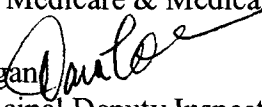




JAN - 9 2004

TO: Dennis G. Smith
Acting Administrator
Centers for Medicare & Medicaid Services

FROM: Dara Corrigan 
Acting Principal Deputy Inspector General

SUBJECT: Review of Acute Care Hospital Prison Inmate Expenditures Claimed by New Jersey to the Disproportionate Share Hospital Program for the Period July 1, 1997 Through June 30, 2001 (A-02-02-01028)

We are alerting you to the issuance of the subject final audit report within 5 business days from the date of this memorandum. A copy of the report is attached. This is the third in a series of reports on Medicaid disproportionate share hospital (DSH) claims that were prepared by a consultant under a contingency fee contract and submitted by New Jersey for Federal reimbursement. The purpose of the contract was to increase Federal reimbursement by identifying and submitting to the Federal Government unclaimed State expenses. We became aware of this contract and related problems during a previous audit.

The objective of our review was to determine whether prison inmates' health service costs claimed by New Jersey as acute care DSH expenditures were allowable for Federal reimbursement.

The DSH program originated with the Omnibus Budget Reconciliation Act of 1981, which authorized State agencies to make additional payments to hospitals that serve a disproportionately large number of low-income patients with special needs. Through the Centers for Medicare & Medicaid Services (CMS), the Federal Government shares in these payments. The New Jersey State plan approved by CMS allowed DSH payments to acute care hospitals for health services provided to Medicaid beneficiaries and uninsured individuals, but excluded DSH payments for prison inmate care.

From July 1, 1997 through June 30, 2001, New Jersey was reimbursed \$22.2 million (\$11.1 million Federal share) for inmates' health care under the Medicaid DSH program. We concluded that the entire amount was unallowable and not reimbursable under the provisions of the State plan. We also determined that New Jersey relied solely on the contractor to prepare and document the additional acute care DSH claims and failed to ensure the accuracy of the claims before submitting them for Federal reimbursement.

We recommended that New Jersey (1) refund \$11,114,820 to the Federal Government, (2) adhere to its State plan requirements and CMS's August 16, 2002 policy clarification

when submitting future DSH claims for Federal reimbursement, and (3) review all work performed by consultants to ensure the veracity of future Medicaid claims to the Federal Government.

New Jersey officials disagreed that the costs claimed under the DSH program were unallowable. They contended that the costs claimed for Federal reimbursement were not payments but adjustments to the Medicaid reimbursement rate for hospital services provided to Medicaid-eligible patients. New Jersey also stated that the CMS policy clarification regarding inmates of correctional facilities did not support our finding on unallowable costs. Lastly, New Jersey contended that its State plan precluded claiming only the costs of medical facilities operated within a correctional facility.

We continue to believe that these costs are unallowable. The contractor identified the claims as costs for providing inpatient and outpatient medical services to prison inmates. According to the New Jersey State plan, such costs are not eligible as DSH payments.

We also believe that CMS's August 16, 2002 policy clarification letter supports our finding; it stipulates that the State may not make DSH payments to cover the cost of inmates' care because inmates have a source of third-party coverage and are therefore not uninsured. In its letter to State Medicaid directors, CMS advised:

Inmates of correctional facilities are wards of the State. As such, the State is obligated to cover their basic economic needs (food, housing, and medical care) because failure to do so would be in violation of the eighth amendment of the Constitution. Therefore, because these individuals have a source of third party coverage, they are not uninsured, and the State cannot make disproportionate share hospital payments to cover the costs of their care.

Regarding New Jersey's assertion that its State plan precluded claiming only the costs of medical facilities operated in a correctional facility, we do not agree. The State plan provided that DSH payments to acute care hospitals should include payments by any State agency for health services provided to Medicaid beneficiaries and uninsured individuals with the exception of payments for prison inmate care. This section of the State plan applies to DSH payments to acute care hospitals. Therefore, we believe that New Jersey's explanation that the State plan exception applies only to medical facilities within a correctional facility is without merit. CMS officials agreed with our interpretation of the State plan.

If you have any questions or comments about this report, please do not hesitate to call me or your staff may contact George M. Reeb, Assistant Inspector General for the Centers for Medicare & Medicaid Audits, at (410) 786-7104. To facilitate identification, please refer to report number A-02-02-01028 in all correspondence.

Attachment



DEPARTMENT OF HEALTH & HUMAN SERVICES

Office Of Inspector General
Office Of Audit Services

JAN 13 2004

Region II
Jacob K. Javits Federal Building
26 Federal Plaza
New York, NY 10278

Report Number: A-02-02-01028

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) report entitled "Review of Acute Care Hospital Prison Inmate Expenditures Claimed by New Jersey to the Disproportionate Share Hospital Program for the Period July 1, 1997 Through June 30, 2001." 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.

In accordance with the principles of the Freedom of Information Act (5 U.S.C. § 552, as amended by Public Law 104-231), OIG reports issued to the Department's grantees and contractors are made available to members of the press and general public to the extent information contained therein is not subject to exemptions in the act which the Department chooses to exercise (see 45 CFR part 5).

To facilitate identification, please refer to report number A-02-02-01028 in all correspondence.

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

Direct Reply to HHS Action Official:

Ms. Sue Kelly
Associate Regional Administrator
Division of Medicaid and Children's Health
Centers for Medicare & Medicaid Services, Region II
Department of Health and Human Services
26 Federal Plaza, Room 3811
New York, New York 10278

Department of Health and Human Services

**OFFICE OF
INSPECTOR GENERAL**

**REVIEW OF ACUTE CARE HOSPITAL
PRISON INMATE EXPENDITURES
CLAIMED BY NEW JERSEY TO THE
DISPROPORTIONATE SHARE
HOSPITAL PROGRAM FOR THE
PERIOD JULY 1, 1997 THROUGH
JUNE 30, 2001**



**JANUARY 2004
A-02-02-01028**

EXECUTIVE SUMMARY

OBJECTIVE

The objective of our review was to determine whether prison inmates' health service costs claimed by New Jersey as acute care disproportionate share hospital (DSH) expenditures were allowable for Federal reimbursement. These costs were incurred from July 1, 1997 through June 30, 2001.

SUMMARY OF FINDINGS

New Jersey claimed and was reimbursed \$22.2 million (\$11.1 million Federal share) for prison inmates' inpatient and outpatient health care costs under the Medicaid DSH program. We found that the entire amount was unallowable. The New Jersey State plan explicitly excluded any Federal funding for the cost of health services provided to prison inmates, and an August 16, 2002 policy clarification by the Centers for Medicare & Medicaid Services (CMS) further prohibited Federal DSH reimbursement for prison inmate costs.

Deloitte Consulting identified these costs under a contingency fee contract with New Jersey. The purpose of the contract was to generate increased Federal reimbursement by identifying and submitting State expenses not previously claimed for Federal reimbursement. We determined that the State agency relied solely on Deloitte to prepare these claims and, contrary to Federal requirements, failed to ensure the veracity of the claims before submitting them for Federal reimbursement.

RECOMMENDATIONS

We recommend that New Jersey:

- refund \$11,114,820 to the Federal Government,
- adhere to its State plan requirements and CMS's policy clarification when submitting future DSH claims for Federal reimbursement, and
- review all work performed by consultants to ensure the veracity of future Medicaid claims to the Federal Government.

AUDITEE'S COMMENTS

The full text of New Jersey's comments is included as an appendix to this report. In summary, New Jersey disagreed that the costs claimed under the DSH program were unallowable. With regard to our recommendation to review all work performed by consultants, New Jersey stated that it was revising its review procedures and would take additional steps to verify the accuracy of future claims.

New Jersey officials contended that the costs claimed for Federal reimbursement were not payments but adjustments to the Medicaid reimbursement rate for hospital services provided to Medicaid-eligible patients. New Jersey also stated that the CMS policy clarification regarding inmates of correctional facilities did not support our finding on unallowable costs. Lastly, New Jersey contended that its State plan precluded claiming only the costs of medical facilities operated within a correctional facility.

OFFICE OF INSPECTOR GENERAL'S RESPONSE

We continue to believe that these costs are unallowable. The contractor identified the claims as costs for providing inpatient and outpatient medical services to prison inmates. According to the New Jersey State plan, such costs are not eligible as DSH payments.

We also believe that CMS's August 16, 2002 policy clarification letter supports our finding; it stipulates that the State may not make DSH payments to cover the cost of inmates' care because inmates have a source of third-party coverage and are therefore not uninsured. In its letter to State Medicaid directors, CMS advised:

Inmates of correctional facilities are wards of the State. As such, the State is obligated to cover their basic economic needs (food, housing, and medical care) because failure to do so would be in violation of the eighth amendment of the Constitution. Therefore, because these individuals have a source of third party coverage, they are not uninsured, and the State cannot make disproportionate share hospital payments to cover the costs of their care.

Regarding New Jersey's assertion that its State plan precluded claiming only the costs of medical facilities operated in a correctional facility, we do not agree. The State plan provided that DSH payments to acute care hospitals should include payments by any State agency for health services provided to Medicaid beneficiaries and uninsured individuals with the exception of payments for prison inmate care. This section of the State plan applies to DSH payments to acute care hospitals. Therefore, we believe that New Jersey's explanation that the State plan exception applies only to medical facilities within a correctional facility is without merit. CMS officials agreed with our interpretation of the State plan. Consequently, we continue to recommend that New Jersey refund \$11,114,820 to the Federal Government.

TABLE OF CONTENTS

	<u>Page</u>
INTRODUCTION	1
BACKGROUND	1
OBJECTIVE, SCOPE, AND METHODOLOGY.....	2
FINDINGS AND RECOMMENDATIONS	3
STATE PLAN PROHIBITS DSH PAYMENTS FOR INMATE CARE	3
CMS POLICY CLARIFICATION EXCLUDES DSH PAYMENTS FOR PRISONERS	3
ALL PRISON INMATE CLAIMS ARE UNALLOWABLE	4
NEW JERSEY DID NOT REVIEW PRISON INMATE CLAIMS	5
RECOMMENDATIONS	5
AUDITEE'S COMMENTS	5
OFFICE OF INSPECTOR GENERAL'S RESPONSE	6
APPENDIX - NEW JERSEY COMMENTS	

INTRODUCTION

BACKGROUND

Disproportionate Share Hospital Program

The Medicaid DSH program originated with the Omnibus Budget Reconciliation Act of 1981, which authorized State agencies to make additional payments to hospitals that serve a disproportionately large number of low-income patients with special needs. Section 1923(g) of the Social Security Act stipulated that annual DSH payments to each hospital not exceed the respective hospital-specific limit calculated using individual State plan guidelines. The Federal Government and the States share in these payments. At the Federal level, CMS is responsible for administering the DSH program.

Within a broad legal framework, each State designs and administers its own Medicaid program. Each State prepares a State plan that defines how a State will operate its Medicaid program, including its DSH program, and is required to submit the plan for CMS approval. In New Jersey, the Department of Human Services, Division of Medical Assistance and Health Services serves as the Medicaid State agency and administers the DSH program.

New Jersey's Use of Consultant

On December 9, 1996, the New Jersey Department of the Treasury, Office of Management and Budget awarded a contingency fee contract to Deloitte Consulting. 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 to the Federal Government unclaimed State expenses. According to the terms of the contract, Deloitte was to receive a percentage ranging from 6 to 7½ percent of the Federal funds recovered.

Recognizing the DSH program's potential for Federal fund enhancement, New Jersey and Deloitte targeted payments for services and other health-related activities made on behalf of Medicaid recipients and uninsured individuals by any State agency and not previously submitted for Federal reimbursement. As a result of Deloitte's efforts, the New Jersey Division of Medical Assistance and Health Services submitted claims for, and was reimbursed, \$586.7 million (\$293.4 million Federal share) in DSH funds. Of this amount, \$233 million (\$116.5 million Federal share) was claimed for payments to acute care hospitals. In reviewing the documentation for these claims, we identified \$22.2 million (\$11.1 million Federal share) of acute care hospital claims for prison inmates; these claims are the subject of this report.¹

¹ We separately reviewed the remaining acute care hospital claims: \$54.9 million in duplicate claims (A-02-01-01037, issued February 25, 2003); \$45.5 million in Federal nonparticipating claims (A-02-02-01040, issued July 9, 2003); and \$110.4 million in contractual services (review ongoing).

OBJECTIVE, SCOPE, AND METHODOLOGY

Objective

The objective of our review was to determine whether prison inmates' health service costs claimed by New Jersey as acute care DSH expenditures were allowable for Federal reimbursement.

Scope

Our audit period covered July 1, 1997 through June 30, 2001.

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.

Methodology

To accomplish our objective, we:

- reviewed the Omnibus Budget Reconciliation Act of 1981 and 1993, section 1923 of the Social Security Act, the New Jersey State plan, and other applicable criteria;
- reviewed the New Jersey Office of Management and Budget 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 between Deloitte and the New Jersey Office of Management and Budget;
- obtained from the State agency the universe of acute care hospital claims totaling \$233 million (\$116.5 million Federal share) prepared by Deloitte and reconciled the claims to the Quarterly Medicaid Statement of Expenditures for the Medical Assistance Program (Form CMS-64) submitted to the Federal Government for reimbursement under the DSH program;
- selected from this universe the 978 claims totaling \$22.2 million (\$11.1 million Federal share) that represented medical expenditures paid by the New Jersey Department of Corrections for prison inmates;-
- tested 30 of the 978 claims to verify that they were, in fact, for medical expenditures related to prison inmates as Deloitte had identified them;² and

² These tests constituted discovery sampling, which is used to verify that the rate of incidence is near 100 percent.

- discussed the audit results with New Jersey officials.

We conducted our fieldwork at the State agency offices in Mercerville, NJ, and performed our review in accordance with generally accepted government auditing standards.

FINDINGS AND RECOMMENDATIONS

Contrary to the New Jersey State plan, prison inmate costs totaling \$22.2 million (\$11.1 million Federal share) were improperly claimed for Federal reimbursement under the New Jersey Medicaid DSH program. CMS reimbursed these claims, which included inpatient and outpatient medical services, for State expenditures incurred from July 1, 1997 through June 30, 2001. New Jersey officials advised us that they had relied on Deloitte to prepare these claims and had not verified their veracity.

STATE PLAN PROHIBITS DSH PAYMENTS FOR INMATE CARE

The approved New Jersey State plan contained a provision prohibiting DSH payments for prison inmate care. Attachment 4.19A, page I-269 of the plan, which applies to our audit period, states:

Disproportionate Share Hospital (DSH) payments to acute care hospitals shall include payments by any agency of the State of New Jersey for health services provided to Medicaid beneficiaries and uninsured individuals. These payments shall be made to each hospital at the amount of the payment by the State agency for Medicaid and uninsured individuals not to exceed 100 percent of the costs incurred by the hospital during the year serving Medicaid beneficiaries and uninsured individuals less Medicaid payments including any other DSH payment methodology and payment from or on behalf of uninsured patients. The DSH payments shall replace the portion of total State agency payments to each hospital supporting services to Medicaid beneficiaries and uninsured patients. These payments from other agencies do not represent payments for prisoner inmate care.

CMS POLICY CLARIFICATION EXCLUDES DSH PAYMENTS FOR PRISONERS

In a policy clarification letter to all State Medicaid directors dated August 16, 2002, CMS addressed payments for prison inmate care:

Section 1923(g) of the Social Security Act establishes a hospital-specific DSH limit. It limits Medicaid payments to the costs incurred during the year of furnishing hospital services by the hospital to individuals who are either eligible for medical assistance under the State plan or have no health insurance or source of third party coverage for services provided during the year. Inmates of correctional facilities are wards of the State. As such, the State is obligated to

cover their basic economic needs (food, housing, and medical care) because failure to do so would be in violation of the eighth amendment of the Constitution. Therefore, because these individuals have a source of third party coverage, they are not uninsured, and the State cannot make DSH payments to cover the costs of their care.

Further, this conclusion is consistent with Section 1905(a) of the Social Security Act and the regulations at 42 CFR 435.1008 and 435.1009, which prohibit (FFP) [Federal financial participation] for services, provided to inmates of public institutions. To read section 1923(g) of the Social Security Act to permit additional DSH payments for the costs of prisoner care would directly conflict with this statutory prohibition, and effectively render the statutory prohibition meaningless.

While this letter was not sent to the State Medicaid directors until after our audit period, it did not, according to CMS, create new policy for States to follow; rather, it clarified existing policy. The letter provides that DSH payments may not be made to cover the costs of providing medical services to inmates.

ALL PRISON INMATE CLAIMS ARE UNALLOWABLE

The 978 DSH claims totaling \$22.2 million (\$11.1 million Federal share) and paid by the New Jersey Department of Corrections were related to medical services for prison inmates and are, therefore, unallowable. The determination that these claims were improper and unallowable was based on State plan requirements.

The improper claims related to inpatient and outpatient medical services provided to prison inmates by St. Francis Hospital. For example, a \$54,265 claim represented a Department of Corrections payment to the hospital for East Jersey State Prison's monthly allocation of the total hospital health services costs for prison inmates. The hospital was under contract with the State to provide services because it had a secure section for inmates who were admitted as inpatients. Once these inmates received care, they were returned to prison. Transferring inmates to the hospital for medical services did not change their status as prisoners; therefore, claiming these costs was inconsistent with provisions of the State plan.

We conclude that \$22.2 million (\$11.1 million Federal share) was improperly claimed.

NEW JERSEY DID NOT REVIEW PRISON INMATE CLAIMS

During our review, we asked New Jersey officials if they had reviewed the claims before submitting them to the Federal Government. They advised us that they had relied solely on Deloitte to prepare and document the additional acute care DSH claims, including prison inmate costs, and had not reviewed the veracity of the claims before submitting them for Federal reimbursement.

Federal requirements at 45 CFR § 95.505 stipulate that Medicaid State plans are comprehensive, written commitments by the States to supervise and administer the Medicaid program. In addition, the DSH claims submitted by New Jersey to CMS for reimbursement required State officials' signatures certifying that the expenditures were allowable in accordance with Federal regulations and the approved State plan.

RECOMMENDATIONS

We recommend that the State agency:

- refund \$11,114,820 to the Federal Government,
- adhere to its State plan requirements and CMS's policy clarification when submitting future DSH claims for Federal reimbursement, and
- review all work performed by consultants to ensure the veracity of future Medicaid claims to the Federal Government.

AUDITEE'S COMMENTS

The full text of New Jersey's comments is included as an appendix to this report. In summary, the State disagreed that the DSH claims were inappropriate. With regard to our recommendation to review all work performed by consultants, New Jersey stated that it was revising its review procedures and would take additional steps to verify the accuracy of future claims.

In its comments, New Jersey contended that our report incorrectly classified DSH adjustments for hospital services provided to Medicaid-eligible patients as payments for prison inmates' health care costs. New Jersey also stated that the CMS policy clarification regarding inmates of correctional facilities did not support our finding on unallowable costs. Lastly, New Jersey said that its State plan's statement that DSH payments do not represent payments for prison inmate care may be confusing; at the time this statement was added, the State intended to preclude claiming only the costs of medical facilities operated within a correctional facility.

OFFICE OF INSPECTOR GENERAL'S RESPONSE

We disagree with New Jersey officials. Deloitte identified these claims as costs for providing inpatient and outpatient medical services to prison inmates. According to the New Jersey State plan, the costs for medical services provided to prison inmates are not eligible as DSH payments. We discussed the State plan with CMS officials, who agreed with our interpretation of the prohibition on prison inmate costs as DSH claims.

We also disagree with New Jersey's assertion that CMS's August 16, 2002 policy clarification did not support our finding. The policy clarification stipulates that the cost of hospital services provided to inmates of correctional institutions may not be included

in the hospital-specific DSH payment limits. Contrary to this policy, New Jersey included DSH expenditures claimed for prison inmates' health care in its calculation of hospital-specific DSH limits. We believe that the CMS policy clarification supports our finding because it stipulates the State's obligation to cover an inmate's basic needs, including medical care, and states that because inmates have a source of third-party coverage, they are not uninsured. Therefore, the State may not make DSH payments to cover the cost of their care. While the policy clarification was not issued until after our audit period, it did not, according to CMS, create new policy; rather, it clarified existing policy. We believe that both the New Jersey State plan and the CMS policy clarification support our assertion that DSH payments may not be made to cover the cost of providing medical services to inmates.

Regarding New Jersey's contention that attachment 4.19A, page I-269 of its State plan may be confusing in stating that DSH payments do not represent payments for prison inmate care, we do not agree. Specifically, this attachment states that DSH payments to acute care hospitals should include payments by any State agency for health services provided to Medicaid beneficiaries and uninsured individuals with the exception of payments for prison inmate care. This section of the State plan applies to DSH payments to acute care hospitals. Therefore, New Jersey's explanation that the State plan exception applies only to medical facilities operating within a correctional facility is without merit.

We continue to recommend that New Jersey refund \$11,114,820 to the Federal Government.



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

JAMES E. MCGREEVEY
Governor

GWENDOLYN L. HARRIS
Commissioner

May 1, 2003

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

Report Number A-02-02-01028

Dear Mr. Horgan:

This is in response to your correspondence of February 28, 2003, concerning the draft audit report entitled "Review of Acute Care Hospital Prison Inmate Expenditures Claimed By The State Of New Jersey To The Disproportionate Share Hospital Program For The Period July 1, 1997 Through June 30, 2001." Your letter provides an opportunity to comment on the draft audit report.

The draft report contains two findings and three recommendations. The report makes the following findings: 1) New Jersey improperly claimed \$11,114,820 federal financial participation (FFP) for Medicaid disproportionate share hospital (DSH) adjustments and 2) the Division of Medical Assistance and Health Services (DMAHS) failed to assure the veracity of these claims prior to submitting them for federal reimbursement. The draft report asserts these DSH adjustments were payments for health care costs applicable to prison inmates and did not adhere to the New Jersey Medicaid State Plan. Additionally, the report indicates these DSH adjustments do not comply with the Centers for Medicaid and Medicare Services (CMS) guidance which prohibits FFP for prison inmate costs under the DSH program.

A review of the available documentation, however, indicates that the findings and the audit report should be revised. As explained more fully below, the finding that New Jersey improperly claimed FFP is not accurate and indicates an apparent misunderstanding of Medicaid DSH adjustments, the CMS guidance on this issue

Timothy J. Horgan
May 1, 2003
Page 2

and the New Jersey Medicaid State Plan. Instead, the claims at issue are proper as they seek reimbursement for allowable payments for health care services of Medicaid patients. In accordance with the applicable sections of the Social Security Act, the state only makes payments for hospital patients eligible for Medicaid. The state then seeks reimbursement only for these payments, which include mandatory DSH adjustments.

The Social Security Act at Section 1902 (a)(13)(A)(iv) requires states to establish Medicaid reimbursement rates for hospital services that take into consideration the situation of hospitals that serve a disproportionate number of low income patients. This Medicaid reimbursement, inclusive of DSH adjustments, provides payments to hospitals for covered services rendered to patients eligible for medical assistance as contained in the Medicaid State Plan (i.e., covered services rendered to Medicaid eligible beneficiaries). Consequently, claims for FFP for DSH expenditures reflect allowable payments to hospitals for services rendered to Medicaid eligible beneficiaries.

Medicaid DSH adjustments represent an increase or add-on to the Medicaid reimbursement rate for hospital services for Medicaid eligible patients. The DSH adjustment provides funding to the hospital in addition to the payment for providing services to Medicaid patients. The hospital's application of this additional funding to any specific patient or service is not restricted or otherwise prescribed by any federal statute or regulation. Therefore, it is not accurate to describe an amount paid as a Medicaid DSH adjustment, including the amounts referenced in the audit report, as payment for any services rendered to any patients other than covered services for Medicaid eligible patients. The audit report incorrectly classifies these DSH adjustments as payments for health care costs of prison inmates.

The DSH adjustments to Medicaid hospital rates are further defined at Section 1923 of the Social Security Act entitled "Adjustment in Payment for Inpatient Hospital Services Furnished by Disproportionate Share Hospitals". Section 1923 (g) states that hospital specific limits for DSH payments include the unreimbursed cost of providing services to patients who are either eligible for medical assistance or have no health insurance. This latter requirement is the subject of the CMS guidance referenced in the audit report.

The CMS guidance, issued more than a year after the period covered by this audit, expresses the opinion that inmates of correctional facilities are not uninsured. Therefore, the cost of hospital services provided to these patients cannot be included in the hospital specific DSH payment limit (i.e. costs incurred for services to Medicaid eligible and uninsured patients). Consequently, this CMS guidance is not directly applicable to a DSH adjustment claimed for FFP and is not supportive of the finding contained in the audit report. Instead, this guidance is applicable to the

calculation of the hospital specific limit applied to the total of state DSH adjustments from all sources.

The New Jersey Medicaid State Plan at Attachment 4.19A, page I-269, explains the applicable DSH adjustment process. This Attachment indicates that payments to hospitals by New Jersey State agencies are considered Medicaid DSH payments and will not exceed the hospital specific DSH payment limit. However, it appears this Attachment may be confusing where it states that these payments do not represent payments for prisoner inmate care. At the time this statement was added, New Jersey intended this sentence to preclude claiming for any costs of medical facilities operating within a correctional facility. Specifically, the costs of any hospital facilities operated by the state corrections agency are not eligible for DSH payments. This is likely the prohibition confirmed in discussions with state officials.

As stated above, the claims at issue are proper as they seek reimbursement for allowable health care services of Medicaid patients. The state seeks only reimbursement for payments, which include DSH adjustments, made for hospital patients eligible for Medicaid. Based on this information, it appears the finding that New Jersey improperly claimed FFP for DSH payments should be removed from the report.

Next, as to the finding that DMAHS failed to insure the veracity of these claims, DMAHS is revising its review procedures and will be taking additional steps to verify the accuracy of future claims.

In summary, the recommendations contained in the report and our responses are provided below:

1. *The Division of Medical Assistance and Health Services should refund \$11,114,820 to the Federal Government for prison inmate costs improperly claimed under the DSH program and paid by CMS.*

As explained above, New Jersey does not agree that this amount was improperly claimed as FFP. Additionally, it is requested that the audit report be revised to eliminate this recommendation.

2. *The Division of Medical Assistance and Health Services should adhere to its state plan requirements and CMS guidance when submitting DSH claims to CMS for reimbursement.*

The Division of Medical Assistance and Health Services has adhered and will continue to adhere to its state plan requirements and CMS guidance when submitting DSH claims to CMS for reimbursement.

Timothy J. Horgan
May 1, 2003
Page 4

3. *The Division of Medical Assistance and Health Services 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, as previously stated, we are revising our review procedures and will be taking additional steps to verify the accuracy of future claims.

The opportunity to review and comment on this draft audit report is greatly appreciated. If you have any questions or require additional information please contact me or David Lowenthal, Assistant Chief Fiscal Officer, DMAHS, at (609) 588-2820.

Sincerely,

A handwritten signature in cursive script, appearing to read "Gwendolyn L. Harris" followed by "Acting for".

Gwendolyn L. Harris
Commissioner

GLH:2:cg
c: David Lowenthal