

DEPARTMENT OF HEALTH AND HUMAN SERVICES
OFFICE OF INSPECTOR GENERAL
Fiscal Year 2003 Budget Request

Witness appearing before the
House Subcommittee on Labor-HHS-Education Appropriations

The Honorable Janet Rehnquist
Inspector General

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TESTIMONY OF JANET REHNQUIST

Inspector General, Department of Health and Human Services

INTRODUCTION

Good Afternoon, Mr. Chairman. I am Janet Rehnquist, Inspector General of the Department of Health and Human Services (HHS). The mission of the Office of Inspector General (OIG) is to identify ways to improve HHS programs and operations and protect them against fraud, waste, and abuse. We do this by conducting independent and objective audits, evaluations, and investigations, which provide timely, useful, and reliable information and advice to Department officials, the Administration, the Congress, and the public. In carrying out our mission, we work with the Department and its operating divisions, the Department of Justice (DOJ), other Federal and State agencies, and the Congress to bring about improvements in HHS programs and operations and prosecute and/or recover funds from those who defraud the Government.

FY 2001 ACCOMPLISHMENTS

I would like to begin by reporting to you the results of our efforts in FY 2001. The heightened focus on fraud and abuse by the Congress, the Department of Justice (DOJ), the FBI, the Centers for Medicare and Medicaid Services (CMS), my office, and others, is yielding substantial recoveries, savings, and program improvements. We reported overall record savings of \$18 billion for Fiscal Year 2001. This was comprised of \$411 million in audit disallowances, \$1.5 billion in investigative receivables, and \$16.1 billion in savings from our recommendations that were implemented by law, regulation, or administrative action. These savings are independently scored or concurred with by the Congressional Budget Office, CMS, or other affected HHS components. These are real savings that represent taxpayer or Medicare Trust Fund dollars that will not be spent. We also excluded 3,756 individuals and entities from continuing their fraudulent or abusive business practices with Medicare, Medicaid, and other Federal and State health care programs. Our investigative work led to 423 convictions of individuals or entities that engaged in crimes against HHS programs and 417 civil actions.

One example of our investigative work was our review of allegations that improper claims were filed with the Medicare and Medicaid programs from fraudulent schemes for pricing, sales,

and marketing by Takeda Abbott Pharmaceutical Products, Inc. (TAP) of its drug Lupron, sold for treatment of advanced prostate cancer. Our investigation resulted in a global settlement with the Government totaling \$875 million, the largest Federal health care settlement in history.

Our work on the Department's programs other than Medicare and Medicaid focused on quality of services and identifying ways to deliver services more effectively and efficiently. In one example, we found that North Carolina claimed unallowable costs of approximately \$48.2 million for child care under Title IV-E Foster Care and other grants over a four-year period. The Administration for Children and Families agreed with our recommendation to collect the \$48.2 million from the State.

OIG FUNDING SOURCES

The Office of Inspector General has two funding sources. First, we receive funding from the Health Care Fraud and Abuse Control (HCFAC) program, established by the Health Insurance Portability and Accountability Act of 1996 (HIPAA) which pays for our Medicare and Medicaid anti-fraud and abuse activities. From the amount appropriated for the HCFAC Program in FY 2003, the OIG will receive between \$150 million and \$160 million. The actual allocation of the FY 2003 HCFAC Program resources, as required by law (HIPAA), will be determined jointly by the Secretary of HHS and the Attorney General.

We also receive a discretionary appropriation which is used to pay for our oversight of all other HHS programs and operations, such as public health, children and families, aging, and departmental management. The OIG's discretionary budget request for FY 2003 is for about \$49.97 million and 320 FTE. This includes an increase to cover annualization of the January 2002 pay raise, the anticipated January 2003 pay raise, an additional 11 investigators to expand the Child Support Enforcement Task Force to all 50 States, the OIG share of departmental information technology infrastructure investments, and an amount for accrued retirement and health benefits associated with the proposed Managerial Flexibility Act of 2001.

APPROACHES

Our comprehensive program of audits and evaluations is designed to detect problems in the early stages, define their nature and scope, and recommend corrective action. Our investigations are designed to identify, investigate, and prosecute cases of suspected fraud, and, where appropriate, seek restitution, fines, penalties, settlements, and convictions. In addition, we

exclude the most egregiously abusive providers from participating in Medicare and other Federal health care programs.

We have strived to increase our effectiveness by partnering with other HHS offices, other Federal agencies, State and local governments, and the health care provider community. For example, we work with the Administration for Children and Families' Office of Child Support Enforcement and Federal, State, and local law enforcement agencies to recover delinquent child support payments from runaway parents. From 1998 to 2001, the OIG opened 1,359 cases nationwide, many in conjunction with the Project Save Our Children Task Forces that currently operate in 29 States and the District of Columbia. As a result of the OIG's investigations, there have been 431 Federal child support convictions yielding \$20.9 million in court-ordered restitution.

HHS TOP ISSUES

You requested that I identify and discuss the HHS issues that we believe are of greatest concern. These issues are described in the Department's accountability report. I would like to highlight a few of them here.

Bioterrorism. First, events of and since September 11 have underscored the need for the necessary infrastructure and tools to respond to potential future terrorist events, including bioterrorism, and other public health emergencies. Our office is currently assessing security controls at CDC, NIH, FDA, and college and university laboratories, including a review of how these institutions are handling access to select agents by restricted persons. We are assessing the capacity and readiness of State and local health departments to detect and respond to events and deploy medical supplies. We are working with FDA to improve the security of the Nation's food supply and with CDC to evaluate the integrity of the vaccine procurement program.

Prescription Drugs. With regard to prescription drugs, the OIG's work has consistently shown that each year the Department pays millions in excessive payments for prescription drugs. The method used to determine the amount to be paid, which is based on the drug's Average Wholesale Price (AWP), is fundamentally flawed. The AWP is a list price reported by the drug manufacturers that is neither average nor wholesale and bears little or no resemblance to the actual wholesale prices available to physicians and suppliers who participate in the Medicare program. Our office and CMS have been working with the Congress to develop more realistic

Medicare and Medicaid reimbursement methods for prescription drugs. Significant progress is being made but a consensus approach has not yet been achieved.

Abuse of the Federal Share of Medicaid. We found that some States inappropriately inflate the Federal share of Medicaid by millions, and in some cases, billions of dollars by requiring their public providers to return Medicaid payments to the State governments through intergovernmental transfers. Once returned, the States used the funds for other purposes, some of which were unrelated to Medicaid. We reviewed this practice in two areas: (1) Medicaid enhanced payments available under upper payment limits (UPL) and, (2) Medicaid disproportionate share hospital (DSH) payments. In response to our work on the upper payment limit provisions, CMS finalized corrective regulatory actions in the past year that will save over \$55 billion over the next ten years. We are expanding our audit work of Medicaid DSH payments and will make recommendations for additional program improvements once those reviews are completed.

Skilled Nursing Facilities. We have looked systematically at CMS' implementation of the Omnibus Budget Reconciliation Act of 1987 nursing home reforms and additional provisions in more recent legislation. For example, Part A reforms of the Balanced Budget Act of 1997 are fully implemented; however, we found some services were paid for twice -- once to the facility under the prospective payment system and again to the supplier. The CMS has made progress in this area, and we plan to review another year to determine if overpayments are continuing. Quality of care studies currently underway include evaluations of the role of the nursing home medical director, family experience with nursing home care, quality assurance committees in nursing homes, nurse aid training, and survey and certification consistency and reliability. The results of these studies will be published over the coming year.

Child Support Enforcement. The goal of Office of Child Support Enforcement (OCSE) is to support families in their efforts to attain and retain self-sufficiency. OCSE and the OIG established multi-agency, multi-jurisdictional task forces to identify, investigate and prosecute the most serious non-support cases. To help improve the efficiency and effectiveness of program operations, we issued a number of studies on OCSE program vulnerabilities. In response to our recommendations, OCSE has offered technical assistance to States to help implement the recommendations. Additional efforts have been made to ensure the Department complies with Executive Order 12953 and acts as a model employer in the area of child support. OCSE is also

following OIG recommendations in designing demonstration programs on program rules and compliance. While much progress is being made, child support enforcement remains a top priority issue.

PROJECTS PLANNED OR UNDERWAY

I would like to turn now to the projects our office has either planned or underway for this year and the next. To place our work plan in context, the Department has estimated budget outlays of \$459.6 billion for FY 2002. The Medicare and Medicaid programs account for the bulk of these dollars, and the other HHS operating divisions administer an additional 300 programs with outlays totaling over \$84.9 billion. By law, only 20 percent of our resources in FY 2003 can be used to oversee these non-Medicare and Medicaid programs and departmental operations. This coverage amounts to a ratio of only one OIG FTE for each \$265 million of HHS expenditures.

The OIG's projects derive from several sources: those that are legislatively mandated; requests by the Congress, the Administration, and the Department; Secretarial priority areas; cooperative efforts with other Federal law enforcement agencies or the States such as for Medicaid and child support enforcement; and those projects we initiate ourselves based on long term strategies and emerging issues. The following are some of the areas in which we have projects planned or underway.

Medicare and Medicaid Projects: The Medicare related subjects that should be completed within the FY 2002 through 2003 period include: overseeing the audit of CMS' FY 2002 financial statements; preaward reviews of Medicare contract proposals and administrative costs; outpatient cardiac rehabilitation programs; patient dumping; provider outreach; compliance program guidance; industry guidance; quality of health care (including nursing homes); Medicare contractor operations and reform; mental health, hospital issues; Medicare+Choice; secondary payer; and home health. Other Medicare issues include billings for clinical laboratory services; physician payments; prescription drugs; and pursuing civil monetary penalty cases for several types of wrongdoing, such as false claims and kickbacks.

The Medicaid related projects will include continuing to cultivate the Federal/State joint audits of the Medicaid program. This cooperative approach has been an overwhelming success in past years in ensuring more effective use of scarce audit resources by both the Federal and State auditors. Completed reports have identified \$226 million in Federal and State savings. The

OIG's Medicaid work will also address: State policies on payment for HIV/AIDS therapy; medicaid access for foster care children and the homeless mentally ill; and the States' coverage for the poor and working disables. We are studying various aspects of the State Children's Health Insurance Program (SCHIP).

Public Health Projects. The public health related subjects for which we have projects planned or underway that should be completed within the FY 2002 through 2003 period include reviews of: physical security of NIH, FDA, university, and CDC laboratories, including handling of certain biological agents and toxins; audit of CDC' vaccine and pharmaceutical procurement program; the Ryan White CARE Act; FDA's bioterrorism program; impact of Prescription Drug User Fee Act on FDA's review of new drug applications; and audits of grant recipient capability and indirect costs. Other public health subject areas for which work is planned or underway relate to: cancer prevention and treatment needs of uninsured women; FDA biennial inspections of drug and device manufacturer forms; blood safety; FDA's bioresearch monitoring program; annual reporting of investigational new drugs; oversight of dietary supplements; Internet pharmacies and providers; mammography facilities; recruiting and protection of human subjects for clinical trials; surveillance of hospital-acquired nosocomial infections; chronic fatigue syndrome; and performance of transplant hospitals.

Children, Families, and the Aging Projects. The subjects related to programs for children, families, and the aging for which we have projects planned or underway that should be completed within the FY 2002 through 2003 period include: placement and safety of children in foster care and group homes; strategies to help hard-to-employ TANF recipients joining the workforce; impact of State time limits on TANF; child care for low-income families; various child support issues such as use of new-hire data to locate non-custodial parents and to implement interstate withholding; Head Start facilities construction and renovation, monitoring of Head Start boards and councils, enrollment goals, teacher credentialing, asthma screening and treatment, and mental health services in Head Start. Also with regard to related programs, we are reviewing: discretionary grants oversight and performance; long term care ombudsman program capacity; withdrawals and transfers of State pension funds; and States' management of the Low-income Home Energy Assistance Program. We plan joint work with State auditors on licensure of Foster Care homes and non-custodial parents' contributions to their children's SCHIP premiums.

General Departmental Management. The OIG's legislatively mandated work includes: evaluating the Department's information security programs and its safeguarding of critical computer systems; implementation of the Government Performance and Results Act; auditing certain financial statements of the Department and the Department's use of Superfund monies; and the Department's accounting for prior-year drug control funds.

CONCLUSION

Mr. Chairman, this concludes my testimony. I appreciate this opportunity to report to you on our accomplishments, the Department's top issues, and our budget request. I welcome your questions.