



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

REGION V
OFFICE OF
INSPECTOR GENERAL

Report Number: A-05-03-00085

May 20, 2004

Mr. Barry Maram
Director
Illinois Department of Public Aid
201 South Grand Avenue East
Springfield, Illinois 62763

Dear Mr. Maram:

Enclosed are two copies of the Department of Health and Human Services (HHS), Office of Inspector General's final report providing the results of our self-initiated audit of "Nursing Homes and Denial of Payment Remedies in the State of Illinois." This audit was initiated to address the general public concern with nursing home quality of care. Our primary focus was with the measures for enforcing nursing home compliance with quality of care standards for Medicaid recipients.

The objectives of our audit were to ensure that the mandatory denial of payment remedy for substandard quality of care was applied to nursing homes that were not in substantial compliance with the prescribed Medicaid participation requirements and to evaluate whether State controls were adequate to prevent improper Medicaid payments to nursing homes under the denial of payment remedy. Our audit included denial of payment sanctions, which were in effect from October 1, 1999 to September 30, 2001.

Title XIX, section 1919 of the Social Security Act, established the requirements for nursing facilities, which are implemented by the State and Secretary of the Department of Health and Human Services. As part of these requirements, nursing facilities undergo an annual State survey and certification process to reveal whether a nursing facility is in substantial compliance with the Federal requirements. 42 CFR § 488 sets forth the regulations governing the survey, certification, and enforcement process. Denial of payment is an enforcement remedy for nursing facilities not in substantial compliance with one or more of the Medicaid participation requirements.

Although the State correctly identified nursing homes providing substandard quality of care and meeting the criteria for mandatory denial of payment remedies, State controls were not adequate to prevent improper Medicaid payments to sanctioned nursing homes, as required in Title XIX, section 1919 of the Social Security Act and 42 CFR § 488. Out of approximately 830 nursing homes surveyed by the State, 84 warranted the mandatory denial of payment remedy for new Medicaid admissions and 62 homes warranted the optional denial of payment sanctions. From these 146 sanctioned nursing homes, we found 147 unallowable Medicaid payments to 27 homes, totaling \$139,783 (\$69,892 Federal share). The overpayments were associated with 16 nursing homes under mandatory denial of payment sanctions and 11 homes under optional denial of payment sanctions.

We recommend the State:

- Refund \$69,892 to the Centers for Medicare & Medicaid Services for the Federal share of identified unallowable payments.
- Implement procedures to ensure the timely suspension of payments to providers under the denial of payment remedy.

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

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

If you have any questions or comments about this report, please do not hesitate to call me or your staff may call Mike Barton, Audit Manager, at (614)-469-2543 or through e-mail at Mike.Barton@oig.hhs.gov. To facilitate identification, please refer to report number A-05-03-00085 in all correspondence relating to this report.

Sincerely,



Paul Swanson
Regional Inspector General
for Audit Services

Enclosure - as stated

Direct Reply to HHS Action Official:

Associate Regional Administrator
Centers for Medicare & Medicaid Services, Region V
Division of Medicaid and State Operations
233 North Michigan Avenue, Suite 600
Chicago, Illinois 60601-5519

Department of Health and Human Services

**OFFICE OF
INSPECTOR GENERAL**

**AUDIT OF NURSING HOMES
AND DENIAL OF PAYMENT
REMEDIES – STATE OF
ILLINOIS**

**OCTOBER 1, 1999 THROUGH
SEPTEMBER 30, 2001**

**ILLINOIS DEPARTMENT
OF PUBLIC AID**



May 2004
A-05-03-00085

Office of Inspector General

<http://oig.hhs.gov>

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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

OBJECTIVES

The objectives of our audit were to ensure that the mandatory denial of payment remedy for substandard quality of care was applied to nursing homes that were not in substantial compliance with the prescribed Medicaid participation requirements and to evaluate whether State controls were adequate to prevent improper Medicaid payments to nursing homes under the denial of payment remedy.

BACKGROUND

This audit was initiated to address the general public concern with nursing home quality of care. Our primary focus was on measures for enforcing nursing home compliance with quality of care standards for Medicaid recipients. We audited denial of payment sanctions, which were in effect from October 1, 1999 to September 30, 2001.

Due to widespread need for nursing home reform, Congress passed the Omnibus Budget Reconciliation Act of 1987. This legislation included the Nursing Home Reform Act, which ensured residents received quality care in nursing homes through the establishment of a Residents' Bill of Rights and the provision of certain services to each resident. It also required nursing homes participating in the Medicaid and Medicare programs to comply with the requirements for standards of care as prescribed by Federal laws.

Title XIX, section 1919 of the Social Security Act, established these requirements for nursing facilities, which are implemented by the State and the Secretary of the Department of Health and Human Services. As part of these requirements, nursing facilities undergo an annual State survey and certification process to reveal whether a nursing facility is in substantial compliance with the Federal requirements.

FINDINGS

Although the State correctly identified nursing homes providing substandard quality of care and meeting the criteria for mandatory denial of payment remedies, the State did not have adequate controls to prevent improper Medicaid payments to sanctioned nursing homes. State surveys of approximately 830 nursing homes appropriately identified 84 that warranted the mandatory denial of payment remedy for new Medicaid admissions and 62 that warranted the optional denial of payment sanctions. We found that 142 of the 146 sanctioned nursing homes received Medicaid payments, while subject to the denial of payment sanction. Of these 142 nursing homes, we found 27 homes had unallowable Medicaid payments, totaling \$139,783 (\$69,892 Federal share). The overpayments were associated with 16 nursing homes under mandatory denial of payment sanctions and 11 homes under optional denial of payment sanctions.

RECOMMENDATIONS

We recommend the State:

- Refund \$69,892 to the Centers for Medicare & Medicaid Services for the Federal share of identified unallowable payments.
- Implement procedures to ensure the timely suspension of payments to providers under the denial of payment remedy.

In a written response dated May 6, 2004, State agency officials concurred with our recommendations. The response is summarized in the body of this report and is included in its entirety as Appendix A to the report.

TABLE OF CONTENTS

	Page
INTRODUCTION	1
BACKGROUND	1
Nursing Home Reform Act Requirements	1
Denial of Payment Sanctions	1
OBJECTIVES, SCOPE, AND METHODOLOGY	2
Objectives	2
Scope	2
Methodology	3
FINDINGS AND RECOMMENDATION	4
FINDINGS	4
Payments Made to Sanctioned Nursing Homes	4
Criteria Application	5
RECOMMENDATION	6
State Agency Comments	6

APPENDIX

A – STATE AGENCY RESPONSE TO DRAFT REPORT

INTRODUCTION

BACKGROUND

Nursing Home Reform Act Requirements

Due to widespread need for nursing home reform, Congress passed the Omnibus Budget Reconciliation Act of 1987. This legislation included the Nursing Home Reform Act, which ensured that residents received quality care in nursing homes by establishing a Residents' Bill of Rights and requiring the provision of certain services and activities to attain or maintain the highest practicable physical, mental, and psychosocial well-being of each resident. It also required nursing homes participating in the Medicaid and Medicare programs to comply with the requirements for standards of care as prescribed by Federal laws. Title XIX, section 1919 of the Social Security Act, established these requirements for nursing facilities, which are implemented by the State and the Secretary of the Department of Health and Human Services.

As part of these requirements, nursing facilities undergo an annual State survey and certification process to reveal whether a nursing facility is in substantial compliance with the Federal requirements. Substantial compliance means a level of compliance such that any identified deficiencies pose no greater risk to resident health or safety than the potential for causing minimal harm. Deficiencies result from noncompliance or substandard quality of care in the nursing home. Facilities not in substantial compliance with these Federal standards of care are deficient and may have enforcement remedies imposed against them. Denial of payment sanctions may be imposed alone or in combination with other remedies when certification standards of care are not met.

Denial of Payment Sanctions

42 CFR § 488, subpart F, sets forth the regulations governing the enforcement of remedies against nursing homes with compliance deficiencies. The remedies imposed on a nursing home result from the seriousness of the deficiency, which is measured by the severity and scope of the deficiency. Certification of noncompliance means that the nursing home is not eligible to participate in the Medicaid program. The State survey agency must re-certify the nursing home for substantial compliance before the enforcement remedies are lifted. The denial of payment remedies are used for nursing facilities not in substantial compliance with one or more of the Medicaid participation requirements. There are two types of the denial of payment sanctions.

The first type of denial of payment pertains to new admissions for all Medicaid residents, whether considered an optional or mandatory sanction based on the seriousness of the deficiency. The optional remedy states that CMS or the State may deny payment for all new Medicaid admissions when a facility is not in substantial compliance with the Medicaid participation requirements. The mandatory remedy must be imposed, when the facility is not in substantial compliance three months after the last day of the survey identifying the deficiency or a facility has been found to have furnished substandard quality of care on the last three consecutive standard surveys. The State Medicaid agency must deny payment to the facility, and CMS must deny Federal financial participation to the State Medicaid agency for all new Medicaid

admissions to the facility (State Operations Manual, section 7506 (C) (2)). The manual defines *substandard quality of care* as:

...one or more deficiencies related to participation requirements under 42 CFR 483.13, resident behavior and facility practices, 42 CFR 483.15, quality of life, or 42 CFR 483.25, quality of care that constitute either immediate jeopardy to resident health or safety; a pattern or widespread actual harm that is not immediate jeopardy; or a widespread potential for more than minimal harm, but less than immediate jeopardy, with no actual harm.

The second type, requiring Department of Health and Human Services Secretarial approval, is the denial of all payments for all Medicaid residents. In these instances, no payments are made for the period between the date that the remedy was imposed and the date that CMS verified that the facility is in substantial compliance with Federal requirements. Once the facility achieves substantial compliance, CMS resumes payments to the facility prospectively (State Operations Manual, section 7508).

OBJECTIVES, SCOPE, AND METHODOLOGY

Objectives

The objectives of our audit were to ensure that the mandatory denial of payment remedy for substandard quality of care was applied in nursing homes that were not in substantial compliance with the prescribed Medicaid participation requirements and to evaluate whether State controls were adequate to prevent improper Medicaid payments to nursing homes under the denial of payment remedy.

Scope

We obtained information from the CMS regional office, State agencies, and selected nursing homes as applicable. Data obtained included, but was not limited to:

- Medicaid paid claims information,
- nursing home admission and discharge records,
- select billing documentation,
- denial of payment letters,
- list of noncompliant nursing facilities,
- State nursing home surveys, and
- other support documentation as applicable.

Our audit included denial of payment sanctions, which were in effect from October 1, 1999 to September 30, 2001. Our review was limited in scope. It was not intended to be a full-scale internal control assessment of the Medicaid agency operations. The objectives of our audit did not require an understanding or assessment of the overall internal control structure of the agency.

Methodology

For the first objective, we determined whether all surveyed nursing homes with deficiencies were properly sanctioned for mandatory denial of payment. We reviewed all nursing homes that provided substandard quality of care but were not placed under the denial of payment remedy. We requested the CMS listing of nursing homes indicating substandard quality of care during our audit period and reviewed the annual surveys for non-sanctioned nursing homes with substandard quality of care deficiencies. In addition, we requested and reviewed the two previous annual surveys to determine whether the nursing homes were sanctioned three consecutive times for substandard quality of care but did not have the mandatory denial of payment remedy enforced. We also evaluated whether nursing homes remained in non-compliance three months after the last day of the survey.

For the second objective, we obtained a State file of sanctioned nursing facilities with the denial of payment remedies and reconciled this information with CMS's Long Term Care Denial of Payment Report. The reconciliation was used to determine the total number of sanctioned nursing homes in Illinois with the denial of payment remedy. Out of the identified 146 sanctioned nursing homes, 142 received Medicaid payments during the sanction periods in our audit.

A listing of Medicaid paid claims was downloaded from the Medicaid Management Information System. We reviewed all Medicaid claims paid to the 142 nursing homes, for services provided during our audit period, to determine if improper payments were made to homes under the denial of payment remedy.

We reviewed admission records and select billing documentation provided by the nursing homes for the sanction period to determine whether the payments were for new Medicaid admissions and, therefore, subject to denial of payment remedy. Based on the State Operations Manual, Publication 7, we established whether each payment for admissions during the sanction period was allowable or unallowable. The payments were considered unallowable if the resident was a new admission to the nursing home that was under the denial of payment remedy. The portion of the claim(s) paid for new admissions during the sanction period was deemed unallowable.

The audit work was performed at the offices of the Illinois Department of Public Health and the Illinois Department of Public Aid in Springfield, Illinois from June 2003 to March 2004. Our review was conducted in accordance with generally accepted government auditing standards.

FINDINGS AND RECOMMENDATION

FINDINGS

Although the State correctly identified the nursing homes providing substandard quality of care and meeting the criteria for mandatory denial of payment, State controls were not adequate to prevent improper Medicaid payments to sanctioned nursing homes, as required in Title XIX, section 1919 of the Social Security Act and 42 CFR § 488. Out of approximately 830 nursing homes surveyed, the State properly identified 146 nursing homes that were out of compliance with quality of care standards and 142 nursing homes that received payments while on the sanction list. The State did not have adequate controls to prevent improper Medicaid payments for new admissions to sanctioned nursing homes.

From the nursing homes surveyed, 84 warranted the mandatory denial of payment remedy and 62 warranted the optional denial of payment sanctions. The denial of payment is an enforcement remedy for nursing facilities not in substantial compliance with one or more of the Medicaid participation requirements. The severity of the deficiency and level of harm to the resident requires imposition of the denial of payment remedies. The State correctly applied the mandatory denial of payment remedy to all nursing homes providing substandard quality of care and meeting the criteria for mandatory denial of payment. We determined that there were no additional nursing homes having three consecutive surveys with substandard quality of care findings or continuing noncompliance three months after the survey, thus warranting mandatory denial of payment sanctions. We did not assess whether additional nursing homes should have been placed under optional denial of payment sanctions.

Payments Made to Sanctioned Nursing Homes

Although the State properly identified nursing homes that were out of compliance with quality of care standards, State controls were inadequate to prevent improper Medicaid payment to sanctioned nursing homes. We determined that 147 unallowable Medicaid payments totaling \$139,783 were made to 27 nursing homes under the denial of payment sanctions. The overpayments were associated with 16 nursing homes under mandatory denial of payment sanctions (\$95,145) and 11 homes under optional denial of payment sanctions (\$44,639). The State controls were not adequate to prevent all improper Medicaid payments to nursing homes under sanction. The Federal financial participation for the improper payments totaled \$69,892.

The following schedule summarizes the results of our review.

NURSING HOME	SANCTION START	SANCTION END	RESIDENT COUNT	SANCTION DAYS	QUESTIONED COSTS	FEDERAL SHARE
1	03/18/2000	04/12/2000	3	48	\$ 3,834	\$ 1,917
2	09/01/2000	09/28/2000	2	45	2,471	1,235
3	12/17/1999	01/23/2000	2	63	5,539	2,769
4	07/01/2000	10/02/2000	5	358	21,457	10,728
5	04/05/2001	06/14/2001	2	111	9,337	4,669
6	10/14/2000	01/25/2001	9	166	12,523	6,261
7	05/03/2000	05/14/2000	1	10	883	442
8	02/22/2000	02/27/2000	1	3	264	132
9	04/20/2001	04/25/2001	1	6	619	309
10	03/05/2000	06/05/2000	7	259	18,841	9,421
11	02/08/2000	03/02/2000	6	68	4,828	2,414
11	07/14/2000	08/16/2000	1	14	1,090	545
12	04/21/2000	06/08/2000	1	38	3,688	1,844
13	03/23/2000	04/10/2000	2	33	3,594	1,797
14	02/04/2000	03/02/2000	3	44	2,797	1,398
14	10/05/2000	12/17/2000	1	47	3,692	1,846
15	07/01/2000	09/12/2000	4	212	9,322	4,661
16	02/05/2000	03/14/2000	2	20	1,926	963
17	01/06/2001	01/17/2001	1	9	749	375
18	08/17/2000	09/05/2000	1	10	864	432
19	09/29/2000	03/19/2001	1	144	11,324	5,662
20	07/12/2000	09/06/2000	1	37	2,875	1,438
21	03/10/2000	04/04/2000	2	45	3,195	1,597
22	05/12/2000	09/04/2000	1	44	3,517	1,759
23	04/12/2000	05/08/2000	1	5	485	243
24	04/07/2000	04/13/2000	1	4	312	156
25	01/28/2000	03/09/2000	3	65	4,204	2,102
26	06/06/2000	10/11/2000	1	11	646	323
27	04/30/2001	06/11/2001	2	61	4,906	2,453
27			68	1980	\$ 139,783	\$ 69,892

Criteria Application

The denial of payment status of a resident is determined by the admission date. According to 42 CFR § 488.401, a new admission is defined as:

...a resident who is admitted to the facility on or after the effective date of a denial of payment remedy and, if previously admitted, has been discharged before that effective date. Residents admitted before the effective date of the denial of payment, and taking temporary leave, are not considered new admissions, nor subject to the denial of payment.

Medicaid payments made by the State for new admissions during the sanction period are unallowable.

RECOMMENDATION

We recommend that the State:

- Refund \$69,892 to the Centers for Medicare & Medicaid Services for the Federal share of identified unallowable payments.

- Implement procedures to ensure the timely suspension of payments to providers under the denial of payment remedy.

State Agency Comments

State agency officials agreed with the findings and recommendations. The full text of the State agency's response is included as Appendix A to this report.

APPENDIX



Rod R. Blagojevich, Governor
Barry S. Maram, Director

Illinois Department of Public Aid

201 South Grand Avenue East
Springfield, Illinois 62763-0001

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TTY: (800) 526-5812

Paul Swanson
Regional Inspector General for Audit Services
Department of Health and Human Services
Office of Audit Services
233 North Michigan Avenue
Chicago, Illinois 60601

May 6, 2004

Re: Report Number: A-05-03-00085

Dear Mr. Swanson:

This is in response to your April 6, 2004 letter and draft report of the Nursing Homes and Denial of Payment Remedies in the State of Illinois.

The Department of Public Aid has reviewed the draft report and concurs with the Department of Health and Human Services' recommendations. The Department will refund \$69,892 to the Centers for Medicare and Medicaid Services for the Federal share of identified unallowable payments to 27 nursing facilities. The Department has already initiated additional steps to reinforce the existing process to assure that inappropriate payments to providers under the denial of payment remedy are not issued, or if issued, are recovered from the facility in a timely manner.

The Department has implemented the generation of a quarterly report, beginning with the quarter of January 1, 2004 through March 31, 2004, which identifies any nursing facilities with a denial of payment remedy and any potential improper payments to the facilities. Based on the report findings, Department staff will determine if the payment was allowable and take steps to recover the funds from the nursing facility, if needed. In addition, the Department has initiated its own review of sanctioned nursing facilities with a denial of payment remedy from October 1, 2001, the date following the audit end date, through December 31, 2003 to ensure any improper payments have not occurred or are recovered as deemed necessary.

It is the Department's intent to effectively implement the denial of payment remedy to aid in the enforcement of nursing home compliance. If you have any questions, please contact my office at (217) 782-1200.

Sincerely,

Barry S. Maram
Director

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