
**OFFICE OF
THE INSPECTOR GENERAL**

SOCIAL SECURITY ADMINISTRATION

**THE ADMINISTRATIVE COSTS
CLAIMED BY THE TEXAS
DISABILITY DETERMINATION
SERVICES**

March 2004

A-15-02-12051

AUDIT REPORT



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- Promote economy, effectiveness, and efficiency within the agency.**
- Prevent and detect fraud, waste, and abuse in agency programs and operations.**
- Review and make recommendations regarding existing and proposed legislation and regulations relating to agency programs and operations.**
- Keep the agency head and the Congress fully and currently informed of problems in agency programs and operations.**

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- Independence to determine what reviews to perform.**
- Access to all information necessary for the reviews.**
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Vision

By conducting independent and objective audits, investigations, and evaluations, we are agents of positive change striving for continuous improvement in the Social Security Administration's programs, operations, and management and in our own office.



SOCIAL SECURITY

MEMORANDUM

Date: March 11, 2004

Refer To:

To: Horace L. Dickerson, Jr.
Regional Commissioner
Dallas

From: Assistant Inspector General
for Audit

Subject: Administrative Costs Claimed by the Texas Disability Determination Services
(A-15-02-12051)

OBJECTIVE

Our objectives were to:

- evaluate the adequacy of internal controls over the accounting and reporting of administrative costs claimed for the Texas Disability Determination Services (TX-DDS) as well as to determine whether the controls were sufficient to ensure the proper draw down of funds and accounting and reporting of administrative costs;
- determine whether costs claimed on the *State Agency Report of Obligations for SSA Disability Programs* (Form SSA-4513) for the period October 1, 1998 through September 30, 2001, were allowable and properly allocated; and
- determine whether the aggregate of the Social Security Administration's (SSA) funds drawn down agreed with total expenditures reported for disability determinations in Fiscal Years (FY) 1999 through 2001.

BACKGROUND

The Disability Insurance (DI) program was established in 1956 under Title II of the Social Security Act (Act). The program provides a benefit to wage earners and their families in the event the wage earner becomes disabled. The Supplemental Security Income (SSI) program was created as a result of the Social Security Amendments of 1972 with an effective date of January 1, 1974. SSI (Title XVI of the Act) provides a nationally uniform program of income to financially needy individuals who are aged, blind, and/or disabled.

SSA is primarily responsible for implementing policies governing the development of disability claims under the DI and SSI programs. Disability determinations under both DI and SSI are performed by Disability Determination Services (DDS) in each State, or other responsible jurisdiction, according to Federal regulations.¹ In carrying out its obligation, each DDS is responsible for determining claimants' disabilities and ensuring that adequate evidence is available to support its determinations. To assist in making proper disability determinations, each DDS is authorized to purchase consultative medical examinations, x-rays and laboratory tests to supplement evidence obtained from the claimants' physicians or other treating sources. SSA pays the DDS for 100 percent of allowable expenditures.

Each year, SSA approves a DDS budget. Once approved, the DDS can withdraw Federal funds through the Department of the Treasury's (Treasury) Automated Standard Application for Payments (ASAP) system. Cash drawn from the Treasury to pay for program expenditures is to be drawn according to Federal regulations and in accordance with intergovernmental agreements entered into by Treasury and the States under the authority of the Cash Management Improvement Act of 1990.² At the end of each fiscal quarter, each DDS submits to SSA a Form SSA-4513 to account for program disbursements and unliquidated obligations.

The designated agency for the State of Texas is the TX-DDS, a division within the Texas Rehabilitation Commission (TRC). Parent agencies, such as the TRC, often provide administrative services (such as accounting, purchasing, and personnel) to the State-designated DDS.

SCOPE AND METHODOLOGY

We obtained evidence to evaluate the appropriateness of recorded financial transactions under the provisions of Office of Management and Budget Circular A-87, *Cost Principles for State, Local and Indian Tribal Governments*.

We reviewed \$247,350,859 in administrative costs the TRC reported for TX-DDS operations for the period October 1, 1998 through September 30, 2001. We audited the Forms SSA-4513 as of December 31, 2001, September 30, 2002, and March 31, 2003, for FYs 1999, 2000, and 2001, respectively. This amount included costs associated with SSA's Automation Investment Funds and Information Technology System funding activities. We also:

- reviewed applicable Federal laws and regulations and pertinent parts of SSA's Program Operations Manual System (POMS), section DI 39500, *DDS Fiscal and Administrative Management*;

¹ 42 United States Code (U.S.C.) § 421; 20 C.F.R. part 404, subpart Q, and part 416, subpart J.

² 31 Code of Federal Regulations (CFR) Part 205 and Public Law No. 101-453.

- interviewed TRC and TX-DDS staff;
- documented our understanding of the TRC's and TX-DDS' systems of internal controls over the accounting and reporting of administrative costs;
- evaluated and tested internal controls regarding accounting and financial reporting;
- traced the administrative expenditures TRC reported on Forms SSA-4513 to its accounting records;
- documented our understanding of the TRC's procedures and internal controls for drawing down SSA funds;
- analyzed TRC draw downs of SSA funds and reconciled them with reported expenditures;
- reviewed the Texas Single Audit reports and related working papers as they were related to direct costs for the period September 1, 2000 through August 31, 2001;
- conducted a physical inventory of equipment items TRC purchased during our audit period and selected computer hardware items SSA provided to TX-DDS;
- reviewed a random sample of 600 cases of other non-personnel and medical service costs for FYs 1999 through 2001. Also, we reviewed a judgmental sample of 101 cases which included consultant physician payroll, medical evidence of record, and all other non-personnel costs for FYs 1999 through 2001;
- conducted analysis of consultative examinations (CE) by comparing the TX-DDS maximum allowable payment schedule to amounts paid for services to vendors; and
- recomputed indirect cost for FYs 1999 through 2001 using approved indirect cost rates.

We determined that the data used in this report is sufficiently reliable given the audit objective and intended use of the data. Any data limitations are minor in the context of this audit and the use of this data should not lead to an incorrect or unintentional message. Our testing of the data reliability included tracing individual transactions to the source documentation, recalculating the totals of the costs categories, reconciling the data to the Forms SSA-4513, and other tests deemed necessary.

We performed work at the TRC, TX-DDS and a contracted certified public accounting firm who conducted Single Audit³ work at TRC, all located within Austin, Texas. We

³ The 1984 Single Audit Act, as amended in 1996 by Public Law No. 104-156, requires non-Federal entities that expend \$300,000 or more per year in Federal awards to have a single or program-specific audit conducted that year; See 31 U.S.C. § 7502.

conducted our audit work from August 2002 through April 2003. Our audit work was completed in accordance with generally accepted government auditing standards.

RESULTS OF REVIEW

Except for the CE and related indirect costs issues discussed below, we determined that costs claimed on the Form SSA-4513 for the period October 1, 1998 through September 30, 2001, were allowable and properly allocated and the system of internal controls was effective. The aggregate of the SSA funds drawn down agreed with total expenditures as reported by TX-DDS for disability determinations in FYs 1999 through 2001.

CE PAYMENTS EXCEEDED AUTHORIZED FEE SCHEDULE

We determined that the TX-DDS paid for CEs in excess of their authorized fee schedule known as the Maximum Allowable Payment Schedule (MAPS). Texas hospital providers were paid higher payments by using a methodology known as a rate of cost to charge (RCC) method. Under this methodology the TX-DDS pays the hospital provider a percentage of its normal customary billing amount. A hospital provider who has an RCC does not have to adhere to MAPS, and amounts paid are in many instances higher than MAPS. This is contrary to POMS DI 39545.210, 1. a., which states, “The DDS will consider its fee schedule as a maximum payment schedule. Authorized payments will represent the lower of either: the provider’s usual and customary charge or, the maximum allowable charge under the fee schedule.”

TX-DDS believed this practice was allowed because some hospital providers would not accept the MAPS amounts. The TX-DDS staff believes that not having those providers would adversely effect the time it takes to process a disability determination case. We contacted SSA’s Dallas Regional Office (RO) to obtain information on this issue. We attempted to find out if any special waiver or privilege was provided to hospitals with RCCs. According to the SSA Dallas RO, the RCC rates were implemented a number of years ago when different SSA and DDS employees were involved in overseeing these issues. The validity of their use had never been discussed.

Hospital CEs Exceed MAPS

We obtained a listing from TX-DDS of the CE vendors who had used an RCC during the period of our audit. Using the vendor identification number of the vendors using RCC for that year, we obtained the related CEs processed during FYs 1999 through 2001 from the TX-DDS VERSA⁴ data base. The VERSA record, used at the DDS to control CE purchases, is the basis for recording the cost in the Texas accounting system. We found the number of vendors using an RCC was 190, 185, and 181 for FY 1999, FY 2000, and FY 2001, respectively.

⁴ Disability claims are processed on an IBM Corporation Model AS/400 computer system, using VERSA software, one of three primary claims processing applications used by the TX-DDS.

We then sorted the records by current procedural terminology (CPT) code which identifies the type of service provided for the CE. We found for FY 1999 that 106 different CPT codes were used, for FY 2000, 102 CPT codes were used, and for FY 2001, 102 CPT codes were used. We compared the amount that was authorized to be paid under MAPS to the amount actually paid the hospital using an RCC. We found of the 52,692 records paid using RCC, 49,071 exceeded MAPS. The amount paid to hospital providers exceeded the MAPS allowed amount by \$3,611,678. The schedule below indicates the actual amount paid to the vendors, and the amount paid in excess.

CE Payments with Hospital RCC Agreement in Excess of MAPS					
FY	Number of CPT Codes Identified in FY	Number of Records Identified as a Vendor with RCC	Total Cost of Records With RCC	Number of Records In Excess of MAPS Authorized Amount	Total Cost of Records Found in Excess of MAPS
1999	106	16,690	\$1,662,139.38	15,368	\$999,041.17
2000	102	18,114	1,957,752.27	17,051	1,276,409.59
2001	102	17,888	1,976,448.35	16,652	1,336,227.52
Total	310	52,692	\$5,596,340.00	49,071	\$3,611,678.28

We believe that the RCC is not a part of the TX-DDS fee schedule. The SSA Regional Office and TX-DDS disagreed with us. We believe that SSA needs to obtain a formal determination from its Office of General Counsel to resolve this issue. We believe that SSA should recover the payments in excess of MAPS unless the Office of General Counsel makes a formal determination that the RCC is part of TX-DDS' official fee schedule.

Indirect Cost Associated with Reduction in CE Costs

Indirect costs for TX-DDS are determined under a negotiated annual indirect cost rate agreement. The TX-DDS computes its indirect costs by multiplying the approved percentage rate to the direct costs of the TX-DDS. Some direct costs, such as, (capital) equipment, building alterations, and renovations are not to be included as part of the base. The annual indirect cost rate is for a State FY (September 1st through August 31st). CE costs are included in the base for the computation of indirect costs.

As a result of the excess CE payments discussed above, indirect costs claimed by the TX-DDS were improperly increased. A reduction in CE costs because of payments in excess of the authorized fee schedule would also result in a reduction in the direct cost base. The reduction in the direct cost base has a similar effect on indirect costs,

lowering the amount computed by its rate percentage. The following schedule computes the amount of the reduction of indirect costs.

Direct Cost Base Reduction and Subsequent Reduction in Indirect Costs				
FY	Period of Time	CE Amount in Excess	Indirect Rate in Effect	Computed Reduction in Indirect Costs
1999	October 1998 thru August 1999	\$908,625	12.4%	\$112,669
	September 1999	90,416	11%	9,946
	FY 1999 Total	999,041		122,615
2000	October 1999 thru August 2000	1,161,104	11%	127,721
	September 2000	115,306	7.8%	8,994
	FY 2000 Total	1,276,410		136,715
2001	October 2000 thru August 2001	1,213,563	7.8%	94,658
	September 2001	122,665	12.6%	15,456
	FY 2001 Total	1,336,228		110,114
Total All Years		\$3,611,679		\$369,444

We believe the SSA Regional Commissioner should instruct the TX-DDS to conform to the POMS by adhering to MAPS, the authorized fee schedule, for paying hospital provider CEs. Lastly, the RO should more closely monitor TX-DDS fees paid for CEs.

CONCLUSIONS AND RECOMMENDATIONS

TX-DDS needs to improve and/or institute controls to ensure reasonable payment for CEs. . However, in its comments to our draft report, the SSA Regional Office and TX-DDS disagreed. Therefore, we have added a recommendation that SSA obtain an opinion from SSA’s Office of General Council as to whether the use of the RCC method constitutes a fee schedule in accordance with POMS and Federal regulations. We believe SSA should implement recommendations 2 and 3 below unless SSA Office of General Counsel makes a formal determination that the RCC is part of the TX-DDS fee schedule in accordance with POMS DI 39545.210, 1.b. As a result of our audit, we recommend that:

1. SSA require that TRC adhere to POMS DI 39545.210, 1.a., requiring CE payment amounts not to exceed the authorized fee schedule and specifically, discontinue selectively paying Texas hospitals higher amounts than the approved fee schedule.
2. TRC, pending the SSA Office of General Counsel’s determination, reimburse SSA \$3,611,679, resulting from CE payments in excess of the authorized fee schedule

known as MAPS. The TX-DDS should adjust their financial reports, Forms SSA-4513, accordingly.

3. TRC, pending the SSA Office of General Counsel's determination, reimburse SSA \$359,515 for indirect costs paid as a result of the overstated direct cost base (CEs in excess of MAPS.) The TX-DDS should adjust the financial reports, Forms SSA-4513, accordingly.
4. SSA's Dallas RO more closely monitor the fees paid by TRC for CEs.
5. SSA seek a legal opinion as to whether the use of the RCC method, which allows the TX-DDS to pay hospital providers a percentage of their normal customary billing amount for CEs, constitutes a fee schedule in accordance with POMS and Federal regulations. SSA should then establish a clear policy on contracts with CE vendors and ensure that policy is implemented consistently across the DDSs. (This is a new recommendation added to our final report which was not included in the draft report provided to SSA and TRC for comments.)

AGENCY COMMENTS AND OIG RESPONSE

SSA agreed with Recommendations 1 and 4, but did not concur with Recommendations 2 and 3. TRC disagreed with Recommendations 1, 2 and 3. SSA and TRC's comments are included in Appendices C and D, respectively.

With regard to Recommendation 1, SSA stated it will work with TRC to exclude the DDS from a State practice of paying negotiated fees for testing performed at hospital facilities. TRC commented that on a prospective basis, the TX-DDS has begun addressing this issue and is devising immediate plans regarding routine payment of contracted fees to hospitals. The DDS expected to begin implementation of these plans in January 2004. However, TRC did not agree that payments under the RCC made in excess of the fee schedule should be reimbursed to SSA.

For Recommendations 2 and 3, both SSA and TRC disagreed with reimbursing the excess funds drawn by the DDS. In SSA's response, the Regional Commissioner stated it is difficult to know what happened in the past since the staff making earlier decisions are no longer overseeing DDS operations and may have discussed the TX-DDS' RCC method. TRC indicated that before the RCC method was established, extensive research, study, and vendor negotiations were undertaken to arrive at rates that would assure clients received quality medical services at the best price. SSA's comments, in and of themselves, do not provide sufficient evidence of whether the Regional Commissioner or his staff gave explicit or implicit approval of the TX-DDS' use of the RCC methodology. The Agency, in consultation with its Office of General Counsel, needs to determine if the excess CE costs and related indirect costs should be recovered. Therefore, we revised our second and third recommendations, and we have added a new recommendation that SSA seek a legal opinion on whether the RCC

method constitutes an allowable fee schedule under POMS and Federal regulations. We shared our revised recommendations with the Regional Commissioner. The Regional Commissioner agreed that it may be helpful to obtain an Office of General Counsel opinion regarding the acceptability of RCC payment rates. With respect to our recommendations that SSA seek reimbursement, the Regional Commissioner continues to request that these recommendations be removed, or at least deferred until the legal issues have been resolved. Recommendations 2 and 3 were revised to state that SSA should seek reimbursement “pending Office of General Counsel determination.” We believe our revised recommendations address the Regional Commissioner’s concerns.

With regard to Recommendation 4, SSA stated it will establish a process to monitor a sample of CE fee payments as part of its oversight process.

Gale W. Stone for
Steven L. Schaeffer

Appendices

Appendix A – Acronyms

Appendix B – Texas Disability Determination Services Obligations Reported/Allowed

Appendix C – SSA Comments

Appendix D – DDS Comments

Appendix E – OIG Contacts and Staff Acknowledgments

Acronyms

Act	Social Security Act
CE	Consultative Examination
CFR	Code of Federal Regulations
CPT	Current Procedural Terminology
DDS	Disability Determination Services
DI	Disability Insurance
Form SSA-4513	State Agency Report of Obligations for SSA Disability Programs
FY	Fiscal Year
MAPS	Maximum Allowable Payment Schedule
MER	Medical Evidence of Records
OIG	Office of Inspector General
POMS	Program Operations Manual System
RCC	Rate of Cost to Charge
RO	Regional Office
SSA	Social Security Administration
SSI	Supplemental Security Income
TRC	Texas Rehabilitation Commission
Treasury	Department of the Treasury
TX-DDS	Texas Disability Determination Services
U.S.C.	United States Code

**TEXAS DISABILITY DETERMINATION SERVICES
OBLIGATIONS REPORTED/ALLOWED FOR FY 1999**

Fiscal Year 1999											
	Disbursements					Unliquidated Obligations					Total Obligations
	Personnel	Medical	Indirect	All Other	Total	Personnel	Medical	Indirect	All Other	Total	
As Reported by State Agency:											
Personnel	\$37,783,724				\$37,783,724					\$0	\$37,783,724
Medical Evidence of Record (MER)		\$5,936,796			5,936,796					0	\$5,936,796
Consultative Examination (CE)		22,432,840			22,432,840					0	\$22,432,840
Indirect			\$9,028,723		9,028,723					0	\$9,028,723
All Other				\$7,754,737	7,754,737					0	\$7,754,737
Total Claimed for TX-DDS	\$37,783,724	\$28,369,636	\$9,028,723	\$7,754,737	\$82,936,820	\$0	\$0	\$0	\$0	\$0	\$82,936,820
1. To Adjust CE's Paid in Excess		(\$999,041)			(\$999,041)					\$0	(\$999,041)
2. To adjust Indirect Cost as a result of reduction in direct cost base caused by CE's in excess.			(\$122,615)		(122,615)					0	(\$122,615)
Adjusted Costs	\$37,783,724	\$27,370,595	\$8,906,108	\$7,754,737	\$81,815,164	\$0	\$0	\$0	\$0	\$0	\$81,815,164

**TEXAS DISABILITY DETERMINATION SERVICES
OBLIGATIONS REPORTED/ALLOWED FOR FY 2000**

Fiscal Year 2000											
	Disbursements					Unliquidated Obligations					Total Obligations
	Personnel	Medical	Indirect	All Other	Total	Personnel	Medical	Indirect	All Other	Total	
As Reported for TX-DDS:											
Personnel	\$38,814,057				\$38,814,057					\$0	\$38,814,057
MER		\$6,308,414			6,308,414					0	\$6,308,414
CE		22,499,668			22,499,668					0	\$22,499,668
Indirect			\$7,797,102		7,797,102					0	\$7,797,102
All Other				\$5,424,865	5,424,865					0	\$5,424,865
Total Claimed for TX-DDS	\$38,814,057	28,808,082	\$7,797,102	\$5,424,865	\$80,844,106	\$0	\$0	\$0	\$0	\$0	\$80,844,106
1. To Adjust CE's Paid in Excess		(\$1,276,410)			(\$1,276,410)					\$0	(\$1,276,410)
2. To adjust Indirect Cost as a result of reduction in direct cost base caused by CE's in excess.		(136,715)			(136,715)					0	(\$136,715)
Adjusted Costs	\$38,814,057	27,394,958	\$7,797,102	\$5,424,865	\$79,430,982	\$0	\$0	\$0	\$0	\$0	\$79,430,982

**TEXAS DISABILITY DETERMINATION SERVICES
OBLIGATIONS REPORTED/ALLOWED FOR FY 2001**

Fiscal Year 2001											
	Disbursements					Unliquidated Obligations					Total Obligations
	Personnel	Medical	Indirect	All Other	Total	Personnel	Medical	Indirect	All Other	Total	
As Reported for TX-DDS:											
Personnel	\$39,901,349				\$39,901,349						\$39,901,349
MER		\$6,305,076			6,305,076		\$1,124			\$1,124	\$6,306,200
CE		22,885,882			22,885,882		14654.84			14,655	\$22,900,537
Indirect			\$6,294,850		6,294,850			1861.86		1,862	\$6,296,712
All Other				\$7,868,654	7,868,654					0	\$7,868,654
Total Claimed for TX-DDS	\$39,901,349	\$29,190,958	\$6,294,850	\$7,868,654	\$83,255,811	\$0	\$15,779	\$1,862	\$0	\$17,640	\$83,273,451
1. To Adjust CE's Paid in Excess		(\$1,336,228)			(\$1,336,228)					\$0	(\$1,336,228)
2. To adjust Indirect Cost as a result of reduction in direct cost base caused by CE's in excess.			(\$110,114)		(110,114)					0	(\$110,114)
Adjusted Costs	\$39,901,349	\$27,854,730	\$6,184,736	\$7,868,654	\$81,809,469	\$0	\$15,779	\$1,862	\$0	\$17,640	\$81,827,109

SSA Comments



SOCIAL SECURITY

MEMORANDUM

Date: December 18, 2003

To: Steve L. Schaeffer
Assistant Inspector General for Audit

From: Horace L. Dickerson, Jr.
Regional Commissioner
Dallas

Subject : Administrative Costs Claimed by the Texas Disability Determination Services
(A-15-02-12051) -- Reply

We appreciate the opportunity to comment on this draft report and to clarify some of the points discussed during the telephone call that was used in lieu of a formal exit conference. In concluding that consultative examination (CE) payments exceeded the authorized fee schedule, it appears the auditors assumed that the fees listed in the Maximum Allowable Payment Schedule (MAPS) are the only CE fees in use, and that the term "Maximum Allowable" in the name of the Texas DDS payment schedule has the same meaning as the phrase "maximum allowable" in DI 395245.210.2.

Actually, Texas DDS CE payments were made following the fee procedures in use by the DDS' parent agency, the Texas Rehabilitation Commission (TRC.) The maximum allowable fee that TRC pays for tests performed in certain hospital facilities and billed separately (not as a part of a physician's fee) is a negotiated percentage of usual and customary charges described as the "RCC rate." We believe the issue should not be that CE payments exceeded the fee schedule, but whether these RCC rates and fees meet the guidelines established in CFR 404.1624 and in POMS. Since the same RCC fees were being used by TRC, another State agency, when making similar purchases, we believe the regulatory requirement is met.

We also believe the draft audit report imposes requirements which go beyond the written instructions and guidelines available to the DDS at the time the expenditures were made. The audit report appears to conclude that the negotiated RCC rates are not part of the Texas fee schedule and, therefore, not appropriate unless accompanied by a waiver from SSA. We are aware of no such written instruction or guideline to that effect. If this finding leads to a change in SSA policy, we can certainly implement it prospectively, ensuring that the Texas DDS discontinue paying negotiated rates to Texas hospitals for laboratory and other testing. But in requesting reimbursement, the audit seeks to apply this policy retroactively to the audit period.

The audit report misstates comments that the Regional Office had no knowledge of deviations from the authorized fee schedule. We did not discuss deviations from the fee schedule during the audit conference call. Our comment was that the RCC rates had been implemented a number of years ago when different SSA and DDS employees were involved in overseeing these issues, and that we are not sure what may or may not have been discussed by those individuals. Over the years that this practice has been in place, including the years covered by this audit, the issue has never been questioned by any of the auditors conducting State audits.

Our responses to individual recommendations are as follows.

Recommendation Number 1: Adhere to POMS DI 39545.210, 1.a., requiring CE payment amounts not to exceed the authorized fee schedule and specifically, discontinue selectively paying Texas hospitals higher amounts than the approved fee schedule.

We concur. We will work with the State of Texas to exclude the DDS from a State practice of paying negotiated fees for testing performed at hospital facilities.

Recommendation Number 2: Reimburse SSA \$3,611,679 resulting from CE payments in excess of the authorized fee schedule known as MAPS. The TX-DDS should adjust their financial reports, Forms SSA-4513, accordingly.

We disagree. The auditors are in effect establishing a new policy that the negotiated RCC rates are not an acceptable practice. CFR 404.1627(b)(2) states that DDS expenditures will be audited on the basis of cost principles and written guidelines in effect at the time the expenditures were made or incurred. We should not apply this new policy retroactively.

Recommendation Number 3: Reimburse SSA \$359,515 for indirect cost paid as a result of the overstated direct cost base (CEs in excess of MAPS.) The TX-DDS should adjust the financial reports, Forms SSA-4513, accordingly.

We disagree. Please see our comments to recommendation number 2.

Recommendation Number 4: SSA's Dallas Regional Office more closely monitor the fees paid for CEs.

We concur. We will establish a process to monitor a sample of CE fee payments as part of our CE oversight process.

If you would like to discuss this, please call me. If members of your staff have questions, please have them call Tom Berling at 214-767-4281 in Management and Operations Support, Center for Disability.

DDS Comments



Letter to the Office of Inspector General, Social Security Administration
January 12, 2004
Page 1

Steven L. Schaeffer, Assistant Inspector General for Audit
Social Security Administration
6401 Security Boulevard
4-L-1 Operations Building
Baltimore, MD 21235

Dear Mr. Schaeffer:

Thank you for the opportunity to respond to your draft audit report, which we received December 15, 2003. TRC Commissioner, Vernon M. Arrell has left TRC. As Interim Commissioner for TRC, I offer the following comments:

The SSA OIG has issued a finding stating that the Texas DDS has utilized CE payment procedures that are contrary to 20 CFR 404.1624 and POMS DI 39545.210,1.a. requirements.

According to 20 CFR 404.1624, “The State will determine the rates of payment to be used for purchasing medical or other services necessary to make determinations of disability. The rates may not exceed the highest rate paid by Federal or other agencies in the State for the same or similar type of service. The State will maintain documentation to support the rates of payment it uses.”

POMS DI 39545.210,1.b. states, “The DDS will consider its fee schedule as a maximum payment schedule. Authorized payments will represent the lower of either:

- The provider's usual and customary charge or,
- The maximum allowable charge under the fee schedule. “

POMS DI 39545.210,1.d. also states that, “the rates must be reasonable and necessary for the efficient administration of the program.”

The TX DDS uses the fee schedule developed and utilized by the Texas Rehabilitation Commission (TRC), its parent administrative support agency. Texas is a geographically and economically diverse state. Therefore, development of this fee schedule was tailored to allow our agency to serve the disabled population of Texas through diligent pursuit of quality services for the most economical price. Thus, TRC’s fee schedule is comprised of essentially two parts, one that represents maximum charges for the majority of the medical procedure vendors (MAPS) and the other that represents maximum charges for individual hospital vendors. TRC does not view these as independent parts, but rather as one comprehensive guide for payment of medical services.

Historically, many Texas hospitals have been unwilling to accept MAPS level fees because they consider their own charges to include administrative service charges, hospital facility and equipment use, technical and/or professional time, drugs/supplies, and documentation requirements. Hospital services are critical to TRC’s mission. They have also provided TX DDS with an avenue to quickly obtain medical evidence at locations convenient to their claimants to help expedite their disability claim determinations. TRC has negotiated fees with our hospital vendors that are lower than their usual and customary charges. TRC believes that this process satisfied requirements set out in POMS DI 39545.210, 1. b. and d.

TRC’s fee assessment method was developed many years ago. It involved extensive research, study, and vendor negotiations to arrive at rates that would assure our clients receive quality of medical services at the best price. This practice enables TRC to serve the maximum number of people requiring our services.



Letter to the Office of Inspector General, Social Security Administration
January 12, 2004
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This process has been evaluated yearly, adjusted where necessary, and documented to support its structure and content. TRC believes our process satisfied the requirements set out by 20 CFR 1624.

Based on the information we have provided concerning the parameters of TRC's fee schedule and our interpretation of federal regulations and policies, we do not agree with the SSA OIG issue that TX DDS exceeded the authorized TRC fee schedule. Rather, we utilized both parts of this schedule as required by agency policy. We believe the TX DDS has operated in good faith these many years and that the use of the TRC fee schedule satisfied all CFR and POMS directives. We have had no notice to the contrary from our Federal partners nor has any issue been brought forth in this area in any of our audits by State auditing entities.

However, on a prospective basis, TRC acquiesces to this recent interpretation by the SSA OIG in both the spirit of following federal law and policy as well as supporting future savings of federal funds. Accordingly, TX DDS has begun addressing this issue and is devising immediate plans regarding routine payment of contracted fees to hospitals. TX DDS expects to begin implementation of these plans in January 2004. As you have noted in your report, there are nearly two hundred vendors that will have to be contacted for new fee negotiations and arrangements. This intensive outreach process will take several months to complete.

We strongly disagree with the SSA OIG recommendation that there should be reimbursement of alleged excess CE fee payments of \$3,611,678 as well as the concomitant \$359,515 alleged excess indirect costs.

We respectfully request that these retroactive amounts be waived for the following reasons.

- Federal regulations give the State of Texas the right to determine the rates of payment to be used for purchasing medical or other services necessary to make determinations of disability.¹
- The TX DDS has not exceeded the TRC fee schedule.
- The payments were assessed on the basis of a difference in interpretation of the fee schedule developed by TRC, not as a result of accidental or deliberate accounting errors.
- TX DDS has taken steps to redesign their hospital CE fee process to bring it into alignment with the SSA OIG interpretation and recommendation.
- Loss of funding on this scale would be extremely detrimental to the ability of TX DDS to serve disabled claimants.

Reimbursements based on interpretations of this nature are not uniformly assessed in SSA OIG administrative costs audits.² We have reviewed 15 recent SSA OIG audits of DDS agencies in other states. All audits looked at whether each state's DDS followed Code of Federal Regulations and Social Security Administration requirements for consultative exam allowable costs. A finding of unallowable CE medical costs, similar to that proposed for Texas TRC DDS, was made in four of the fifteen audits reviewed: California, Illinois, Kansas, and New Mexico. The SSA OIG recommended reimbursement of

¹ 20 CFR 404.1624

² Office of the Inspector General, SSA Administrative Costs Audits A-09-02-22022, specialty exam coding and related costs issue; A-05-02-22109, consultative exam fee setting issue; A-06-03-13016, CE excess payments issue.



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the fees in question in only two of those four audits (Kansas and California). It is unknown whether the SSA Regional Offices support these proposed refunds, and whether the findings have been waived subsequent to the audits.

Sincerely,

Mary Wolfe

cc: Ed Bloom, Deputy Commissioner for Disability Determination Services
Alex McAlmon, Associate Commissioner for Management Audit, TRC

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