counts. The Draft Audit Report also recommends that written procedures be established to ensure that the Hospital only includes residents in the initial residency period.

Hospital Response:

The Hospital agrees with this Draft Audit Report finding. However, the Hospital identified this issue prior to the OIG's issuance of the Draft Audit Report. Consequently, cost reports for the periods of FY 2002 to present and the related reimbursement have already been adjusted for this issue. Also, as the dental residency program is no longer in operation, the recommendation regarding a written procedure for the dental residency program is no longer necessary. Nonetheless, the Hospital has reviewed its written procedures to address this issue in the context of other residency programs.

4. Non-Patient Care Activities

Draft Audit Report Findings and Recommendations:

The Draft Audit Report concludes that the Hospital included resident didactic, *i.e.*, classroom, time in the nonhospital setting as part of the Hospital FTE counts in FY 2002. The Draft Audit Report suggests that CMS should review whether there is a basis to disallow this time based on current CMS guidelines.

The Draft Audit Report recommends that the Hospital work with CMS to resolve the issue of didactic time of residents assigned to nonhospital settings.

Hospital Response:

In 1999, the Hospital specifically sought CMS input regarding didactic time of residents. The Hospital received written confirmation from CMS regarding the appropriateness of including didactic time in the resident FTE counts contemporaneously with the initiation of the dental program at the Hospital. As noted within a letter from CMS, dated September 24, 1999, this issue was addressed as follows:

> HCFA interprets the phrase "patient care activities" broadly to include any patient care oriented activities that are part of the resident program. As you stated in your letter, this can include resident participation in "1) the direct delivery of patient care, such as clinical rounds, discussions, and conferences, and 2) scholarly activities, *such as educational seminars, classroom lectures*, research conferences, patient care related research as part of the residency program, and presentations of papers and research results to other residents, medical students, and faculty." Therefore, as long as the residents are primarily involved in patient care oriented activities and other program requirements are met, a hospital may include other educational activities as part of the entire time spent by residents in nonhospital setting and include this time in its FTE count and GME/IME payment calculations.

See Letter from Tzvi Hefter, Director – Division of Acute Care, Health and Human Services (emphasis added) (Exhibit E, attached). Accordingly, the Hospital submits that based on and in reliance on input from CMS, it appropriately included the residents' didactic time in the nonhospital setting as part of the FTE counts[3]. While the Hospital is prepared to discuss this didactic issue further with CMS, it believes that its position is supported by prior CMS guidance.

[3] The Draft Audit Report is also inconsistent with an argument that didactic time should be removed in the resident FTE count. The Draft Audit Report implicitly sets forth that the Hospital should pay for teaching time associated with didactic time by including such time in the OIG's calculation of supervisory teaching physicians' costs. Accordingly, a position that didactic time results in supervisory teaching physicians' costs would equally imply that such time is appropriately included in the resident FTE counts.

Thank you for your consideration of our responses. If you have any questions, please do not hesitate to contact me at 832-355-2300.

Sincerely,

David C. Pate, M.D., J.D.
Chief Executive Officer
St. Luke's Episcopal Hospital