MAR 25 2009

TO: Charlene Frizzera
Acting Administrator
Centers for Medicare & Medicaid Services

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

SUBJECT: Review of Medicaid Participation Eligibility for One Indiana State-owned Psychiatric Hospital for the Period July 1, 1996, Through June 30, 2007 (A-05-07-00076)

Attached is an advance copy of our final report on Medicaid participation eligibility for hospital A, an Indiana State-owned psychiatric hospital, for the period July 1, 1996, through June 30, 2007. We will issue this report to the Indiana Family and Social Services Administration (the State agency) within 5 business days.

Medicaid inpatient psychiatric services for recipients under the age of 21 and for those age 65 and older may be provided in psychiatric hospitals, and those hospitals must meet both the basic Medicare Conditions of Participation (CoP) requirements and two special Medicare CoP requirements for staffing and medical records. Special Medicare CoP compliance can only be established through a special survey process.

Our objective was to determine whether the State agency made Medicaid payments to hospital A for inpatient psychiatric services according to Federal eligibility requirements for hospitals.

During the period July 1, 1996, through June 30, 2007, the State agency paid $26,208,269 ($16,298,423 Federal share) to hospital A, which was not eligible to receive Medicaid payments for inpatient psychiatric services. Hospital A did not meet Federal Medicaid eligibility requirements because it did not demonstrate compliance with the two special Medicare CoP requirements.

We recommend that the State agency:

- refund $16,298,423 to the Federal Government for Medicaid inpatient psychiatric service payments made to hospital A from July 1, 1996, through June 30, 2007;

- identify and refund the Federal share of additional unallowable Medicaid payments to hospital A for inpatient psychiatric services provided after June 30, 2007; and

- ensure that Medicaid payments for inpatient psychiatric services are made only to eligible hospitals.

In written comments to our draft report, the State agency disagreed with the finding and first recommendation and did not address the other recommendations. The State agency said that the facts are sufficient to establish hospital A's eligibility to receive Medicaid payments and that hospital A's claims related to the treatment of children are proper because the Medicare special CoP do not apply to the treatment of patients age 21 and under.

After reviewing the State agency's comments, we maintain that our finding and recommendations are valid.

If you have any questions or comments about this report, please do not hesitate to call me, or your staff may contact George M. Reeb, Assistant Inspector General for the Centers for Medicare & Medicaid Audits, at (410) 786-7104 or through e-mail at George.Reeb@oig.hhs.gov or Marc Gustafson, Regional Inspector General for Audit Services, Region V, at 312-353-2621 or through email at Marc.Gustafson@oig.hhs.gov. Please refer to report number A-05-07-00076.

Attachment

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

REGION V
OFFICE OF
INSPECTOR GENERAL

MAR 30 2009

Report Number: A-05-07-00076

Ms. Pat Casanova
Director, Office of Medicaid Policy and Planning
Indiana Family and Social Services Administration
402 West Washington Street, MS07
Indianapolis, Indiana 46204-2739

Dear Ms. Casanova:

Enclosed is the U.S. Department of Health and Human Services (HHS), Office of Inspector General (OIG), final report entitled "Review of Medicaid Participation Eligibility for One Indiana State-owned Psychiatric Hospital for the Period July 1, 1996, Through June 30, 2007." We will forward a copy of this report to the HHS action official noted on the following page for review and any action deemed necessary.

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

Pursuant to the Freedom of Information Act, 5 U.S.C. § 552, OIG reports generally are made available to the public to the extent that information in the report is not subject to exemptions in the Act. Accordingly, this report will be posted on the Internet at http://oig.hhs.gov.

If you have any questions or comments about this report, please do not hesitate to call me, or contact David Markulin, Audit Manager, at (312) 353-1644 or through e-mail at David.Markulin@oig.hhs.gov. Please refer to report number A-05-07-00076 in all correspondence.

Sincerely,

Marc Gustafson
Regional Inspector General
for Audit Services

Enclosure

Direct Reply to HHS Action Official:

Ms. Jackie Garner
Consortium Administrator
Consortium for Medicaid and Children's Health Operations
Centers for Medicare & Medicaid Services
233 North Michigan Avenue, Suite 600
Chicago, Illinois 60601

Department of Health and Human Services

OFFICE OF INSPECTOR GENERAL

REVIEW OF MEDICAID PARTICIPATION ELIGIBILITY FOR ONE INDIANA STATE-OWNED PSYCHIATRIC HOSPITAL FOR THE PERIOD JULY 1, 1996, THROUGH JUNE 30, 2007

Daniel R. Levinson
Inspector General

March 2009
A-05-07-00076

Office of Inspector General

http://oig.hhs.gov

The mission of the Office of Inspector General (OIG), as mandated by Public Law 95-452, as amended, is to protect the integrity of the Department of Health and Human Services (HHS) programs, as well as the health and welfare of beneficiaries served by those programs. This statutory mission is carried out through a nationwide network of audits, investigations, and inspections conducted by the following operating components:

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Pursuant to the Freedom of Information Act, 5 U.S.C. ' 552, Office of Inspector General reports generally are made available to the public to the extent that information in the report is not subject to exemptions in the Act.

OFFICE OF AUDIT SERVICES FINDINGS AND OPINIONS

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

EXECUTIVE SUMMARY

BACKGROUND

Medicaid Program

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

Medicaid generally covers inpatient psychiatric services for eligible recipients who are under the age of 21 or age 65 and older at institutions for mental disease (IMD), which include psychiatric hospitals. To receive payment for these services, psychiatric hospitals must meet certain Federal Medicaid eligibility requirements.

Medicaid inpatient psychiatric services for recipients under the age of 21 and for those age 65 and older may be provided in psychiatric hospitals and those psychiatric hospitals must meet both the basic Medicare Conditions of Participation (CoP) requirements and two special Medicare CoP requirements for staffing and medical records. Psychiatric hospitals must comply with basic and special Medicare CoP to receive federally matched funding for inpatient psychiatric services provided to recipients. Generally, all Medicaid-participating hospitals demonstrate compliance with the basic Medicare CoP requirements through an accreditation process performed by the Joint Commission on Accreditation of Healthcare Organizations (JCAHO). However, psychiatric hospitals must also meet the two additional special Medicare staffing and medical record CoP requirements. Compliance with these requirements is not measured by JCAHO accreditation. Special Medicare CoP compliance can only be established through a special survey process.

The Indiana Family and Social Services Administration (the State agency) administers Indiana's Medicaid program. Pursuant to the CMS-approved State plan, the State agency provides federally matched Medicaid funding to eligible hospitals. The State agency operates psychiatric hospitals under the administrative control of the Division of Mental Health. State-owned psychiatric hospitals and IMDs are responsible for inpatient care, treatment, or detention of children, adolescents, and adults with severe mental disorders. During the period July 1, 1996, through June 30, 2007, the State agency made Medicaid payments totaling $26,208,269 ($16,298,423 Federal share) for inpatient psychiatric services to a State-owned psychiatric hospital (hospital A). In a previous audit report (A-05-06-00045, May 13, 2008), we reported that the State agency made Medicaid disproportionate share hospital payments totaling $86.1 million ($53.4 million Federal share) from July 1, 2000, through June 30, 2003, to hospital A when it did not meet Medicaid eligibility requirements.

OBJECTIVE

The objective was to determine whether the State agency made Medicaid payments to hospital A for inpatient psychiatric services according to Federal eligibility requirements for hospitals.

SUMMARY OF FINDING

During the period July 1, 1996, through June 30, 2007, the State agency paid $26,208,269 ($16,298,423 Federal share) to hospital A, which was not eligible to receive Medicaid payments for inpatient psychiatric services. Hospital A did not meet Federal Medicaid eligibility requirements because it did not demonstrate compliance with the two special Medicare CoP requirements. The State agency believed that hospital A demonstrated substantial compliance with the Federal Medicaid eligibility requirements through its JCAHO accreditation. However, Federal regulations stipulate that JCAHO accreditation does not demonstrate special Medicare CoP compliance for psychiatric hospitals.

RECOMMENDATIONS

We recommend that the State agency:

- refund $16,298,423 to the Federal Government for Medicaid inpatient psychiatric service payments made to hospital A from July 1, 1996, through June 30, 2007;

- identify and refund the Federal share of additional unallowable Medicaid payments to hospital A for inpatient psychiatric services provided after June 30, 2007; and

- ensure that Medicaid payments for inpatient psychiatric services are made only to eligible hospitals.

STATE AGENCY COMMENTS AND OFFICE OF INSPECTOR GENERAL RESPONSE

In written comments to our draft report, the State agency disagreed with the finding and first recommendation and did not address the other recommendations. The State agency said that the facts are sufficient to establish hospital A's eligibility to receive Medicaid payments and that hospital A's claims related to the treatment of children are proper because the Medicare special CoP do not apply to the treatment of patients age 21 and under.

The State agency's comments, excluding personally identifiable information, are included as the Appendix.

After reviewing the State agency's comments, we maintain that our finding and recommendations are valid.

TABLE OF CONTENTS

INTRODUCTION

BACKGROUND

Medicaid Program

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

Medicaid Inpatient Psychiatric Services

Medicaid generally covers inpatient psychiatric services for eligible recipients who are under the age of 21 or age 65 and older at institutions for mental disease (IMD), which include psychiatric hospitals. In limited circumstances, Medicaid covers these services until a recipient reaches the age of 22. To receive payment for these services, psychiatric hospitals must meet certain Federal Medicaid eligibility requirements.

Medicaid Hospital Eligibility Requirements

Sections 1905(a)(16) and 1905(h)(1)(A) of the Act require that Medicaid inpatient psychiatric services for recipients under the age of 21 be provided in psychiatric hospitals that meet the definition of psychiatric hospital in section 1861(f) of the Act. Section 1861(f) requires psychiatric hospitals to meet the basic Medicare Conditions of Participation (CoP) requirements[1] and to meet two special Medicare CoP requirements for staffing and medical records.

Federal regulation (42 CFR § 440.140(a)) requires psychiatric hospitals to comply with basic and special Medicare CoP to receive federally matched funding for inpatient IMD services provided to recipients who are age 65 and older. Generally, all Medicaid-participating hospitals demonstrate compliance with the basic Medicare CoP requirements through an accreditation process performed by the Joint Commission on Accreditation of Healthcare Organizations (JCAHO). However, psychiatric hospitals must also meet the two special Medicare CoP requirements. Pursuant to 42 CFR § 488.5(a)(2), compliance with these requirements is not measured by JCAHO accreditation. The CMS "State Operations Manual," section 2718A, stipulates that special Medicare CoP compliance can only be established through a special survey process.

Indiana Psychiatric Hospitals

The Indiana Family and Social Services Administration (the State agency) administers Indiana's Medicaid program. The State agency operates State-owned psychiatric hospitals under the

[1]Medicare CoP requirements as stated in §§ 1861(e)(3) through (9) of the Act.

administrative control of the Division of Mental Health. Pursuant to the State plan, these hospitals are responsible for inpatient care, treatment, or detention of children, adolescents, and adults with severe mental disorders. During the period July 1, 1996, through June 30, 2007, the State agency made Medicaid payments totaling $26,208,269 ($16,298,423 Federal share) for inpatient psychiatric services to one State-owned psychiatric hospital (hospital A). In a previous audit report (A-05-06-00045, May 13, 2008), we reported that the State agency made Medicaid disproportionate share hospital payments totaling $86.1 million ($53.4 million Federal share) from July 1, 2000, through June 30, 2003, to hospital A when it did not meet Medicaid eligibility requirements.

OBJECTIVE, SCOPE, AND METHODOLOGY

Objective

The objective was to determine whether the State agency made Medicaid payments to hospital A for inpatient psychiatric services according to Federal eligibility requirements for hospitals.

Scope

We reviewed Medicaid payments for inpatient psychiatric services made to hospital A during the period July 1, 1996, through June 30, 2007. Our objective did not require a review of the State agency's internal controls for processing Medicaid payments.

We performed fieldwork by contacting the State agency in Indianapolis, Indiana.

Methodology

To accomplish the objective we:

- reviewed Federal Medicaid requirements regarding hospital eligibility,
- identified dates for which the State agency and hospital A could not demonstrate compliance with Federal regulations and special Medicare CoP requirements,[2] and
- used available State agency payment records to quantify the State and Federal funding amounts for Medicaid payments made to hospital A for inpatient psychiatric services provided during the audit period and the dates for which compliance with Federal requirements could not be demonstrated.

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

[2]The State agency and hospital A did not demonstrate compliance with special Medicare CoP for the period February 15, 1982, through June 30, 2007. We made no compliance determinations for periods after June 30, 2007.

FINDING AND RECOMMENDATIONS

During the period July 1, 1996, through June 30, 2007, the State agency paid $26,208,269 ($16,298,423 Federal share) to hospital A, which was not eligible to receive Medicaid payments for inpatient psychiatric services. Hospital A did not meet Federal Medicaid eligibility requirements because it did not demonstrate compliance with the two special Medicare CoP requirements. The State agency believed that hospital A demonstrated substantial compliance with the Federal Medicaid eligibility requirements through its JCAHO accreditation. However, Federal regulations stipulate that JCAHO accreditation does not demonstrate special Medicare CoP compliance for psychiatric hospitals.

UNALLOWABLE MEDICAID PAYMENTS

During the period July 1, 1996, through June 30, 2007, the State agency made Medicaid payments totaling $26,208,269 ($16,298,423 Federal share) to hospital A for inpatient psychiatric services that were provided during periods when hospital A did not meet Medicaid eligibility requirements.

Federal Requirements

Sections 1905(a)(16) and 1905(h)(1)(A) of the Act require that Medicaid inpatient psychiatric services for recipients under the age of 21 be provided in psychiatric hospitals as defined in § 1861(f) of the Act. Section 1861(f)(2) requires psychiatric hospitals to meet the basic Medicare CoP requirements as stated in §§ 1861(e)(3) through (9), and §§ 1861(f)(3) and (4) require these hospitals to meet two special Medicare CoP requirements for staffing and medical records.

Federal regulation (42 CFR § 440.140(a)) requires IMDs, including psychiatric hospitals, to meet the requirements at 42 CFR § 482.60(b), (c), and (d) to receive federally matched Medicaid funding for inpatient services provided to recipients age 65 and older. All hospitals must comply with the basic Medicare CoP requirements (42 CFR § 482.60(b)) that address licensing, quality of care, safety, patient rights, self-assessment and performance improvement, service availability, utilization and review, and other requirements that apply to participating hospitals (42 CFR §§ 482.1 through 482.57). Psychiatric hospitals must also comply with the two special Medicare staffing and medical record CoP requirements (42 CFR 482.60(c) and (d)). The CMS "State Operations Manual," section 2718A, adds clarification, requiring psychiatric hospitals to be surveyed to establish compliance with the special Medicare CoP requirements.

Psychiatric hospitals must meet these requirements before they can receive federally matched Medicaid funding.

Hospital A Ineligible for Medicaid Payments

Hospital A was ineligible for Medicaid payments received from July 1, 1996, through June 30, 2007, for inpatient psychiatric services because it did not comply with the special Medicare CoP requirements. Specifically, the facility did not demonstrate compliance with the special

Medicare staffing and medical record requirements for psychiatric hospitals through the special Medicare CoP survey process.

Unmet Federal Requirements

The State agency believed that hospital A was eligible to receive Medicaid payments because hospital A demonstrated substantial Medicare CoP compliance through its JCAHO accreditation. Although all Medicaid-participating hospitals must have JCAHO accreditation to demonstrate compliance with the basic Medicare CoP requirements, psychiatric hospitals must also meet the special Medicare staffing and medical record CoP requirements. Pursuant to 42 CFR § 488.5(a)(2), JCAHO accreditation does not demonstrate compliance with the special Medicare CoP requirements.

Pursuant to the CMS "State Operations Manual," section 2718A, compliance with the special Medicare CoP requirements can only be demonstrated through a special survey process. The State agency and hospital A were unable to establish hospital A's compliance with the special Medicare CoP requirements for the period from February 15, 1982, through June 30, 2007. CMS terminated hospital A from Medicare program participation under involuntary conditions on February 15, 1982. When hospital A applied for readmission to the Medicare program in August 2006, CMS rejected the application specifically because it did not comply with the two special Medicare CoP requirements.

RECOMMENDATIONS

We recommend that the State agency:

- refund $16,298,423 to the Federal Government for Medicaid inpatient psychiatric service payments made to hospital A from July 1, 1996, through June 30, 2007;

- identify and refund the Federal share of additional unallowable Medicaid payments to hospital A for inpatient psychiatric services provided after June 30, 2007; and

- ensure that Medicaid payments for inpatient psychiatric services are made only to eligible hospitals.

STATE AGENCY COMMENTS

In written comments to our draft report, the State agency disagreed with the finding and first recommendation and did not address the other recommendations. The State agency said that the facts are sufficient to establish hospital A's eligibility to receive Medicaid payments. Although the State agency was unable to locate hospital A's special CoP survey documentation, it produced a letter to hospital A that described the State's process and specific requirements, including a survey for compliance with the special CoP, which must be met to qualify for Medicaid reimbursement. The State agency also provided a subsequent letter to hospital A certifying the facility as a Medicaid provider of psychiatric hospital services. The State agency concluded that this documentation is sufficient evidence that hospital A complied with the special CoP during the audit period.

In addition, the State agency said that the Medicare special CoP do not apply to the treatment of patients age 21 and under, and hospital A's claims related to the treatment of children are therefore proper. Based on its review of Federal requirements at 42 CFR § 440.160(b)(1) and 42 CFR § 441.151(a)(2)(i), the State agency concluded that special CoP compliance is not required for psychiatric hospitals to provide inpatient services to individuals age 21 and under.

The State agency's comments, excluding personally identifiable information, are included as the Appendix.

OFFICE OF INSPECTOR GENERAL RESPONSE

After reviewing the State agency's comments, we maintain that our finding and recommendations are valid. The State agency was unable to locate hospital A's actual survey documentation. Without reviewing this documentation, we cannot determine whether hospital A was properly certified as meeting the special Medicare CoP, as required by the CMS "State Operations Manual," section 2718A. Regarding the provision of inpatient psychiatric services to recipients age 21 and under, § 1905(a)(16) and § 1905(h)(1)(a) of the Act require these services to be provided in psychiatric hospitals as defined in § 1861(f) of the Act. Sections 1861(f)(3) and (4) require special CoP compliance for psychiatric hospitals. Hospital A is a psychiatric hospital and therefore must demonstrate special CoP compliance to provide these services.

APPENDIX

INDIANA FAMILY & SOCIAL SERVICES ADMINISTRATION
"People helping people help themselves"

Mitchell E. Daniels, Jr., Governor
State of Indiana

Office of Medicaid Policy and Planning
MS07, 402 W. WASHINGTON STREET, ROOM W382
INDIANAPOLIS, IN 46204-2739

December 22, 2008

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

Dear Mr. Gustafson:

The Indiana Office of Medicaid Policy and Planning ("OMPP") appreciates the opportunity to comment on the Office of the Inspector General's ("OIG's") draft report entitled "Review of Medicaid Participation Eligibility for One Indiana State-Owned Psychiatric Hospital for the Period July 1, 1996, through June 30, 2007," Report No. A-05-07-00076, dated October 29, 2008 ("Audit Report"). "). In correspondence dated November 20, 2008, the OIG extended the deadline for OMPP's response to December 29, 2008.

1. OMPP strongly disagrees with the OIG's recommendation that it refund $16,298,423 in federal payments for Medicaid inpatient psychiatric services provided by one state-owned psychiatric hospital (called "Hospital A" in the report) during the audit period. The OIG cites Sections 1905(a)(16), 1905(h)(1)(A), and 1861(f) of the Social Security Act ("Act") and 42 C.F.R. Section 440.140(a) for the proposition that Medicaid providers of inpatient psychiatric services must demonstrate compliance with special Medicare conditions of participation ("CoP") setting staffing and recordkeeping requirements for psychiatric hospitals. Audit Report at 1, 3. The OIG also cites 42 C.F.R Section 488.5(a)(2) for the proposition that a State Medicaid agency may not rely solely on a hospital's Joint Commission on Accreditation of Healthcare Organizations ("JCAHO") accreditation when determining that the hospital meets the special staffing and recordkeeping CoP. *Id.*

The OIG concluded that Hospital A did not meet the Medicare staffing and recordkeeping CoP during the audit period, because it had been terminated from the Medicare

program in 1982 and because CMS determined in 2006 that it did not meet the special CoP.[1] *Id.* at 4. The OIG also concluded that the State Medicaid agency could not rely on Hospital A's JCAHO accreditation as evidence that the facility met the special CoP. *Id.*

These conclusions are incorrect. Hospital A was certified as a Medicaid provider in 1996, following a survey by the Indiana Department of Health (the State survey agency) in 1995. While the State has not been able to locate the results of the survey, the pre-survey correspondence confirms that both the surveyors and the hospital were well aware of the need to review compliance with Medicare's CoP for psychiatric hospitals. As discussed below, these facts are sufficient to establish the hospital's eligibility to receive Medicaid payments, absent any exercise of CMS's "look-behind" authority. Moreover, once Hospital A had become a certified Medicaid provider, the hospital's continuing JCAHO accreditation allowed OMPP to determine that there was no need to re-survey the facility. In any event, the Medicare CoP do not apply to the treatment of patients age 21 and under, and Hospital A's claims related to the treatment of children are therefore proper. We address each of these points in greater detail below.

2. The State's decision to award Hospital A a Medicaid provider agreement is sufficient evidence that the hospital complied with the Medicare staffing and recordkeeping CoP during the audit period, absent any exercise of CMS's "look-behind" authority. A health care facility becomes a Medicaid provider via a "two-step process." *Legacy Healthcare, Inc. v Feldman*, No. IP 00-0306-C M/S, 2000 WL 1428667 at *5 (S.D. Ind. Mar. 8, 2000). First, the State survey agency conducts a survey to "determin[e] whether [the facility] meets the requirements for participation in the [Medicaid] program," and certifies successful results to the State Medicaid agency. Act, Section 1902(a)(33)(B); *see also* Act, Section 1902(a)(9)(A); 42 C.F.R. § 431.610(e); SOM § 1008B; *New York State Department of Social Services*, DAB No. 1441, at 3 (1993); *Indiana Department of Public Welfare*, DAB No. 1294, at 3 n.3 (1992); *Oklahoma Department of Human Services*, DAB No. 799, at 3 (1986). The State Medicaid agency then decides whether to enter into a provider agreement with the facility, and may do so "without seeking approval from [CMS]." *Oklahoma*, DAB No. 799, at 3; *see also Legacy*, 2000 WL 1428667 at *5; *New York*, DAB No. 1441, at 3. Thus, "state certification is sufficient for Medicaid participation." *Oklahoma*, DAB No. 799, at 1. And "[i]f the state Medicaid agency ... enters into a provider agreement with the facility, this is evidence that the facility met certification requirements," unless CMS exercises its look-behind authority. *Louisiana Department of Health and Hospitals*, DAB No. 1116, at 1 (1989).

Although OMPP has thus far been unable to locate the actual survey documentation for Hospital A, it has located correspondence between State representatives and the hospital indicating that the State surveyed Hospital A in 1995 and certified it as a Medicaid provider in March 1996, retroactive to March 1995. *See* Letter from [redacted], Program Director, Division of Acute Care, Indiana State Department of Health, to [redacted], Superintendent, [redacted] State Hospital (Jan. 24, 1995) (attached as Ex. 1); Letter from [redacted], Supervisor, Medicaid

[1] OMPP disputes the date CMS cites for the latter determination, which appears to be based on the fact that in August 2006 Hospital A applied for admission to the Medicare program. *See* Audit Report at 4. At the earliest, CMS could not have determined that Hospital A was out of compliance with the staffing and recordkeeping CoP until May 10, 2007, when CMS completed a survey of the facility in conjunction with the hospital's application.

Office of Inspector General note: We have removed personally identifiable information from this appendix.

Provider Enrollment, EDS, to [redacted], Superintendent, [redacted] State Hospital (Mar. 18, 1996) (attached as Ex. 2). It is clear from these documents that both the State survey agency and Hospital A were aware of the Medicare CoP, and that the survey was designed to assess compliance with them. *See* Ex. 1, p. 3. Viewed together, and absent any contradictory evidence, these documents demonstrate that Hospital A met the special Medicare CoP for psychiatric hospitals as of March 1995.

OMPP's certification of Hospital A as a Medicaid provider, following a survey by the State survey agency, means that CMS's termination of the hospital from the Medicare program in 1982 and its more recent[2] determination that the hospital did not meet the staffing and recordkeeping CoP are beside the point. There is no requirement that CMS itself survey for and certify compliance with a *Medicaid* provider's CoP. *See New York*, DAB No. 1441, at 3; *Indiana*, DAB No. 1241, at 3 n.3; *Oklahoma*, DAB No. 799, at 1, 3. Even if there were such a requirement, the 1982 decision predates the beginning of the audit period by over a decade, and thus does not accurately reflect conditions at the facility during the audit period. Moreover, while the hospital is working to implement the areas for improvement identified in the 2007 survey, the State does not believe the survey established that the hospital was out of compliance with the Medicare CoP. The surveyors held the facility to arbitrary and unreasonable standards that went beyond the plain language of 42 C.F.R. §§ 482.61 and 482.62. For example, the surveyors expected Hospital A to provide a schedule of activities on holidays, weekends, and at night that was comparable to the schedule during working hours. This requirement appears nowhere in the regulations. The surveyors also found Hospital A to be out of compliance with Section 482.62(d)(2)'s requirement that "[t]he staffing pattern must ensure the availability of a registered nurse 24 hours each day" because the hospital did not always have a registered nurse *on each unit*. This interpretation is not supported by 482.62(d)(2), which speaks only of "the availability" of "a" registered nurse. Even if not stationed on the unit, a registered nurse was available to all patients 24 hours each day.

3. Although JCAHO accreditation might not be sufficient evidence of a hospital's initial compliance with the Medicare CoP, Hospital A's continuous JCAHO accreditation during the audit period supports the continuing validity of the 1996 certification.

The State need resurvey and recertify a hospital only "as frequently as [is] necessary to ascertain compliance and confirm the correction of deficiencies." 42 C.F.R. § 488.20(b)(1). JCAHO continued to accredit the hospital during the audit period, and in 1998 even awarded it a special commendation. Although the regulations setting forth special Medicare CoP for psychiatric hospitals are more specific than the JCAHO standards, JCAHO does survey in the same general areas covered by the CoP. Because Hospital A's continuous accreditation indicated that the facility continued to meet federal requirements, the 1995 certification of the facility as a Medicaid provider was valid throughout the audit period.

4. In any event, the OIG erred in assuming that the Medicare CoP for psychiatric hospitals apply to facilities providing inpatient psychiatric services to individuals age 21 and under. Hospital A serves some individuals in this age group.

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[2] *See* note 1, *supra*.

The regulations OIG cited in support of its assertion that psychiatric hospitals must meet Medicare CoP in order to receive Medicaid funding apply only to inpatient hospital services for "individuals age 65 or older." 42 C.F.R. § 440.140(a); *see* Audit Report at 3. However, the standards are different for inpatient psychiatric services for individuals age 21 and under. In that case, the regulations require only that the hospital be JCAHO-accredited. *See* 42 C.F.R. § 440.160(b)(1) (services must be provided by "a psychiatric hospital or an inpatient psychiatric program in a hospital, accredited by the Joint Commission on Accreditation of Healthcare Organizations"); 42 C.F.R. § 441.151(a)(2)(i) ("[i]npatient psychiatric services for individuals under age 21 must be: ... [p]rovided by ... [a] psychiatric hospital or an inpatient psychiatric program in a hospital, accredited by the Joint Commission on Accreditation of Healthcare Organizations"). In *New Jersey Department of Human Services,* DAB No. 513 (1984), the Departmental Appeals Board confirmed that there are "distinct statutory requirements" for the two groups and that, unlike the over-65 category, "for Medicaid individuals under age 21, JCAH[O] accreditation renders a facility or program eligible to receive [federal financial participation] so long as the services are in compliance with 42 C.F.R. Part 441, Subpart D and the services are provided under the direction of a physician." *Id.* at 6, 3.

Thus, even if the OIG is correct that Hospital A was not in compliance with the Medicare CoP, such compliance is not required with respect to claims for services provided by Hospital A to individuals age 21 and under. OMPP has ascertained that a total of $5,193,842 in disallowed claims were for services provided to individuals in this age group.

We appreciate your consideration of the information provided in this letter. If you have any questions or require additional information, please contact me at 317-234-2407.

Sincerely,

Jeffrey M. Wells
Director, Office of Medicaid Policy and Planning

Exhibit 1

Evan Bayh, Governor
John C. Bailey, M.D., State Health Commissioner

Jiana State Department of Health
1330 West Michigan Street
P.O. Box 1964
Indianapolis, IN 46206-1964
317/383-6100 TDD 317/383-6859

Indiana State Department of Health

An Equal Opportunity Employer

January 24, 1995

[redacted]
Superintent
[redacted] State Hospital
Division of Mental Health
[redacted]

Dear [redacted]:

This is in response to your expression of interest in the participation of your Psychiatric Hospital under the Medicare/Medicaid Program. The Indiana State Department of Health has an agreement with the Department of Health and Human Services, Health Care Financing Administration, to assist in determining whether psychiatric hospitals meet and continue to meet the Conditions of Participation.

We are enclosing a copy of the Conditions of Participation for psychiatric hospitals, 42 CFR Part 482, explaining the specific requirements which must be met to qualify for reimbursement under Medicare/Medicaid.

Enclosed, you will find the following forms for participation in the Medicare/Medicaid program.

1. HCFA 1537 - Hospital Survey Report and HCFA 1537A - Psychiatric Hospital Survey Report.
2. HCFA 1513 - Ownership and Control Disclosure Statement.
3. HCFA 1514 - Medicare/Medicaid Eligibility Request.
4. Medicare Intermediary Information (we must have two original signed copies).
5. HCFA 1561 - Health Insurance Benefit Agreement (we must have two original signed copies).
6. HCFA 2572 - Statement of Financial Solvency (we must have two original signed copies).

7. Civil Rights Compliance Requirements letter, data needs, sample policies/fact sheets and attachments with explanation.

   a. HHS 441 - Assurance of compliance relating to title VI of the Civil Rights Act (we must have two signed originals of Form 441).

   b. HHS 641 - Assurance of Compliance with Section 504 of the Rehabilitation Act of 1973 (we must have two signed originals of Form 641).

   c. HHS 680 - Assurance of compliance with the Age discrimination Act (we must have two signed originals of Form 680)

8. Hospital Administrator Qualification form

9. A copy of your most recent JCAHO Accreditation.

10. Advance Directives Guideline

11. Comprehensive Laboratory Improvement Act (CLIA) Information Sheets and Application (HCFA-116).

12. An 8 1/2 x 11 schematic of all licensed and accredited beds (by room number). Indicate which beds you wish certified.

After we have received your response to this letter and upon receipt of the completed forms, you will be informed regarding a survey date. An on-site survey will be scheduled by the Indiana State Department of Health to interview you and your staff members, review documents, and determine if your facility meets the Special Conditions for Psychiatric Hospitals. Every effort will be made to survey your facility as soon as the forms are received. You must have been open at least one day and have had a minimum of one patient before survey will be performed.

Upon completion and receipt of the survey findings, a recommendation will be transmitted to the Indiana Family and Social Services Administration and EDS, who will notify you of their decision. Hospitals that are not approved will be sent notification including reasons for denial and additional information concerning their rights to appeal the decision. In addition to completing these forms, you will need to submit documentation that you meet the requirements of the Family and Social Services Administration for planning and licensure of your psychiatric facility.

If you are accredited by the Joint Commission of Accreditation for Health Care Organizations, please include a copy of your letter to indicate the type of accreditation which you have. A psychiatric hospital accredited by JCAHO for adult psychiatric facilities is "deemed" to meet the Conditions of participation for hospitals with the exception of the special medical record and staffing requirements found in the HCFA 1537A Psychiatric Hospital Survey Report. Your type of accreditation will also indicate the type of survey required from the State Fire Marshal for certification.

The HCFA 1537A survey report form, item number one, will be used to survey your facility for compliance with the Conditions of Participation. These forms are provided for your information and may be used to prepare for the survey. Do not use reproductions or carbon copies when multiple originals are requested.

If you desire additional information, please contact this office.

Sincerely,

[redacted], Program Director
Division of Acute Care
[redacted]

Enclosures

Exhibit 2

EDS

March 18, 1996

RECEIVED
MAR 25 1996
[redacted] STATE HOSPITAL
SUPERINTENDENT'S OFFICE

[redacted]
Superintendent
[redacted] State Hospital
[redacted]

RE: Initial Certification Confirmation
Provider #[redacted]

Dear Dr. [redacted]:

This is to advise you that your facility is hereby certified as a provider of Psychiatric Hospital services for recipients age 65 years and older and for recipients age 21 years and under, under the provisions of the Social Security Act, Title XIX, Section 1905, as amended. The effective period of certification began March 23, 1995.

Your cooperation and assistance in providing quality health care to Medicaid recipients is very much appreciated.

Sincerely,

[redacted]
[redacted], Supervisor
Medicaid Provider Enrollment

cc: [redacted]
Indiana State Department of Health

LTC Unit, EDS

950 North Meridian
10th Floor
Indianapolis, Indiana 46204
(317) 488-5000
Fax: (317) 488-5169