



Office of Audit Services
Region II
Jacob K. Javits Federal Building
26 Federal Plaza
New York, NY 10278

February 25, 2003

Report Number: A-02-01-01037

Ms. Gwendolyn L. Harris, Commissioner
State of New Jersey
Department of Human Services
P.O. Box 700
Trenton, New Jersey 08625

Dear Ms. Harris:

Enclosed are two copies of the Department of Health and Human Services (HHS), Office of Inspector General (OIG), Office of Audit Services' (OAS) final report entitled, "Review of Duplicate Acute Care Hospital Expenditures Claimed by the State of New Jersey to the Disproportionate Share Hospital Program." A copy of this report will be forwarded to the HHS action official noted below for review and any action deemed necessary.

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

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To facilitate identification, please refer to report number A-02-01-01037 in all correspondence relating to this report.

Sincerely yours,

A handwritten signature in black ink, appearing to read "Timothy J. Horgan".

Timothy J. Horgan
Regional Inspector General
for Audit Services

Enclosures – as stated

Page 2 – Ms. Gwendolyn L. Harris, Commissioner

Direct Reply to HHS Action Official:

Ms. Sandra M. Tokayer
Acting Associate Regional Administrator
Division of Financial Management
Centers for Medicare and Medicaid Services, Region II
Department of Health and Human Services
26 Federal Plaza, Room 38-130
New York, New York 10278

Department of Health and Human Services

**OFFICE OF
INSPECTOR GENERAL**

**REVIEW OF DUPLICATE ACUTE
CARE HOSPITAL EXPENDITURES
CLAIMED BY THE
STATE OF NEW JERSEY
TO THE DISPROPORTIONATE
SHARE HOSPITAL PROGRAM**



JANET REHNQUIST
Inspector General

FEBRUARY 2003
A-02-01-01037

Office of Inspector General

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OAS FINDINGS AND OPINIONS

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



EXECUTIVE SUMMARY

Background

On December 9, 1996, the state of New Jersey, Department of the Treasury, Office of Management and Budget (NJOMB) awarded a contingency fee contract to Deloitte Consulting (Deloitte). The purpose of the contract, known as the "Federal Fund Revenue Enhancers For All Federal Programs" was to generate increased federal reimbursement by identifying and submitting state expenses not previously claimed to the respective funding agencies for federal financial participation (FFP). According to the terms of the contingency fee contract, Deloitte was to receive a percentage ranging from 6 to 7 ½ percent of the federal funds recovered. For the enhancement project initiative relating to state disproportionate share payments to acute care hospitals, Deloitte identified an additional \$233,012,833 (federal share \$116,506,416) of state expenditures that were claimed to the Federal Government under the Medicaid program.

The Omnibus Budget Reconciliation Act of 1981 (OBRA 81) established the disproportionate share hospital (DSH) program by adding section 1923 to the Social Security Act (the Act). Section 1923 authorized state Medicaid agencies to make additional payments to hospitals serving a disproportionately large number of low-income patients with special-needs. The Federal Government shares in these payments and the Centers for Medicare and Medicaid Services (CMS) is the operating division within the Department of Health and Human Services responsible for administering the DSH program.

We initially requested supporting documentation to test the \$233,012,833 of disproportionate share acute care hospital claims submitted to and paid by CMS to the state of New Jersey's Department of Human Services, Division of Medical Assistance and Health Services (DMAHS). At the state level, the DMAHS is responsible for administering and claiming federal reimbursement of DSH expenses. The DMAHS advised us that as a result of attempting to comply with our request for documentation, they discovered that duplicate claims were erroneously submitted to and paid by CMS.

Objective

The objective of this review was limited to identifying, verifying, and recommending a financial adjustment for the duplicate DSH acute care hospital claims. This is the first report in a series of reports we plan to issue on DSH claims submitted by the state as a result of the "Federal Fund Revenue Enhancers For All Federal Programs" contract.

Summary of Finding

Our review showed that Deloitte erroneously duplicated \$54,924,748 (federal share \$27,462,374) of disproportionate share acute care hospital claims, which were submitted to CMS for state expenditures incurred during the period April 1, 1997 through June 30, 2001. State officials advised us that this duplication occurred because of a Deloitte computer system error. We determined that DMAHS relied solely on Deloitte to prepare and document the additional disproportionate share acute care hospital claims and, contrary to federal requirements, failed to

ensure the veracity of the claims prior to submitting them for federal reimbursement. Furthermore, the overpayment received from CMS was deposited into the state's general fund and earned interest. We calculated the related interest earned to be \$2,958,449.

Recommendations

We recommended that DMAHS:

- Refund \$30,420,823 to the Federal Government. This refund represents \$27,462,374 for the overpayment related to the duplicated claims and \$2,958,449 of interest earned by the state on the overpayment.
- Thoroughly review all work performed by outside consultants to assure the veracity of future claims to the Federal Government.

Auditee's Comments

The full text of the state of New Jersey's comments is included as an Appendix to this report. In summary, state officials agreed that inappropriate claims totaling \$54,924,748 (federal share \$27,462,374) were submitted to the Federal Government. However, they contended that the amount to be refunded is likely to be less than the amount cited because federal DSH funding is limited and the state's DSH expenditures have exceeded the available funding. The state requested that the refund be handled as a decreasing adjustment on a future claim to CMS, which should assure the return of the appropriate amount.

Regarding the interest that was earned on the overpayment, the state requested that we eliminate the adjustment from the report. They claim that there is no specific evidence that the state earned interest and there appears to be no specific statutory or regulatory basis for the imposition of this interest charge. The state cited revised Department of Treasury (Treasury) regulations at 31 CFR 205 enacted on May 10, 2002, which became effective on June 24, 2002. According to the state, this regulation change excluded this type of interest charge.

The state's response further stated that if the interest adjustment is deemed appropriate, they be provided with the actual interest calculations and requested time to study the information to determine if interest was earned on the overpayment. In addition, the state contended that during the audit period they were required to borrow funds to meet current obligations and thus, the cost of borrowing should be credited against the amount alleged to have been earned by the state.

Finally, the state's response stated that it is their policy to submit accurate claims to the Federal Government. However, they are revising their review procedures and additional steps will be taken to verify the accuracy of future claims.

Office of Inspector General's Response

We are pleased that the state acknowledged the duplicate claim of \$54,924,748 (federal share \$27,462,374). Our review showed that the state did receive the full \$27,462,374 from the Federal Government and is responsible for returning the amount. We encourage them to discuss with CMS officials the methodology for handling the overpayment. We are also pleased the state plans to take steps to improve their procedures for enhancing the accuracy of the claims they submit to the Federal Government.

Regarding our interest adjustment, we verified that the overpayments received for the duplicate claims were deposited directly into the state's general fund. We determined that the state invested these funds and earned interest. In addition, we discussed the methodology that we used to calculate the interest with state officials who agreed that the method was equitable. We also provided the actual interest calculations to the state officials during the review. We will provide the interest calculations again if necessary.

Further, the state cited May 10, 2002 Treasury regulation changes in its response dealing with interest liability that did not take effect until after our audit period. Our adjustment includes interest that was earned by the state on the federal overpayments during the audit period up to January 31, 2002. The Treasury regulation on interest liability that was in effect during the audit period was 31 CFR 205.12 (a). This regulation, which is still in effect and now found at section 205.15, states: "A State will incur an interest liability to the Federal Government if Federal funds are in a State account prior to the day the State pays out funds for program purposes. A State interest liability will accrue from the day Federal funds are credited to a State account to the day the State pays out the Federal funds for program purposes." We determined that the overpayment identified in this review was never used for program purposes. Consequently, the state is liable for interest until it returns the amount to the Federal Government.

Lastly, we do not agree that the cost of borrowing by the state should be credited against the interest amount we calculated as an adjustment because CMS advances funds to states to meet Medicaid obligations and the advances specifically include funds for the DSH program.

Consequently, we continue to recommend the refund of \$2,958,449 in interest.

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INTRODUCTION

Background

The disproportionate share hospital (DSH) program originated with the Omnibus Budget Reconciliation Act of 1981 (OBRA 81), which authorized state agencies to make additional payments to hospitals serving a disproportionately large number of low-income patients with special-needs. The eligible hospitals are reimbursed from various funds established within the New Jersey DSH program: the Health Care Subsidy Fund/Charity Care Subsidy Fund, Mental Health Service Contracts Fund, and the Hospital Relief Subsidy Fund. The Federal Government shares in these payments and the Centers for Medicare and Medicaid Services (CMS) is the operating division within the Department of Health and Human Services responsible for administering the DSH program. Section 1923(g) of the Social Security Act (the Act) also stipulates that annual DSH payments to each hospital shall not exceed the respective hospital-specific limit calculated utilizing state plan guidelines.

On December 9, 1996, the New Jersey Office of Management and Budget (NJOMB) awarded a contingency fee contract to Deloitte Consulting (Deloitte). The purpose of the contract, known as the “Federal Fund Revenue Enhancers For All Federal Programs,” was to generate increased federal financial participation (FFP) by identifying and submitting eligible expenses not previously claimed to the respective federal funding agencies. According to the terms of the contract, Deloitte was to receive a percentage ranging from 6 to 7 ½ percent of the federal funds recovered. We became aware of this enhancement project as a result of a previous audit of one of the project’s initiatives (retroactive emergency assistance program report number A-02-99-02006). Based on the significance of our audit results, we reviewed the various DSH initiatives identified in the contract to determine if the claims submitted were allowable, reasonable, and in accordance with existing CMS regulations.

The state and Deloitte identified four DSH initiatives related to inpatient hospitals as having the potential for federal fund enhancement. These initiatives targeted state payments for services and other health related activities made on behalf of Medicaid recipients and uninsured individuals by any agency of the state and not paid by any of the New Jersey DHS funds.

As a result of Deloitte’s efforts on the four DSH initiatives related to inpatient hospitals, the Division of Medical Assistance and Health Services (DMAHS) submitted and was reimbursed \$586,746,672 (federal share \$293,373,336). The DSH claims were submitted for the following:

<u>Description</u>	<u>Total Claim</u>	<u>FFP Amount</u>
New Jersey Acute Care Hospitals	\$233,012,833	\$116,506,416
University of Medicine and Dentistry, Newark	247,145,662	123,572,831
University of Medicine and Dentistry, Piscataway	90,051,378	45,025,689
Runnells Hospital	<u>16,536,799</u>	<u>8,268,400</u>
Total Additional DSH Claim to CMS	<u>\$586,746,672</u>	<u>\$293,373,336</u>

Although we planned to review the entire \$586,746,672, we decided to segment our audit effort and issue separate reports for each of the above four DSH initiatives. For our first audit, we selected \$233,012,833 of DSH expenses claimed by DMAHS for acute care hospitals. The Deloitte agreement with the NJOMB provided for the identification of all state agency payments to acute care hospitals for medical services that qualify for federal reimbursement under the DSH program.

To accomplish our audit objectives, we requested documentation for the \$233,012,833 of disproportionate share acute care hospital claims developed by Deloitte. These claims were submitted by DMAHS, the state agency responsible for administering and claiming federal reimbursement of DSH expenses. We were advised by DMAHS that while attempting to gather the requested documentation, they discovered that duplicate claims were erroneously included as part of the enhancement project claims submitted to and paid by CMS.

Objectives, Scope, and Methodology

Initially, the primary objective of our audit was to determine the veracity of \$233,012,833 of disproportionate share acute care hospital claims submitted to and paid by CMS and to determine if these claims were adequately supported and met the criteria cited in the New Jersey state plan and the applicable federal regulations. As a result of obtaining information for our planned audit, the state discovered and notified us that duplicate acute care hospital claims had erroneously been submitted and were subsequently paid by CMS. Consequently, we limited this review to identifying, verifying, and recommending a financial adjustment for the duplicate DSH claims.

This is the first report in a series of reports we plan to issue on DSH claims, that were submitted by the state as a result of the “Federal Fund Revenue Enhancers For All Federal Programs” contract.

To accomplish our objective, we:

- Obtained and reviewed OBRA 81 and 93, section 1923 of the Act, the New Jersey state plan, and other applicable criteria.

- Reviewed the NJOMB request for proposal for the “Federal Fund Revenue Enhancers For All Federal Programs” and Deloitte’s response to the request for proposal.
- Reviewed the “Federal Fund Revenue Enhancers For All Federal Programs” contract entered into with Deloitte by the NJOMB.
- Determined the total DSH claims submitted on the Quarterly Medicaid Statement of Expenditures for the Medical Assistance Program (Form CMS-64) for expenditures incurred during the period October 1, 1995 through June 30, 2001 and the amount applicable to the Deloitte enhancement project for DSH payments to acute care hospitals.
- Held discussions with various state officials at the DMAHS, NJOMB, New Jersey State Attorney General’s Office, state of New Jersey’s Department of the Treasury, state of New Jersey’s Division of Purchase and Property and obtained applicable correspondence related to the duplicate DSH claims.
- Obtained from DMAHS a summary of each hospital’s original DSH claims supporting the total claimed amount of \$233,012,833 and their revised summaries by hospital after adjusting for duplicate claims. The revised summaries were adjusted downward by \$54,924,748 leaving an adjusted total of \$178,088,085. In order to verify the duplicate amount, we judgmentally selected four acute care hospitals and tested the summaries provided by the state.
- Reviewed the remaining \$178,088,085 (\$233,012,833 less \$54,924,748) to determine if there were any other obvious duplications.
- Ascertained that the state placed the overpayment in its general fund and earned interest.

Our review was performed in accordance with generally accepted government auditing standards. We did not perform an in-depth review of the state’s internal control structure; however, we did make a limited assessment of the fiscal controls related to DSH claims submitted for federal reimbursement.

We did not review Deloitte’s computer system to ascertain the derivation of the errors that caused the duplicate claims to be submitted for federal reimbursement. However, we did request the state to review Deloitte’s computer system. We were advised that the state has filed a formal complaint against Deloitte, and that further verification of the type of computer error that caused the duplication may be necessary in the future. However, according to the state, they have sufficient information concerning the error to sustain the complaint against Deloitte, and therefore at the present time, will not be reviewing Deloitte’s computer system. We did not

expand our testing to Deloitte's computer system because both the state and Deloitte acknowledged the duplicate claims and we also planned to review the balance of the nonduplicated claims in future audits.

Our fieldwork was performed at the DMAHS offices in Mercerville, New Jersey.

FINDINGS AND RECOMMENDATIONS

Our review confirmed that Deloitte duplicated \$54,924,748 (federal share \$27,462,374) of disproportionate share acute care hospital claims, which were submitted to CMS for state expenditures incurred during the period April 1, 1997 through June 30, 2001. State officials advised us that this duplication occurred because of a Deloitte computer system error. We determined that DMAHS relied solely on Deloitte to prepare and document the additional disproportionate share acute care hospital claims and, contrary to federal requirements, failed to ensure the veracity of the claims prior to submitting them for federal reimbursement. Furthermore, the overpayment received from CMS was deposited into the state's general fund and earned interest. We calculated the related interest earned to be \$2,958,449.

Duplicate DSH Claims for Acute Care Hospitals

During our audit, we requested DMAHS provide supporting documentation for disproportionate share acute care hospital claims for state expenditures incurred during the period April 1, 1997 through June 30, 2001. The DMAHS provided us with spreadsheets for each state fiscal year (SFY), which included the original amount claimed and Deloitte's revised amount by acute care hospital. The difference between the original and revised spreadsheets or \$54,924,748 (federal share \$27,462,374) represented duplicate claims that were erroneously submitted to and reimbursed by CMS. The following is a schedule of the additional claims for acute care hospital expenditures resulting from Deloitte's contract incurred during the period April 1, 1997 through June 30, 2001, the FFP applicable to each year, the total duplicate amount, and the FFP applicable to the duplication.

<u>Period</u>	<u>Total Claim</u>	<u>FFP</u>	<u>Duplication</u>	<u>FFP</u>
SFY 1997	\$14,258,480	\$7,129,240	\$3,526,693	\$1,763,347
SFY 1998	46,379,649	23,189,824	9,509,658	4,754,829
SFY 1999	57,206,984	28,603,492	11,906,366	5,953,183
SFY 2000	56,732,867	28,366,434	13,864,184	6,932,092
SFY 2001	<u>58,434,853</u>	<u>29,217,426</u>	<u>16,117,847</u>	<u>8,058,923</u>
GRAND TOTAL	<u>\$233,012,833</u>	<u>\$116,506,416</u>	<u>\$54,924,748</u>	<u>\$27,462,374</u>

The state officials advised us they were not aware of the duplication prior to our review and did not discover the error until we requested they provide supporting documentation. They also advised us that the duplication occurred because of a Deloitte computer error. State officials provided us with a copy of an August 27, 2001 letter from Deloitte to the state, which acknowledges their error:

“The error that caused the duplicate claims to be submitted was a provider identification file containing duplicate provider identification numbers. Unfortunately, this file caused duplicate claims to be selected for reporting to the State. After identifying the error, we promptly corrected the file.”

In order to verify that duplicate claims were submitted and paid by CMS, we judgmentally selected four acute care hospitals and determined the following:

- For the first hospital tested, we determined that 59 claims (consisting of inpatient, outpatient, and Medicare co-insurance amounts) for SFY 1997 totaled only \$117,999 but Deloitte doubled this amount and \$235,998 was submitted through the state to CMS and was paid.
- For the second hospital tested, we determined that 516 claims (consisting of inpatient, outpatient, and Medicare co-insurance amounts) for SFY 1997 totaled only \$214,564 but Deloitte doubled this amount and \$429,128 was submitted through the state to CMS and was paid.
- For the third hospital tested, we determined that 1,492 claims (consisting of inpatient, outpatient, and Medicare co-insurance amounts) for SFY 1998 totaled only \$368,130 but Deloitte doubled this amount and \$736,260 was submitted through the state to CMS and was paid.
- For the fourth hospital tested, we determined that 259 claims (consisting of inpatient, outpatient, and Medicare co-insurance amounts) for SFY 1999 totaled only \$53,187 but Deloitte doubled this amount and \$106,374 was submitted through the state to CMS and was paid.

Overall, 2,326 claims totaled only \$753,880 for the above four acute care hospitals but Deloitte doubled this amount and \$1,507,760 was claimed and paid. Consequently, the state over-claimed \$753,880 and was overpaid \$376,940 ($\$753,880 \times 50$ percent FFP) for these four hospitals.

We asked the state if they reviewed the claims before they were submitted to the Federal Government. The DMAHS advised us that they relied solely on Deloitte to prepare and document the additional disproportionate share acute care hospital claims and did not review the veracity of the claims prior to submitting them for federal reimbursement. In addition, after the state had the opportunity to review Deloitte’s revised spreadsheets, they agreed that the \$54,924,748 (federal share \$27,462,374) was erroneously duplicated.

In order to assure ourselves that there were no additional duplications included in the total claim, we reviewed the schedules provided by DMAHS and tested the remaining \$178,088,085 claims for duplicates. Our review showed no additional duplicates. We will review the allowability of the remaining acute care hospital claims in our subsequent audit.

Interest Earned on DSH Overpayments

We determined that the overpayment of \$27,462,374 received from the Federal Government was deposited into the state's general fund and earned interest. We obtained the monthly interest rates earned on the state's general fund, which ranged from 2.31 percent to 6.39 percent, from the state's Division of Investment. We applied these rates to the overpayment and calculated that the state earned \$2,958,449 of interest.

Recommendations

We recommended that DMAHS:

- Refund \$30,420,823 to the Federal Government. This refund represented \$27,462,374 for the overpayment related to the duplicated claims and \$2,958,449 of interest earned by the state on the overpayment.
- Thoroughly review all work performed by outside consultants to assure the veracity of future claims to the Federal Government.

Auditee's Comments

The full text of the state of New Jersey's comments is included as an Appendix to this report. In summary, state officials agreed that inappropriate claims totaling \$54,924,748 (federal share \$27,462,374) were submitted to the Federal Government. However, they contended that the amount to be refunded is likely to be less than the amount cited because federal DSH funding is limited and the state's DSH expenditures have exceeded the available funding. The state requested that the refund be handled as a decreasing adjustment on a future claim to CMS, which should assure the return of the appropriate amount.

Regarding the interest that was earned on the overpayment, the state requested that we eliminate the adjustment from the report. They claim that there is no specific evidence that the state earned interest and there appears to be no specific statutory or regulatory basis for the imposition of this interest charge. The state cited revised Department of Treasury regulations at 31 CFR 205 enacted on May 10, 2002, which became effective on June 24, 2002. According to the state, this regulation change excluded this type of interest charge.

The state's response further stated that if the interest adjustment is deemed appropriate, they be provided with the actual interest calculations and requested time to study the information to determine if interest was earned on the overpayment. In addition, the state contended that during the audit period they were required to borrow funds to meet current obligations and thus, the cost of borrowing should be credited against the amount alleged to have been earned by the state.

Finally, the state's response stated that it is their policy to submit accurate claims to the Federal Government. However, they are revising their review procedures and additional steps will be taken to verify the accuracy of future claims.

Office of Inspector General's Response

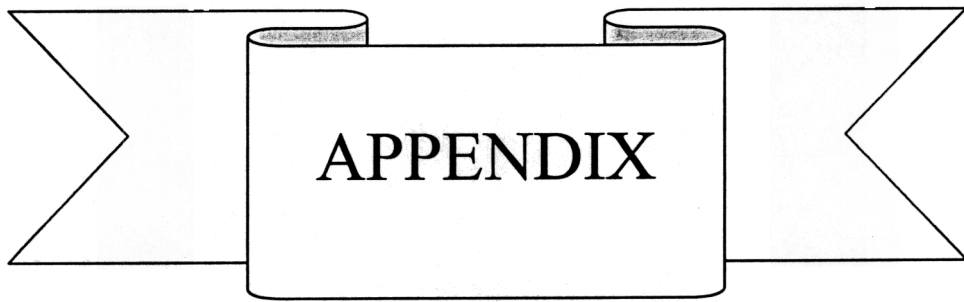
We are pleased that the state acknowledged the duplicate claim of \$54,924,748 (federal share \$27,462,374). Our review showed that the state did receive the full \$27,462,374 from the Federal Government and is responsible for returning that amount. We encourage them to discuss with CMS officials the methodology for handling the overpayment. We are also pleased the state plans to take steps to improve their procedures for enhancing the accuracy of the claims they submit to the Federal Government.

Regarding our interest adjustment, we verified that the overpayments received for the duplicate claims were deposited directly into the state's general fund. We determined that the state invested these funds and earned interest. In addition, we discussed the methodology that we used to calculate the interest with state officials who agreed that the method was equitable. We also provided the actual interest calculations to the state officials during the review. We will provide the interest calculations again if necessary.

Further, the state cited May 10, 2002 Treasury regulation changes in its response dealing with interest liability that did not take effect until after our audit period. Our adjustment includes interest that was earned by the state on the federal overpayments during the audit period up to January 31, 2002. The Treasury regulation on interest liability that was in effect during the audit period was 31 CFR 205.12 (a). This regulation, which is still in effect and now found at section 205.15, states: "A State will incur an interest liability to the Federal Government if Federal funds are in a State account prior to the day the State pays out funds for program purposes. A State interest liability will accrue from the day Federal funds are credited to a State account to the day the State pays out the Federal funds for program purposes." We determined that the overpayment identified in this review was never used for program purposes. Consequently, the state is liable for interest until it returns the amount to the Federal Government.

Lastly, we do not agree that the cost of borrowing by the state should be credited against the interest amount we calculated as an adjustment because CMS advances funds to states to meet its Medicaid obligations and the advances specifically include funds for the DSH program.

Consequently, we continue to recommend the refund of \$2,958,449 in interest.





State of New Jersey
DEPARTMENT OF HUMAN SERVICES
PO Box 700
TRENTON NJ 08625-0700

JAMES E. MCGREEVEY
Governor

APPENDIX
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GWENDOLYN L. HARRIS
Commissioner

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September 10, 2002

Timothy J. Horgan
Regional Inspector General
for Audit Services
Office of the Inspector General
Office of Audit Services
Jacob K. Javits Federal Building
26 Federal Plaza
New York, New York 10278

Re: CIN A-02-01-01037

Dear Mr. Horgan:

This is in response to your correspondence dated July 17, 2001 (sic) concerning the draft audit report titled "Review of Duplicate Acute Care Hospital Expenditures Claimed by the State of New Jersey, Department of Human Services, Division of Medical Assistance and Health Services to the Disproportionate Share Hospital Program." Your letter provides an opportunity to comment on the draft audit report.

The draft report contains three findings and two recommendations. The report indicates that New Jersey improperly claimed \$27,462,374 federal financial participation (FFP) for duplicate disproportionate share hospital (DSH) payments during the period April 1, 1997 through June 30, 2001; New Jersey earned interest of \$2,958,449 on the overpayment; and the Division of Medical Assistance and Health Services (DMAHS) failed to insure the veracity of the claims prior to submitting them for federal reimbursement.

Deloitte Touche Consulting Group ("Deloitte"), under its contract with the Treasury Department of the State of New Jersey, was responsible for the preparation of federal fund claims, providing the data in the form required for submission to the Centers for Medicare & Medicaid Services (CMS) and for the maintenance of the documentation to support the claims and for audit purposes. The State's review of the Deloitte claims documentation indicates that duplicate DSH claims totaling \$27,462,374 FFP were inadvertently submitted to CMS. However, with respect to the interest, the draft report, other than noting that the interest is based on the monthly interest rates earned by the

Timothy J. Horgan
September 10, 2002
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State Division of Investment, does not indicate the start or end dates for the running of interest, the amounts to which it is applied, or the statutory or regulatory citation upon which interest is to be charged. Therefore, I am unable to confirm that New Jersey earned any interest on the overpayment cited in the report, nor am I able to research the basis for the imposition of interest.

The recommendations contained in the report and our responses are provided below:

1 DMAHS should refund \$30,420,823 to the Federal government. This refund represents \$27,462,374 for the overpayment related to the duplicate claims and \$2,958,449 of interest earned by the State on the overpayment.

A. The Overpayment: New Jersey requests that this recommendation be revised. As you are aware, New Jersey is allotted specific amounts each fiscal year. While it is acknowledged that New Jersey inappropriately submitted claims totaling \$27,462,374 FFP, this is not the amount ultimately received by the State. Since federal DSH funding is limited and New Jersey's DSH expenditures have exceeded the available funds, the amount to be refunded is likely to be less than the amount cited. Therefore, it is requested that this recommendation indicate that New Jersey should include a decreasing adjustment on the federal claim for \$54,924,748, total computable. This process will assure the return of the appropriate amount to CMS.

B. Interest on the Overpayment: It is requested that the recommendation to refund \$2,958,449 for imputed interest be eliminated from the report. There appears to be no specific evidence that the State earned interest in this case. Likewise, there appears to be no statutory or regulatory basis for the imposition of this interest charge. Revised Department of Treasury regulations at 31 CFR Part 205 enacted on May 10, 2002, and effective June 24, 2002 after a Notice of Proposed Rule Making published in the Federal Register on October 12, 2000, considered this issue and excluded this type of interest. This penalty was rejected in deference to specific program and debt collection regulations. The applicable program and debt collection regulations are clear that interest is imposed only when a disallowance is formally issued by the cognizant federal agency and after the State is afforded an opportunity to return the funds. In this case, no disallowance has been issued and the State was specifically requested not to return the funds pending completion of the audit. As a result, interest has not been imputed in any previous case involving program disallowances, to include a previous disallowance involving the DSH program. Interest would only be levied if the State chose to retain the amount of the disallowance, pending Appellate Board review and only after the Appellate Board deemed that the disallowance was proper. In that event, interest would be levied from the date of notice from the program and payment was made by an appropriate decreasing adjustment.

In the alternative, if imputed interest is deemed to be appropriate in this case, the State requests that it be provided with the actual interest calculations made by the OIG to


arrive at the \$2,958,449 figure, since it has not been established that the State actually earned interest on the federal funds. The State would also request time to study the information and determine if indeed the State earned money on the overclaims. The State drew down funds related to the claims at various times, and therefore the total amount subject to interest at any time would have varied. Further, New Jersey is continually balancing funding needs through investing and short-term borrowing. In numerous instances during this audit period the State was required to borrow funds to meet current obligations. Thus, the cost of borrowing, which is not an allowable indirect program cost, should be credited against the amount alleged to have been earned by the State.

2. DMAHS should thoroughly review all work performed by outside consultants to assure the veracity of future claims to the Federal Government.

It is the policy and practice of DMAHS to submit accurate claims to the federal government. However, we are always eager to upgrade and improve our procedures with a view to enhancing the accuracy of the claims we submit. Therefore, we are revising our review procedures and additional steps will be taken to verify the accuracy of future claims.

Please be advised that the extensive and professional efforts of the auditors responsible for this report are greatly appreciated. Your staff exhibited significant patience and minimized the burden on State staff in the course of this audit.

If you have any questions or require additional information, please contact me or Kathryn A. Plant, Acting Director, DMAHS, at 609-588-2600.

Sincerely,

Gwendolyn L. Harris
Commissioner

GLH:2
c: Kathryn Plant