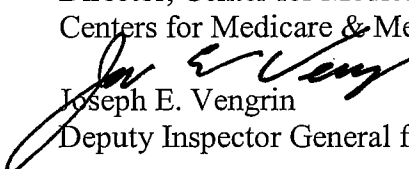




MAR 13 2006

TO: Herb Kuhn
Director, Center for Medicare Management
Centers for Medicare & Medicaid Services

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

SUBJECT: Graduate Medical Education for Dental Residents Claimed by Boston
Medical Center for Fiscal Years 2000 Through 2002 (A-04-04-06003)

Attached is an advance copy of our final report on Medicare graduate medical education (GME) payments for dental residents claimed by Boston Medical Center (the Hospital) in Boston, MA. We will issue this report to the Hospital within 5 business days.

Based on 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 Boston University Goldman School of Dental Medicine, 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 (FYs) 2000 through 2002.¹

The Hospital inappropriately included a total of 120.15 direct GME FTEs and 113.80 indirect GME FTEs in the counts for FYs 2001 and 2002 without incurring all of the costs of training dental residents in nonhospital sites for those years. Federal regulations stipulate that hospitals must incur all or substantially all of the training costs to include dental residents who train in nonhospital sites in the FTE counts for Medicare GME payments. The Hospital did not have written procedures to prevent the inclusion of FTEs for which it had not paid the training costs. As a result, the Hospital overstated its direct and indirect GME claims by a total of \$4.9 million for FYs 2001 and 2002.

¹The fiscal intermediary disallowed all offsite dental FTEs that the Hospital claimed on the FY 2000 cost report. Therefore, we did not review FY 2000.

We recommend that the Hospital:

- file an amended cost report, which will result in a refund of \$4,927,120 associated with FTEs for which the Hospital did not incur all or substantially all of the training costs;
- establish and follow written procedures to ensure that the FTE counts for residents in nonhospital settings include only those FTEs for which the Hospital has incurred all or substantially all of the training costs; and
- determine whether errors similar to those identified in our review occurred in Medicare cost reports after FY 2002 and refund any overpayments.

In written comments on the draft report, the Hospital generally disagreed with our findings and recommendations related to FY 2002. The Hospital asserted that it had paid all or substantially all of the dental resident costs for FY 2002 and was therefore entitled to reimbursement for these dental residents. The Hospital did not address our findings and recommendations for FY 2001. We disagree with the Hospital's assertion that it paid all or substantially all of the dental resident costs in FY 2002 and maintain that the findings and recommendations are valid.

If you have any questions or comments about this report, please 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 Lori S. Pilcher, Regional Inspector General for Audit Services, Region IV, at (404) 562-7750. Please refer to report number A-04-04-06003.

Attachment



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

MAR 14 2006

Report Number: A-04-04-06003

Mrs. Elaine Ullian
Chief Executive Officer
Boston Medical Center
Talbot 1 Building
715 Albany Street
Boston, Massachusetts 02118

Dear Mrs. Ullian:

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 Boston Medical Center for Fiscal Years 2000 Through 2002." A copy of this report will be forwarded to the 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-04-04-06003 in all correspondence.

Sincerely,

A handwritten signature in black ink, appearing to read "Lori S. Pilcher", with a horizontal line extending to the right.

Lori S. Pilcher
Regional Inspector General
for Audit Services, Region IV

Enclosures

Page 2 - Mrs. Elaine Ullian

HHS Action Official:

Charlotte S. Yeh M.D.
Regional Administrator
Centers for Medicare & Medicaid Services, Region I
Department of Health and Human Services
JFK Building, Room 2325
Boston, Massachusetts 02203

Department of Health and Human Services

**OFFICE OF
INSPECTOR GENERAL**

**GRADUATE MEDICAL EDUCATION
FOR DENTAL RESIDENTS CLAIMED
BY BOSTON MEDICAL CENTER FOR
FISCAL YEARS 2000 THROUGH 2002**



**Daniel R. Levinson
Inspector General**

**MARCH 2006
A-04-04-06003**

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.

Based on 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 the Boston Medical Center (the Hospital) and its arrangements with the Boston University Goldman School of Dental Medicine (the Dental School). The Dental School is a nonhospital setting. In October 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 \$72 million in direct (\$18 million) and indirect (\$54 million) GME payments for the 2-year period that ended June 30, 2002. FTEs used to calculate reimbursable GME costs averaged 310 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 (FYs) 2000 through 2002.¹

SUMMARY OF FINDINGS

The Hospital inappropriately included a total of 120.15 direct GME FTEs and 113.80 indirect GME FTEs in the counts for FYs 2001 and 2002 without incurring all of the costs of training dental residents in nonhospital sites for those years. Federal regulations stipulate that hospitals must incur all or substantially all of the training costs to include dental residents who train in nonhospital sites in the FTE counts for Medicare GME payments. The Hospital did not have written procedures to prevent the inclusion of FTEs for which it had not paid the training costs.

¹The fiscal intermediary disallowed all offsite dental FTEs that the Hospital claimed on the FY 2000 cost report. Therefore, we did not review FY 2000.

As a result, the Hospital overstated its direct and indirect GME claims by a total of \$4.9 million for FYs 2001 and 2002.

RECOMMENDATIONS

We recommend that the Hospital:

- file an amended cost report, which will result in a refund of \$4,927,120 associated with FTEs for which the Hospital did not incur all or substantially all of the training costs;
- establish and follow written procedures to ensure that the FTE counts for residents in nonhospital settings include only those FTEs for which the Hospital has incurred all or substantially all of the training costs; and
- determine whether errors similar to those identified in our review occurred in Medicare cost reports after FY 2002 and refund any overpayments.

HOSPITAL'S COMMENTS

In written comments on the draft report, the Hospital generally disagreed with our findings and recommendations related to FY 2002. The Hospital asserted that our conclusions were incorrect because they were based on faulty underlying data. The Hospital also stated that it had paid all or substantially all of the dental resident costs for FY 2002 and was therefore entitled to reimbursement for these dental residents. The Hospital did not address our findings and recommendations for FY 2001.

The complete text of the Hospital's comments is included as Appendix B.

OFFICE OF INSPECTOR GENERAL'S RESPONSE

We disagree with the Hospital's assertions that we used faulty data to compute resident training costs and that the Hospital met the "substantially all" requirement and was entitled to its direct and indirect GME reimbursement. We maintain that the findings and recommendations are valid.

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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.

Based on 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.

Boston Medical Center

The Boston Medical Center (the Hospital) comprises Boston City Hospital, Boston Specialty Rehabilitation Hospital, and Boston University Medical Center Hospital. The Hospital is a private, not-for-profit, 550-bed academic medical center that serves as a major teaching affiliate for the Boston University Goldman School of Dental Medicine (the Dental School). The Dental School is a nonhospital setting. In October 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.

For all FTEs, including dental FTEs, the Hospital claimed more than \$72 million in direct (\$18 million) and indirect (\$54 million) GME payments for the 2-year period that ended June 30, 2002. FTEs used to calculate reimbursable GME costs averaged 310 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 (FYs) 2000 through 2002.¹

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 Boston, MA. 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 2001 and 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;
- 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 2001 and 2002 cost reports.

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

¹The fiscal intermediary disallowed all offsite dental FTEs that the Hospital claimed on the FY 2000 cost report. Therefore, we did not review FY 2000.

FINDINGS AND RECOMMENDATIONS

The Hospital inappropriately included dental residents who trained in nonhospital sites in the FTE counts for FYs 2001 and 2002 without incurring all of the residents' training costs for those years. Federal regulations stipulate that hospitals must incur all or substantially all of the training costs to include dental residents in the FTE counts for Medicare GME payments. The Hospital did not have written procedures to prevent the inclusion of FTEs for which it had not paid the training costs. As a result, the Hospital overstated its direct and indirect GME claims by a total of \$4.9 million for FYs 2001 and 2002.

TRAINING COSTS INCURRED BY THE HOSPITAL

In computing FYs 2001 and 2002 GME payments, the Hospital did not comply with Federal regulations requiring that hospitals incur all or substantially all of the training costs for dental residents.

Sections 1886(h)(4)(E) and (d)(5)(B)(iv) of the Act state that in determining the FTEs for residents assigned to nonhospital settings, hospitals must incur all or substantially all of the costs for the training program. Federal regulations (42 CFR § 413.75(b)) define all or substantially all of the costs 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."²

For dental residents training in nonhospital sites, the Hospital inappropriately included 64.35 direct GME FTEs and 61.54 indirect GME FTEs in the counts for FY 2001 and 55.80 direct GME FTEs and 52.26 indirect GME FTEs in the counts for FY 2002. The Hospital should not have included these FTEs because it did not incur all of the training costs, as defined by regulations, for the dental residents. To include the dental FTEs, the Hospital should have paid all of the residents' salaries and fringe benefits in addition to the supervisory teaching physicians' costs attributable to GME. Instead, for FY 2001, the Hospital did not pay any of the training costs for dental residents. Rather, the Dental School paid the training costs. For FY 2002, the Hospital paid a portion of the supervisory teaching physicians' costs, but it did not pay any of the residents' salaries or fringe benefits. The Dental School paid the residents' salaries and fringe benefits.

The Hospital did not have written procedures to ensure that it included in the calculation of GME payments only FTEs for which it paid the training costs. The Hospital accepted the FTE counts provided by the Dental School without verifying that the FTEs were allowable.

As a result, Medicare overpaid the Hospital \$4.9 million in GME payments for FYs 2001 and 2002. The overpayments were \$1,515,221 and \$3,411,899, respectively. (See Appendix A for details.)

²During our audit period, these requirements were found in 42 CFR § 413.86.

RECOMMENDATIONS

We recommend that the Hospital:

- file an amended cost report, which will result in a refund of \$4,927,120 associated with FTEs for which the Hospital did not incur all or substantially all of the training costs;
- establish and follow written procedures to ensure that the FTE counts for residents in nonhospital settings include only those FTEs for which the Hospital has incurred all or substantially all of the training costs; and
- determine whether errors similar to those identified in our review occurred in Medicare cost reports after FY 2002 and refund any overpayments.

HOSPITAL'S COMMENTS AND OFFICE OF INSPECTOR GENERAL'S RESPONSE

In written comments on the draft report, the Hospital generally disagreed with our findings and recommendations for FY 2002. The Hospital did not address our findings and recommendations for FY 2001. The complete text of the Hospital's comments is included as Appendix B.

Data Used To Compute Resident Training Costs

Hospital's Comments

The Hospital asserted that our conclusions were incorrect because they were based on faulty underlying data. The Hospital stated that we had incorrectly included oral surgery and pediatric dentistry residents primarily trained in hospital-based settings when calculating the resident training costs for the Dental School.

Office of Inspector General's Response

When calculating resident training costs for the Dental School, we correctly omitted oral surgery residents. We included the training costs for pediatric dentistry residents who were rotated to nonhospital settings. A Hospital official who authorized the resident rotation provided supporting rotation schedules. The subsequent information that the Hospital submitted with its comments on the draft report did not provide sufficient evidence that the dental residents in question had primarily trained in hospital-based settings. Unless the Hospital can provide additional documentation to the contrary, we believe that we correctly included pediatric dentistry residents in our calculations.

Definition of “All or Substantially All”

Hospital’s Comments

The Hospital stated that it had incurred almost 90 percent of the resident training costs. Because we were silent as to the standard used to measure “all or substantially all” of the training costs, the Hospital concluded that 90 percent of the resident training costs was “substantially all.” Accordingly, the Hospital emphasized that it should be entitled to count the dental FTEs when determining its direct and indirect GME reimbursement. Even assuming that the law required the Hospital to incur 100 percent of the training costs to be entitled to count all of the resident FTEs, the Hospital argued that it should be entitled to count at least the portion of the FTEs equivalent to the portion of the costs it incurred (90 percent).

Office of Inspector General’s Response

Our benchmark for the term “all or substantially all” is clearly stated in regulations cited in the report. Sections 1886(h)(4)(E) and (d)(5)(B)(iv) of the Act state that in determining the FTEs for residents assigned to nonhospital settings, hospitals must incur all or substantially all of the costs for the training program. Federal regulations define “all or substantially all of the costs” 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” (42 CFR § 413.75(b)).

The Hospital did not meet the “all or substantially all” criteria because in FY 2002, it did not incur the costs for stipends (salaries) paid to Dental School residents. The Hospital incurred salary and fringe benefit costs associated only with supervisory physicians (teaching physicians). The Dental School, however, paid \$195,141 in stipends to dental residents. Because the Hospital incurred only supervisory physician salaries and not the federally required resident and supervisory physician salaries, it is not entitled to count the dental resident FTEs when determining its direct and indirect GME reimbursement.

The Hospital’s assertion that it should be allowed to count at least the portion of the FTEs equivalent to the portion of the costs it incurred is contrary to the regulatory requirements for reimbursement. The regulations clearly state that to claim a resident, the Hospital must have incurred both resident and teaching physician salaries, not one or the other and not a portion thereof.

APPENDIXES

CALCULATING GRADUATE MEDICAL EDUCATION PAYMENTS

DIRECT GRADUATE MEDICAL EDUCATION

Hospitals are paid for direct graduate medical education (GME) based on Medicare's share of a hospital-specific per resident amount multiplied by the number of full-time equivalent (FTE) residents and the percentage of Medicare inpatient days to total inpatient days. The payment methodology contained in 42 CFR § 413.76 is:¹

$$\text{Medicare payment} = (\text{hospital's established per resident amount}) \times (\text{number of FTE residents}) \times (\text{number of Medicare inpatient days/number of total inpatient days})$$

The number of FTE residents used in the calculation is equal to the average of the FTE count for the current year and the preceding 2 cost-reporting years, or the 3-year rolling average. Table 1 illustrates the effect of the overstated fiscal year (FY) 2001 FTE count on the rolling average FTE count in FYs 2001 and 2002 at the Boston Medical Center (the Hospital). Because of the rolling average, the effect of the Office of Inspector General's (OIG's) adjustment to the FY 2001 FTE count would not be fully recognized until FY 2003.

Table 1: Effect of Overstated FTE Count on Rolling Average

	FTE Count				3-Year Rolling Average
	1999	2000	2001	2002	
<u>2001 Cost Report</u>					
Per Hospital	341.07	384.86	390.46		372.13
Per OIG	341.07	384.86	326.11		350.68
<u>2002 Cost Report</u>					
Per Hospital		384.86	390.46	230.52	335.28
Per OIG		384.86	326.11	174.72	295.23

¹During our audit period, these requirements were found in 42 CFR § 413.86.

INDIRECT GRADUATE MEDICAL EDUCATION

Medicare pays for indirect GME based on a formula that calculates an add-on to the Hospital's basic prospective payment. The add-on is determined by a multiplier (established by legislation) and the resident-to-bed ratio. The payment methodology contained in 42 CFR § 412.105 is:

$$\text{Medicare payment} = \text{multiplier} \times \left[\left(1 + \frac{\text{number of FTE residents}}{\text{number of available beds}} \right)^{0.405} - 1 \right]$$

The number of FTE residents used in the calculation is the 3-year rolling average. The resident-to-bed ratio is the lesser of the current or prior-year ratio. Table 2 illustrates the effect of OIG's reduction of the FYs 2001 and 2002 dental FTE counts on the resident-to-bed ratio.

Table 2: Effect of Overstated FTE Count on Resident-to-Bed Ratio

	Resident-to-Bed Ratio		
	Current Year	Prior Year	Lesser of Current or Prior Year
<u>2001 Cost Report</u>	<u>2001</u>	<u>2000</u>	
Per Hospital	1.048931	1.040345	1.040345
Per OIG	0.995634	1.040345	0.995634
<u>2002 Cost Report</u>	<u>2002</u>	<u>2001</u>	
Per Hospital	0.909716	1.048931	0.909716
Per OIG	0.821320	0.995634	0.821320

SUMMARY OF AUDIT RESULTS

Table 3 summarizes the Hospital's overstated FTEs and the resultant overstated claims for direct and indirect GME reimbursement.

Table 3: Summary of Audit Results

Fiscal Year	Overstated FTEs		Overstated Claim for Reimbursement		
	Direct	Indirect	Direct	Indirect	Total
2001	64.35	61.54	\$495,586	\$1,019,635	\$1,515,221
2002	55.80	52.26	1,015,559	2,396,340	3,411,899
Total	120.15	113.80	\$1,511,145	\$3,415,975	\$4,927,120



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December 22, 2005

VIA FEDERAL EXPRESS

Ms. Lori S. Pilcher
Regional Inspector General for Audit Services, Region IV
Office of Inspector General
Office of Audit Services
Department of Health and Human Services
61 Forsyth Street, S.W., Suite 3T41
Atlanta, GA 30303

RE: Response to OIG Draft Report No. A-04-04-06003

Dear Ms. Pilcher:

This letter is in response to the OIG's November 2005 draft report entitled "Graduate Medical Education for Dental Residents Claimed by the Boston Medical Center for Fiscal Years 2000 through 2002" (the "Draft Report"). Boston Medical Center Corporation "BMC" was selected as part of a 10-hospital review requested by Congress to determine the effects of the Balanced Budget Act of 1997 reimbursement for graduate medical education ("GME") at hospitals with dental residents. At issue in your review, as per the OIG's audit workpapers, is the costs incurred for dental medicine interns and residents for Fiscal Year ("FY") 2002 only.

In the Draft Report, the OIG concluded that BMC inappropriately included all full-time equivalents ("FTEs") for dental residents who trained in nonhospital dental clinics and thus overstated its claim for GME reimbursement by \$4.9 million.¹ The OIG reasoned that BMC was not entitled to any reimbursement for dental FTEs because, the OIG alleges, BMC did not incur "all or substantially all" of the residents' training costs. Instead, the OIG alleges, the costs were incurred by the affiliated Boston University Goldman School of Dental Medicine (hereinafter, "Dental School"), which houses the nonhospital dental sites and is located on the academic medical center campus. The OIG shared some of its audit workpapers with BMC. These audit workpapers indicate that the

¹ This amount is the sum of \$1,515,221 (for FY 2001) and \$3,411,899 for (FY 2002) under the OIG's calculation, despite the OIG's statement that only costs relating to 2002 are relevant. It should be noted that BMC's calculation of reimbursement impact, and associated demand for reimbursement, differ significantly from what is set forth in the Draft Report. However, since the calculation of reimbursement impact is not material to our response to the OIG's review of the allowable FTE count, we are not addressing errors in the OIG's reimbursement calculations herein.

Lori S. Pilcher
December 22, 2005
Page 2 of 5

OIG believes that BMC failed to incur \$355,971 (or approximately 30%) of the resident training costs for FY 2002. The OIG alleges that this shortfall is attributable to BMC's failure to incur the costs of (i) resident stipends, (ii) professional liability insurance, and (iii) cardio-pulmonary resuscitation training for post-doctoral students.

BMC respectfully asserts that the OIG's conclusions are incorrect because they are based on faulty underlying data. In fact, BMC *did incur* substantially all of the residents' training costs and, therefore, is entitled to the requested reimbursement under the applicable statute and regulations.² When calculating the resident training costs, the OIG included the training costs for oral surgery and pediatric dentistry residents who were primarily trained in hospital-based settings at BMC or other hospitals, not in the dental clinics.³ It was incorrect for the OIG to include all of the oral surgery and pediatric dentistry training costs in the costs that must be incurred by BMC and paid to the Dental School. Indeed, BMC was properly paid by the fiscal intermediary for FTEs associated with the oral surgery and pediatric dentistry residents, both before and after the changes in the law permitting nonhospital training settings, as these residents (unlike other dental residents) trained at the hospital.

Additionally, the OIG *did not include* the oral surgery residents' FTEs in its calculation of the IME and DME FTE counts for FY 2002 (*See* Table 3 of the Draft Report), even though it *did include* the training costs associated with these residents in its calculation of the training costs the hospital must incur. This suggests that the OIG may have intended to remove the oral surgery training costs from the calculation of costs to be incurred, but

² The indirect medical education ("IME") statute, S.S.A. § 1886(d)(5)(B)(iv), provides:

Effective for discharges occurring on or after October 1, 1997, all the time spent by an intern or resident in patient care activities under an approved medical residency training program at an entity in a nonhospital setting shall be counted towards the determination of full-time equivalency if the hospital incurs all, or substantially all, of the costs for the training program in that setting.

The direct medical education ("DME") statute, S.S.A. § 1886(h)(4)(E), provides:

Such rules [regarding counting time spent in outpatient settings] shall provide that only time spent in activities relating to patient care shall be counted and that all the time so spent by a resident under an approved medical residency training program shall be counted towards the determination of full-time equivalency, without regard to the setting in which the activities are performed, if the hospital incurs all, or substantially all, of the costs for the training program in that setting.

42 C.F.R. § 413.86 sets forth the following conditions for a hospital to include FTEs for residents training in nonhospital settings:

- (i) The resident spends his or her time in patient care activities.
- (ii) The written agreement between the hospital and the nonhospital site must indicate that the hospital will incur the cost of the resident's salary and fringe benefits while the resident is training in the nonhospital site and the hospital is providing reasonable compensation to the nonhospital site for supervisory teaching activities. The agreement must indicate the compensation the hospital is providing to the nonhospital site for supervisory teaching activities.
- (iii) The hospital must incur all or substantially all of the costs for the training program in the nonhospital setting in accordance with the definition in paragraph (b) of this section.

³ There were other errors in the OIG's analysis, but the improper inclusion of the oral surgery and pediatric dentistry residents accounts for the most significant difference between the OIG's calculation of the total training costs and the actual training costs at the nonhospital site. We address some of the other, less material, errors in the exhibits hereto.

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simply made an error in including the associated costs. The effect of this error was to improperly inflate the total training costs, but properly deflate the FTEs operating at the nonhospital site associated with the oral surgery program.

Rotation schedules establishing the time these residents were operating at hospital sites (and not at the Dental School) are attached hereto at Exhibit A.⁴ BMC also submits comprehensive tables identifying those residents training at the hospital and nonhospital sites at Exhibit B. The tables at Exhibit B are broken down by training program, and are organized with the same format and nomenclature as the OIG's auditors employed during their review. The top box of each table in Exhibit B shows the OIG's calculation of the FTE count for the given training program. The middle box shows the actual FTE count. The bottom box explains the difference between the OIG's count and the actual count. Exhibit B identifies the errors in the OIG's calculations not only for the inclusion of oral surgery and pediatric dentistry residents, but also for other errors not expressly discussed in this letter. Attached at Exhibit C is a global summary of the difference between the OIG's FTE count and the actual FTE count, including all of the training programs. Exhibit D is the spreadsheet employed by the OIG during the review that shows the allocation of teaching physicians' costs spread among the training programs, also known as the "Physicians Quarterly Time Allocation Overview." We have made revisions to the Exhibit D spreadsheet incorporating the changes to the FTE counts derived from Exhibit C and allocable to the nonhospital sites. For clarity, we have kept in place the OIG's cost figures employed during the review, and have only revised the FTE count. Exhibit D demonstrates that, based on the OIG's calculation and including the revised FTE count, BMC incurred 90% of the costs of the nonhospital training program.⁵ Ninety percent (90%) is unquestionably "substantially all" of the training costs. We will provide you under separate cover a fully revised Exhibit D showing not only BMC's calculation of the actual FTE count, but also of the teaching costs. BMC does not resubmit herewith the other documentation the auditors reviewed during their work on this project, but if you would like additional copies of any of these materials, we will make them available.

By incorrectly including the oral surgery and pediatric dentistry costs, the OIG determined that the "Faculty Salary & Fringe Allocation" costs were \$985,447 and the total costs to be incurred by BMC were \$1,206,262.38.⁶ Based on these incorrect

⁴ As our attorney discussed with agents of your office, the exhibits to this letter as well as those documents previously provided to your office are confidential and proprietary to BMC. They fall within the exemptions to the Freedom of Information Act (5 U.S.C. § 552, as amended by Public Law 104-231) including, *inter alia*, the exemptions set forth at 45 CFR § 5.65. They may not be published and must be retained by the OIG during this project with the strictest controls on their dissemination and confidentiality. If the OIG has any objections to complying with this request, please contact us immediately.

⁵ BMC Actual Reimbursement ÷ (OIG Total to be Reimbursed – All program cost changes as a result of the revised FTE count) = Percentage Reimbursed
 $\$850,291 \div (1,206,262 - 262,343) = .90 * 100 = 90\%$

⁶ The OIG included in the total costs some additional (and much smaller) costs allegedly associated with resident training, namely (i) CPR for postdoctoral students, (ii) professional liability insurance, and (iii) some resident stipends. BMC claims that these additional costs were not relevant to resident training and/or not made known to BMC at the time. Furthermore, BMC has at this time paid the Dental School any unpaid costs pursuant to its agreement. Regardless, these costs are insubstantial and thus should not impact the OIG's determination as to whether BMC paid substantially all of the resident training costs.

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numbers, the OIG calculated that BMC failed to incur \$355,971.38 (approximately 30%) of resident training costs in the nonhospital dental clinics. Yet, the oral surgery and pediatric dentistry training costs alone accounted for approximately \$254,000 of the "Faculty Salary & Fringe Allocation" costs. By removing just the \$254,000 from the total costs to be incurred, BMC's "shortfall" (based solely on the OIG's formula and accepting its other assumptions) decreases to approximately \$100,000. Accordingly, after simply correcting for the OIG's error in including the oral surgery and pediatric dentistry residents, under the OIG's analysis BMC would have incurred almost 90% of the resident training costs.

It is important to recognize that BMC intended at all times to assume all of the training costs of the nonhospital clinics. Consistent with the regulations, BMC has contracts in place designed so that BMC will incur all or substantially all of the costs associated with the education of the dental residents. There is a complex cost finding system between BMC and the Dental School that is intended to identify all the training costs of the residents and assure that BMC is solely responsible for them. As in any sophisticated accounting system, it is possible that minor errors (*i.e.* 10% of costs) will arise, which need to be corrected on audit or annual settlements. These minor accounting errors should not be the basis of a disallowance of an entire category of intern and resident from GME reimbursement. We hope that the OIG is not suggesting that the law requires absolute perfection in cost accounting.

The Draft Report is silent as to what standard the OIG was using to measure whether BMC paid "substantially all" of the training costs. Indeed, it would be unreasonable if the OIG required BMC to incur 100% of training costs in order to include the nonhospital residents in BMC's FTE count.⁷ BMC would strenuously object to a requirement that it must incur 100% of the training costs. Such a reading ignores the operative language: "or substantially all." BMC, therefore, assumes that the OIG is using some other benchmark for determining when a provider had incurred "substantially all" of the costs of the training program. The OIG did not disclose its benchmark in the Draft Report or the audit workpapers.

The OIG conceded, in a related report, that there is no set standard as to what percentage of the training costs constitutes "substantially all" of the costs for purposes of GME reimbursement for the costs of residents at nonhospital sites.⁸ In other Medicare contexts, The OIG and the Provider Reimbursement Review Board have each defined

⁷ The Draft Report, however, suggests that this might be the case. *See* Report, pg. 3 ("The Hospital inappropriately included dental residents who training in nonhospital sites in the FTE counts for FYs 2001 and 2002 without incurring all of the residents' training costs for those years.").

⁸ *See* OIG Report, "Alternative Medicare Payment Methodologies for the Cost of Training Medical Residents in Nonhospital Settings," Report No. A-02-04-01012 (Dec. 8, 2004) (including the OIG's recommendation to CMS that it establish a definition for "substantially all").

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“substantially” as approximately 80%.⁹ Furthermore, in several non-Medicare contexts, Federal courts have defined “substantially” as a variety of percentages, ranging from 50% to 90%.¹⁰ We are aware of no instance in which a court defined “substantially” for Medicare purposes as more than 90%. Because BMC clearly included more than 90% of the training costs (and, indeed, was operating under an accounting system designed to cover 100% of the training costs), there is no doubt that BMC incurred “substantially all” of the training costs and, therefore, is fully entitled to GME reimbursement for the residents in question.

Even assuming for the moment that the law required a hospital to incur 100% of the training costs to be entitled to count all of the resident FTEs, BMC would argue that it should be entitled to count at least the portion of the FTEs equivalent to the portion of the costs it incurred – in BMC’s case 90%. It would be fundamentally unfair to deny BMC 100% of the FTEs and associated reimbursement for an alleged *de minimis* accounting error in the calculation of payment of training costs. Such a reading would be an extreme penalty and forfeiture, which the law clearly disfavors.

For the reasons set forth herein, BMC respectfully asserts that it should be entitled to count the dental FTEs toward its total FTE count for the purpose of determining its DME and IME reimbursement. Accordingly, BMC requests that the OIG revise the recommendations included in the Draft Report and conclude that BMC did, in fact, incur substantially all of the costs for the training program.

Please do not hesitate to contact me with your questions or concerns.

Yours truly,



Mark Goldstein
Senior Director of Finance
Boston Medical Center Corporation

⁹ See 68 Fed. Reg. 53939, 53942 (September 15, 2003) (the OIG proposal that hospital’s charge to non-governmental payor must be at least 80% of the charge to the government for violation of “Substantially in Excess” statute); *Maximum Home Health Care, Inc. v. Blue Cross and Blue Shield Assoc.*, HCFA Admin. Dec. (Sept. 6, 2002) (PRRB concluded that a charge between 80% and 85% of the median and mean management fees was not “substantially out of line”, 42 C.F.R. § 413.9(c)(2), with comparable providers).

¹⁰ See, e.g., *Central States Pension Fund v. Robinson Cartage*, 55 F.3d 1318, 1321 (7th Cir. 1995) (defining the term “substantially all” in ERISA in the context of exemption from withdrawal liability as 85%); *Continental Can v. Chicago Truck Drivers*, 916 F.2d 11541156 (7th Cir. 1990) (“It is our intent that, as used in this special trucking industry withdrawal rule, the substantially all requirement would only be satisfied where at least 85% of the contribution to the plan are made by employers who are primarily engaged in the specified industries.” (citing 126 Cong. Rec. 23040 (Aug. 25, 1980))).

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Exhibits

Exhibit A – Rotation Schedules

Exhibit B – I&R Lists

Exhibit C – Global summary of difference between OIG FTE count and actual FTE count

Exhibit D – Physicians Quarterly Time Allocation Overview

Exhibits available on request