



DEPARTMENT OF HEALTH AND HUMAN SERVICES

OFFICE OF INSPECTOR GENERAL

WASHINGTON, DC 20201



August 15, 2016

TO: Andrew M. Slavitt
Acting Administrator
Centers for Medicare & Medicaid Services

FROM: /Gloria L. Jarmon/
Deputy Inspector General for Audit Services

SUBJECT: State Governments May Unduly Benefit Financially From Publicly Owned but Privately Operated Entities (A-06-16-08005)

The purpose of this memorandum is to alert you to a potential issue identified during our audit of the Alabama Medicaid Agency's (State agency) hospital certified public expenditures (CPEs) program for fiscal year (FY) 2010.^{1,2} During the course of our audit, we noticed that the State agency had claimed, for FYs 2010 and 2011, more than \$5 million in Federal funds related to CPEs for three hospitals that appeared to be private hospitals.

The three hospitals were owned but not operated by State or local governments. Infirmiry Health, Inc. (Infirmiry Health), the largest nongovernmental healthcare system in Alabama according to its Web site, operated the three hospitals. The University of South Alabama (University) owned one hospital's facilities and grounds, and Infirmiry Health made lease payments to the University to use them. County health care authorities (authorities) owned the other two hospitals' facilities and grounds, which Infirmiry Health used free of charge. Infirmiry Health submitted Medicaid claims to and was paid by the State agency for the Medicaid services the hospitals provided.

As a private entity operating in publicly owned facilities, Infirmiry Health (1) received no State or local government funding other than payment for Medicaid claims; (2) had no State employees working at the hospitals; and (3) paid for the hospitals' expenditures, including patient care liability insurance. None of the more than \$5 million in Federal funding that the State agency received for CPEs was distributed to the three hospitals.

¹ *Alabama Did Not Comply With Federal and State Requirements for Claiming Medicaid Certified Public Expenditures for Federal Fiscal Year 2010 (A-06-15-00004).*

² Public entities (e.g., public hospitals) may certify that they have spent funds on Medicaid items or services that are eligible for Federal matching funds. These funds are referred to as CPEs and may be claimed as the State's share of Medicaid expenditures.

The Federal and State Governments jointly administer the Medicaid program, and the Federal Government pays a share of each State’s actual Medicaid expenditures. States may fund the State share of Medicaid through public funds that are certified by the contributing public agency (e.g., a public hospital) as eligible Medicaid expenditures.³ However, “public funds” and “contributing public agency” are not defined in Federal statute or regulations. Thus, CMS relies on the State’s definition or requirement of what constitutes an appropriate entity that may certify public expenditures.

According to Alabama’s State plan and the Code of Alabama, publicly owned hospitals and hospitals owned or operated by a State agency or a State university may certify public expenditures.⁴ The three Infirmity Health hospitals qualified to provide CPEs under that definition because the facilities and grounds were owned by the University and the authorities.

The State’s definition of a public hospital indicates that a facility only has to be owned by a public entity, regardless of whether the facility is operated by a public entity or whether State or local government funds are used in its operation. As a result, the State agency received more than \$5 million in Federal funding by claiming CPEs from the three Infirmity Health hospitals, even though no State or local government funding was used to operate the hospitals.

We identified this issue in our Alabama audit and were able to quantify the potential Federal impact in that State. However, other States use similar language in their State plans or State regulations to define certain types of public entities. For example, Georgia, Kentucky, and Virginia all use “owned or operated” in their definition of public hospitals in conjunction with CPEs. These States could also obtain Federal funding by utilizing funds from private entities that operate a facility that is owned by the State or a local unit of government.

We are concerned that:

- the Federal Government is matching funds from private entities with no true State or local government funds involved and
- State Governments can benefit financially from publicly owned but privately operated entities because the Federal Government has not provided a clear definition of “public funds” or “contributing public agency.”

We suggest that CMS consider requiring that, to certify public expenditures as the State’s share of Medicaid expenditures, an entity be operated by a unit of government. We respectfully request to be advised of any actions that CMS takes in response to this memorandum and to be provided copies of final CMS policies concerning the definition of a public entity.

³ Social Security Act § 1903(w)(6)(A) and 42 CFR § 433.51(a) and (b).

⁴ TN No. AL-09-005, Attachment 4.19-A, Page 3A(r), and Attachment 4.19-B, Page 8.1(6), and Code of Alabama § 40-26B-70.

If you have any questions or comments about this memorandum, please do not hesitate to call me, or your staff may contact Brian P. Ritchie, Assistant Inspector General for Audit Services, at (410) 786-7104 or through email at Brian.Ritchie@oig.hhs.gov.