




AUG 30 2004

TO: Mark B. McClellan, M.D., Ph.D.
Administrator
Centers for Medicare & Medicaid Services

FROM: Lewis Morris 
Chief Counsel to the Inspector General

SUBJECT: Review of Medicaid Transportation Claims Made by School Health Providers
in New York State (A-02-03-01008)

Attached is an advance copy of our final report on Medicaid transportation claims made by school health providers in New York State. We will issue this report to the State within 5 business days. This report is the second in a series on New York State's Medicaid school health program. We are conducting these audits in response to a request by officials of the Centers for Medicare & Medicaid Services (CMS).

Our objective was to determine whether Federal Medicaid payments for transportation services claimed by 695 school and preschool providers in New York State were in compliance with Federal and State requirements. Our audit period covered September 1, 1993 through June 30, 2001, when such payments totaled \$72.3 million.

Pursuant to Federal laws and regulations, Federal guidance, State regulations, or the Medicaid State plan, (1) transportation services must be documented, (2) a Medicaid-reimbursable service other than transportation must be provided on days when transportation is claimed, (3) a child's individualized education plan or an individualized family service plan (child's plan/family plan) must be prepared and must include transportation services, (4) a minimum of two school health services other than transportation must be provided during the service month billed, and (5) transportation services must be actually provided.

We found that 97 of the 110 transportation claims in our statistically valid sample did not comply with Federal and State requirements and that 96 contained more than 1 deficiency. Specifically:

- Ninety claims did not comply with CMS guidance requiring date-specific documentation of transportation services. Of the 90 claims, 52 lacked only this documentation and 38 contained additional deficiencies.
- Twenty-eight claims did not comply with Federal and State requirements that a Medicaid-reimbursable school health service other than transportation be rendered on days when transportation was claimed.
- Twenty-one claims did not include a recommendation for transportation services in the child's plan/family plan as required by Federal law and State regulations.

- Sixteen claims did not meet the State plan requirement that a minimum of two school health services other than transportation be rendered during the month billed.
- Eleven claims did not comply with Federal and State regulations requiring that payment be made only when a Medicaid recipient is actually transported.
- Three claims lacked a child’s plan/family plan as required by Federal law.

We determined that some of these claims¹ were unallowable because they did not meet the requirements of Federal law or regulations, State regulations, or the approved State plan. Based on our sample, we estimate that \$17,238,611 in Federal Medicaid funding was unallowable.

We “set aside” other claims¹ for consideration by CMS and the State because Federal Medicaid law and regulations require that services be documented but do not specify how services should be documented. Based on our sample, set-aside claims totaled an estimated \$35,798,691 in Federal Medicaid funding. In these cases, providers’ documentation, such as bus rosters and attendance records, did not support the specific dates that students were transported or the number of daily round trips billed to Medicaid. Nevertheless, there was evidence that related school health services were rendered during the month that transportation services were claimed, and some of the students who received those health services may have also received transportation services.

We recommend that the State (1) refund \$17,238,611 to the Federal Government, (2) work with CMS to resolve \$35,798,691 in set-aside claims, (3) provide proper guidance on Federal and State Medicaid criteria to schools and preschools, (4) reinforce the need for school health providers to comply with Federal and State requirements, and (5) improve its monitoring of school health providers’ transportation claims to ensure compliance with Federal and State requirements.

In written comments on our draft report, State officials disagreed with most aspects of the report, including the audit approach, sampling methodology, criteria, and conclusions, and recommended that the draft report be withdrawn. The State said that the majority of our recommended disallowances were based on CMS’s policy requirement for date-specific documentation, which was not specified in law or regulation. The State also expressed concern that we had inappropriately applied Federal regulations designed for a medical office setting to an educational setting.

In response to the State’s comment that CMS’s policy requirement was not specified in law or regulation, we have modified our final report to set aside, rather than question, claims that lacked date-specific documentation. As to the State’s other comments, we planned this audit in conjunction with CMS and conducted the audit in accordance with generally accepted government auditing standards. Our sampling methodology, criteria, and conclusions are valid. Medicaid school health providers are required to follow the same documentation standards that apply to all Medicaid providers.

¹The 97 claims that did not comply with Federal or State requirements consisted of 45 claims that were unallowable plus 60 set-aside claims less 8 claims with both unallowable and set-aside amounts.

Page 3 – Mark B. McClellan, M.D., Ph.D.

If, during the resolution process, the State furnishes additional relevant documentation to CMS or if the State can prove that records were destroyed in accordance with established record retention policies, we will assist CMS in recalculating the projected unallowable or set-aside amount.

If you have any questions or comments about this report, please do not hesitate to call me, or your staff may contact George M. Reeb, Assistant Inspector General for the Centers for Medicare & Medicaid Audits, at (410) 786-7104 or Timothy J. Horgan, Regional Inspector General for Audit Services, Region II, at (212) 264-4620.

Attachment



DEPARTMENT OF HEALTH & HUMAN SERVICES

Office Of Inspector General
Office Of Audit Services

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

AUG 31 2004

Report Number: A-02-03-01008

Antonia C. Novello, M.D., M.P.H., Dr. P.H.
Commissioner
State of New York Department of Health
Empire State Plaza
14th Floor, Room 1408
Corning Tower
Albany, New York 12237

Dear Dr. Novello:

Enclosed are two copies of the Department of Health and Human Services (HHS), Office of Inspector General (OIG) final report entitled "Review of Medicaid Transportation Claims Made by School Health Providers in New York State." 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 are made available to members of the public to the extent the information 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-02-03-01008 in all correspondence.

Sincerely yours,

Timothy J. Horgan
Regional Inspector General
for Audit Services

Enclosures – as stated

Page 2 – Antonia C. Novello, M.D., M.P.H., Dr. P.H

Direct Reply to HHS Action Official:

Ms. Sue Kelly
Associate Regional Administrator
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Department of Health and Human Services

**OFFICE OF
INSPECTOR GENERAL**

**REVIEW OF MEDICAID
TRANSPORTATION CLAIMS MADE
BY SCHOOL HEALTH PROVIDERS
IN NEW YORK STATE**



**AUGUST 2004
A-02-03-01008**

Office of Inspector General

<http://oig.hhs.gov>

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In accordance with the principles of the Freedom of Information Act (5 U.S.C. 552, as amended by Public Law 104-231), Office of Inspector General, Office of Audit Services reports are made available to members of the public to the extent the information is not subject to exemptions in the act. (See 45 CFR part 5.)

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 HHS divisions will make final determination on these matters.



EXECUTIVE SUMMARY

OBJECTIVE

Our objective was to determine whether Federal Medicaid payments for transportation services claimed by 695 school and preschool providers in New York State were in compliance with Federal and State requirements. Our audit period covered September 1, 1993 through June 30, 2001, when such payments totaled \$72.3 million.

Officials of the Centers for Medicare & Medicaid Services (CMS) requested the audit.

SUMMARY OF FINDINGS

Of the 110 transportation claims in our statistical sample, 97 did not comply with Federal laws and regulations, Federal guidance, State regulations, or the Medicaid State plan. The primary Federal requirements governing transportation services are 42 CFR §§ 431.17 and 433.32, as well as section 1902(a)(27) of the Social Security Act. Other relevant Federal guidance includes Office of Management and Budget Circular A-87, a 1997 CMS Medicaid school-based technical assistance guide, and Medicaid State operations letters issued by CMS. Further, State regulations issued to the provider community govern the allowability of school health services.

Pursuant to these requirements, (1) transportation services must be documented, (2) a Medicaid-reimbursable service other than transportation must be provided on days when transportation is claimed, (3) a child's individualized education plan or an individualized family service plan (child's plan/family plan) must be prepared and must include transportation services, (4) a minimum of two school health services other than transportation must be provided during the service month billed, and (5) transportation services must be actually provided.

Of the 97 noncompliant claims, 96 contained more than 1 deficiency. Specifically:

- Ninety claims did not comply with CMS guidance requiring date-specific documentation of transportation services. Of the 90 claims, 52 lacked only this documentation and 38 contained additional deficiencies.
- Twenty-eight claims did not comply with Federal and State requirements that a Medicaid-reimbursable school health service other than transportation be rendered on days when transportation was claimed.
- Twenty-one claims did not include a recommendation for transportation services in the child's plan/family plan as required by Federal law and State regulations.
- Sixteen claims did not meet the State plan requirement that a minimum of two school health services other than transportation be rendered during the month billed.

- Eleven claims did not comply with Federal and State regulations requiring that payment be made only when a Medicaid recipient is actually transported.
- Three claims lacked a child’s plan/family plan as required by Federal law.

We determined that some of these claims¹ were unallowable because they did not meet the requirements of Federal law or regulations, State regulations, or the approved State plan. Based on our sample, we estimate that \$17,238,611 in Federal Medicaid funding was unallowable.

We “set aside” other claims¹ for consideration by CMS and the State because Federal Medicaid law and regulations require that services be documented but do not specify how services should be documented. Based on our sample, set-aside claims totaled an estimated \$35,798,691 in Federal Medicaid funding. In these cases, providers’ documentation, such as bus rosters and attendance records, did not support the actual dates that students were transported or the number of daily round trips billed to Medicaid. Nevertheless, there was evidence that related school health services were rendered during the month that transportation services were claimed, and some of the students who received those health services may have also received transportation services.

In our opinion, deficiencies in the sampled claims occurred because (1) the State provided to its schools and preschools improper guidance about CMS’s policy requirement for date-specific documentation, (2) school health providers did not comply with other guidance they had received, and (3) the State did not adequately monitor transportation claims from providers for compliance with Federal and State requirements.

RECOMMENDATIONS

We recommend that the State:

- refund \$17,238,611 to the Federal Government
- work with CMS to resolve \$35,798,691 in set-aside claims
- provide proper guidance on Federal and State Medicaid criteria to schools and preschools
- reinforce the need for school health providers to comply with Federal and State requirements
- improve its monitoring of school health providers’ transportation claims to ensure compliance with Federal and State requirements

¹The 97 claims that did not comply with Federal or State requirements consisted of 45 claims that were unallowable plus 60 set-aside claims less 8 claims with both unallowable and set-aside amounts.

STATE'S COMMENTS

In written comments on our draft report, State officials disagreed with most aspects of the report, including the audit approach, sampling methodology, criteria, and conclusions, and recommended that the draft report be withdrawn. The State said that the majority of our recommended disallowances were based on CMS's policy requirement for date-specific documentation, which was not specified in law or regulation. The State also expressed concern that we had inappropriately applied Federal regulations designed for a medical office setting to an educational setting. The full text of the State's comments is included as Appendix E.

OFFICE OF INSPECTOR GENERAL'S RESPONSE

In response to the State's comment on CMS's policy requirement for date-specific documentation, we have modified our final report to set aside, rather than question, some claims. As to the State's other comments, we planned this audit in conjunction with CMS and conducted the audit in accordance with generally accepted government auditing standards. Our sampling methodology, criteria, and conclusions are valid. Medicaid school health providers are required to follow the same documentation standards that apply to all Medicaid providers.

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- C – Deficiencies of Each Sampled Claim
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- E – New York State’s Comments

Glossary of Abbreviations and Acronyms

CFR	Code of Federal Regulations
CMS	Centers for Medicare & Medicaid Services
HCFA	Health Care Financing Administration
IDEA	Individuals with Disabilities Education Act
MA	Medical Assistance
OIG	Office of Inspector General

INTRODUCTION

BACKGROUND

The Medicaid Program

Under Title XIX of the Social Security Act (the Act), the Medicaid program pays the health care costs of persons who qualify because of medical condition, economic condition, or other qualifying factors. Medicaid costs are shared between the Federal Government and the States. Within the Federal Government, CMS administers the Medicaid program.

To participate in Medicaid, a State must submit and receive CMS's approval of a State plan. The State plan is a comprehensive document describing the nature and scope of the State's Medicaid program and the State's obligations to the Federal Government. Medicaid pays for medically necessary services that are specified in Medicaid law when included in the State plan and when provided to individuals eligible under the State plan.

Medicaid Coverage of School Health Services

Section 411(k)(13) of the Medicare Catastrophic Coverage Act of 1988 (Public Law 100-360) amended section 1903(c) of the Act to permit Medicaid payment for medical services provided to children under the Individuals with Disabilities Education Act (IDEA) through a child's plan/family plan.

In August 1997, CMS issued a school-based guide entitled "Medicaid and School Health: A Technical Assistance Guide." According to this guide, school health-related services included in a child's plan/family plan may be covered if all relevant statutory and regulatory requirements are met. In addition, the guide provides that a State may cover services included in a child's plan/family plan as long as (1) the services are listed in section 1905(a) of the Act and are medically necessary; (2) all Federal and State regulations are followed, including those specifying provider qualifications; and (3) the services are included in the State plan or are available under the Early and Periodic Screening, Diagnostic and Treatment Medicaid benefit. Covered services may include but are not limited to physical therapy, occupational therapy, speech pathology/therapy services, psychological counseling, nursing, and transportation services.

New York's Medicaid Program

In New York State, the Department of Health is the State agency responsible for operating the Medicaid program. Within the Department of Health, the Office of Medicaid Management administers the Medicaid program. The Department of Health uses the Medicaid Management Information System, a computerized payment and information reporting system, to process and pay Medicaid claims, including school health claims.

The Department of Health and the State Education Department developed the State's school supportive health services and preschool supportive health services programs. In general, under the school program, 5- to 21-year-old students receive school health services from their local school districts. Under the preschool program, 3- to 4-year-old children receive school health services through their county offices.

The Federal share of school health claims was 50 percent during our audit period. Under the State's Medicaid program, only the Federal share is actually paid to school health providers. The State share is taken from the school district's or county's annual State education aid appropriation. In addition, the State takes back 50 percent of the Federal share from the school districts, leaving them with 25 percent of each claim submitted, and 59.5 percent from the counties (preschools), leaving them with 20.25 percent of each claim submitted.

Transportation claims paid by the State's Medicaid Management Information System show a service date of the first of the month for services generally rendered during that month. A field on the Medicaid claim form shows the number of days claimed per month by school health providers. Medicaid reimburses school-based transportation claims based on the number of days billed multiplied by a daily rate. The daily rate for round-trip transportation was \$25 for school health providers in Nassau, Suffolk, and Westchester Counties and \$11.50 for the other counties included in our audit. Until July 1, 1999, Medicaid reimbursed transportation by a common carrier, such as a school bus, or by a "specialized" vehicle, such as a wheelchair bus or van, an ambulette, or an invalid coach. In a May 1999 letter, CMS advised State Medicaid directors that beginning July 1, 1999, only specialized transportation could be billed to Medicaid.

From April 1, 1990 through June 30, 2001, the State received more than \$2.5 billion of Federal Medicaid funding for over 15.3 million school health claims. Of this amount, about \$2.25 billion was for school districts and approximately \$291 million was for preschools. The Federal share for Medicaid school health transportation services was \$242.7 million, of which \$72.3 million represented the audit universe for our review period.

OBJECTIVE, SCOPE, AND METHODOLOGY

Objective

Our objective was to determine whether Federal Medicaid payments for transportation services claimed by 695 school and preschool providers in New York State were in compliance with Federal and State requirements.

Scope and Methodology

Our audit period covered September 1, 1993 through June 30, 2001. During our audit, we did not review the overall internal control structure of the State or the Medicaid program. Rather, our internal control review was limited to the objective of our audit.

To accomplish our objective, we:

- met with CMS regional and central office officials to plan the audit
- reviewed Federal and State regulations and guidelines
- reviewed prior survey work that we had performed at 11 schools and preschools in the State
- held discussions with State Department of Health and Education Department officials to gain an understanding of the State's school and preschool programs
- ran computer programming applications at the Medicaid Management Information System fiscal agent that identified 15,311,862 school and preschool claims totaling over \$5 billion (\$2.5 billion Federal share) for the period April 1, 1990 through June 30, 2001
- eliminated from our programming applications all duplicate school and preschool claims that were identified in an Office of the State Comptroller audit report (Report 2000-S-1)
- eliminated claims from six school health providers (New York City Board of Education school and preschool; Ogdensburg, Ithaca, and Elmira school districts; and a preschool provider), which we reviewed separately

We extracted from the programming applications the transportation claims for our September 1, 1993 through June 30, 2001 audit period. These applications identified 1,309,924 transportation claims totaling \$144,592,334 (\$72,296,470 Federal share) made by 695 school and preschool providers. These claims were made on behalf of 89,850 beneficiaries (students). Of the 695 providers, 639 were school districts and 56 were counties. We then used stratified random sampling techniques to select a sample of 110² claims from the universe of 1,309,924 transportation claims. Appendix A contains the details of our sample design and methodology.

On May 24, 2002, we issued letters to the 79 school and preschool providers in our sample, requesting documentation to support the 110 sampled claims. Appendix B contains the instructions that were attached to our letters. In conjunction with CMS officials, we developed worksheets that contained the criteria applied to each sampled claim. We also reviewed the documentation submitted by the sampled providers to determine if the claims were allowable. If we determined that a claim appeared unallowable based on the initial documentation submitted, we followed up with provider officials to (1) determine if additional documentation existed to support the claim, (2) obtain clarification of the submitted documentation, and (3) verify our review determinations.

²We first distributed a sample of 100 claims over 3 strata of Federal amounts paid. If the basic stratification scheme for the sample of 100 allocated fewer than 30 claims to a particular stratum, the sample size for that stratum was increased to 30 to conform to our standards. The resulting sample size was 110.

We used a variables appraisal program to estimate the dollar impact of our sample results in the total population of 1,309,924 transportation claims. We estimated both a recommended financial adjustment and a set-aside amount.

We conducted our review in accordance with generally accepted government auditing standards. We performed fieldwork at the State Department of Health, the State Medicaid Management Information System fiscal agent, and CMS in Baltimore.

FINDINGS AND RECOMMENDATIONS

Of the 110 transportation claims in our statistical sample, 97 did not comply with Federal laws and regulations, Federal guidance, State regulations, or the Medicaid State plan. Of the 97 claims, 96 contained more than 1 deficiency. The schedule below summarizes the deficiencies noted and the number of claims that contained each type of deficiency. Appendix C shows our determination on the deficiencies in each sampled claim.

Type of Deficiency	Number of Deficient Claims³
1. No date-specific service delivery documentation and lack of complete assurance that services were rendered	90
2. Daily round trips claimed in excess of number of days when health services were rendered	28
3. Transportation services not included in child’s plan/family plan	21
4. No assurance that a minimum of two school health services were rendered during the month	16
5. Transportation services not rendered	11
6. No child’s plan/family plan	3

In our opinion, these deficiencies occurred because:

- The State provided to its schools and preschools improper guidance about CMS’s policy requirement for date-specific documentation (deficiency 1 above).
- School health providers did not comply with guidance they had received dealing with deficiencies 2 through 6 above.
- The State did not adequately monitor transportation claims from providers for compliance with Federal and State requirements.

³Total exceeds 97 because 96 claims contained more than 1 error.

DEFICIENCIES NOTED IN SAMPLED CLAIMS

The sections below discuss the six types of deficiencies noted in the sampled claims and the criteria that we applied in determining whether claims were in compliance with Federal and State requirements.

1. No Date-Specific Service Delivery Documentation and Lack of Complete Assurance That Services Were Rendered

Federal regulations at 42 CFR §§ 431.17 and 433.32, as well as section 1902(a)(27) of the Act and an August 1997 CMS guide entitled “Medicaid and School Health: A Technical Assistance Guide,” require that services claimed for Federal Medicaid funding be documented. These criteria, however, do not specify how services must be documented. In addition, a July 29, 1994 CMS letter to the State provides, “In general, HCFA [Health Care Financing Administration⁴] policy requires the development and maintenance of sufficient written documentation to support each Medicaid service for which billing is made.” State guidance issued in February 1992 informed school health providers that Federal law and State regulations require providers to maintain financial and health records necessary to fully disclose the extent of services, care, and supplies provided to Medicaid recipients.

Of the 110 sampled claims, 90 did not have documentation that identified the specific dates on which services were rendered. Providers did not submit any date-specific service delivery documentation for the 90 claims. Fifty-two of the 90 claims lacked only this documentation, and 38 contained additional deficiencies.

Many providers maintained lists (bus routes) or bus rosters of students who were to be transported, but these schedules did not document the actual dates that students were transported. Since transportation was claimed based on the number of days billed multiplied by a daily rate, date-specific documentation, in our opinion, should have been maintained for each student. Further, the transportation documentation should have correlated with the dates when school health services were provided. Lacking date-specific documentation, we did not have complete assurance that transportation services were rendered for the 90 claims.

2. Daily Round Trips Claimed in Excess of Number of Days When Health Services Were Rendered

CMS’s Medicaid State Operations Letter 94-06, issued in February 1994, states that consistent with section 1903(c) of the Act, Medicaid will reimburse transportation to onsite services for children under IDEA if (1) the child receives a Medicaid-covered service other than transportation and (2) both the covered service and the transportation are included in the child’s plan/family plan.

⁴CMS was formerly known as HCFA.

In addition, State regulations at New York Compilation of Codes, Rules and Regulations, Title 18, section 505.10(d)(7) state:

Payment is available for transportation services provided in order for the recipient to receive an MA [medical assistance] covered service if the recipient receives such services (other than transportation services) at school or off the school premises and both the covered service and transportation service are included in the recipient's individualized education plan. Payment is available for transportation services provided in order for the recipient . . . to receive an MA covered service if both the covered service and transportation service are included in the recipient's interim or final individualized family services plan.

Finally, State guidance issued in June 1994 and August 1995 provides that transportation services may be billed for a round trip once per day on a day that the student also receives a covered Medicaid school health service.

For 28 sampled claims, Medicaid-reimbursable school health services other than transportation were not rendered on days when transportation was claimed. For example, one provider billed for 4 days of transportation but did not provide documentation showing that any Medicaid-reimbursable school health services had been rendered. Another provider billed for 24 days of transportation, but documentation showed that school health services other than transportation had been rendered on only 12 days. Therefore, in that case, the provider could have billed for only 12 transportation services. Additionally, for more than 1 year, this provider consistently billed for 24 transportation services per month. However, during this period, the number of monthly school health services other than transportation never reached 24.

3. Transportation Services Not Included in Child's Plan/Family Plan

Section 1903(c) of the Act permits Medicaid payment for medical services provided to children under IDEA that were included in a child's plan/family plan. According to Part B of IDEA, school districts must prepare a child's plan/family plan for each child that specifies all special education and related services needed by the child. Similarly, State regulations at New York Compilation of Codes, Rules and Regulations, Title 18, section 505.10 provide that transportation services may be billed to Medicaid if the need for transportation is listed in the child's plan/family plan.

For 21 sampled claims, the child's plan/family plan did not identify or recommend transportation services. These claims were therefore unallowable.

For an additional 10 sampled claims from 9 school health providers, the need for transportation services was stamped on the child's plan/family plan. Although we did not question these claims, we are concerned about the validity of using stamps because we found on visits to two school districts that State officials had encouraged school health providers to retroactively stamp "transportation" on the child's plan/family plan. An August 1994 e-mail by an official of one

school district stated that per State guidance, transportation could be claimed from April 1990 to the present. According to the e-mail, a State Education Department official had provided instructions on how to document transportation in the child's plan/family plan for previous years by stamping or writing "Transportation provided per district policy."

Because most of the providers in our audit had only one or two sampled claims, we did not determine whether the providers had similarly stamped the child's plan/family plan for additional children. A more detailed review at the providers with the 10 sampled claims would be needed to make this determination.

4. No Assurance That a Minimum of Two School Health Services Were Rendered During the Month

The approved State plan requires that providers render a minimum of two school health services other than transportation during the month that they claim Medicaid reimbursement for transportation. For 16 sampled claims, school health providers did not supply any documentation to show that they had rendered any Medicaid-reimbursable school health services other than transportation. Therefore, we had no assurance that a minimum of two school health services were provided during the month billed.

5. Transportation Services Not Rendered

According to Federal regulations at 42 CFR § 440.170, transportation expenses include the cost of travel necessary to secure a beneficiary's medical examinations and treatments. State regulations at New York Compilation of Codes, Rules and Regulations, Title 18, section 505.10(d)(5) provide that Medicaid will pay for transportation only if the beneficiary was actually transported in a vehicle.

For 11 sampled claims, providers billed for transportation services not rendered. For example, a preschool provider billed for 14 transportation services during June 1999, even though documents revealed that the student's parent transported the child to school starting in January 1999. In a second example, a school district billed for five transportation services during September 1996, while documents revealed that the student was discharged from the school district on March 31, 1996.

6. No Child's Plan/Family Plan

Section 1903(c) of the Act permits Medicaid payment for school health services that are identified in a child's plan/family plan. Pursuant to Part B of IDEA, school districts must prepare, for each child, a plan that specifies all needed special education and related services.

For three of the sampled claims, school health providers did not provide a child's plan/family plan.

CAUSES OF DEFICIENCIES IN CLAIMS

As discussed below, we found three main causes of the deficient claims.

State Guidance Was Improper

The State did not supply the provider community with proper guidance on Federal criteria concerning appropriate documentation to support Medicaid transportation claims. As a result, for 90 of the 110 sampled claims, school health providers submitted no date-specific documentation, such as a transportation log, to substantiate the specific number of transportation services rendered.

On June 30, 1994, the State wrote to CMS regarding acceptable documentation for transportation claims. The letter stated, “While transportation is traditionally documented by means of a ‘trip ticket’ or log, we are proposing the use of secondary documentation to substantiate the provision of transportation by school districts to MA special education recipients.” The State proposed the use of school attendance records and service records showing that the student received a medical service included in the child’s plan at the school site/contractor location.

On July 29, 1994, CMS responded that its policy requires the development and maintenance of sufficient written documentation to support each Medicaid service billed. At a minimum, according to CMS, the documentation should consist of (1) the specific service rendered, (2) the date and time the service was rendered, (3) who rendered the service, (4) the setting in which the service was rendered, and (5) the time it took to render the service, if relevant. CMS further stated:

Transportation is a separate Medicaid service even when furnished to children who are receiving services under IDEA. The above documentation requirements must be met. We do not believe that inferring that a child used Medicaid transportation to and from school because he/she attends school and receives a Medicaid service on a particular day meets the above requirements.

CMS’s letter concluded by stating, “We regret that we cannot support this proposal.”

Notwithstanding CMS’s rejection of the State’s proposal, the State did not advise the school health provider community to keep date-specific delivery documentation to support transportation services billed to Medicaid. Rather, the State continued to inform providers that the use of “secondary documentation,” such as bus rosters, was acceptable. Similarly, a January 2002 memorandum from the State Education Department to the provider community did not require providers to maintain date-specific service delivery documentation, such as transportation logs, to support their Medicaid claims. The guidance continued to incorrectly maintain that bus rosters were acceptable documentation.

This documentation does not meet the criteria specified in CMS’s 1994 letter because it represents scheduled transportation, not transportation that was actually rendered. Further, it does not support the number of transportation services billed to Medicaid and does not link the dates of transportation services billed and the dates of school health services rendered to students during the month.

School Health Providers Did Not Comply With Guidance

Unallowable claims were also submitted because school health providers did not comply with State guidance. For example, State guidance stipulated that transportation may be claimed only once per day on a day when the student also received a Medicaid-reimbursable school health service other than transportation. However, for 28 sampled claims, Medicaid-reimbursable school health services other than transportation were not rendered on days when transportation was claimed.

Additionally, for 21 sampled claims, the child’s plan/family plan did not identify or recommend transportation services as required by June 1994 State guidance.

Finally, State guidance specified that providers could claim transportation services only if they actually rendered the services. However, for 11 sampled claims, providers billed for transportation services not rendered.

The State Did Not Adequately Monitor Transportation Claims

The State did not adequately monitor transportation claims from school health providers for compliance with Federal and State requirements during its onsite reviews of documentation.

According to the State’s “Documentation Review Guidelines,” the purpose of a review is to determine whether a school health provider has appropriate documentation to support its claims. The transportation section of the guidelines states that reviewers will check the child’s plan/family plan for approved transportation and also check that transportation was claimed only once daily and only in conjunction with the delivery of another Medicaid-reimbursable service. However, the guidelines did not require reviewers to determine whether date-specific service delivery documentation existed to support billed transportation services.

PROJECTION OF DEFICIENCIES TO UNIVERSE OF CLAIMS

While 97 of the 110 transportation claims sampled were not in accordance with Federal and State requirements, we determined that some of these claims were unallowable and that others should be set aside for consideration by CMS and the State.⁵

⁵The 97 claims that did not comply with Federal or State requirements consisted of 45 claims that were unallowable plus 60 set-aside claims less 8 claims with both unallowable and set-aside amounts.

Recommended Financial Adjustment

This category includes 36 claims that were unallowable and 9 claims that were partially unallowable, for a total of 45 claims that did not meet the requirements of Federal law or regulations, State regulations, or the approved State plan. Extrapolating the results of our sample, we estimate that the State improperly claimed between \$17,238,611 and \$27,550,907 in Federal funds. The midpoint of the confidence interval amounted to \$22,394,759. The range shown has a 90-percent level of confidence with a sampling precision as a percentage of the midpoint of 23.02 percent. The details of our sample results and projection are shown in Appendix D, page 1 of 2.

Set-Aside Amount

We set aside other claims because Federal Medicaid law and regulations require that services be documented but do not specify how services should be documented. In these cases, providers' documentation, such as bus rosters and attendance records, did not support the actual dates that students were transported or the number of daily round trips billed to Medicaid. Nevertheless, there was evidence that related school health services were rendered during the month that transportation services were claimed, and some of the students who received those health services may have also received transportation services.

This category includes 52 claims with a full set-aside amount and 8 claims with a partial set-aside amount, for a total of 60 claims. Extrapolating the results of our sample, we estimate that the amount that the State and CMS will need to resolve is between \$35,798,691 and \$48,327,691 in Federal funds. The midpoint of the confidence interval amounted to \$42,063,191. The range shown has a 90-percent level of confidence with a sampling precision as a percentage of the midpoint of 14.89 percent. The details of our sample results and projection are shown in Appendix D, page 2 of 2.

RECOMMENDATIONS

We recommend that the State:

- refund \$17,238,611 to the Federal Government
- work with CMS to resolve \$35,798,691 in set-aside claims
- provide proper guidance on Federal and State Medicaid criteria to schools and preschools
- reinforce the need for school health providers to comply with Federal and State requirements
- improve its monitoring of school health providers' transportation claims to ensure compliance with Federal and State requirements

STATE'S COMMENTS AND OFFICE OF INSPECTOR GENERAL'S RESPONSE

In comments dated November 24, 2003, State officials disagreed with the findings and recommendations in our draft report and stated that the report should be withdrawn. Below are summaries of the main issues raised by the State and the Office of Inspector General's (OIG) response to those comments. The State's comments are included in their entirety as Appendix E.

Audit Period

State's Comments

State officials said that our September 1, 1993 through June 30, 2001 audit period was inconsistent with the audit periods that we used in reviewing other States' school health programs. State officials noted that the audit periods used in other States were usually the most recent fiscal year completed.

OIG's Response

The primary reasons for this audit were past OIG survey work that found numerous problems with the State's Medicaid school health claims, past CMS reviews dating back to 1993 that found problems with the State's claims, and a Department of Justice investigation of the State resulting from a Federal false claims action.

Documentation Requirements

State's Comments

According to State officials, the vast majority of our recommended disallowances concerned the requirement that school districts and counties maintain transportation logs even though Federal regulations did not contain this requirement. State officials believed that the records maintained by school districts met Federal documentation requirements as outlined in CMS's July 29, 1994 letter as follows:

1. *The specific service rendered:* The State responded that New York Education Law § 3635 mandated that transportation be provided to students and said that we would have to conclude that school districts failed to fulfill this State mandate solely because they failed to provide transportation logs.
2. *The date and time the service was rendered:* According to the State, the date and time for each student's pickup and dropoff were established before every school year.

3. *Who rendered the service:* The State responded that rosters or schedules provided by school districts clearly showed which bus and driver transported each student every day.
4. *The setting in which the service was rendered:* The State said that unless otherwise stated, the setting was a regular bus.
5. *The time it took to render the service, if relevant:* The State responded that the length of the bus trip was not relevant to Medicaid reimbursement.

State officials also noted that CMS's August 1997 Technical Assistance Guide did not mention the use of transportation logs as a requirement for documenting transportation services.

OIG's Response

For 90 of the 110 sampled claims, school health providers had no date-specific documentation to substantiate the specific number of transportation services rendered and billed to Medicaid. Because transportation services are reimbursed based on the number of days billed, we lacked complete assurance that transportation services billed were actually rendered without some type of date-specific service delivery documentation, such as transportation logs.

The State maintained that transportation services should be considered documented because school districts prepared bus rosters and students' pickup and dropoff times before each school year. However, this documentation did not support the actual dates that students were transported and did not meet CMS's policy requirement. Nevertheless, there was evidence that related school health services were rendered during the month that transportation services were claimed, and some of the students who received those health services may have also received transportation services. Therefore, we have set aside claims in which the only deficiency was the lack of date-specific documentation. CMS and the State should work together in resolving these claims.

Federal Guidance

State's Comments

State officials said that their ability to assist school districts in properly claiming Medicaid reimbursement had been compromised by the Federal Government's delay in responding to questions involving the interpretation of Federal regulatory requirements. Specifically, the officials believed that the Federal Government had failed to address the inconsistency between Federal guidance mandating that providers retain transportation logs and Federal law requiring only that providers maintain records to support their claims.

OIG's Response

We believe that CMS provided prompt, clear, and noncontradictory guidance to the State. As previously noted, the State's June 1994 inquiry proposed the use of "secondary documentation," such as school attendance records and other records showing that the student received a medical service, to substantiate the provision of transportation services billed. CMS responded a month later with its minimum documentation requirements. CMS also stated that it did "not believe that inferring that a child used Medicaid transportation to and from school because he/she attends school and receives a Medicaid service on a particular day meets the above requirements." Notwithstanding CMS's documentation requirements, we verified, for the 52 sampled claims whose only deficiency was the lack of date-specific documentation, that the children received other Medicaid school health services during the month that transportation was claimed.

Transportation in Child's Plan/Family Plan

State's Comments

State officials noted that Medicaid State Operations Letter 94-06 had created confusion for the State and school administrators by requiring that regular bus transportation be included in a child's plan/family plan. They maintained that according to IDEA, only specialized transportation was required to be included in a child's plan/family plan. They said that this misstatement by CMS resulted in stamping plans with the notation "transportation" in order to meet this new requirement.

OIG's Response

We disagree that IDEA requires the inclusion of only specialized transportation in a child's plan/family plan. According to Part B of IDEA, each plan must specify all specialized education and related services needed by the child. Part A of IDEA defines "related services" as "transportation, and . . . developmental, corrective, and other supportive services." Further, Medicaid State Operations Letter 94-06, as well as a February 16, 1994 letter from the Director of CMS's Medicaid Bureau, also specified that school transportation must be included in the child's plan/family plan. Finally, the State's own regulations at section 505.10(d)(7) and a June 1994 memorandum from the State Education Department require that transportation be listed in the child's plan/family plan and do not mention that transportation must be specialized.

Educational Versus Medical Model

State's Comments

State officials said that consistent with the development of a child's plan for disabled children under IDEA, schools had provided services covered under the school health program since 1975. Officials explained that when schools began to bill Medicaid for these services in 1993, it was

both reasonable and consistent with congressional intent that the schools documented and billed these services using an “educational” versus a “medical” model.

According to State officials, we challenged most of the claims on the grounds that school bus drivers did not maintain a running log of every child that got on and off a school bus. Officials said that applying this “medical model” approach to public school transportation not only would be unreasonably burdensome, but would threaten the health and safety of school children as well. State officials believed that the requirement for this type of documentation, a requirement found in neither statute nor regulation, would add considerable time to bus runs and distract drivers from their most important task—maintaining the safety of the children.

OIG’s Response

Medicaid was established as a payer of medical services, and school health providers that enroll as Medicaid providers are not exempt from Medicaid requirements on the provision of State plan services.

In guidance directed to the State and in its 1997 Technical Assistance Guide, CMS clearly delineated that school health providers were considered medical providers and that they must meet documentation standards that apply to all Medicaid entities. The law and regulations allowing Medicaid to be the primary payer for IDEA services provided in schools do not call for or allow a suspension or loosening of general Medicaid requirements. Specifically, the U.S. Department of Education’s 1999 final regulations on IDEA found at 34 CFR § 300.142(i) state that “Nothing in this part should be construed to alter the requirements imposed on a State Medicaid Agency, or any other agency administering a public insurance program by Federal statute, regulations or policy under title XIX, or title XXI of the Social Security Act or any other public insurance program.” This section clearly specifies that Medicaid requirements apply to school-based IDEA services.

As noted previously, we have set aside claims that lacked date-specific documentation to support the specific number of transportation services billed.

OIG Sample Design and Methodology

State’s Comments

State officials said that both the small sample size of 110 claims and the extrapolation of the sample results to nonaudited providers were invalid and inconsistent with appropriate audit practices. They stated that this extraordinarily small sample was not representative of most of the 1.3 million claims in the universe because the universe included payments to nearly 700 providers while OIG audited claims from only 79 providers. Officials believed that there was no reasonable basis to conclude that the errors noted in our draft report would be present in the documentation maintained by the providers that were not sampled.

OIG's Response

We disagree. We select our samples according to principles of probability; that is, every sampling unit has a known non-zero chance of selection. An estimate made from a sample is valid if it is unbiased or nearly so and if we can compute its margin of sampling error for a given probability.

To increase the expected precision of the estimates, we used stratification. Accordingly, the transportation claims were sorted in ascending order by the Federal amount paid, and using the cumulative square root of frequency method to determine dollar-value stratum boundaries and applying Neyman allocation, a sample of 100 claims was distributed over 3 strata. If the basic stratification scheme for the sample of 100 allocated fewer than 30 claims to a particular stratum, the sample size for that stratum was increased to 30 to conform to our standards. This approach is consistent with generally accepted statistical practices. Use of larger sample sizes usually has the advantage of yielding estimates with better precision without affecting the estimate of the mean. The expected result of better precision would typically be a larger lower bound for the confidence interval of the estimate. In this audit, the lower bound was used as the amount recommended for monetary recovery. With a larger sample size, the expected result would be a larger lower limit and a larger recommended disallowance.

The low percentage of total items that were sampled is not a relevant statistical issue. Again, an increased sample size affects precision and would be expected to narrow the confidence interval and increase the lower limit. The expected result again would be a larger recommended disallowance.

Records Retention

State's Comments

State officials said that New York's Medicaid providers were required to maintain records supporting their claims for only 6 years from the date of service. According to officials, the longer period covered by the audit and the examination of claims beyond the 6-year record retention period made it much more difficult for school districts to demonstrate their compliance.

OIG's Response

The State sent guidance to its school health providers specifying that documentation must be maintained for 6 years from the date of payment, not the date of service.

If, during the resolution process, additional relevant documentation is furnished to CMS or if the State can prove that records were destroyed in accordance with established record retention policies, we will assist the parties in recalculating the sample projections.

OIG Audit Methodology

State's Comments

State officials said that we had inappropriately listed the “no bus log” finding as two separate categories (categories B and C) in Appendix C. The officials were referring to the 90 claims in our sample that did not have date-specific service delivery documentation, such as transportation logs, to support transportation services billed and for which we lacked complete assurance that services were rendered. State officials said that although we noted that we were combining these reasons for reporting purposes, we did not actually do so.

OIG's Response

In both the draft and final reports, we clearly combined these two conditions. Further, in the final report, we have set aside those claims that had deficiencies only in categories B and C for consideration by CMS and the State.

If a claim met all of the criteria, we allowed the claim. If it failed one or more of the criteria other than B and C, we recommended a disallowance of the claim in full or in part depending on the circumstances.

State Guidance and Monitoring

State's Comments

State officials said that, contrary to the draft audit report, they had provided proper and timely guidance to schools and counties regarding CMS's requirements for transportation services. Officials stated that in June 1994 and August 1995, the State Education Department sent letters to school districts and counties noting that a list of students transported in accordance with district policy must be maintained. The letters also said that if daily logs reflecting the actual provision of services were maintained, they should be retained as documentation.

OIG's Response

As described earlier, we believe that improper State guidance caused a significant number of errors identified by our audit. Additionally, in our opinion, the State did not adequately monitor transportation claims for compliance with Federal and State requirements.

Analysis of Questioned Claims

State's Comments

State officials provided an analysis of the questioned claims and asserted that certain findings could be refuted if alternate documentation were accepted, the 6-year record retention

requirement were used, regulations were interpreted differently, or documentation previously not acceptable to us were reexamined.

OIG's Response

We disagree with the State's analysis of the questioned claims. We reviewed each of the sampled claims using a worksheet that encompassed Federal and State requirements. CMS officials reviewed and approved these worksheets. The State's analysis was not sufficient to reverse our determinations.

APPENDICES

SAMPLE DESIGN AND METHODOLOGY

Overview: A contracted statistical consultant developed the sample design and methodology for our audit of transportation claims.

Methodology: The methodology used in the audit was that of full probability sampling, enabling the auditors to compute (1) an unbiased estimate of the total amount of the overpayment for the universe and (2) an estimate of the standard error associated with the estimated overpayment.

Sampling Frame: The sampling frame was Federal Medicaid claims paid for transportation services claimed by 695 schools and preschools with service dates from September 1, 1993 through June 30, 2001. This frame contained 1,309,924 claims totaling \$72,296,470 of Federal funds.

Sampling Procedures: Stratification was deemed beneficial in increasing the expected precision of the estimates. Accordingly, the transportation claims were sorted in ascending order by the Federal amount paid, and using the cumulative square root of frequency method to determine dollar-value stratum boundaries and applying Neyman allocation, a sample of 100 claims was distributed over 3 strata. If the basic stratification scheme for the sample of 100 allocated fewer than 30 claims to a particular stratum, the sample size for that stratum was increased to 30 to conform to our standards. The overall layout of the sampling design was as follows:

Stratum Number	Stratum Range	Sample Size	Stratum Size	Federal Paid
1	>\$0 thru \$50	41	716,257	\$19,814,468
2	>\$50 thru \$90	30	385,525	26,103,881
3	>\$90	39	208,142	26,378,121
Total		110	1,309,924	\$72,296,470

Random Selection: Within each stratum, the claims were sorted by beneficiary identification number and then by service date in ascending order. The claims were then numbered sequentially from 1 to the stratum size. For each stratum, the required random selection numbers were generated by RAT STATS (May 1993 version), an approved software used in OIG sample auditing. The random selection numbers for each stratum were applied to select the claims to be examined in the audit.

Review Process: Documentation to support the claims that were randomly selected was requested from the school and preschool providers. If documentation supporting a sampled claim was not found, the Federal payment for that claim was considered an error. A Medicaid

claim or portion thereof that was questioned based on the lack of date-specific documentation to support the number of transportation services billed was separately projected as a set-aside.

Analysis of Audit Results: A database was produced showing the amount of the overpayment for each sampled claim. Using RAT STATS, the data in the sample were used to derive statistical estimates of the total amount of the overpayment. The lower limit of a symmetric, two-sided 90-percent confidence interval was reported as the estimate of the total overpayment. Thus, it was possible to state as a statistically valid estimate that with 95 percent confidence, the true overpayment was as least as great as the lower limit.

DOCUMENTATION REQUESTED BY OUR AUDIT

Below are the instructions attached to the letters that we sent to the school health providers in our sample.

Please provide the following documents and information for the claim(s) for Medicaid reimbursement for transportation services for the student(s) identified by Enclosure A.

1. The student's Individualized Education Plans or Programs (IEPs) or Individualized Family Services Plans (IFSPs) recommending the transportation services provided for the time period under review.
2. Notes, minutes of meetings, or other documents reflecting or relating to consideration by the Committee on Special Education (CSE) of the student's transportation needs for the relevant time period under review and relating to the recommendation on the IEP or IFSP for the period under review.
3. Service encounter records, logs or other documentation substantiating that the transportation services were rendered on the dates for which the school district or county preschool program claimed Medicaid reimbursement for transportation for the student.
4. Documentation sufficient to show the type of transportation service provided to the student (for example, an ambulette, invalid coach, specialized bus, regular school bus, or other).
5. Documentation that the student was on a list of students who were required to be transported by the school district or county preschool program.
6. Service encounter records, logs, or other documentation substantiating that other types of school or preschool health services were rendered and documentation showing the specific number of services rendered each month during the time period under review. If a student was provided school or preschool health services by the New York City Board of Education, please also provide the Related Service Attendance Forms (RSAFs) for the relevant time period.
7. Student and service provider attendance records related to 3 and 6 above for the period under review
8. Any external or internal written communications (*e.g.*, correspondence, memoranda) or notes relating to the Medicaid claims for the transportation services provided to the student during the relevant time period.

9. If outside contractors or service providers were used to provide the transportation services, please provide a copy of the signed Provider Agreement and Statement of Reassignment.

DEFICIENCIES OF EACH SAMPLED CLAIM**Legend**

A	No Documentation
B	No Date-Specific Service Delivery Documentation
C	Lack of Complete Assurance That Services Were Rendered
D	Transportation Services Not Rendered
E	No Child's Plan/Family Plan
F	Transportation Services Not Included in Child's Plan/Family Plan
G	Daily Round Trips Claimed in Excess of Number of Days When Health Services Were Rendered
H	No Assurance That a Minimum of Two School Health Services Were Rendered During the Month
I	Specialized Transportation Improperly Claimed for Service Dates On or After July 1, 1999

OIG Review Determinations on the 110 Sampled Claims

Claim No.	A	B	C	D	E	F	G	H	I	No. of Deficiencies
S1-1		X	X							2
S1-2		X	X				X			3
S1-3		X	X			X				3
S1-4		X	X					X		3
S1-5		X	X			X				3
S1-6		X	X			X	X	X		5
S1-7		X	X			X				3
S1-8		X	X				X	X		4
S1-9		X	X							2
S1-10										0
S1-11		X	X							2
S1-12		X	X							2
S1-13		X	X			X				3
S1-14										0
S1-15		X	X							2
S1-16		X	X							2
S1-17		X	X	X		X				4
S1-18		X	X			X				3
S1-19		X	X							2
S1-20										0
S1-21		X	X							2

APPENDIX C
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Claim No.	A	B	C	D	E	F	G	H	I	No. of Deficiencies
S1-22		X	X			X				3
S1-23		X	X							2
S1-24		X	X		X					3
S1-25		X	X							2
S1-26						X				1
S1-27		X	X							2
S1-28		X	X				X	X		4
S1-29		X	X				X	X		4
S1-30		X	X				X	X		4
S1-31		X	X			X	X			4
S1-32										0
S1-33										0
S1-34		X	X				X	X		4
S1-35		X	X							2
S1-36				X			X			2
S1-37		X	X			X	X	X		5
S1-38		X	X							2
S1-39		X	X							2
S1-40		X	X							2
S1-41		X	X							2
S2-1		X	X			X				3
S2-2		X	X							2
S2-3		X	X							2
S2-4		X	X							2
S2-5		X	X							2
S2-6		X	X				X			3
S2-7		X	X							2
S2-8		X	X							2
S2-9		X	X							2
S2-10		X	X			X				3
S2-11		X	X							2
S2-12		X	X	X	X		X	X		6
S2-13		X	X							2
S2-14		X	X							2
S2-15				X		X				2
S2-16		X	X							2
S2-17		X	X							2
S2-18		X	X							2

Claim No.	A	B	C	D	E	F	G	H	I	No. of Deficiencies
S2-19		X	X							2
S2-20							X	X		2
S2-21		X	X							2
S2-22		X	X							2
S2-23										0
S2-24										0
S2-25						X	X	X		3
S2-26		X	X							2
S2-27		X	X							2
S2-28		X	X	X			X			4
S2-29		X	X			X				3
S2-30		X	X				X			3
S3-1		X	X							2
S3-2		X	X	X						3
S3-3		X	X				X			3
S3-4		X	X							2
S3-5		X	X							2
S3-6		X	X			X	X	X		5
S3-7		X	X			X	X			4
S3-8		X	X				X	X		4
S3-9		X	X							2
S3-10		X	X							2
S3-11		X	X							2
S3-12		X	X							2
S3-13		X	X				X			3
S3-14		X	X				X	X		4
S3-15										0
S3-16				X		X				2
S3-17		X	X	X			X			4
S3-18		X	X	X		X	X			5
S3-19		X	X							2
S3-20		X	X							2
S3-21		X	X							2
S3-22		X	X							2
S3-23		X	X							2
S3-24		X	X							2
S3-25		X	X							2
S3-26		X	X							2

Claim No.	A	B	C	D	E	F	G	H	I	No. of Deficiencies
S3-27		X	X			X				3
S3-28				X			X			2
S3-29										0
S3-30										0
S3-31		X	X	X			X			4
S3-32		X	X							2
S3-33										0
S3-34										0
S3-35		X	X		X		X	X		5
S3-36										0
S3-37		X	X							2
S3-38		X	X				X	X		4
S3-39		X	X							2
Total	0	90	90	11	3	21	28	16	0	

Notes:

1. For reporting purposes, we combined reasons B and C. If a claim was deficient only for reasons B and C, we set aside the claim.
2. Although we did not question any claims for reason I, it should be noted that only four sampled claims had service dates on or after July 1, 1999 and that all of these claims were for preschool students. CMS's guidance on specialized transportation did not apply to preschool students.

SAMPLE RESULTS AND PROJECTION

The results of our review of the 110 Federal Medicaid transportation claims were as follows:

Sample Results and Recommended Financial Adjustment

Stratum Number	Claims in Universe	Value of Universe (Federal Share)	Sample Size	Value of Sample (Federal Share)	Improper Claims	Value of Improper Claims (Federal Share)
1. >\$0 thru \$50	716,257	\$19,814,468	41	\$1,183.25	20	\$496.50
2. >\$50 thru \$90	385,525	26,103,881	30	2,019.25	10	481.00
3. >\$90	208,142	26,378,121	39	5,055.25	15	1,412.75
Total	1,309,924	\$72,296,470	110	\$8,257.75	45	\$2,390.25

Projection of Sample Results

Precision at the 90-Percent Confidence Level

Point Estimate:	\$22,394,759
Lower Limit:	\$17,238,611
Upper Limit:	\$27,550,907
Precision Percent:	23.02 %

SAMPLE RESULTS AND PROJECTION

The results of our review of the 110 Federal Medicaid transportation claims were as follows:

Sample Results and Set-Aside Amount

Stratum Number	Claims in Universe	Value of Universe (Federal Share)	Sample Size	Value of Sample (Federal Share)	Set-Aside Claims	Value of Set-Aside Claims (Federal Share)
1. >\$0 thru \$50	716,257	\$19,814,468	41	\$1,183.25	17	\$543.00
2. >\$50 thru \$90	385,525	26,103,881	30	2,019.25	21	1,394.50
3. >\$90	208,142	26,378,121	39	5,055.25	22	2,746.25
Total	1,309,924	\$72,296,470	110	\$8,257.75	60	\$4,683.75

Projection of Sample Results

Precision at the 90-Percent Confidence Level

Point Estimate:	\$42,063,191
Lower Limit:	\$35,798,691
Upper Limit:	\$48,327,691
Precision Percent:	14.89 %



STATE OF NEW YORK
DEPARTMENT OF HEALTH

APPENDIX E
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Commissioner

Dennis P. Whalen
Executive Deputy Commissioner

November 24, 2003

VIA FEDERAL EXPRESS

Timothy J. Horgan
Regional Inspector General for Audit Services
Centers for Medicare & Medicaid Services
Region II
Jacob J. Javits Federal Building
26 Federal Plaza
New York, New York 10278

Re: Draft Report Number A-02-03-01008, entitled "Review of Transportation Claims To Medicaid Made By 695 School Health Providers Within New York State"
(Audit of Transportation Services Provided to Disabled Children)

Dear Mr. Horgan

Enclosed is the response of the New York State Department of Health ("DOH") to the referenced draft audit report, which was produced by the U.S. Health and Human Services' Office of Inspector General ("OIG"). For the reasons set forth in our response, as well as the concerns raised in my April 7, 2003 letter, the draft audit report should be withdrawn.

For more than a decade, local school districts in New York State have relied on Congress's promise that it would provide federal Medicaid monies to help fund health-related services to poor disabled children in our schools. Now, more than a decade after Congress made its promise, OIG seeks repayment of nearly \$60 million from New York for transportation services lawfully provided by school districts and county pre-school programs. The draft report does not dispute that the services were provided, but rather alleges that the small number of schools and counties whose claims were sampled did not meet hyper-technical federal rules and policies, including the maintenance of so-called "transportation [bus] logs."

The vast majority of disallowances taken by OIG concern this supposed requirement that school districts and counties maintain transportation logs. We believe that this practice could compromise the safety of the children being transported, since bus drivers would be engaged in preparing documents at every stop, rather than attending to the children entering, exiting and remaining on the buses. Nothing in

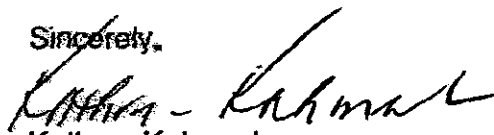
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federal law or regulations supports this potentially unsafe documentation "requirement". The draft findings would suggest that school districts have failed, in the vast majority of cases, to appropriately transport poor disabled children to school. Clearly this is not the case.

To the extent that policy issues remain between the State and CMS, such as documentation of transportation services, we urge that they be resolved amicably through the program review process, rather than by disallowing millions of dollars in federal payments, which can only serve to diminish scarce Medicaid funding for school-supportive health services.

Sincerely,



Kathryn Kuhmerker
Deputy Commissioner
Office of Medicaid Management

Enclosure

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EXECUTIVE SUMMARY

1. Overview

A. Summary Statement of New York's Response

The Office of Inspector General (OIG) of the U.S. Department of Health and Human Services has issued a draft audit report that proposes a disallowance of \$59.7 million, or roughly 82% of the \$72.3 million in federal Medicaid payments for transportation services provided to disabled children by school districts and counties across New York State during a period encompassing nearly eight years (September 1, 1993 through June 30, 2001). As detailed in the body of our audit response, New York objects to this draft audit report in the strongest possible terms and requests that it be withdrawn for the following reasons:

Fundamental Flaws in Audit Concept and Design -- The draft audit report's finding that \$59.7 million is due the federal government is based upon three minuscule statistical samples that were reviewed by OIG (110 out of over 1.3 million claims). Alleged errors in recordkeeping by only 79 Medicaid providers were extrapolated to encompass 616 different providers not included in this audit. There is no reasonable basis to conclude that the errors alleged in the draft audit report would be present in the documentation maintained by different personnel from over six hundred school districts and pre-school programs of varying sizes and locations throughout New York State.

Inconsistency with Audit Approach in Other States -- In this audit of transportation services, OIG elected to go back to the beginning of the School Supportive Health Services and Preschool Supportive Health Services programs in New York (jointly referred to herein as "SSHS") and review all of the nearly eight years of payments made by the federal government. In sharp contrast, the audit period used in comparable audits in other states focused only on the most recent fiscal year completed. Further, the sample sizes were much larger in other states and monetary disallowances were limited to the providers actually audited.

- **Inappropriate Application of a "Medical" vs. "Educational" Model** -- Consistent with the development of an Individualized Education Program (IEP) for each disabled child under the federal Individuals with Disabilities Education Act (IDEA), schools have been providing services covered under the SSHS program since 1975. When schools began to bill Medicaid for these services in 1993, it was both reasonable and consistent

with Congressional intent that these services were documented and billed by schools using an "educational" model. Therefore, application of a "medical" model of service delivery and documentation, such as that used for hospitals, is patently unfair to our schools. Once OIG applies the appropriate educational model (or even a reasonable interpretation of a medical model), a substantial portion of the sampled claims would meet federal requirements.

B. General History

In 1988, Congress enacted legislation to encourage state and local education agencies across the nation to access federal Medicaid reimbursement for health-related services for disabled children. In New York State, such federal cost-sharing meant that 50% of the Medicaid cost for services would be borne by the federal government, with the remaining 50% to be paid for equally by the State and local governments. The new legislation provided a critical source of funding for New York's local school districts and pre-school programs, which are federally mandated under the IDEA to provide disabled children with necessary health-related services in the school setting. Prior to that time, school districts and pre-schools relied largely on local sources of income to pay for these costly services. This placed a tremendous economic burden on them, particularly for the smaller, less wealthy districts in the State.

In 1995, New York received formal federal approval of what became known as the "School Supportive Health Services" (SSHS) program. The federal approval was made retroactive to May 1992, and permitted school districts to bill for services back to April 1990. It is clear that Congress intended federal Medicaid funds to be used to assist states in the provision of medically necessary health services in an educational setting, consistent with IDEA. Congressional intent is evident in the amendments included in the Medicare Catastrophic Coverage Act of 1988, which amended Title XIX of the Social Security Act by adding a new Section 1903(c) [42 U.S.C. §1396b(c)]:

Nothing in this subchapter shall be construed as prohibiting or restricting, or authorizing the Secretary to prohibit or restrict, payment under subsection (a) of this section for medical assistance for covered services furnished to a child with a disability because such services are included in the child's individualized education program established pursuant to part B of the Individuals with Disabilities Education Act or furnished to an infant or toddler with a disability because such services are included in the child's individualized family service plan adopted pursuant to part H of such Act.

C. Billing for Transportation Services under the “Educational” vs. “Medical” Model

In keeping with Congressional intent that Medicaid be used to support medically necessary services required by a child's IEP, school districts and counties that operate pre-school programs began billing for SSHS services, including transportation of disabled children. This is notable for two important reasons. First, it meant that local educational agencies would finally begin to receive Medicaid payments for costly services that they had been mandated to provide under law since 1975. Second, in order to receive these benefits, school districts would have to learn the technical recordkeeping and billing requirements of Medicaid -- one of the most complex programs in the nation. The proposed OIG disallowances for transportation services are fundamentally flawed because both OIG and the Centers for Medicare and Medicaid Services (CMS)¹ have failed to recognize and account for the way in which educational systems legitimately document these services.

Until July 1, 1999, transportation by regular school bus was recognized by CMS as a Medicaid-reimbursable service when provided to a disabled child on a day that the child received a medical service pursuant to the IEP. While there was recognition by CMS that an educational model of transport was appropriate, there has been a puzzling failure by CMS to recognize the standard educational model of documenting that transport. Most of the claims proposed to be disallowed by the OIG are challenged on the grounds that school bus drivers in New York State have not maintained a running log of every child that gets on and off the school bus. Applying this “medical model” approach to public school transportation would be not only unreasonably burdensome but would threaten the health and safety of school children as well.

The negative impact of this bus log requirement should be obvious. It would require each bus driver to manually document every single student getting on and off each bus. The requirement for maintenance of this type of documentation, a requirement found in neither statute nor regulation, would add considerable time to each bus run and distract the driver from his or her most important task -- maintaining the safety of the children on the bus. It must be noted that this requirement could not be applied only to those students receiving IDEA services who are in receipt of Medicaid; to do so would be to clearly signal to all which students are in receipt of Medicaid and have a disability of some kind, a clear violation of Medicaid, IDEA and HIPAA confidentiality standards.

The draft audit report rejects alternative forms of transportation under the theory that any individual disabled student could have taken an alternative mode of transportation to/from school on the service date, or left school early (taking the bus only in the morning), or arrived late (taking only the afternoon bus trip home), etc. While the State acknowledges that this could have happened in *isolated* instances, the OIG disallowance of virtually the entire audit sample is, in essence, a finding that in *virtually no instance* was a child

¹ Formerly the Health Care Financing Administration (HCFA) and, for ease of reference, referred to through CMS.

transported to school in a school bus. For the non-New York City school districts included in the scope of this audit, the vast majority of students are transported to school in a school bus operated by the districts; it is highly unlikely that any significant number of parents of Medicaid-eligible children transported their children to school in some other way. Despite this, OIG has proposed a disallowance of virtually the entire sample. OIG's attempt to reclaim millions of Medicaid dollars based on its speculation that disabled children *might* have taken alternative forms of transportation to or from school on a particular day -- despite being scheduled for pick-up and drop-off on a bus route, being in attendance in school and receiving a medical service on that day -- should not give rise to such a massive fiscal disallowance. At most, any fiscal disallowance should be a small percentage of the universe of payments for transportation to account for occasional instances where a disabled student may have taken alternative transportation to or from school.

D. Programmatic Context

New York is a national leader in providing educational and health-related services to disabled children. In the 2003-2004 school year, school districts in New York will spend in excess of \$6 billion on special education services, including the transportation of disabled children in specially-equipped vehicles. In the recent past, New York received a relatively modest level of federal support for these essential services, with approximately \$540 million in IDEA funding, and approximately \$390 million for Medicaid-eligible services under SSHS alone.

E. Audit History

In the fall of 2001, the federal Department of Justice (DOJ) and the OIG initiated an investigation of three New York school districts -- Ogdensburg, Ithaca and Elmira -- as a result of a federal False Claims Act "whistleblower" action initiated by a service provider. This investigation appears to have provided the impetus for this audit as well as five additional audits of SSHS by OIG. The six audits (including this one) will address the following SSHS services:

- Speech pathology services for all schools/counties other than New York City, Jefferson County, Ogdensburg, Ithaca and Elmira. The audit covers claims for September 1, 1993 through June 30, 2001.
- Speech pathology services for New York City only. The audit covers claims for September 1, 1993 through June 30, 2001.
- Transportation services for all schools/counties other than New York City, Jefferson County, Ogdensburg, Ithaca and Elmira. The audit is the subject of this response and covers claims for September 1, 1993 through June 30, 2001.
- Transportation services for New York City only. The audit covers claims for September 1, 1993 through June 30, 2001.
- Retroactive claims for all schools/counties other than New York City, Jefferson

County, Ogdensburg, Ithaca and Elmira. The audit covers claims for April 1, 1990 through August 31, 1993.

- Retroactive claims for New York City only The audit covers claims for April 1 1990 through August 31, 1993.

The current audit was conducted by OIG using a sample of 110 claims for services provided from September 1993 through June 2001. The draft audit report from OIG contends that approximately 82% of the sample claims are unallowable, thereby resulting in a projected disallowance of \$59.7 million of the \$72.2 million in claims submitted.

2. Policy Issues

Since the inception of the IDEA, school districts across New York State have been providing essential health-related services to disabled children consistent with federal requirements. The draft audit report makes no serious claim that school districts and counties routinely failed to provide transportation of disabled children for necessary medical services. Instead, the proposed audit disallowance of \$59.7 million is due largely to compliance issues associated with technical documentation requirements. OIG therefore seeks reimbursement of millions of dollars for what it believes are record-keeping deficiencies -- not because the school districts failed to provide the services for which they billed. Such an action by the federal government runs contrary to the stated intent of Congress and the President that disabled children receive the health-related services they need to fulfill the requirements of their IEP's, and that the use of Medicaid funds should in no way be restricted or prohibited for such covered services.

New York understands the importance of ensuring that its receipt and use of Medicaid funds is consistent with federal intent, as well as statutory and regulatory requirements. New York is steadfast in its commitment to ensure compliance with these requirements, and we appreciate the importance of vigilant monitoring and oversight to ensure this commitment is fulfilled. However, as discussed below, the ability of the State and our SSHS providers to ensure full compliance with documentation requirements has been affected by a variety of factors outside of our control.

A. Inconsistent/Contradictory Federal Guidance

The initial years of implementation of any program can be difficult, and the SSHS program was no exception. Compliance with documentation and billing requirements was even more difficult for schools and counties because they are primarily educators, rather than traditional health-care providers. Further, while traditional health-care providers are typically required to maintain records in a manner that overlaps with Medicaid requirements, schools and county pre-school programs had no similar documentation experience. In fact, they were accustomed to the documentation requirements of the IDEA-based educational model under which they had operated for at least 15 years before

Medicaid was made available by Congress to pay for such services.

While the State Departments of Social Services (now Health) and Education provided extensive training in billing and document retention, New York's efforts have been hampered by the inconsistent and often contradictory advice provided by federal agencies. This problem is by no means unique to New York. The lack of federal guidance was also criticized in a series of reports produced by the federal General Accounting Office (GAO). In one of these reports, issued in 1999, GAO stated: "Inconsistent guidance from HCFA appears to have heightened school district concerns that Medicaid reimbursements will have to be returned to the federal government later because of inappropriate documentation requirements or changes in documentation requirements."

In his 2002-03 budget proposal, President Bush highlighted this problem, stating: "In past years, billing inconsistencies have plagued the program because the federal government has never articulated clear guidance. In 2002, the Administration will release guides that will address all aspects of school-based Medicaid billing." Despite the President's pronouncement, CMS has yet to provide guidance that is entirely consistent with law and its own prior guidance, or that will aid school districts across the country in maintaining appropriate records.

B. Delays in Federal Policy Responses and Program Reviews

Like other states, New York's ability to assist school districts and counties in properly claiming Medicaid reimbursement has been compromised by the federal government's delay in responding to questions involving the interpretation of various federal regulatory requirements. Indeed, prior to this audit, New York raised with the federal government the issue that federal guidance mandating that providers retain transportation logs is inconsistent with federal law requiring only that providers maintain records to support their Medicaid claims, and imposes a new standard. To date, however, the federal government has failed to address this important legal issue and proposes to take millions of dollars in disallowances against the State for its alleged failure to meet this standard.

This problem has been compounded by the federal government's failure to audit the SSHS program until recently. As a result of this delay, New York's SSHS providers have been asked to document services that were rendered over a decade ago. While the federal government argues that no statute of limitations applies to the auditing of Medicaid claims, that position is unrealistic and inequitable to states such as New York that reimburse providers for services validly rendered and then must wait until OIG audits those claims before they can challenge federal interpretation and guidance on issues such as documentation requirements for transportation services.

In addition, under New York State regulations, Medicaid providers are only required to maintain records supporting their Medicaid payments for a period of 6 years from the date

of the service. Despite its knowledge of this requirement, OIG now attempts to hold New York fiscally responsible for alleged record-keeping errors that date back over a decade.

3. **Audit Methodology and Scope**

A. **Inappropriately Small Sample Size**

This audit of transportation services was conducted by OIG using three small samples totaling only 110 claims out of over 1.3 million claims in the audit period. While sampling is routinely used in audits as a way to reduce audit time, the sample sizes in this case cannot reasonably support an extrapolation to the universe of payments and a disallowance of nearly \$60 million dollars. OIG examined only 41 claims in one sample, 30 in another, and 39 in the last. This extraordinarily small sample is not representative of most of the 1.3 million claims in the universe, because the universe includes payments to nearly 700 providers while OIG audited claims from only 79 of those providers. There is no reasonable basis to conclude that 616 other school districts and county pre-school programs would have made the same type of alleged errors in documentation of services. Both the small sample size and the extrapolation to non-audited providers are inconsistent with standard audit practices and OIG's audits of other states' SSHS programs.

B. **Inconsistency with Audit Approach in Other States**

Recently, OIG has conducted a number of audits of SSHS programs in other states, including Massachusetts, Connecticut and Oregon. However, the audit approach taken by OIG in New York is significantly different than that in other states, and has resulted in a proposed disallowance that is excessively and disproportionately large. Comparatively, the New York State audit used minuscule sample sizes taken from claims for services that were provided as early as 1993, and OIG applied much higher standards of documentation in New York. Despite the small sample sizes and the uneven treatment between states, OIG recommends extrapolating the audit's findings to hundreds of providers that were never audited by OIG.

The audits that OIG conducted in other states with fee-for-service SSHS programs involved claims submitted during a much shorter period of time than in New York. These other audits typically reviewed program information for claims submitted during a one-year period -- not eight years, as in New York. The audits in other states also focused on more recent periods of time (i.e., the most recent fiscal year prior to the audit), rather than going back to 1993, as in New York. This audit methodology unique to New York has substantially disadvantaged the State. The longer period covered by the audit and the examination of claims that are far older than the six-year period for record retention that New York requires has made it much more difficult for school districts and pre-school programs to demonstrate their full compliance.

In addition to the inconsistencies in the length of time audited and the age of claims examined, OIG's statistical sampling methodology in New York is extremely problematic. In three other states where OIG used a sampling methodology², the sizes of the samples used to review claims were much larger than those in New York when comparing the sample size to the total number of claims in the other states' universes of payments. In addition, samples from the three other states were taken from the universe of claims of individual providers. In New York, the claims of nearly 700 school districts and county pre-school programs were grouped together and the billing errors of 79 providers were attributed to all providers. In OIG's audits of the three other states, individual providers were expected to reimburse the federal government for overpayments based on their own errors, while OIG proposes to hold New York State fiscally responsible for alleged billing errors of 79 providers that have been attributed to all providers in the State. In no other SSHS audit did OIG recommend that claims be disallowed for individual providers that it never audited, as it proposes to do in New York State.

4. Conclusion of Executive Summary

OIG's audit of Medicaid claims for transportation services that were provided in our school districts and counties should be withdrawn, and the other planned audits cancelled. As will be described in the detailed audit response below, the vast majority of the audit findings were the result of inappropriate regulatory interpretations by the federal government. In addition, the methodological design of the audit was fundamentally flawed and inconsistent with the methods that OIG has used to audit similar providers in other states.

The audit fails to recognize the essential foundation upon which the School Supportive Health Services program is based: Congress intended to assist school districts with the provision of services required under IDEA and expected that the services would be provided as determined by each local educational agency's Committee on Special Education, in accordance with the provisions of IDEA.

Finally, it needs to be emphasized that the draft audit raises no question that essential SSHS services to disabled children were provided, and that disabled children received those services. Instead, a massive disallowance is proposed that would have a paralyzing impact on New York and its schools based upon an alleged failure to meet highly technical documentation requirements. Because all necessary services were provided, and because of the devastating impact that OIG's flawed audit would have on our school districts and counties, the instant draft audit report should be withdrawn.

²The three states are Massachusetts, Connecticut and Oregon. Information to support this statement was obtained from HHS's website

RESPONSE TO DRAFT AUDIT REPORT

1. General Responses

A. Federal Statutes and Regulations

In its draft audit report, OIG notes that federal regulations (42 CFR 431.17) require that the Medicaid state agency maintain or supervise the maintenance of records necessary for the proper and efficient operation of the State Plan. In accordance with that section, New York adopted a six-year general record retention requirement³ for all Medicaid providers. While in other states OIG either audited SSHS claims for the most recent fiscal year, or only audited claims that easily fell within each state's own record retention period, OIG went beyond New York's six-year retention period to examine claims, disallow services, and extrapolate the disallowances to a universe of payment far in excess of the retention period. This action has placed New York and the providers at a distinct disadvantage. The draft findings are artificially high for reasons related solely to the difficulty any organization has in retrieving very old records and unrelated to whether services were provided to children.

B. Federal Guidance on Billing for Transportation Services

The draft audit report cites a series of federal pronouncements on SSHS transportation services as a basis for stating that federal guidance on this topic was clear and consistent. In fact, it is apparent that CMS was developing guidance on an *ad hoc* basis and that its interpretations of the availability of transportation services to disabled students and the requirements for billing Medicaid for such services were in a constant state of flux.

Federal guidance on Medicaid reimbursement for transportation to school-based health services began with Medicaid State Operations Letter #93-67, a letter not cited by OIG in its draft report. That letter states, in part:

Medicaid funds are not available for reimbursement for transporting Medicaid recipients to schools on a normal school day, even though school-based health services are provided in the school during part of the day. Education is the primary purpose for attending school; any medical services rendered in schools are secondary.

No exception was made for services provided under IDEA in that early Operations Letter. Yet, less than a year later, CMS reversed its opinion concerning Medicaid reimbursement

³This time period is extended in cases where an audit of a provider has commenced within the six-year period, or in cases where the provider has engaged in fraud.

for transportation of disabled students under IDEA, as evidenced by Medicaid State Operations Letter #94-06, which was cited in the draft audit report.

Operations Letter #94-06 created confusion for the State and school administrators by requiring that regular bus transportation be included on a student's IEP in order to be reimbursable by Medicaid. This pronouncement reflects CMS's misunderstanding of the requirements of the IDEA and the required content of a student's IEP. Under IDEA, regular school transportation, as opposed to specialized transportation, is not required to be included in a child's IEP. This misstatement by CMS of another federal agency's requirements resulted in schools stamping IEP's with the notation "transportation" in order to try to meet this new "requirement."

The August 1997 Technical Assistance Guide cited in the draft audit report contains only a few pages on transportation⁴. The subjects covered by this section of the guide are "Transportation as an Optional Service," "Transportation as an Administrative Expense," and "Medical Coverage of Transportation to School-Based Health Services." Nowhere in this guide did CMS mention the use of so-called "transportation logs." Under the general documentation requirements at page 39, the guide states:

A school, as a provider, must keep organized and confidential records that detail client specific information regarding all specific services provided for each individual recipient of services and retain those records for review . . . Relevant documentation includes the dates of service, who provided the services, where the service was provided, any required medical documentation related to the diagnosis or medical condition of the recipient, length of time required for service, if relevant, and third party billing information.

Again, the guide's general maintenance-of-records section contained no mention of "transportation logs" as a requirement for documenting transportation services. In 1994 New York had proposed the use of alternative documentation of transportation services and set forth how that documentation would meet CMS's written documentation requirements while preserving the confidentiality of recipient records. Nevertheless, CMS had refused to reverse its position that only transportation logs could be used to document transportation services. CMS's subsequent failure to include its requirement for transportation logs in its supposedly comprehensive guide to States is curious and reflects either CMS's discomfort with its position or a tacit acknowledgement that there is more than one way to establish that a service was provided. In any event, New York continues to maintain that the continued insistence on the maintenance of transportation logs is bad policy and is wrong.

⁴Pages 53-56.

New York continued its objection to maintenance of transportation logs as the only form of documentation of transportation services, since we had concerns about school bus drivers taking attendance of students as they entered and exited buses instead of monitoring the students. Further, since CMS had reversed itself previously on transportation issues and this appeared to be an evolving area at the federal level, New York believed that CMS would at some point adopt a more reasoned approach to document transportation services provided to disabled students.

On May 21, 1999, the Director of CMS's Center for Medicaid and State Operations issued a letter to all State Medicaid Directors. The letter once again changed the federal position on how Medicaid-reimbursable transportation may be provided and what documentation must be maintained to support billing for such services. The letter stated that the guidance contained therein would become effective on July 1, 1999. Under these guidelines, a child with special education needs under IDEA who rode a regular school bus to school with non-disabled children should not have "transportation" listed as a required service in his/her IEP, and the cost for transporting such students should not be billed to Medicaid. Instead, CMS stated that only "specialized" transportation should be billed by school districts. CMS characterized specialized transportation as certain transportation required by the child in vehicles specially adapted to the needs of the disabled, which would include a specially adapted school bus. Transportation could be billed to Medicaid if the need for that specialized transportation was identified in the child's IEP and if other documentation requirements were met.

In its draft audit report, OIG mischaracterizes the May 1999 letter, claiming: "CMS further stated that documentation such as a trip log must be maintained to support each transportation service claimed for Medicaid reimbursement." In fact, the letter states: "This usually takes the form of a trip log maintained by the provider of the specialized transportation service." In misstating the CMS letter, OIG gives the impression that a trip log must be maintained, even though CMS clearly envisioned that other forms of documentation would be acceptable. In any event, the May 1999 guidance is applicable only to claims for "specialized" transportation and not to the "regular" transportation claims in this audit sample.

2. Specific Responses

REASONS WHY THE CLAIMS WERE DISALLOWED

A. No Service Date Delivery Documentation Such as Transportation Logs Maintained to Support Transportation Services Billed And No Assurance That Services Were Rendered (Draft Report Categories B and C)

Section 1903(c) of the Social Security Act permits Medicaid payment for medical services provided to children under IDEA that are included on a child's IEP or Individualized

Family Service Plan (IFSP). In general, school health related services included in a child's IEP or IFSP can be covered if all relevant statutory and regulatory requirements are met. Section 1902(a)(27) of the Act requires documentation be maintained as is necessary to disclose the extent of services provided to individuals under the State plan. Federal regulations at 42 CFR 431.17 require that the Medicaid State agency maintain or supervise the maintenance of records necessary for the proper and efficient operation of the State plan. Regulations at 42 CFR 433.32 require Medicaid agencies to maintain an accounting system and supporting fiscal records to assure that claims for Federal funds were made in accordance with applicable Federal requirements.

However, nowhere in federal regulations or guidance is it stated that school districts *must* maintain transportation logs. We believe that the records maintained by school districts meet the federal requirements stated above. CMS's guidance on documentation of transportation (letter of July 29, 1994) stated that the following information must be maintained:

The specific service rendered;"

Response: New York Education Law §3635 mandated during the audit period that transportation be provided to students. To support this finding, the OIG would have to conclude that school districts were failing to fulfill this State mandate solely because districts failed to provide transportation logs.

"2. The date and time the service was rendered;"

Response: The date and time for each student's pick-up and drop-off are established before every school year begins. A child's parent must be made aware of when the bus will come and pick the child up for school and when the bus will drop the child off after school. The documentation required by the State accounts for this requirement with the exception of circumstances where the child is transported to school by means other than that provided by the school district. This exception is a rare event. The cost to districts to account for this deviation would simply drive the Medicaid reimbursement for each transportation service higher.

"3 Who rendered the service;

Response: The rosters or schedules provided by school districts clearly show which bus and driver transport each student every day.

"4. The setting within which the service was rendered;"

Response: Unless otherwise stated, the setting is a regular bus.

"5 The amount of time it took to render the service, if relevant."

Response: The length of the bus trip is not relevant to Medicaid reimbursement for transportation services.

The draft audit report finds that the State did not notify the school health provider community of this specific CMS guidance and continued to issue guidance to providers that did not require them to maintain service delivery documentation to support actual transportation services rendered. This statement is untrue, as evidenced by the draft report itself. Page 10 of the draft report acknowledges that the State did, in fact, inform schools in an August 1999 letter of CMS's position on transportation. In June 1994 and again in August 1995, letters from the State Education Department to school districts and counties stated: "A list of students transported in accordance with district policy must be maintained. (Parents who choose not to participate in the district's transportation program must be excluded from the list.) If daily logs reflecting the actual provision of service are maintained they should be retained as documentation."

For many of the disallowed cases, the Department provided bus rosters that support the transportation claims [S1-3, S1-9, S1-16, S1-17, S1-19, S1-22, S1-27, S1-34, S1-41, S2-2, S2-5, S2-6, S2-10, S2-19, S2-26, S2-28, S2-29, S3-1, S3-4, S3-8, S3-9, S3-12, S3-20, S3-21, S3-22, S3-37 & S3-39].

In addition, some of the disallowed claims were beyond the State's 6-year record retention requirement and should not have been included in this audit [S1-5, S1-7, S1-12, S1-27, S1-29, S1-31, S1-36, S2-3, S2-4, S2-8, S2-10, S2-1, S2-20, S2-25, S3-10, S3-22, S3-23, S3-24 & S3-26].

It must be noted that OIG has inappropriately listed the "no bus log" finding as two separate categories of finding (Categories B and C) in its schedule of disallowances (Appendix C to the draft report). Although OIG notes in Audit Note I to Appendix C that it was combining reasons B and C for reporting purposes, it did not actually do so. Instead, the sample-by-sample chart lists the disallowances separately, making it appear that there were two different reasons for disallowing 93 claims in the sample.

B. Medicaid Reimbursable School Health Services Were Not Rendered on Days Transportation Was Claimed (Draft Report Category G)

To the extent that a transportation service was claimed on a date that a Medicaid reimbursable service was not delivered, the Department agrees that a claim for that transportation service was not appropriate.

However, most school districts subject to this audit employ billing software that is

designed to ensure that a transportation claim is submitted to Medicaid only when an underlying medical service is provided. Under this system, when the district employee receives a medical service report, the report is keyed into the software. If the student had been identified previously as eligible for a transportation service (i.e., transportation appears on the IEP and the student is transported to school by the district) the system would generate a transportation claim.

Five of the disallowed cases were beyond the State's 6-year record retention requirement and should not have been included in this audit [S1-29, S1-31, S1-36, S2-20, S2-25].

In addition, one of the cases (S2-28) was disallowed because the unsigned school attendance record indicated that the child was absent on April 19, 1996, the date of the claimed transportation service. However, the OIG workpapers also contain documentation, consisting of two signed service reports (from a speech therapist and a school counselor), that the child in fact received Medicaid reimbursable services on April 19. The signed service reports are far better evidence of what happened that day than the unsigned attendance record. This disallowance should be withdrawn. Because OIG incorrectly concluded that the child was not in school on April 19, this sample was also disallowed under Category D (Transportation Service Not Rendered); the Category D disallowance should be withdrawn as well.

C. The IEP Or IFSP Did Not Identify Or Recommend Transportation Services (Draft Report Category F)

Regular transportation is not required by federal or state law or regulation to be included on the IEP's of students with disabilities. New York State Education Law §3635 mandates that every student who lives outside certain geographic boundaries of a particular school district must be transported to school. CMS approved regular transportation as an eligible Medicaid service from the initiation of the School Supportive Health Services program up until June 30, 1999. Regular transportation was to be claimed only for days on which an eligible special education service was provided to a student. Since, under IDEA, regular transportation is not required to be listed on the student's IEP, this finding is fatally flawed and should be withdrawn in its entirety.

In addition, the State has identified one case in this category of disallowance where transportation actually was listed on the IEP [S2-15].

Also, five of the disallowed cases were beyond the State's 6-year record retention requirement and should not have been included in this audit [S1-5, S1-7, S1-31, S2-10, S2-25].

D. No Assurance that a Minimum of Two Monthly School Health Services Were Rendered (Draft Report Category H)

The draft audit report states that for 16 sample claims, the school health providers could not supply documentation to show that two school health services were provided in the month that transportation was billed. It is accurate to say that our State Plan for Medicaid requires that a minimum of two services be provided within the month in order to claim Medicaid reimbursement for speech therapy, physical therapy, occupational therapy, nursing and psychological counseling. However, a minimum of two services is *not* required for billing transportation. Pursuant to New York's State Plan Amendment (SPA) 92-42, at least two services are required to bill for a monthly fee, but under the plain language of the SPA, no such requirement exists for an encounter-based transportation fee. The provision of transportation is billable even if the underlying health service is not billable because the district did not provide the health service at least two times in the month. This disallowance category reflects a clear misunderstanding of the CMS-approved claiming and payment provisions for SSHS transportation services and should be withdrawn in its entirety.

E. Billing For Transportation Services Not Rendered (Draft Report Category D)

One of the disallowed cases in this category (S1-36) was beyond the State's 6-year record retention requirement and should not have been included in this audit.

F. No IEP or IFSP Was Found (Draft Report Category E)

The State has identified one case in the sample (S1-24) where the transportation service was provided during the initial IEP review process. Once a child is referred to the Committee on Special Education, all of the medical evaluations and services are Medicaid reimbursable, as are transportation services to obtain those evaluations and services. These services are reimbursable even if the end result is that no IEP is generated.

CONCLUSION

Based on this audit's flawed audit protocols, which are described in greater detail in the body of our response, the draft audit report should be withdrawn in its entirety. OIG's findings suggest that New York's school districts failed to provide the necessary transportation for its disabled children an astonishing 82% of the time over an eight-year period. This is obviously not the case, yet OIG demands repayment of 82% of federal payments for such services, based on alleged record-keeping errors. This audit of the nation's largest Medicaid program is being performed in a manner inconsistent with the audits of any other state and is designed to maximize the federal government's recovery of

monies lawfully paid to New York. As a direct result of OIG's actions, this State is faced with massive reductions in its critical stream of federal funding, thereby jeopardizing local school districts' funding of federally mandated health services for disabled children.

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