



Office of Performance Evaluations Idaho State Legislature

Report 98-02

June 1998

Medicaid Reimbursement for Outpatient Occupational and Speech Therapy

At the request of the Joint Legislative Oversight Committee, we conducted an evaluative review of Medicaid billing and reimbursement for outpatient occupational and speech therapy. Independent providers of these two services may not bill Medicaid directly, but may serve Medicaid-eligible individuals under contract with hospitals.¹ Concerns had been raised that hospitals were benefiting financially from Medicaid reimbursement by acting as billing agents for independent providers of these outpatient services.

Furthermore, a recent case of alleged fraud had highlighted the potential for abuse of Medicaid when hospitals contract for services. In 1997, a contracted provider of occupational and speech therapy was arraigned on 35 counts of federal mail fraud for allegedly submitting fraudulent claims to Medicaid through a hospital and other organizations. In conjunction with this case, the state received repayments from the hospital of \$1.1 million for improperly submitted claims and

¹ Under Idaho's State Medicaid Plan, independent providers of respiratory therapy and psychological services also may not bill Medicaid directly. However, we did not include them in our analysis as no providers of respiratory therapy and only three providers of psychological services had contractual relationships with hospitals during the years under review.

claims for services by the contracted provider that could not be verified.

We focused our review on four issues:

- Does Medicaid allow hospitals to act as billing agents for independent providers of outpatient occupational and speech therapy?
- Can hospitals benefit financially from Medicaid reimbursement for contracted services? To what degree have they benefited in recent years?
- Do controls exist to prevent hospitals from accruing undue benefit from the reimbursement arrangement?
- Could allowing independent providers of occupational and speech therapy to bill Medicaid directly reduce Medicaid expenditures, saving the state money?

To answer these questions, we:

- Reviewed appropriate federal and state laws pertaining to Medicaid and Idaho's State Medicaid Plan;
- Interviewed Department of Health and Welfare personnel and contracted staff who audit Medicaid costs;
- Interviewed hospital representatives and contracted providers;

This report was completed at the request of the Joint Legislative Oversight Committee under the authority of Idaho Code § 67-457 through § 67-464. Questions about the report may be directed to the Office of Performance Evaluations, P.O. Box 83720, Boise, ID 83720-0055, or phone (208) 334-3880.

Figure 1: Mandatory and Optional Services Provided Under Idaho's State Medicaid Plan

Mandatory Services^a

Inpatient hospital services	Medical and surgical services of a dentist
Outpatient hospital services	Nurse-midwife services
Rural health clinic services ^b	Nursing facility services ^c
Laboratory and radiology services	Home health services ^c
Physician services	Early and periodic screening, diagnostic and treatment services ^d
Pediatric and family nurse practitioner services	
Family planning services and supplies	

Optional Services^a

Clinic services	Nursing Facility ^{d, f}
Optometrist services	Hospice care services
Podiatrist services	Extended services for pregnant women
Chiropractor services	Organ transplant procedures
Preventative dental services and dentures	Developmental disability services for adults
Prosthetic devices	Intermediate care facilities for the mentally retarded
Physician assistant services	Eyeglasses
Physical therapy services	Inpatient psychiatric services ^d
Prescribed drugs	Emergency hospital services
Screening services	Personal care services
Rehabilitative services	Case Management Services
Audiometric exams	Medical equipment and supplies
Transportation ^e	

^a Most mandatory and optional services are established with specified limitations.

^b Including federally qualified health center services.

^c For individuals age 21 and older.

^d For individuals under age 21.

^e To and from providers of medical care.

^f For individuals who are age 65 or older and reside in institutions for mental disease (IMDs). Apart from this coverage, individuals who reside in IMDs are not covered under Medicaid.

Source: Health Care Financing Review, Medicare and Medicaid Statistical Supplement, 1996; and Idaho's State Medicaid Plan, March 1998.

occupational or speech therapy delivered by independent providers, although federal guidelines would permit that option.³

According to sources we consulted, the state originally chose not to allow Medicaid reimbursement for these services because independent occupational and speech therapists were not given professional oversight through licensure. Occupational and speech therapy

delivered as hospital outpatient services receive oversight through the hospital.

³ Audiometric exams by independent providers are included in Idaho's State Medicaid Plan. In addition, outpatient occupational and speech therapy are also reimbursable by Medicaid when provided in a Developmental Disability Agency, the public schools, and through hospice programs. Occupational therapy is also reimbursable as part of home health coverage.

Table 2: Medicaid Reimbursement for Contracted Outpatient Occupational and Speech Therapy, Fiscal Years 1994 and 1995

	Number (Percent) of All Hospitals That Contracted and Served Medicaid Clients	Statewide Hospital Medicaid Reimbursement for Contracted Services	Statewide Hospital Medicaid Reimbursement for Contracted and In-House Services	Percent of Total Statewide Reimbursement Contracted
Fiscal Year 1994				
Occupational Therapy	5 (13%)	\$153,890	\$315,216	49%
Speech Therapy	9 (23%)	\$866,702	\$992,407	87%
Fiscal Year 1995				
Occupational Therapy	5 (13%)	\$149,218	\$380,128	39%
Speech Therapy	12 (30%)	\$531,863	\$1,337,624	40%

Source: Office of Performance Evaluations survey results and analysis of Department of Health and Welfare data.

- **Federal and state Medicaid guidelines contain provisions that prohibit hospitals from acting as billing agents for independent providers of occupational and speech therapy and make hospitals financially responsible if they fail to adhere to federal and state laws.**

Hospitals may receive Medicaid reimbursement for outpatient services delivered by contracted providers. However, administrative rule governing provider reimbursement requires all hospital outpatient services to be provided “on site.”⁵ As a result, hospitals cannot bill Medicaid for occupational and speech therapy delivered by independent providers in non-hospital settings.

Federal and state statutes and regulations then hold hospitals responsible for ensuring adherence to this and other requirements.⁶ Like other Medicaid providers, hospitals must enter into a provider agreement with the Department of Health and Welfare to be eligible for Medicaid reimbursement. Among other provisions, the agreement requires hospitals to certify that those

items and services claimed for reimbursement, whether delivered by staff or by a contracted provider, were actually delivered, were medically necessary, and were provided in accordance with other applicable regulations.

We reviewed administrative rule and the state Medicaid provider manual for hospitals, spoke with department staff and a contracted provider, and consulted with the Office of the Attorney General for guidance in the interpretation of on site.

We found:

- **The Department of Health and Welfare has not established a clear definition of on site for the delivery of hospital outpatient services.**

⁵ IDAPA 16.03.10.457.

⁶ 42 U.S.C. § 1396a(a)(27) (1998); 42 C.F.R. § 431.107 (1996); State Medicaid Manual 1.2.1; IDAPA 16.03.10.050; and Idaho’s Medicaid Provider Agreement.

We found:

- **Although in approximately half the cases hospitals were reimbursed by Medicaid more than their contract costs for outpatient occupational and speech therapy during fiscal years 1994 and 1995, the additional reimbursement appeared reasonable in each case.**

Table 3 shows that the number of hospitals that were reimbursed more than they paid their contracted providers varied by year and by service. In most cases, the positive margin was one-third or less of the hospital's overall Medicaid reimbursement for that service. While the positive margins ranged from \$55 to \$104,827, each appeared to be reasonable because it either: (1) was a relatively small dollar amount; or (2) represented a small percent of the hospital's reimbursement for that service. For example, the largest positive margin of \$104,827 represented only 20 percent of that hospital's reimbursement

for speech therapy; contractor costs accounted for the other 80 percent.

Furthermore, a hospital that accounts for a large percent of the total statewide reimbursement for any one outpatient service may raise concern that a provider has submitted fraudulent billings, such as billings for goods or services not provided or billings for phantom visits.⁸ For example, two of the Idaho hospitals that contracted for speech therapy in 1994 accounted for 82 percent of all Medicaid reimbursement for hospital outpatient speech therapy statewide that year. State Medicaid fraud investigators found one of these hospitals had submitted and been reimbursed for questionable billings for services provided by the contractor. The investigation resulted in the hospital repaying the department \$1.1 million. Pursuant to our referral, investigators are currently reviewing the other hospital.

⁸ According to the Health Care Financing Administration, these are two examples of Medicaid fraud and abuse.

Table 3: Minimum and Maximum Margin and Percent of Hospital Reimbursement, Fiscal Years 1994 and 1995

	<u>Number of Hospitals With Positive Margin</u>	<u>Minimum Positive Margin and Percent of Hospital Reimbursement</u>	<u>Maximum Positive Margin and Percent of Hospital Reimbursement</u>
Fiscal Year 1994			
Occupational Therapy	3 of 5	\$3,510 (70%)	\$51,518 (37%)
Speech Therapy	6 of 9	\$55 (9%)	\$104,827 (20%)
Fiscal Year 1995			
Occupational Therapy	3 of 5	\$1,509 (33%)	\$5,674 (4%)
Speech Therapy	4 of 12	\$1,140 (24%)	\$78,937 (33%)

Source: Office of Performance Evaluations survey results and hospital cost report data.

two of the contracts we reviewed specifically addressed and allowed subcontracting. Contracts with an individual provider (11 of 23) limit the delivery of services to the provider named in the contract. However, contracts with a business (12 of 23) may allow either its employees or contracted providers to deliver the contracted services. In these cases, hospitals must still ensure adherence to Medicaid requirements, but are restricted in their ability to legally oversee subcontractors when specific provisions are not included in the contract.

Without clear and complete contract terms, the intent of the parties involved is subject to interpretation, which complicates oversight and enforcement.⁹

Allowing Providers to Bill Medicaid Directly

As noted, outpatient occupational and speech therapy are not reimbursable under the State Medicaid Plan when provided by independent providers. In addition, when hospitals bill Medicaid for contracted outpatient occupational and speech therapy, Medicaid may reimburse the hospitals more than they paid the contracted providers. To determine the potential effect of allowing providers to bill Medicaid directly, we reviewed comparable Medicaid reimbursement rates in Idaho and other states, estimated Medicaid reimbursement rates for services if they were billed to Medicaid directly, and reviewed other policy concerns. We found:

- **Allowing independent providers of outpatient occupational and speech therapy to bill Medicaid directly is likely to have little effect on the state's Medicaid costs.**

⁹ Idaho cases have established that federal and state laws become part of every contractual relationship. *Robinson v. Joint School District No. 150*, 100 Idaho 263 (1979); and *Rungee v. Allied Van Lines*, 92 Idaho 718 (1968).

Overall costs are not likely to change much for two reasons:

1. **There appears to be little difference between the actual average hospital reimbursement rate for contracted services and comparable rates that would be established for independent providers.**

Unlike hospital reimbursement, Medicaid reimbursement to independent providers is based on a fee schedule established by the Department of Health and Welfare. A reimbursement rate is calculated for each of a provider's Medicaid-eligible procedures.¹⁰

We compared the statewide Medicaid reimbursement for contracted outpatient occupational and speech therapy during fiscal years 1994 and 1995 to estimates of Medicaid reimbursement to private providers if they had billed directly. According to our calculations, the average reimbursement to hospitals that contracted for outpatient occupational therapy, inflated to fiscal year 1998 dollars, was \$18.37 per 15 minutes. Medicaid billing rates for independent providers of selected physical therapy services, many of which are similar to occupational services, averaged \$18.55 per 15 minutes during fiscal year 1998, a rate comparable to the actual average for contracted hospital outpatient occupational therapy.

The average reimbursement to hospitals that contracted for outpatient speech therapy, in fiscal year 1998 dollars, was \$15.82 per 15 minutes. During the same year, the average Medicaid reimbursement rates for services by independent providers of speech therapy in Oregon, Washington, and Montana were \$18.68 per 15 minutes for individual therapy and \$10.10 per 15 minutes for group therapy, a range approximating Idaho's average rate.

¹⁰ The state may opt to not cover all of the procedures a provider is qualified to perform.

Consistent with Idaho Code § 67-461(2), the Department of Health and Welfare and the Governor were given the opportunity to review this report in advance and respond in writing. The Governor did not provide a written response. Below we have included the Department of Health and Welfare's response to the review. We appreciate the cooperation we received from the Department of Health and Welfare, Idaho Hospital Association, and Idaho hospitals.



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May 29, 1998

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PERFORMANCE EVALUATIONS
IDAHO STATE LEGISLATURE

Ms. Nancy Van Maren, Director
Office of Performance Evaluations
J.R. Williams Building, Suite 10
Boise, ID 83720

Dear Ms. Van Maren:

Thank you for the opportunity to review and provide feedback on the report, *Medicaid Reimbursement for Outpatient Occupational and Speech Therapy*, for the Joint Legislative Oversight Committee. I would like to address two issues discussed in the report: (1) definition of on site; and (2) hospital contracts with their subcontractors.

In response to the recommendation that "...the Department of Health and Welfare define on site in its rules and in the provider manuals hospitals receive," I am happy to advise you that the Department of Health and Welfare has been meeting with the Idaho Hospital Association (IHA) and has developed a definition for rule. It is our intent to move forward in a timely manner to get this definition in rule and in the hospital provider manuals.

It is unfortunate that 30 percent of the hospital contracts with subcontractors that were reviewed did not contain a provision requiring hospital subcontractors to comply with all state and federal statutory and regulatory requirements. However, it is our expectation that all Medicaid providers and their subcontractors adhere to all state and federal requirements. Although we do not monitor hospital contracts with their subcontractors, appropriate sanctions are applied when a provider is found to be noncompliant.

Again, thank you for providing this document for our review.

Sincerely,

Handwritten signature of James C. Wilson, Deputy Director.
for LINDA L. CABALLERO
Director