



JUL 29 2008

TO: Kerry Weems
Acting Administrator
Centers for Medicare & Medicaid Services

FROM: Daniel R. Levinson *Daniel R. Levinson*
Inspector General

SUBJECT: Upper Payment Limit Payments to Texas State Hospitals for Inpatient Services
(A-06-07-00025)

Attached is an advance copy of our final report on upper payment limit (UPL) payments to State hospitals for inpatient services for the period December 2003 to August 2005. We will issue this report to the Texas Health and Human Services Commission (the State agency) within 5 business days.

The Medicaid program provides payments to certain hospitals for inpatient services insofar as the aggregate payments do not exceed the UPL, which is a reasonable estimate of the amount that would be paid for Medicaid services under Medicare payment principles. Although Federal regulations do not specify how States should calculate UPLs, each State's UPL methodology must comply with its State plan approved by the Centers for Medicare & Medicaid Services (CMS). Federal matching funds are not available for Medicaid payments that exceed UPLs.

Our objective was to determine whether the State agency calculated June 2005 UPL payments to State-owned and -operated hospitals for inpatient services in accordance with Federal regulations and the State plan.

We could not determine whether the State agency calculated UPL payments totaling \$112.3 million for inpatient services in accordance with Federal regulations and the State plan because the State agency did not retain the documentation needed to support its UPL calculations. Federal regulations require States to maintain documentation of payment rates. According to the State agency, the Texas "Records Retention Schedule" policy requires the State agency to retain the UPL supporting documentation for 7 years. The lapse in the retention of supporting documentation occurred because the State agency did not have procedures in place to ensure that its staff followed document-retention policy for UPL payments.

As a result, we are setting aside the \$112.3 million in UPL payments (\$69.1 million Federal share) for further CMS review.

We recommend that the State agency:

- work with CMS to recalculate the UPL, compare it to the payments made, and refund the Federal Government's share of any overpayments identified as a result of the recalculation and
- implement procedures to ensure that supporting documentation for UPL payments is retained.

In written comments on our draft report, the State agency said that it had recalculated the UPL and that it plans to provide the revised calculation and support to CMS. The State agency also said that it has implemented procedures to ensure that supporting documentation for UPL payment calculations is retained.

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 through e-mail at George.Reeb@oig.hhs.gov or Gordon L. Sato, Regional Inspector General for Audit Services, Region VI, at (214) 767-8414 or through e-mail at Gordon.Sato@oig.hhs.gov. Please refer to report number A-06-07-00025.

Attachment



DEPARTMENT OF HEALTH & HUMAN SERVICES

Office of Inspector General

Office of Audit Services
1100 Commerce, Room 632
Dallas, TX 75242

JUL 31 2008

Report Number: A-06-07-00025

Mr. Albert Hawkins
Executive Commissioner
Texas Health and Human Services Commission
P.O. Box 13247
Austin, Texas 78711

Dear Mr. Hawkins:

Enclosed is the U.S. Department of Health and Human Services (HHS), Office of Inspector General (OIG), final report entitled "Upper Payment Limit Payments to Texas State Hospitals for Inpatient Services." We will forward a copy of this report to the HHS action official noted on the following 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 this 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.

Pursuant to the principles of the Freedom of Information Act, 5 U.S.C. § 552, as amended by Public Law 104-231, OIG reports generally are made available to the public to the extent the information is not subject to exemptions in the Act (45 CFR part 5). Accordingly, this report will be posted on the Internet at <http://oig.hhs.gov>.

If you have any questions or comments about this report, please do not hesitate to call me, or contact Sylvie Witten, Audit Manager, at (512) 339-3071 or through e-mail at sylvie.witten@oig.hhs.gov. Please refer to report number A-06-07-00025 in all correspondence.

Sincerely,

Gordon Sato
Regional Inspector General
for Audit Services

Enclosure

Direct Reply to HHS Action Official:

Ms. Jackie S. Garner
Consortium Administrator
Consortium for Medicaid and Children's Health Operations
233 North Michigan Avenue, Suite 600
Chicago, Illinois 60601-5519

cc:

Mr. Tom Suehs
Deputy Executive Commissioner Financial Services
Texas Health and Human Services Commission

Mr. David M. Griffith
Internal Audit Director
Texas Health and Human Services Commission

Department of Health and Human Services

**OFFICE OF
INSPECTOR GENERAL**

**UPPER PAYMENT LIMIT
PAYMENTS TO TEXAS STATE
HOSPITALS FOR INPATIENT
SERVICES**



Daniel R. Levinson
Inspector General

July 2008
A-06-07-00025

Office of Inspector General

<http://oig.hhs.gov>

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Pursuant to the principles of the Freedom of Information Act, 5 U.S.C. § 552, as amended by Public Law 104-231, Office of Inspector General reports generally are made available to the public to the extent the information is not subject to exemptions in the Act (45 CFR part 5).

OFFICE OF AUDIT SERVICES FINDINGS AND OPINIONS

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

EXECUTIVE SUMMARY

BACKGROUND

The Medicaid program provides payments to certain hospitals for inpatient services insofar as the aggregate payments do not exceed the upper payment limit (UPL), which is a reasonable estimate of the amount that would be paid for Medicaid services under Medicare payment principles. Although Federal regulations do not specify how States should calculate UPLs, each State's UPL methodology must comply with its State plan approved by the Centers for Medicare & Medicaid Services (CMS). Federal matching funds are not available for Medicaid payments that exceed UPLs.

In Texas, the Texas Health and Human Services Commission (the State agency) administers the Medicaid program. The State agency awarded a contingency fee contract to Public Consulting Group, Inc. (PCG), a management consulting firm, to assist with the development of the State agency's inpatient UPL program. The fee was contingent on PCG maximizing Federal funding for the UPL payment. Effective December 2003, CMS approved a Texas State plan amendment to provide for UPL payments to State-owned and -operated hospitals for inpatient services. In June 2005, Texas made \$112.3 million (\$69.1 million Federal share) in UPL payments to its State-owned and -operated hospitals for inpatient services. Texas paid PCG \$2.2 million for its UPL work.

OBJECTIVE

Our objective was to determine whether the State agency calculated June 2005 UPL payments to State-owned and -operated hospitals for inpatient services in accordance with Federal regulations and the State plan.

SUMMARY OF FINDING

We could not determine whether the State agency calculated UPL payments totaling \$112.3 million for inpatient services in accordance with Federal regulations and the State plan because the State agency did not retain the documentation needed to support its UPL calculations. Federal regulations require States to maintain documentation of payment rates. According to the State agency, the Texas "Records Retention Schedule" policy requires the State agency to retain the UPL supporting documentation for 7 years. The lapse in the retention of supporting documentation occurred because the State agency did not have procedures in place to ensure that its staff followed document-retention policy for UPL payments.

As a result, we are setting aside the \$112.3 million in UPL payments (\$69.1 million Federal share) for further CMS review.

RECOMMENDATIONS

We recommend that the State agency:

- work with CMS to recalculate the UPL, compare it to the payments made, and refund the Federal Government's share of any overpayments identified as a result of the recalculation and
- implement procedures to ensure that supporting documentation for UPL payments is retained.

STATE AGENCY COMMENTS

The State agency said that it had recalculated the UPL and that it plans to provide the revised calculation and support to CMS. The State agency also said that it has implemented procedures to ensure that supporting documentation for UPL payment calculations is retained. The State agency's comments appear in their entirety as the Appendix.

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INTRODUCTION

BACKGROUND

The Medicaid Program

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

Upper Payment Limits

The Medicaid program provides payments to certain hospitals for inpatient services insofar as the aggregate payments do not exceed the upper payment limit (UPL). The UPL is a reasonable estimate of the amount that would be paid for Medicaid services under Medicare payment principles. Federal regulations do not specify how States should calculate the UPL; however, a State's methodology and related UPL payments must comply with Federal regulations and the State's CMS-approved State plan. Federal matching funds are not available for Medicaid payments that exceed the UPL.

State Agency's Upper Payment Limit History

The State agency awarded a contingency fee contract to Public Consulting Group, Inc. (PCG), based on the State agency's Request for Proposal from qualified consultants to help maximize the receipt of Federal revenue. According to the contract, PCG, a management consulting firm, was to assist the State agency with the development of its inpatient UPL. PCG activities included drafting a State plan amendment, negotiating with CMS for program approval, and calculating the UPL. Effective December 2003, CMS approved a Texas State plan amendment to provide for UPL payments to State-owned and -operated hospitals for inpatient services. The State plan specified that the most recently available cost report data be used to calculate the UPL.

In June 2005, the State agency made UPL payments of \$112.3 million (\$69.1 million Federal share) to State-owned and -operated hospitals for inpatient services. The payments covered the period from CMS's approval of the State plan to the end of the quarter in which the State agency made the UPL payments (December 2003 through August 2005). The State agency paid a contingency fee of \$2.2 million to PCG for its UPL work. State agency officials told us that they did not claim the contingency fee on the "CMS Quarterly Medicaid Statement of Expenditures for the Medical Assistance Program" form (Form CMS-64). Based on our limited review of the Form CMS-64 and discussions with CMS regional officials, we did not find evidence that the State agency claimed the fee on the Form CMS-64.

OBJECTIVE, SCOPE, AND METHODOLOGY

Objective

Our objective was to determine whether the State agency calculated June 2005 UPL payments to State-owned and -operated hospitals for inpatient services in accordance with Federal regulations and the State plan.

Scope

Our review covered the \$112.3 million (\$69.1 million Federal share) in UPL payments made in June 2005 for the period December 2003 through August 2005. We did not review the overall internal control structure of the State agency. We limited our review to those controls necessary to determine whether the UPLs for inpatient services were calculated in accordance with Federal regulations and the State plan.

We performed our fieldwork at the State agency in Austin, Texas, from March through October 2007.

Methodology

To accomplish our objective, we:

- reviewed Federal laws and regulations pertaining to UPL payments;
- examined the UPL methodology described in the State plan to ensure that it was consistent with Federal requirements;
- spoke to CMS regional office staff in Dallas, Texas, about the State's UPL methodology for inpatient services;
- interviewed State agency personnel about procedures for calculating the UPL;
- examined the calculation for the June 2005 UPL payments to determine whether they were in accordance with Federal regulations and the State plan;
- traced the UPL payments to the Form CMS-64 for the quarter ending June 2005 to verify that the State agency claimed the payments; and
- reviewed Federal regulations and State policy regarding document retention procedures.

We conducted this performance audit in accordance with generally accepted government auditing standards. Those standards require that we plan and perform the audit to obtain sufficient, appropriate evidence to provide a reasonable basis for our finding and conclusions based on our audit objective. We believe that the evidence obtained provides a reasonable basis for our finding and conclusions based on our audit objective.

FINDING AND RECOMMENDATIONS

We could not determine whether the State agency calculated UPL payments totaling \$112.3 million for inpatient services in accordance with Federal regulations and the State plan because the State agency did not retain the documentation needed to support its UPL calculations. Federal regulations require States to maintain documentation of payment rates. According to the State agency, the Texas “Records Retention Schedule” policy requires the State agency to retain the UPL supporting documentation for 7 years. The lapse in the retention of supporting documentation occurred because the State agency did not have procedures in place to ensure that its staff followed document-retention policy for UPL payments.

As a result, we are setting aside the \$112.3 million in UPL payments (\$69.1 million Federal share) for further CMS review.

LACK OF SUPPORTING DOCUMENTATION

Federal regulations (42 CFR § 447.203) require States to “maintain documentation of payment rates and make it available to HHS [the Department of Health and Human Services] upon request.” In addition, the State agency informed us that its policy for records retention, the “Records Retention Schedule,” for rate-setting documentation requires that the State retain UPL documentation for a period of 7 years: 2 years at the State agency and 5 additional years in storage.

The State agency did not retain the underlying support for Medicare and Medicaid data used to determine UPL payments. State agency officials said that the former director of hospital reimbursement, who left that job in July 2006, obtained the Medicare and Medicaid data used to calculate UPL payments primarily on his own but did not retain the supporting records used in the UPL calculations or indicate how the data were obtained. State agency officials contacted the former director but were unable to obtain the supporting records. As a result, State agency officials were unable to determine the source of the Medicare and Medicaid data or the method the former director used to calculate UPLs.

The lapse in the retention of supporting documentation occurred because the State agency did not have specific procedures in place to ensure that UPL documentation was retained for 7 years, as State policy requires. As a result, we are setting aside the \$112.3 million in UPL payments (\$69.1 million Federal share) for further CMS review.

The current director of hospital reimbursement stated that his office was developing procedures to ensure that document retention policy is followed for all future UPL calculations.

RECOMMENDATIONS

We recommend that the State agency:

- work with CMS to recalculate the UPL, compare it to the payments made, and refund the Federal Government's share of any overpayments identified as a result of the recalculation and
- implement procedures to ensure that supporting documentation for UPL payments is retained.

STATE AGENCY COMMENTS

The State agency said that it had recalculated the UPL and that it plans to provide the revised calculation and support to CMS. The State agency also said that it has implemented procedures to ensure that supporting documentation for UPL payment calculations is retained. The State agency's comments appear in their entirety as the Appendix.

APPENDIX



TEXAS HEALTH AND HUMAN SERVICES COMMISSION

ALBERT HAWKINS
EXECUTIVE COMMISSIONER

April 7, 2008

Mr. Gordon L. Sato
Regional Inspector General for Audit Services
Office of Inspector General, Office of Audit Services
1100 Commerce, Room 632
Dallas, Texas 75242

Reference Report Number A-06-07-00025

Dear Mr. Sato:

The Texas Health and Human Services Commission (HHSC) received a draft audit report entitled "Upper Payment Limit Payments to State Hospitals for Inpatient Services" from the Department of Health and Human Services Office of Inspector General. The cover letter, dated March 10, 2008, requested that HHSC provide written comments, including the status of actions taken or contemplated in response to the report recommendations.

The report identified two recommendations for the Health and Human Services Commission (HHSC) to consider regarding inpatient UPL payments to state hospitals. These recommendations address: (1) HHSC working with CMS to recalculate the UPL, compare it to the payments made, and refund CMS the share of any overpayments identified as a result of the recalculation; and (2) implementing procedures to ensure that supporting documentation for UPL payments is retained. This management response includes comments related to these recommendations and details related actions HHSC has taken or planned.

DHHS/OIG Recommendation: *We recommend that the State agency work with CMS to recalculate the UPL, compare it to the payments made, and refund the Federal Government's share of any overpayments identified as a result of the recalculation.*

HHSC Management Response

For state fiscal years 2004 and 2005, HHSC's upper payment limit (UPL) payment to state hospitals for inpatient services totaled \$112.3 million (\$69.1 million federal share).

Mr. Gordon L. Sato
April 7, 2008
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In response to the audit, HHSC recalculated the state hospital inpatient UPL for the same period, and determined that the payment should have been \$119.6 million (\$73.5 million federal share).

Actions Planned:

HHSC will provide the revised calculation and support to CMS and seek approval to make an additional state hospital UPL payment of \$7.3 million (\$4.4 million federal share) for the state fiscal year 2004 and 2005.

Estimated Completion Date: Within 30 days after issuance of final audit report

Title of Responsible Person: Director, Rate Analysis


DHHS/OIG Recommendation: *We recommend that the State agency implement procedures to ensure that supporting documentation for UPL payments is retained.*

HHSC Management Response

HHSC has implemented policies and procedures to ensure proper documentation supporting UPL payment calculations is retained in accordance with state and federal requirements.

If you have any questions or require additional information, please contact David M. Griffith, CPA, CIA, CGAP, Internal Audit Director. Mr. Griffith may be reached by telephone at (512) 424-6998 or by email at David.Griffith@hhsc.state.tx.us.

Sincerely,



Albert Hawkins