Department of Health and Human Services

OFFICE OF INSPECTOR GENERAL

INDIANA IMPROPERLY CLAIMED FEDERAL REIMBURSEMENT FOR MOST MEDICAID INPATIENT PSYCHIATRIC HOSPITAL SERVICE AND DISPROPORTIONATE SHARE HOSPITAL PAYMENTS TO EVANSVILLE PSYCHIATRIC CHILDREN'S CENTER

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

May 2013
A-05-12-00040

Office of Inspector General

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EXECUTIVE SUMMARY

BACKGROUND

Medicaid Program

Pursuant to Title XIX of the Social Security 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.

Indiana Medicaid Program

The Indiana Office of Medicaid Policy and Planning (the State Medicaid agency) administers the Indiana Medicaid program according to the CMS-approved State plan. The State Medicaid agency makes Medicaid payments to eligible hospitals and claims Federal reimbursement for a portion of those payments. The Indiana Division of Mental Health and Addiction operates six State-owned psychiatric hospitals that provide inpatient treatment for mental health conditions. The Indiana State Department of Health is the State survey agency responsible for determining whether these hospitals meet the standards for participation in the Medicaid program. Evansville Psychiatric Children's Center (Evansville), an institution for mental diseases and one of the six State-owned psychiatric hospitals, provides Medicaid inpatient psychiatric services primarily to adolescents and children with serious emotional disturbances.

Federal Requirements for Inpatient Psychiatric Hospital Services

For States to claim Federal reimbursement for their Medicaid inpatient psychiatric service and disproportionate share hospital (DSH) payments to a psychiatric hospital, the hospital's inpatient services must meet the Federal definition of such services. This definition requires the provider to demonstrate compliance with the basic Medicare Conditions of Participation (CoP) generally applicable to all hospitals and two special Medicare CoP applicable to psychiatric hospitals. The basic Medicare CoP address issues such as licensing, quality of care, safety, patient rights, self assessment and performance improvement, and service availability. The special Medicare CoP specify staffing and medical record requirements.

A psychiatric hospital must undergo review by qualified health care professionals to demonstrate compliance with the basic and special Medicare CoP. That review provides CMS with reasonable assurance that participating facilities are improving the health and protecting the safety of Medicaid beneficiaries. For periods in which a psychiatric hospital does not demonstrate compliance with the basic and special Medicare CoP, all inpatient psychiatric service and DSH payments received from the State Medicaid agency are ineligible for Federal reimbursement.

CMS made a technical error when it issued Medicare transplant center CoP regulations in 2007. Effective June 28, 2007, it inadvertently omitted certain Medicare psychiatric hospital CoP regulations that were relevant to this audit. CMS formally reinstated the omitted regulations effective October 26, 2007. Despite the omission, CMS's implementing guidance remained in effect from June 28 through October 25, 2007 (the regulatory gap period).

OBJECTIVE

Our objective was to determine whether the State Medicaid agency claimed Federal reimbursement for inpatient psychiatric service and DSH payments made to Evansville in accordance with certain Federal requirements for inpatient psychiatric hospital services.

SUMMARY OF FINDING

Most State Medicaid agency claims for Federal reimbursement for inpatient psychiatric service and DSH payments made to Evansville were not in accordance with Federal requirements for inpatient psychiatric hospital services. The State Medicaid agency claimed $10,480,784 in Federal reimbursement for claims with dates of service during the audit period, January 1, 2006, through December 31, 2010. The State Medicaid agency claimed $7,913,344 in Federal reimbursement for claims with dates of service from January 1, 2006, through December 9, 2009, and $2,567,440 for claims with dates of service from December 10, 2009, through December 31, 2010.

Evansville did not demonstrate compliance with the basic or special Medicare CoP from January 1, 2006, through December 9, 2009. Therefore, of the $7,913,344 claimed for that period, the $7,567,455 for claims with dates of service outside the regulatory gap period was not allowable. We have not provided an opinion on the allowability of State Medicaid agency claims for the remaining $345,889, which was for claims with dates of service during the regulatory gap period. The State Medicaid agency claimed the $7,913,344 because it believed that Evansville had met all requirements to be eligible for Medicaid inpatient psychiatric service and DSH payments.

On December 10, 2009, Evansville successfully completed a survey that demonstrated its compliance with the basic and special Medicare CoP. Therefore, the State Medicaid agency properly claimed $2,567,440 in Federal reimbursement for claims with dates of service on or after December 10, 2009.

RECOMMENDATIONS

We recommend that the State Medicaid agency:

- refund $7,567,455 to the Federal Government for its share of inpatient psychiatric service and DSH payments made to Evansville for claims with dates of service outside the regulatory gap period when it did not demonstrate compliance with the basic and special Medicare CoP,

- work with CMS to determine whether the State Medicaid agency should refund an additional $345,889 to the Federal Government for its share of payments made to Evansville for claims with dates of service during the regulatory gap period, and

- ensure that Federal reimbursement for Medicaid inpatient psychiatric service and DSH payments to psychiatric hospitals is claimed only if those hospitals can demonstrate compliance with the basic and special Medicare CoP.

STATE MEDICAID AGENCY COMMENTS AND OFFICE OF INSPECTOR GENERAL RESPONSE

In written comments on our draft report, the State Medicaid agency did not concur with our first and second recommendations. Although the State Medicaid agency concurred with our third recommendation, it also stated that Evansville "does not need to demonstrate compliance with the basic Medicare CoP … to receive payments for children under age 21."

After reviewing the State Medicaid agency's comments on our draft report, we maintain that our findings and recommendations are valid. Federal Medicaid requirements mandate that inpatient service and DSH payments to psychiatric hospitals are eligible for Federal reimbursement only if they demonstrate compliance with both the basic and special Medicare CoP. Evansville did not demonstrate compliance with either the basic or the special Medicare CoP from January 1, 2006, through December 9, 2009.

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INTRODUCTION

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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.

Indiana Medicaid Program

The Indiana Office of Medicaid Policy and Planning (the State Medicaid agency) administers the Indiana Medicaid program according to the CMS-approved State plan. The State Medicaid agency makes Medicaid payments to eligible hospitals and claims Federal reimbursement for a portion of those payments. The Indiana Division of Mental Health and Addiction operates six State-owned psychiatric hospitals that provide inpatient treatment for mental health conditions. The Indiana State Department of Health is the State survey agency responsible for determining whether these hospitals meet the standards for participation in the Medicaid program. Evansville Psychiatric Children's Center (Evansville), an institution for mental diseases (IMD) and one of the six State-owned psychiatric hospitals, provides inpatient psychiatric services primarily to adolescents and children with serious emotional disturbances. During the audit period, January 1, 2006, through December 31, 2010, Evansville participated in the Medicaid, but not the Medicare, program.

Federal Requirements for Inpatient Psychiatric Hospital Services

For States to claim Federal reimbursement for their Medicaid inpatient psychiatric service and disproportionate share hospital (DSH)[1] payments to a psychiatric hospital, the hospital's inpatient services must meet the Federal definition of such services. This definition requires the provider to demonstrate compliance with the basic Medicare Conditions of Participation (CoP) generally applicable to all hospitals and two special Medicare CoP applicable to psychiatric hospitals.

Medicaid Payments

Pursuant to section 1903(a)(1) of the Act, States can claim Federal reimbursement for a portion of their Medicaid medical assistance and DSH payments. For patients in IMDs, a category that

[1] Pursuant to section 1923 of the Act, certain hospitals are eligible for special payments, known as DSH payments. To receive DSH payments, hospitals must serve a disproportionately large share of low-income and/or uninsured patients and meet other Federal and State requirements. The payments compensate the hospitals for their uncompensated costs of providing hospital services to such patients.

generally includes psychiatric hospitals, medical assistance includes inpatient hospital services for individuals aged 65 or older but excludes care or services for younger individuals except for inpatient psychiatric hospital services for individuals under age 21 (section 1905(a) of the Act).[2] In addition, if a certain percentage of a psychiatric hospital's inpatient days are attributable to Medicaid-eligible patients, the hospital may be entitled to DSH payments pursuant to section 1923 of the Act.

Definition of Medicaid Inpatient Psychiatric Hospital Services

The Federal definition of Medicaid inpatient psychiatric hospital services requires the hospitals providing such services to comply with Medicare CoP, including two special Medicare CoP. The basic Medicare CoP address issues such as licensing, quality of care, safety, patient rights, self assessment and performance improvement, and service availability (42 CFR §§ 482.1–482.23 and 42 CFR §§ 482.25–482.57). The special Medicare CoP specify staffing and medical record requirements (42 CFR §§ 482.61 and 482.62).

In 72 Fed. Reg. 60787 (Oct. 26, 2007), CMS corrected a technical error that it had made when it issued Medicare transplant center CoP regulations that became effective June 28, 2007. When it amended 42 CFR part 482, subpart E, in 72 Fed. Reg. 15198 (Mar. 30, 2007), CMS inadvertently omitted 42 CFR §§ 482.60–482.62, which are Medicare psychiatric hospital CoP regulations relevant to this audit. The correction reinstated the omitted regulations effective October 26, 2007. Despite the omission, CMS's implementing guidance (e.g., manuals) remained in effect from June 28 through October 25, 2007 (the regulatory gap period).

Demonstrating Compliance With Medicare Conditions of Participation

To demonstrate compliance with the basic and special Medicare CoP, a psychiatric hospital must undergo review by qualified health care professionals. Medicare-participating psychiatric hospitals are generally deemed to meet both the basic and special Medicare CoP for Medicaid purposes (42 CFR § 488.5(b)). If psychiatric hospitals do not participate in Medicare, they can demonstrate compliance with the basic and special Medicare CoP by successfully completing a survey of those CoP performed by the State survey agency (42 CFR § 488.10(a)). During the audit period, January 1, 2006, through December 31, 2010, a psychiatric hospital could also generally demonstrate compliance with the *basic* Medicare CoP[3] by being accredited as a hospital by CMS-approved organizations, such as the Joint Commission.[4] However, psychiatric hospitals could not demonstrate compliance with the *special* Medicare CoP (42 CFR § 488.5(a)) through Joint Commission accreditation, because at that time the Commission did not have that

[2] Pursuant to 42 CFR § 441.151(a)(3), medical assistance also includes necessary inpatient psychiatric hospital services for individuals aged 21 if they were receiving such services immediately before reaching age 21.

[3] One exception is the utilization review requirement in 42 CFR § 482.30; however, compliance with the utilization review requirement was outside the scope of our audit.

[4] The Joint Commission was previously known as the Joint Commission on Accreditation of Healthcare Organizations and is so referenced in 42 CFR § 488.5(a).

authority.[5] According to the CMS *State Operations Manual*, section 2718A, psychiatric hospitals had to be specially surveyed by qualified psychiatric health care professionals to demonstrate compliance with the *special* Medicare CoP.

Accreditation or survey by qualified health care professionals provides CMS with reasonable assurance that participating facilities are improving the health and protecting the safety of Medicaid beneficiaries. To provide such assurance, the surveys must be performed "as frequently as necessary to ascertain compliance" (42 CFR § 488.20(b)(1)).

For periods in which a psychiatric hospital does not demonstrate compliance with the basic and special Medicare CoP, all inpatient psychiatric service and DSH payments received from the State Medicaid agency are ineligible for Federal reimbursement.

OBJECTIVE, SCOPE, AND METHODOLOGY

Objective

Our objective was to determine whether the State Medicaid agency claimed Federal reimbursement for inpatient psychiatric service and DSH payments made to Evansville in accordance with certain Federal requirements for inpatient psychiatric hospital services.

Scope

We reviewed Evansville's compliance for the period of January 1, 2006, through December 31, 2010, with certain Federal requirements for inpatient psychiatric hospital services. We identified $10,480,784 in Federal reimbursement for Medicaid inpatient psychiatric service and DSH payments made to Evansville for claims with dates of service during the audit period. We limited our review of the State Medicaid agency's internal controls to those significant to the objective of our audit.

We performed our fieldwork from February through May 2012.

Methodology

To accomplish our objective, we:

- examined Federal and State Medicaid requirements for inpatient psychiatric hospital services,

- identified periods for which neither the State Medicaid agency nor Evansville could demonstrate Evansville's compliance with certain Federal requirements for inpatient psychiatric hospital services,

[5] After the audit period (January 1, 2006, through December 31, 2010), CMS granted the Joint Commission deeming authority with respect to the two special Medicare CoP (76 Fed. Reg. 10598 (Feb. 25, 2011)).

- held discussions with officials of the State Medicaid agency and reviewed its Medicaid payment records, and

- determined the amount of Federal reimbursement for Medicaid inpatient psychiatric service and DSH payments made to Evansville for claims with dates of service during periods when it did not demonstrate compliance.

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.

FINDING AND RECOMMENDATIONS

Most State Medicaid agency claims for Federal reimbursement for inpatient psychiatric service and DSH payments made to Evansville were not in accordance with Federal requirements for inpatient psychiatric hospital services. The State Medicaid agency claimed $10,480,784 in Federal reimbursement for claims with dates of service during the audit period, January 1, 2006, through December 31, 2010. The State Medicaid agency claimed $7,913,344 in Federal reimbursement for claims with dates of service from January 1, 2006, through December 9, 2009, and $2,567,440 for claims with dates of service from December 10, 2009, through December 31, 2010.

Evansville did not demonstrate compliance with the basic or special Medicare CoP from January 1, 2006, through December 9, 2009. Therefore, of the $7,913,344 claimed for that period, the $7,567,455 for claims with dates of service outside the regulatory gap period was not allowable. We have not provided an opinion on the allowability of State Medicaid agency claims for the remaining $345,889, which was for claims with dates of service during the regulatory gap period. The State Medicaid agency claimed the $7,913,344 because it believed that Evansville had met all requirements to be eligible for Medicaid inpatient psychiatric service and DSH payments.

On December 10, 2009, Evansville successfully completed a survey that demonstrated its compliance with the basic and special Medicare CoP. Therefore, the State Medicaid agency properly claimed $2,567,440 in Federal reimbursement for claims with dates of service on or after December 10, 2009.

FEDERAL REQUIREMENTS

Pursuant to sections 1905(h)(1) and 1861(f) of the Act, if inpatient psychiatric services furnished to individuals under age 21 are provided in a psychiatric hospital, the psychiatric hospital must meet the basic and special Medicare CoP. Regulations in 42 CFR § 482.60 implement the requirements in 1861(f)[6] and mandate that such psychiatric hospitals meet the basic Medicare CoP (42 CFR §§ 482.1–482.23 and 42 CFR §§ 482.25–482.57) applicable to all hospitals and

[6] Regulations in 42 CFR § 482.1(a)(2) cite section 1861(f) of the Act as a statutory basis for 42 CFR pt. 482.

two special Medicare CoP applicable to psychiatric hospitals (42 CFR §§ 482.61 and 482.62). Psychiatric hospitals that provide Medicaid inpatient psychiatric services must meet the same Medicare CoP for their DSH payments to be eligible for Federal reimbursement.

The Medicare CoP for psychiatric hospitals are minimum standards that provide a basis for improving quality of care and protecting the health and safety of Medicaid beneficiaries. The basic Medicare CoP address issues such as licensing, quality of care, safety, patient rights, self assessment and performance improvement, and service availability (42 CFR §§ 482.1–482.23 and 42 CFR §§ 482.25–482.57). The special staffing Medicare CoP require that psychiatric hospitals "have adequate numbers of qualified professional and supportive staff to evaluate patients, formulate written, individualized comprehensive treatment plans, provide active treatment measures, and engage in discharge planning" (42 CFR § 482.62). The special medical record Medicare CoP require that "medical records maintained by a psychiatric hospital … permit determination of the degree and intensity of the treatment provided to individuals who are furnished services in the institution" (42 CFR § 482.61).

EVANSVILLE DID NOT DEMONSTRATE COMPLIANCE WITH MEDICARE CONDITIONS OF PARTICIPATION FOR MOST OF AUDIT PERIOD

The State Medicaid agency claimed $10,480,784 in Federal reimbursement for inpatient psychiatric service and DSH payments made to Evansville for claims with dates of service during the audit period. During most of that period, Evansville did not demonstrate compliance with the Medicare CoP.

Evansville did not demonstrate compliance with the basic or special Medicare CoP from January 1, 2006, through December 9, 2009. Evansville did not participate in Medicare at any time during the audit period and was not thereby deemed to meet either the basic or the special Medicare CoP for Medicaid purposes. Prior to December 10, 2009, Evansville also did not demonstrate compliance with the basic Medicare CoP by any approved method. First, it was not accredited as a hospital by a CMS-approved organization at any time during the audit period.[7] Second, until December 10, 2009, it had never been surveyed by the State survey agency to demonstrate compliance with the basic Medicare CoP. Prior to December 10, 2009, Evansville also did not demonstrate compliance with the special Medicare CoP because it had last been surveyed by the State survey agency to demonstrate compliance with those standards in May 1995. As of the beginning of our audit period, that survey was more than 10 years old and, therefore, did not reasonably satisfy the requirement to be resurveyed "as frequently as necessary to ascertain compliance" (42 CFR § 488.20(b)(1)). Accordingly, the May 1995 survey could not legitimately demonstrate Evansville's compliance with the special Medicare CoP.

The State Medicaid agency claimed $7,913,344[8] in Federal reimbursement for inpatient psychiatric service and DSH payments made to Evansville for claims with dates of service from

[7] Evansville was accredited by the Joint Commission under the *Comprehensive Accreditation Manual for Behavioral Health Care* standards, but it was not accredited as a hospital and thus did not have deemed compliance with the basic Medicare CoP.

[8] This figure is the sum of improperly claimed and set-aside Federal reimbursement in the table on the next page.

January 1, 2006, through December 9, 2009. The State Medicaid agency improperly claimed $7,567,455 in such funds for claims with dates of service during that period but outside the regulatory gap period. The $7,567,455 included Federal reimbursement of $6,573,945 for improperly claimed service payments and $993,510 for improperly claimed DSH payments. We have set aside for further review by CMS and the State Medicaid agency $345,889 in Federal reimbursement for inpatient psychiatric service payments made to Evansville for claims with dates of service during the regulatory gap period.[9] The table below shows Federal reimbursement by payment type and allowability.

Federal Reimbursement by Payment Type and Allowability

Payment Type	Improperly Claimed	Set Aside	Properly Claimed	Total
Service	$6,573,945	$345,889	$2,567,440	**$9,487,274**
DSH	993,510	0	0	**993,510**
Total	**$7,567,455**	**$345,889**	**$2,567,440**	**$10,480,784**

The State Medicaid agency improperly claimed Federal reimbursement for claims with dates of service from January 1, 2006, through December 9, 2009, because the State Medicaid agency believed that Evansville had met all requirements to be eligible for inpatient psychiatric service and DSH payments. Specifically, the State Medicaid agency believed that Evansville's Medicaid certification established its eligibility for such payments and that Evansville did not have to demonstrate compliance with the Medicare CoP.

Within the scope of this review, the State Medicaid agency properly claimed $2,567,440 in Federal reimbursement for inpatient psychiatric service payments made to Evansville for claims with dates of service on or after December 10, 2009. On December 10, 2009, Evansville successfully completed a survey of both the basic and special Medicare CoP performed by the State survey agency and thereby demonstrated its compliance with those standards.

RECOMMENDATIONS

We recommend that the State Medicaid agency:

- refund $7,567,455 to the Federal Government for its share of inpatient psychiatric service and DSH payments made to Evansville for claims with dates of service outside the

[9] Despite CMS's inadvertent omission of 42 CFR §§ 482.60–482.62 in 72 Fed. Reg. 15198 (Mar. 30, 2007), CMS's implementing guidance remained in effect during this period.

regulatory gap period when it did not demonstrate compliance with the basic and special Medicare CoP,

- work with CMS to determine whether the State Medicaid agency should refund an additional $345,889 to the Federal Government for its share of payments made to Evansville for claims with dates of service during the regulatory gap period, and

- ensure that Federal reimbursement for Medicaid inpatient psychiatric service and DSH payments to psychiatric hospitals is claimed only if those hospitals can demonstrate compliance with the basic and special Medicare CoP.

STATE MEDICAID AGENCY COMMENTS

In written comments on our draft report, the State Medicaid agency did not concur with our first and second recommendations and only technically concurred with our third recommendation. The State Medicaid agency did not concur with our first and second recommendations because it believes that Evansville, which provided inpatient psychiatric services to individuals under age 21, did not have to meet the basic Medicare CoP. The State Medicaid agency also believes that Evansville's May 1995 survey demonstrated its compliance with the special Medicare CoP during the audit period. Although the State Medicaid agency concurred with our third recommendation, it also stated that Evansville "does not need to demonstrate compliance with the basic Medicare CoP … to receive payments for children under age 21."

The State Medicaid agency's comments are included in their entirety as the Appendix.

OFFICE OF INSPECTOR GENERAL RESPONSE

After reviewing the State Medicaid agency's comments on our draft report, we maintain that our findings and recommendations are valid. Federal Medicaid requirements mandate that inpatient service and DSH payments to psychiatric hospitals are eligible for Federal reimbursement only if they demonstrate compliance with both the basic and special Medicare CoP. Evansville did not demonstrate compliance with either the basic or the special Medicare CoP from January 1, 2006, through December 9, 2009.

The State Medicaid agency believes that Evansville, which provided inpatient psychiatric services to individuals under age 21, did not have to meet the basic Medicare CoP; we disagree. Section 1905(h)(1) of the Act states, "[T]he term 'inpatient psychiatric hospital services for individuals under age 21' includes only … inpatient services which are provided in an institution … which is a psychiatric hospital as defined in section 1861(f)."[10] Section 1861(f) of the Act defines a psychiatric hospital and requires it to meet both the basic and special Medicare CoP. These requirements are implemented in 42 CFR § 482.60.[11] Therefore, psychiatric

[10] Section 1905(h)(1) of the Act also permits such services to be provided "in another inpatient setting that the Secretary has specified in regulations," such as psychiatric residential treatment facilities. However, such settings are irrelevant to this audit because Evansville was a psychiatric hospital throughout the audit period.

[11] Regulations in 42 CFR § 482.1(a)(2) cite section 1861(f) of the Act as a statutory basis for 42 CFR pt. 482.

hospitals like Evansville were required to meet the basic and special Medicare CoP to make the inpatient service and DSH payments they received for individuals under age 21 eligible for Federal reimbursement.

The State Medicaid agency also believes that Evansville's May 1995 survey demonstrated Evansville's compliance with the special Medicare CoP during the audit period; we disagree. Regulations in 42 CFR § 488.20(b)(1) require Evansville to be resurveyed "as frequently as necessary to ascertain compliance." We concluded that, on its face, the May 1995 survey did not reasonably satisfy that requirement because at the beginning of our audit period (January 1, 2006), the survey was already more than 10 years old.

APPENDIX

APPENDIX: STATE MEDICAID AGENCY COMMENTS

"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

November 2, 2012

Sheri L. Fulcher
Regional Inspector General for Audit Services
Department of Health and Human Services
Office of Audit Services
233 North Michigan, Suite 1360
Chicago, IL 60601

Re: OIG Report No. A-05-12-00040

Dear Ms. Fulcher:

The Indiana Office of Medicaid Policy and Planning (OMPP) appreciates the opportunity to comment on the Office of Inspector General's (OIG) draft report entitled "Indiana Improperly Claimed Federal Reimbursement for Most Medicaid Inpatient Psychiatric Hospital Service and Disproportionate Share Hospital Payments to Evansville Psychiatric Children's Center," Report No. A-05-12-00040, dated September 28, 2012. The State appreciates the extension of the deadline for OMPP's response to October 31, 2012.

In this letter, the State addresses the recommendations included in the aforementioned draft audit report.

Recommendation 1: Refund $7,567,455 to the Federal Government for its share of inpatient psychiatric service and DSH payments made to Evansville for claims with dates of service outside the regulatory gap period when it did not demonstrate compliance with the basic and special Medicare CoP.

State Response: Nonconcurrence. Indiana submitted claims for federal financial participation (FFP) related to inpatient psychiatric services and disproportionate share hospital (DSH) payments because the State believed that Evansville Psychiatric Children's Center (EPCC) met all applicable requirements for services and DSH payments. The premise for the financial findings in the draft report is that a provider must "demonstrate compliance with the basic

Medicare Conditions of Participation (CoP) generally applicable to all hospitals and two special Medicare CoP applicable to psychiatric hospitals."

EPCC is a children's facility and was Joint-Commission accredited for the entire audit period and met the requirements for receiving DSH payments set forth in Attachment 4.19A of the State plan, thus the State properly claimed FFP and DSH payments for EPCC. EPCC does not need to demonstrate compliance with the basic Medicare CoP in order to receive payments for children under age 21, as the Medicaid regulations permit reimbursement for inpatient psychiatric services provided to children under age 21 in a non-hospital setting accredited by the Joint Commission (see 42 CFR § 441.151(a)(2)).

Further, EPCC was previously surveyed by the State survey agency to demonstrate compliance with the special Medicare CoP in May 1995. The OIG writes in the draft report "...that survey was more than 10 years old and, therefore, did not reasonably satisfy the requirement to be resurveyed "as frequently as necessary to ascertain compliance" (42 CFR § 488.20(b)(1). Accordingly, the May 1995 survey could not legitimately demonstrate Evansville's compliance with the special Medicare CoP."

Indiana disagrees that the quoted Regulation prohibits it from relying on a survey that is more than 10 years old to demonstrate compliance with conditions of participation. Most notably, the quoted Regulation requires only that a State conduct surveys as frequently as it deems "necessary to ensure compliance and confirm the correction of deficiencies." *See* 42 C.F.R. § 488.20(b)(1). The Regulation does not set a time limit on State's ability to rely on successful facility surveys. The OIG report references no legal support for its interpretation of the law that a state's survey from 1995 is not frequent enough to "ascertain compliance and confirm the correction of deficiencies."

Further still, in a 2000 report[1], the OIG pointed out that there was no established survey cycle for psychiatric hospitals and recommended that CMS establish one. EPCC was regularly reaccredited by the Joint Commission with no indication of any problem that would require recertification. There has never been any indication that EPCC was out of compliance with the special CoP. In the absence of pertinent guidance from CMS, it is Indiana's position that neither EPCC nor the State Medicaid agency is responsible for scheduling recertification surveys.

Recommendation 2: Work with CMS to determine whether the State Medicaid agency should refund an additional $345,889 to the Federal Government for its share of payments made to Evansville for claims with dates of service during the regulatory gap period.

State Response: Nonconcurrence. As stated previously, Indiana submitted claims for federal financial participation (FFP) related to inpatient psychiatric services and disproportionate share hospital (DSH) payments because the State believes that EPCC met all applicable requirements for services and DSH payments during the time period of this audit. Thus, the State believes there is no need to work with CMS on this issue.

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[1] "The External Quality Review of Psychiatric Hospitals," No. OEI-01-99-00160 (May 2000), available at http://oig.hhs.gov/oei/reports/oei-01-99-00160.pdf.

Recommendation 3: Ensure that Federal reimbursement for Medicaid inpatient psychiatric service and DSH payments to psychiatric hospitals is claimed only if those hospitals can demonstrate compliance with the basic and special Medicare CoP.

State Response: Concurrence. As stated previously, Indiana submitted claims for federal financial participation (FFP) related to inpatient psychiatric services and disproportionate share hospital (DSH) payments because the State believes that EPCC met all applicable requirements for services and DSH payments during the time period of this audit. The draft report also recognizes that on December 10, 2009, EPCC successfully completed a survey of both the basic and special Medicare CoP performed by the State survey agency and demonstrated compliance with those standards and that FFP claimed on or after December 10, 2009 was properly claimed.

The State appreciates your consideration of the information provided in this letter. If you have any questions or require additional information, please contact Kristina Moorhead at 317-233-2127 or Kristina.Moorhead@fssa.in.gov.

Sincerely,

P Casanova

Pat Casanova
Medicaid Director