Department of Health and Human Services

OFFICE OF INSPECTOR GENERAL

CMS'S RELIANCE ON NEW JERSEY LICENSURE REQUIREMENTS COULD NOT ENSURE THE QUALITY OF CARE PROVIDED TO MEDICAID HOSPICE BENEFICIARIES

Inquiries about this report may be addressed to the Office of Public Affairs at Public.Affairs@oig.hhs.gov.

Gloria L. Jarmon
Deputy Inspector General
for Audit Services

June 2015
A-02-11-01024

Office of Inspector General

http://oig.hhs.gov

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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

CMS could not rely on New Jersey licensure requirements to ensure the quality of care provided to Medicaid hospice beneficiaries because most hospices did not meet certain State requirements for employee health examinations.

WHY WE DID THIS REVIEW

Hospice care is a program of palliative care that provides for the physical, emotional, and spiritual care needs of a terminally ill patient and his or her family. Hospices must comply with Federal and State requirements to ensure that hospice care is furnished by qualified workers. Prior Office of Inspector General (OIG) reviews of personal care services (PCS) found that services were provided by PCS attendants who did not meet State qualification requirements. OIG is performing reviews in various States to determine whether similar vulnerabilities exist at hospices.

The objective of this review was to determine whether the Centers for Medicare & Medicaid Services' (CMS) reliance on New Jersey licensure requirements for hospice workers ensured quality of care and that adequate protection was provided to Medicaid hospice beneficiaries.

BACKGROUND

A hospice is a public agency, private organization, or a subdivision of either that is primarily engaged in providing care to terminally ill individuals. Hospice care can be provided to individuals in a home, hospital, nursing home, or hospice facility.

In New Jersey, the Department of Human Services (State agency) administers its Medicaid program in accordance with a CMS-approved State plan. The State plan establishes what services the Medicaid program will cover, including hospice care when it is provided by a licensed hospice.

A Medicaid participating hospice must meet the Medicare conditions of participation for hospices, one of which requires a hospice to be licensed if State or local law provides for licensing of hospices. Hospice providers that fail to meet conditions of participation may be required to enter a plan of correction or be subject to termination from the Medicare and Medicaid programs. However, a hospice provider may not be subject to disallowance of past claims if found to be noncompliant or deficient with standards in the conditions of participation. CMS relies on the States to license hospices within their jurisdictions. In New Jersey, the Department of Health is responsible for licensing agencies that provide hospice services. Among other requirements, hospices in New Jersey must maintain confidential health records for each employee and volunteer, as well as document that direct patient care workers have received initial health evaluations, initial and annual tuberculosis screenings, and screenings for rubella and rubeola.

Qualified individuals must provide hospice care services in accordance with Federal and State regulations. Hospice care services include, but are not limited to, nursing care, home health aide services, physical therapy, social worker services, and spiritual care. When hospice care is furnished to an individual residing in a nursing facility, hospice care payments include payments for room and board in addition to hospice care services.

HOW WE CONDUCTED THIS REVIEW

We limited our review to Medicaid hospice claims of $100 or more paid to New Jersey hospices for the period January 1, 2007, through July 31, 2008. From a total of 20,367 beneficiary-months for which the State agency claimed Medicaid reimbursement, we reviewed a random sample of 150 beneficiary-months. For those 150 beneficiary-months, we reviewed the qualifications of 720 corresponding hospice workers from 37 hospices who provided direct care to Medicaid beneficiaries. A beneficiary-month includes all hospice services provided to a beneficiary during a monthlong period.

WHAT WE FOUND

CMS could not rely on New Jersey's licensing requirements to ensure quality of care and that adequate protection was provided to Medicaid hospice beneficiaries. Specifically, we found that most hospices did not meet certain State requirements for employee health examinations. Of the 150 beneficiary-months in our sample, hospices could not document that 300 hospice workers met State requirements related to hospice worker health examinations during 118 beneficiary-months. Specifically:

- 194 workers had not been screened for rubella, rubeola, and/or tuberculosis;
- 108 workers had not received initial health evaluations; and
- 43 workers had no health records in their employee files.

The total exceeds 300 workers because 45 of the workers who had not received an initial health evaluation also had not been screened for at least 1 infectious disease.

On the basis of our sample results, we estimated that hospice workers did not meet health examination requirements for 16,022 of the 20,367 beneficiary-months covered by our review and that the Federal Government reimbursed New Jersey $16,488,357 for these services during our audit period.

WHAT WE RECOMMEND

To improve protection provided to Medicaid hospice beneficiaries, we recommend that CMS:

- work with the State agency and the Department of Health to ensure that hospices meet State health examination requirements for hospice workers and

- consider working with the State agency to modify the State agency's hospice payment conditions by implementing provisions similar to the State licensure requirements for hospice workers.

STATE AGENCY COMMENTS

In written comments on our draft report, the State agency stated that it was not in a position to comment on the validity of the facts presented in the report because records from the audit period were relatively inaccessible.

CMS COMMENTS

In written comments on our draft report, CMS concurred with our first recommendation but did not indicate concurrence or nonconcurrence with our second recommendation. CMS stated that it did not have authority to direct the State in payment procedures, but that it will work to ensure that the State agency follows all the requirements of the Conditions of Participation. CMS also stated that it will share this report with the State survey agency (the Department of Health) for its consideration and action.

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INTRODUCTION

WHY WE DID THIS REVIEW

Hospice care is a program of palliative care that provides for the physical, emotional, and spiritual care needs of a terminally ill patient and his or her family. Hospices must comply with Federal and State requirements to ensure that hospice care is furnished by qualified workers. Prior Office of Inspector General (OIG) reviews of personal care services (PCS) found that services were provided by PCS attendants who did not meet State qualifications requirements.[1] OIG is performing reviews in various States to determine whether similar vulnerabilities exist at hospices.

OBJECTIVE

The objective of this review was to determine whether the Centers for Medicare & Medicaid Services' (CMS) reliance on New Jersey licensure requirements for hospice workers ensured quality of care and that adequate protection was provided to Medicaid hospice beneficiaries.

BACKGROUND

The Medicaid Program: How It Is Administered

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, CMS administers the Medicaid program. In New Jersey, the Department of Human Services (State agency) administers its Medicaid program in accordance with a CMS-approved State plan. The State plan establishes which services the Medicaid program will cover, including hospice care when it is provided by a licensed hospice.

A Medicaid participating hospice must meet the Medicare conditions of participation for hospices and have a valid provider agreement to provide hospice care (*State Medicaid Manual* § 4305). One of the conditions of participation requires a hospice to be licensed if State or local law provides for licensing of hospices (42 CFR § 418.116). Hospice providers that fail to meet conditions of participation in 42 CFR part 418 may be required to enter a plan of correction or be subject to termination from the Medicare and Medicaid programs. However, a hospice provider may not be subject to disallowance of past claims if found to be noncompliant or deficient with standards in the conditions of participation. CMS relies on the States to license hospices within their jurisdictions. In New Jersey, the Department of Health, Division of Health Facilities Evaluation and Licensing, is responsible for licensing agencies that provide hospice services.

[1] U.S. Department of Health and Human Services, OIG, portfolio entitled *Personal Care Services: Trends, Vulnerabilities, and Recommendations for Improvement*, issued November 15, 2012.

Hospices Provide Care to Terminally Ill Patients

A hospice is a public agency, private organization, or a subdivision of either that is primarily engaged in providing care to terminally ill individuals. An individual is considered to be terminally ill if the individual has a medical prognosis that his or her life expectancy is 6 months or less if the illness runs its normal course. Hospice care can be provided to individuals in a home, hospital, nursing home, or hospice facility.

Qualified individuals must provide hospice care services in accordance with Federal and State regulations. Hospice care services include, but are not limited to, nursing care, home health aide services, physical therapy, social worker services, and spiritual care.

New Jersey Health Examination Requirements for Hospices and Hospice Workers

Hospices and their staffs must operate and provide services in compliance with all applicable Federal, State, and local laws and regulations (42 CFR § 418.116). New Jersey regulations on hospice licensing are found in Title 8, chapter 42C, of the New Jersey Administrative Code (N.J.A.C.). Among other requirements, hospices and hospice workers must comply with the following health examination requirements:

- Hospices must maintain confidential health records for each employee and volunteer (N.J.A.C. 8:42C-3.4(f)).

- All new hospice workers must receive initial health evaluations (N.J.A.C. 8:42C-3.4(e)).

- All hospice workers must receive initial and annual screening tests for tuberculosis (N.J.A.C. 8:42C-3.4(h)).[2]

- All hospice workers must receive a screening test for rubella (N.J.A.C. 8:42C-3.4(i)(1)(2)).[3]

- All hospice workers must receive a screening test for rubeola (N.J.A.C. 8:42C-3.4(j)).[4]

HOW WE CONDUCTED THIS REVIEW

We limited our review to Medicaid hospice claims of $100 or more paid to New Jersey hospices for the period January 1, 2007, through July 31, 2008. From a total of 20,367 beneficiary-months for which the State agency claimed Medicaid reimbursement, we reviewed a random

[2] The only exceptions are for workers with a prior positive result, who received appropriate medical treatment, or when medically contraindicated. If the screening test is positive, a chest x ray must be performed and, if necessary, followed by chemoprophylaxis or therapy.

[3] The only exceptions are for workers who can document immunity or vaccination, or when medically contraindicated.

[4] The only exceptions are for workers born before 1957, or who can document immunity or vaccination.

sample of 150 beneficiary-months. For those 150 beneficiary-months, we reviewed the qualifications of 720 corresponding hospice workers from 37 hospices who provided direct care to Medicaid beneficiaries.[5] A beneficiary-month includes all hospice services provided to a beneficiary during a monthlong period.

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 objectives.

Appendix A contains the details of our audit scope and methodology, Appendix B contains our sampling methodology, and Appendix C contains our sample results and estimates.

FINDINGS

CMS could not rely on New Jersey's licensing requirements to ensure quality of care and that adequate protection was provided to Medicaid hospice beneficiaries. Specifically, we found that most hospices did not meet certain State requirements for employee health examinations. Of the 150 beneficiary-months in our sample, hospices could not document that 300 hospice workers met State requirements related to hospice worker health examinations during 118 beneficiary-months. On the basis of our sample results, we estimated that hospice workers did not meet health examination requirements for 16,022 of the 20,367 beneficiary-months covered by our review and that the Federal Government reimbursed New Jersey $16,488,357 for these services during our audit period.

HEALTH EXAMINATION REQUIREMENTS NOT MET

We reviewed health records for a total of 720 hospice workers (i.e., employees, contracted workers, and volunteers). Of the 732 hospice workers related to the beneficiary-months in our sample, we found that 300 workers were not in compliance with at least 1 State health examination requirement. The following table summarizes the deficiencies.

Table: Unqualified Workers Associated With Sampled Beneficiary-Months

Deficiency	Number of Workers
No screening for rubella, rubeola, and/or tuberculosis	194
No initial health evaluation	108
No employee health record	43

The total exceeds 300 workers because 45 of the workers who had not received an initial health evaluation also had not been screened for at least 1 infectious disease.

[5] Our sample included 12 additional hospice workers for which hospices did not have any personnel files; therefore, our review encompassed a total of 732 workers, of which we reviewed personnel files for 720.

Hospice Workers Not Screened for Infectious Diseases

For 194 of the 720 hospice workers whose health records we reviewed, hospices did not provide documentation that the workers were screened for at least 1 of the following infectious diseases: rubella, rubeola, or tuberculosis. Of the 194 workers, 103 workers were not screened for 1 of the diseases, 73 workers were not screened for 2 of the diseases, and 18 workers were not screened for any of the 3 diseases.

Hospice Workers Did Not Receive Initial Health Evaluation

For 108 of the 720 hospice workers whose health records we reviewed, hospices did not provide documentation that the workers received initial health evaluations before our sampled beneficiary-month. We also noted that 45 of these 108 workers were not screened for at least 1 of the infectious diseases as described in the finding above.

Hospices Did Not Maintain Employee Health Records

For 31 of the 720 hospice workers whose personnel files we reviewed, there was no health record in the worker's records.[6] In addition, for 12 other hospice workers, hospices did not have any records. Therefore, of a total of 732 hospice workers, 43 workers did not have employee health records.

CMS COULD NOT RELY ON NEW JERSEY'S LICENSING REQUIREMENTS TO ENSURE QUALITY OF CARE AND THAT ADEQUATE PROTECTION WAS PROVIDED TO MEDICAID HOSPICE BENEFICIARIES

Of the 150 beneficiary-months sampled, 118 contained services performed by hospice workers who did not meet State health examination requirements. On the basis of our sample results, we estimated that hospice workers did not meet qualifications requirements for 16,022 beneficiary-months and that the Federal Government reimbursed New Jersey $16,488,357 for these services during our January 1, 2007, through July 31, 2008, audit period. The details of our sample results and estimates are shown in Appendix C.

RECOMMENDATIONS

To improve protection provided to Medicaid hospice beneficiaries, we recommend that CMS:

- work with the State agency and the Department of Health to ensure that hospices meet State health examination requirements for hospice workers and

- consider working with the State agency to modify the State agency's hospice payment conditions by implementing provisions similar to the State licensure requirements for hospice workers.

[6] Health records must include documentation of all medical screening tests performed and the results of these tests.

STATE AGENCY COMMENTS

In written comments on our draft report, the State agency stated that it was not in a position to comment on the validity of the facts presented in the report because records from the audit period were relatively inaccessible. At the State agency's request, we provided it with a list of errors by hospice. The State agency's comments appear in their entirety as Appendix D.

CMS COMMENTS

In written comments on our draft report, CMS concurred with our first recommendation but did not indicate concurrence or nonconcurrence with our second recommendation. CMS stated that it did not have authority to direct the State in payment procedures, but that it will work to ensure that the State agency follows all the requirements of the Conditions of Participation. CMS also stated that it will share this report with the State survey agency (the Department of Health) for its consideration and action.

CMS's comments are included in their entirety as Appendix E.

APPENDIX A: AUDIT SCOPE AND METHODOLOGY

We limited our review to Medicaid hospice claims of $100 or more paid to New Jersey hospices for the period January 1, 2007, through July 31, 2008. During this period, the State agency claimed $83,151,316 ($41,582,690 Federal share) for hospice services provided during 20,367 beneficiary-months. A beneficiary-month includes all hospice services for a beneficiary for 1 month.

We did not assess the overall internal control structure of the State agency or the Medicaid program. Rather, we limited our internal control review to those controls related to the objective of our audit. Our review allowed us to establish reasonable assurance of the authenticity and accuracy of the data obtained from the Medicaid Management Information System file for our audit period, but we did not assess the completeness of the file.

We performed fieldwork at the State agency's offices in Trenton, New Jersey, and at 37 hospices throughout New Jersey.

Methodology

To accomplish our objective, we:

- reviewed applicable Federal and State requirements;
- held discussions with the State agency and Department of Health officials to gain an understanding of the State's hospice services program;
- ran computer programming applications that identified a sampling frame of 20,367 beneficiary-months, totaling $83,151,316 ($41,582,690 Federal share), submitted by 52 hospice providers;
- selected a random sample of 150 beneficiary-months from our sampling frame, and for each beneficiary-month, obtained and reviewed health records for hospice workers who performed direct patient care on the associated beneficiaries to determine whether the workers met State health screening requirements;
- estimated the total number of beneficiary-months and value of service-days for which hospice workers did not meet State health examination requirements for the sampling frame of 20,367 beneficiary-months; and
- discussed our findings with State agency and Department of Health officials.

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 objectives.

APPENDIX B: STATISTICAL SAMPLING METHODOLOGY

POPULATION

The population consisted of beneficiary-months that included Medicaid payments of $100 or more that the State made to New Jersey providers for hospice services provided from January 1, 2007, through July 31, 2008, for which the State claimed Federal Medicaid reimbursement.

SAMPLING FRAME

The sampling frame was an Excel file containing 20,367 Medicaid beneficiary-months with Medicaid payments of $100 or more to hospice providers for hospice services during the period January 1, 2007, through July 31, 2008. Payments for these beneficiary-months totaled $83,151,316 ($41,582,690 Federal share). Our advanced audit techniques staff extracted the Medicaid claims from the State agency's Medicaid payment files provided to us by staff of the State agency's Medicaid Management Information System fiscal agent.

SAMPLE UNIT

The sample unit was a beneficiary-month (those paid claim lines for services provided to a single beneficiary with service dates within a single calendar month).

SAMPLE DESIGN

We used a simple random sample.

SAMPLE SIZE

We selected a sample of 150 beneficiary-months.

SOURCE OF RANDOM NUMBERS

We generated the random numbers with the Office of Inspector General, Office of Audit Services (OAS), statistical software.

METHOD FOR SELECTING SAMPLE ITEMS

We consecutively numbered the sample units in the sampling frame. After generating 150 random numbers, we selected the corresponding frame items.

ESTIMATION METHODOLOGY

We used the OAS statistical software to appraise the sample results. We used an attribute appraisal to estimate the total number of Medicaid payments made to hospice providers with hospice services that did not comply with health examination and licensure requirements for hospice workers. We used a variable appraisal to estimate the total amount of Federal Medicaid

reimbursement made to hospice providers with hospice workers that did not comply with health screenings and licensure requirements.

APPENDIX C: SAMPLE RESULTS AND ESTIMATES

Sample Details and Results

Beneficiary-Months in Frame	Value of Frame (Federal Share)	Sample Size	Value of Sample (Federal Share)	No. of Beneficiary-Months With Deficient Services	Value of Deficient Services (Federal Share)
20,367	$41,582,690	150	$307,934	118	$121,434

Estimated Number of Deficient Beneficiary-Months and Value of Deficient Services
(Limits Calculated for a 90-Percent Confidence Interval)

	Total Number of Deficient Beneficiary-Months	Total Value of Deficient Services
Point estimate	16,022	$16,488,357
Lower limit	14,756	14,182,400
Upper limit	17,112	18,794,315

APPENDIX D: STATE AGENCY COMMENTS

CHRIS CHRISTIE
Governor

KIM GUADAGNO
Lt. Governor

State of New Jersey
DEPARTMENT OF HUMAN SERVICES
DIVISION OF MEDICAL ASSISTANCE AND HEALTH SERVICES
PO BOX 712
TRENTON, NJ 08625-0712

JENNIFER VELEZ
Commissioner

VALERIE HARR
Director

February 17, 2015

James P. Edert
Regional Inspector General for Audit Services
Department of Health and Human Services
Office of Inspector General
Office of Audit Services, Region II
Jacob K. Javits Federal Building
26 Federal Plaza, Room 3900
New York, NY 10278

Re: Draft Audit Report on CMS's Reliance on NJ Licensure Requirements
A-02-11-01024

Dear Mr. Edert:

This letter provides the New Jersey Department of Human Services' ("State" or "DHS") initial response to the Department of Health and Human Services Office of the Inspector General's ("OIG") draft audit report A-02-11-01024 entitled CMS's Reliance on New Jersey Licensure Requirements Could Not Ensure the Quality of Care Provided to Medicaid Hospice Beneficiaries.

As you noted, the State is not responding to the OIG findings and recommendations at this time, but you have requested written comments on the validity of the facts contained in this draft report. Because the audit period reviewed by the OIG auditors is over six years old and the records are relatively inaccessible, the State is not in a position to provide you with such comment. The State looks forward to the opportunity to respond to the OIG findings and recommendations when the draft report is formally issued.

*

Should you have any questions, please contact myself or Richard Hurd at 609-588-2550 or by email at Richard.H.Hurd@dhs.state.nj.us.

Sincerely,

Valerie Harr
Director

Enclosures
c: J. Velez
R. Hurd

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* Office of Inspector General Note: The State agency was advised that our recommendations are directed to CMS and that any subsequent comments would not be included in the final report.

APPENDIX E: CMS COMMENTS

DEPARTMENT OF HEALTH & HUMAN SERVICES

Centers for Medicare & Medicaid Services

MAY 14 2015

200 Independence Avenue SW
Washington, DC 20201

To: Daniel R. Levinson
Inspector General
Office of the Inspector General

From: Andrew M. Slavitt
Acting Administrator
Centers for Medicare & Medicaid Services

Subject: CMS Reliance on New Jersey Licensure Requirements Could not Ensure the Quality of Care Provided to Medicaid Hospice Beneficiaries (A-02-11-01024)

The Centers for Medicare & Medicaid Services (CMS) appreciates the opportunity to review and comment on the Office of the Inspector General's (OIG) draft report. CMS is committed to ensuring Medicare and Medicaid beneficiaries receive high quality health care.

CMS contracts with the New Jersey Department of Health to conduct certification surveys of hospices. CMS is currently reviewing the OIG's findings and will request a complaint investigation of those findings by the New Jersey Department of Health, if indicated. If a complaint investigation is conducted on the hospice and deficient practices are identified, the hospice will be required to provide a plan of correction for all deficient practices. A failure by the hospice to make the necessary corrections and regain compliance with the Conditions of Participation could result in the termination of its Medicare provider agreement.

OIG Recommendation

The OIG recommends that CMS work with the state agency and the Department of Health to ensure that hospices meet State health examination requirements for hospice workers.

CMS Response

CMS concurs with this recommendation. CMS will continue to work with the New Jersey Department of Health to reinforce the adherence to Federal and State requirements. While federal surveyors cannot enforce State laws, CMS is supportive of New Jersey's own efforts to do so. CMS contracts with New Jersey's Department of Health to monitor compliance with all Federal and State requirements for hospice workers. As part of this review, CMS will investigate the most recent recertification or complaint survey(s) for the 37 hospices involved and ascertain whether or not there are currently identified issues. Until the Improving Medicare Post-Acute Care Transformation (IMPACT) Act of 2014, there were no legislative or regulatory standards for the frequency of hospice surveys. The IMPACT Act added a statutory requirement that the interval between hospice surveys may not exceed three years.

OIG Recommendation

The OIG recommends that CMS consider working with the State agency to modify the State agency's hospice payment conditions by implementing provisions similar to the State licensure requirements for hospice workers.

CMS Response

CMS does not have authority to direct the State in payment procedures. However, CMS will work to ensure that the State Survey Agency follows all the requirements of the Conditions of Participation. CMS will share this report with the State Survey Agency for their consideration and action, as they may deem appropriate.