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REPORT TO THE CONGRESS

204

Questionable Claims Under The Medicaid Program For The' Care Of Persons In State Institutions For The Mentally' Retarded In California

B-164031(3)

Social and Rehabilitation' Service
Department of Health, Education,
and Welfare

*BY THE COMPTROLLER GENERAL
OF THE UNITED STATES*

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MAY 11, 1970



COMPTROLLER GENERAL OF THE UNITED STATES
WASHINGTON, D C 20548

B-164031(3)

To the President of the Senate and the
Speaker of the House of Representatives

This is our report on questionable claims under the Medicaid program for the care of persons in State institutions for the mentally retarded in California. Medicaid is a grant-in-aid program administered at the Federal level by the Social and Rehabilitation Service, Department of Health, Education, and Welfare. Our review was made pursuant to the Budget and Accounting Act, 1921 (31 U.S.C. 53), and the Accounting and Auditing Act of 1950 (31 U.S.C. 67).

Copies of this report are being sent to the Director, Bureau of the Budget, and to the Secretary of Health, Education, and Welfare.

A handwritten signature in cursive script, reading "James B. Stacks", is positioned above the title of the Comptroller General.

Comptroller General
of the United States

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ABBREVIATIONS

DHCS	California Department of Health Care Services
GAO	General Accounting Office
HEW	Department of Health, Education, and Welfare
PHS	U.S. Public Health Service
SRS	Social and Rehabilitation Service
SSA	Social Security Administration

*COMPTROLLER GENERAL'S
REPORT TO THE CONGRESS*

QUESTIONABLE CLAIMS UNDER THE MEDICAID
PROGRAM FOR THE CARE OF PERSONS IN STATE
INSTITUTIONS FOR THE MENTALLY RETARDED IN
CALIFORNIA
Social and Rehabilitation Service
Department of Health, Education, and
Welfare B-164031(3)

D I G E S T

WHY THE REVIEW WAS MADE

Under Medicaid, a grant-in-aid program administered at the Federal level by the Department of Health, Education, and Welfare (HEW), the Federal Government pays from 50 to 83 percent of costs incurred by States in providing medical care to individuals unable to pay.

Under Medicaid, Federal funds for providing skilled nursing care to eligible persons in institutions for the mentally retarded are available to the States on condition that two HEW requirements are met. First, the institutions must be accepted into the program as providers of skilled nursing care. Second, persons for whom claims are made must be in need of, and actually receive, this type of care.

The State of California has certified as skilled nursing homes significant sections of its institutions for the mentally retarded. In September 1968, the State began claiming Federal assistance for residents of these institutions on the basis that they were Medicaid patients in need of, and receiving, skilled nursing care. Federal funds claimed under Medicaid for such persons from September 1968 through August 1969 amounted to \$14.2 million.

The General Accounting Office (GAO) examined into these claims by California because it appeared to GAO that the care generally provided to persons in these institutions was, for the most part, custodial- or residential-type care rather than skilled nursing care as certified by the State of California.

FINDINGS AND CONCLUSIONS

California's claims for Federal funds under Medicaid were questionable. The claims were not made on the basis of the persons' need for skilled nursing care but simply on the basis of their presence in institutions certified by the State as skilled nursing homes.

After GAO's inquiries about the correctness of California's claims, an HEW medical review team visited the State institutions and reported that 88 percent of those individuals included in its review were not in need of skilled nursing or hospital care and that only custodial care--not skilled nursing care--was being provided to most of them. (See pp. 14 to 16.)

Also, evidence indicates that, since January 1969, the State's institutions may not have met nurse staffing standards prescribed by HEW for participation in the Medicaid program. (See p. 9.)

According to HEW officials, at least seven more States are claiming over \$71 million of Federal funds annually for skilled nursing care for persons in State institutions for the mentally retarded. The correctness of such claims should be determined in view of the situation in California. (See pp. 17 and 18.)

RECOMMENDATIONS OR SUGGESTIONS

The Secretary, HEW, should ensure that, in administering the provision of skilled nursing care under Medicaid programs the States.

- determine, on a case-by-case basis, the types and levels of care essential to meet the needs of mentally retarded persons in State institutions and
- evaluate periodically the needs of these mentally retarded persons to ensure that the types and levels of care prescribed for them is, in fact, provided.

The Secretary should also determine whether past claims by California and other States for Federal funds under the Medicaid program are correct. Adjustments of Federal payments should be made, as appropriate. In arriving at the amounts of necessary adjustments of Federal payments, the question concerning the nurse staffing standards should be resolved. (See p. 18.)

AGENCY ACTIONS AND UNRESOLVED ISSUES

The Assistant Secretary, Comptroller, HEW, has stated that HEW and the State of California agreed with GAO's recommendations and would take action to make sure that mentally retarded persons in State institutions, under the Medicaid program, are in need of, and are receiving, the skilled nursing care for which claims are being made. He has said also that an audit would be made of the payments to the State institutions for the mentally retarded in California and that the audit would ascertain whether the institutions have met nurse staffing standards. (See p. 27.)

HEW has already made or scheduled fact-finding visits to four additional States to determine whether problems similar to those in California exist in these States; and visits to additional States will be scheduled. (See p. 28.)

The State advised HEW that medical-social teams would review each case under which claims were being made and would terminate billings for persons not needing skilled nursing care. The State advised also that such reviews had already resulted in the termination of billings for persons found not to need skilled nursing care. (See p. 19.)

GAO is asking that the Secretary, HEW, keep GAO informed as to the outcome of the audits undertaken by HEW in various States.

MATTERS FOR CONSIDERATION BY THE CONGRESS

This report is being issued to the Congress because of expressed congressional concern over the rising costs under the Medicaid program and the significant amounts of Federal funds expended for skilled nursing care.

CHAPTER 1

INTRODUCTION

The General Accounting Office has reviewed claims made by the State of California, under the Medicaid program, for Federal funds to pay a portion of the costs of skilled nursing care provided to individuals in State institutions for the mentally retarded. The Medicaid program--authorized by title XIX of the Social Security Act, as amended (42 U.S.C. 1396)--is a grant-in-aid program under which the Federal Government participates in costs incurred by the States in providing medical assistance to individuals who are unable to pay for such care. Medicaid is administered at the Federal level by the Social and Rehabilitation Service (SRS) of the Department of Health, Education, and Welfare.

State Medicaid programs are required to provide inpatient hospital services, outpatient hospital services, laboratory and X-ray services, skilled nursing home services, and physicians' services. Additional services such as dental care and home health care and the provision of prescribed drugs may be included in its Medicaid program if a State so chooses.

The Federal Government pays from 50 to 83 percent of the costs incurred by States in providing medical services under their Medicaid programs. For calendar year 1968, the 42 States and jurisdictions having Medicaid programs reported expenditures of about \$3.9 billion of which about \$2 billion represented the Federal share. The scope of our review is described on page 21.

ADMINISTRATION OF MEDICAID PROGRAM

The Secretary of HEW has delegated the responsibility for administering the Medicaid program to the Administrator of SRS. Authority to approve grants for State Medicaid programs has been further delegated to the Regional Commissioners of SRS who are responsible for the field activities of the program.

Under the act, the States have the primary responsibility for initiating and administering the Medicaid program. The nature and scope of a State's Medicaid program are contained in a State plan which, after approval by SRS Regional Commissioners, provides the basis for Federal grants to the State. The Regional Commissioners are also responsible for determining whether the State programs are being administered in accordance with existing Federal requirements and the provisions of the State's approved plan. HEW's Handbook of Public Assistance Administration provides the States with Federal policy and instructions relating to the administration of the several public assistance programs; supplement D of the handbook prescribes the policies, requirements, and instructions relating to the Medicaid program.

At the time of our review, the HEW regional office in San Francisco, California--one of 10 regional offices administering the field activities of the Medicaid program--provided general administrative direction for medical assistance programs in Alaska, Arizona, California, Guam, Hawaii, Nevada, Oregon, and Washington. The HEW Audit Agency is responsible for audits of the manner in which Federal responsibilities relative to State Medicaid programs are being discharged.

ELIGIBLES UNDER MEDICAID PROGRAM

Persons receiving public assistance payments under other titles of the Social Security Act (title I, old-age assistance; title IV, aid to families with dependent children; title X, aid to the blind; title XIV, aid to the permanently and totally disabled; and title XVI, optional combined plan for other titles) are entitled to benefits of the Medicaid program. Persons whose income or other financial resources exceed standards set by the States to qualify for public assistance programs but are not sufficient to meet the costs of necessary medical care are also entitled to benefits of the Medicaid program. Those persons receiving public assistance payments are generally referred to as "categorically" needy persons whereas other eligible individuals are generally referred to as "medically" needy persons.

Historically, care and treatment of mentally retarded persons have been responsibilities of the individual States. However, under the Medicaid program, mentally retarded persons may receive care and services on the same basis as other eligible persons provided that (1) such persons are "categorically" or "medically" needy, (2) they are in need of medical services, and (3) the provider of the service--including institutions--is qualified to participate in the Medicaid program.

MEDICAID PROGRAM IN CALIFORNIA

The Medicaid program in California became effective March 1, 1966, and is referred to as Medi-Cal. In California the Department of Health Care Services (DHCS) was established as part of the Human Relations Agency to administer the Medi-Cal program. The Federal Government pays 50 percent of the administrative and medical services costs of the Medi-Cal program and 75 percent of expenditures attributable to the compensation or training of skilled medical personnel and supporting staff. California reported to the Federal Government that Medi-Cal expenditures for fiscal year 1969 amounted to about \$808 million; the Federal share was about \$405 million.

The California Department of Mental Hygiene operates 14 State mental institutions, of which 10 serve primarily the mentally ill and four serve only the mentally retarded. Care of the mentally retarded in these four institutions is usually provided in residential wards; however, these institutions have medical-surgical wards where illnesses, injuries, and surgical needs of mentally retarded persons are treated. Also, each institution provides its residents other services, such as therapy, educational and vocational training, and recreation.

State institutions for the mentally retarded in California also provide services under the federally administered medical insurance program (Medicare) authorized by title XVIII of the Social Security Act (42 U.S.C. 1395). Subject to certain limitations--such as the number of days of care that can be provided and the amount of coinsurance or deductible that the patient must pay--providers are paid under Medicare for reasonable costs of medical care and

services provided to mentally retarded persons over the age of 65. Medicaid benefits cannot be used until Medicare benefits have been exhausted.

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A listing of principal HEW officials having responsibility for the matters discussed in this report is included as appendix III.

CHAPTER 2

IMPLEMENTATION OF THE MEDI-CAL PROGRAM

TO COVER PERSONS IN STATE INSTITUTIONS FOR

THE MENTALLY RETARDED

To participate in the Medicaid program, which became effective January 1, 1966, institutions such as hospitals and nursing homes must meet certain minimum requirements prescribed by SRS. Prior to January 1, 1969, eligibility of an institution to participate in the Medicaid program was based upon certification by (1) the Social Security Administration (SSA) that the institution met the requirements for participation in the Medicare program or (2) an appropriate State agency that the institution met the minimum requirements prescribed by SRS. Effective January 1, 1969, only those nursing homes meeting SRS minimum requirements were eligible to participate in the Medicaid program.

The Medicaid program provides for Federal participation in the costs of care for eligible persons 65 years of age and older in mental institutions. The four institutions for the mentally retarded in California were certified by SSA as psychiatric hospitals for purposes of participation in the Medicare program and, as noted above, such certification made them eligible to participate in the Medicaid program. The DHCS, therefore, made claims under the Medicaid program for the costs of caring for eligible persons 65 years old or over in these institutions from inception of the Medi-Cal program in March 1966. These claims were for costs incurred in providing care to an average of about 100 persons a month.

In June 1966, 5 months after enactment of the Medicaid program, SRS issued guidelines to the States for implementing and administering the Medicaid program. These guidelines provided, among other things, that institutions for the mentally retarded would not be eligible for participation in the Medicaid program unless such institutions met the SRS requirements as a general hospital or a skilled nursing home.

In October 1966, the California Department of Mental Hygiene therefore requested SSA to change the certification of the four institutions for the mentally retarded from psychiatric hospitals to general hospitals since such certification under the Medicare program would also qualify the institutions as eligible to participate under the Medicaid program. SSA certified only the medical-surgical wards of the four institutions as general hospitals and would not certify the entire facilities of the four institutions as general hospitals because the institutions were primarily training schools or custodial care facilities and did not provide the types of services required for certification as a general hospital under the Medicare program.

Effective in April 1968, the DHCS--the State agency administering the Medi-Cal program--changed the certification of the four institutions from psychiatric hospitals to combined general hospitals and skilled nursing homes for purposes of participation in the Medicaid program. Under this certification, the medical-surgical wards (approximately 1,380 beds) were certified as eligible for participation in the program as a general hospital and the residential wards (approximately 10,400 beds) were certified for participation in the program as skilled nursing homes.

From September 1968 through August 1969, the DHCS submitted claims to SRS totaling about \$28.3 million as the cost of caring for about 5,000 mentally retarded persons in the four institutions on the basis that these persons were permanently and totally disabled. The Federal share of these claims was 50 percent, or about \$14.2 million.

Until January 1, 1969, SRS policy permitted participation of skilled nursing homes in the Medicaid program as long as a reasonable plan, which would lead to full compliance with SRS minimum requirements for nursing homes by that date, was being followed by the facilities. Effective January 1, 1969, however, only those facilities in compliance with these minimum requirements were eligible to participate in the Medicaid program. These requirements provided, among other things, that a professional registered nurse or licensed practical nurse must be on duty at all times and in charge of the nursing activities. The DHCS

concluded that, for compliance with this nursing standard, psychiatric technicians regularly employed in the mental institutions were equivalent to licensed practical nurses.

SRS, however, advised the DHCS that there was no provision in the standards for accepting the services of other than a registered or licensed nurse and that the use of technicians was not an acceptable substitute for meeting the nurse staffing standards. Because such use had been the practice in the past, the Secretary, Human Relations Agency, requested the Secretary, HEW, in July 1969 to amend the Federal regulations to permit the use of psychiatric technicians as nurses-in-charge in State institutions for the mentally retarded. (See p. 20.)

CHAPTER 3

CLAIMS FOR SKILLED NURSING CARE FOR PERSONS

IN STATE INSTITUTIONS FOR THE

MENTALLY RETARDED IN CALIFORNIA

Our review of Medicaid claims by the State of California for the care of individuals in State institutions for the mentally retarded showed that claims were being made on behalf of most of these individuals simply because they were in institutions certified by the State as skilled nursing homes rather than because they were in need of such care. Generally, mentally retarded persons need specialized behavioral care and services, and vocational, educational, and rehabilitative training--nonmedical care which is not covered under the Medicaid program. Although some mentally retarded persons may require intense and reasonably continuous medical and/or skilled nursing care, the needs of the mentally retarded, as a class, are outside the scope of services which are generally associated with, and normally provided in, skilled nursing homes. A substantial portion of claims made by the State of California--as much as \$12.5 million annually--are questionable because most individuals in the State institutions for the mentally retarded did not need, and did not receive, skilled nursing care.

In April 1968 the DHCS certified major sections of the four State institutions for the mentally retarded as skilled nursing homes meeting SRS requirements for participation in the Medicaid program, and in September 1968 DHCS began claiming Federal funds for costs incurred in caring for about 5,000 mentally retarded persons in these institutions on the basis that they were Medicaid patients receiving skilled nursing care.

In discussing with SRS officials the correctness of claims made by DHCS, we were advised that at least seven other States were claiming under Medicaid the cost of skilled nursing care for persons in State institutions for the mentally retarded. According to SRS officials these claims amount to over \$71 million annually.

Historically, State and local governments have financed and provided institutional care for the mentally retarded in State-operated institutions. Primarily these institutions were engaged in providing residential- or custodial-type care--generally described as room and board; personal care and supervision (including necessary protective care); assistance and guidance with the activities of daily living; and recreational activities.

Subsequent to inquiries which we made to SRS concerning the correctness of payments for mentally retarded persons under the Medicaid program, SRS issued instructions to State agencies in February 1969 which provided that:

"Custodial care and training are not regarded as medical services and are not eligible for Federal financial participation under title XIX. Assistance with activities of daily living, such as helping with dressing, eating, washing, shaving, and guidance in daily activities, is not sufficient in itself to constitute inpatient or skilled nursing home services. Also, retardates who need only assistance with activities of daily living do not qualify as inpatients."

The Department of Mental Hygiene, in its request for State funds for fiscal year 1969-70, describes persons in the California State institutions for the mentally retarded as varying in age from a few days to 90 years and ranging from those who

- are completely bedfast to those who are actively ambulatory,
- are severely malformed (including blind and deaf) to those without physical handicaps who are culturally deprived,
- have severe behavioral and psychotic problems to well-adjusted docile persons who are rejected by their families or communities.

As indicated, the natures and the needs of mentally retarded persons vary from those persons who require medical care or services to those persons who require only residential and custodial care. In our opinion, this latter group of individuals, in most instances, would not require the services of a skilled nursing home.

The California Department of Public Health is the State agency responsible for examining and recommending certification of health facilities for purposes of participation in the Medicare program. Officials of the State Department of Public Health advised us, in September 1969, that, although there were some mentally retarded patients who needed skilled nursing care, it was their opinion that most of the population of the State institution did not need, and did not receive, such care. We noted, however, that, as of June 1969, the DHCS was submitting claims and receiving Federal payments for the cost of caring for over 90 percent of the individuals in these institutions who could meet the age requirement (18 years of age or older) for eligibility under the program for the permanently and totally disabled.

Information as to the type of care needed by, and actually provided to, a number of persons in the four State institutions for the mentally retarded is included in a report dated June 23, 1969, by a California Human Relations Agency Task Force on Review of Mental Retardation Services. The report was based, in part, on the observations made by task force members and consultants during their visits to the four State institutions. The visits were made after the date that the DHCS certified the residential wards of these institutions as skilled nursing wards eligible to participate in the Medicaid program.

The task force report was critical of the institution's emphasizing control and custody of patients rather than emphasizing the rehabilitation and development of the potential of each individual. The report points out that the current organizational structure of the four institutions is inappropriate because, although medical treatment is appropriate for only a portion of the residents currently in these institutions, the structure presumes that the primary

service requirement for all residents is medical treatment that is provided through a structure of medical management.

More detailed information concerning the type of care needed by, and being provided to, persons in the State institutions for the mentally retarded in California is included in a report dated October 9, 1969, to the Regional Associate Commissioner, Medical Services Administration, SRS, summarizing the findings of a U.S. Public Health Service (PHS) team which assisted SRS in a review of the four mental retardation institutions. The PHS/SRS review was conducted after our inquiries about the correctness of the State's claims. An objective of the SRS review was to determine whether the individuals being cared for--and whose cost of care was being billed under the Medi-Cal program--were, in fact, in need of skilled nursing care.

The PHS team, which consisted of two medical officers, a nursing consultant, and a hospital administration consultant, reviewed the medical records of about 230 mentally retarded persons. The cases reviewed were selected on the basis of a 5-percent random sample of all individuals included by the State in its claims for Federal participation in the costs of providing skilled nursing home care or hospital care during June 1969. The PHS review team concluded that 88 percent of the individuals included in the review were not in need of skilled nursing care or hospital care. The report added that, for the most part, only custodial care was being provided to these individuals.

The following examples taken from the PHS report illustrate the type of care being provided to many of the individuals in the four institutions.

1. Medical records included quarterly progress report dated June 20, 1969, which showed no change in the individual's condition during the last quarter. Record stated that individual, aged 42, was suitable for home placement. There was one nursing note in June; it stated that a routine urine specimen was obtained for a survey period. Level of care was considered to be custodial.

2. Individual is aged 60. Medical records show no physicians' notes between March and July 1969. July record stated no change in individual's condition and it was planned to place her outside the institution. Nurses' notes indicated that, during June 1969, the patient occasionally went to church and movies and on bus and train rides. Records stated also that she was not on medication. Level of care was considered to be custodial.
3. Individual is aged 25. Quarterly progress report dated May 16, 1969, showed that the individual had no special incidents or illnesses and had no medication during the quarter. Behavior was noted as satisfactory and he had been approved for outside placement. Level of care was considered to be custodial.
4. Quarterly progress report dated June 27, 1969, showed that the individual was 20 years old, had ground privileges, was ambulatory and could feed and dress himself. The report stated that there were no incidents or illnesses during the period. The individual was not on medication but was on a low-calorie diet for weight control. Level of care was considered to be custodial.
5. Quarterly progress report dated April 7, 1969, describes a 22-year-old woman who cannot speak and who works outside her ward. The report stated that she required careful supervision and was in good health. July quarterly progress report recommended her for placement in a board and care facility. There were no doctors' or nurses' notes indicating any medical problems during June 1969. Level of care was considered to be custodial.
6. Quarterly progress report of June 17, 1969, showed patient, aged 35, to be in good physical condition and considered to be a well-behaved working patient. Treatment consists of industrial therapy. Social worker is trying to obtain permission from relative for community placement. No indication of any medical problem during June 1969 although the patient

went to the dental clinic twice in that month.
Level of care was considered to be custodial.

7. Quarterly progress report dated August 1969 showed no change in individual's condition during the past 3 months. April orders called for ointment and regular diet. Nursing note in June 1969 states that this 18-year-old helps to carry bedspreads and pick up dirty clothes. Level of care was considered to be custodial.

If the same percentage of persons in these four institutions, considered by the PHS review team as not being in need of general hospital or skilled nursing care, was applicable for the entire year for which DHCS submitted claims for such care, the total dollar amount of questionable claims made by California for Federal funds would be about \$12.5 million.

CHAPTER 4

CONCLUSIONS AND RECOMMENDATIONS

CONCLUSIONS

A substantial portion of the \$14.2 million in Federal Medicaid funds claimed by the State of California during the period September 1968 through August 1969 for skilled nursing care provided to individuals in State institutions for the mentally retarded were questionable because the type of care upon which most of the claims were based--skilled nursing care--was not the type of care required by, or provided to, these persons.

Our opinion is based upon (1) statements of California Department of Public Health officials that most of the population of the State institutions for the retarded do not need, and do not receive, skilled nursing care (see p. 13), (2) the California Human Relations Agency task force report which points out that the organizational structure of the four institutions is inappropriate because it presumes the primary service requirement for all residents is medical treatment but such treatment is appropriate for only a portion of the residents (see p. 13), and (3) the conclusions of the PHS/SRS review team that 88 percent of the individual cases which they have reviewed are not in need of skilled nursing care or hospital care (see pp. 14 to 16). This matter takes on added significance since, according to SRS officials, at least seven other States are claiming, under the Medicaid program, costs for skilled nursing care for persons in State institutions for the mentally retarded and such claims amount to over \$71 million of Federal funds annually.

In our opinion, a physician's determination that a person needs skilled nursing care and the person's admittance into a facility that has been approved as meeting SRS requirements as a provider of skilled nursing services under the Medicaid program indicate--in usual circumstances--that the person is actually in need of, and will receive, the type of care and services that a skilled nursing home is certified to provide. However, in an unusual situation--

where certification as skilled nursing homes was made of practically entire institutions which had been identified as providing training- and/or custodial-type care to a specific class of individuals (the mentally retarded)--we believe that SRS should take additional measures to ensure, on an individual basis, that skilled nursing care is warranted and is being provided.

RECOMMENDATIONS TO THE SECRETARY
OF HEALTH, EDUCATION, AND WELFARE

In view of the significant amount of Medicaid expenditures that are being claimed by the various States for care provided to mentally retarded persons in State institutions and considering the matters discussed in this report relating to the type of care for which California has claimed Federal funds, we recommend that the Secretary, HEW, take measures to ensure that the States, in administering the provision of skilled nursing care under their Medicaid programs,

- determine, on a case-by-case basis, the types and levels of care essential to meet the needs of such mentally retarded persons and
- evaluate periodically the needs of these mentally retarded persons to ensure that the types and levels of care that have been prescribed for them under the Medicaid program are, in fact, being provided to them.

We recommend also that the Secretary provide for reviews of past claims under the Medicaid program by the State of California and other States for Federal funds to pay for the care and services to mentally retarded individuals in State institutions to determine the correctness of the claims. Adjustments of the Federal payments should be made as may be appropriate. In arriving at the amounts of any necessary adjustments of Federal payments, we believe that the question concerning the use of psychiatric technicians in lieu of licensed practical nurses to meet staffing standards should be resolved.

CHAPTER 5

AGENCY COMMENTS

By letter dated March 4, 1970, the Assistant Secretary, Comptroller, HEW, furnished us HEW and DHCS comments on our findings and recommendations. (See apps. I and II).

HEW advised us that the report presents a factual picture of the situation in California with reference to persons in State institutions for the mentally retarded under the medical assistance program, and is consistent with the findings of the SRS Regional Office.

Both HEW and the State are in agreement with our recommendations relating to establishing and periodically evaluating, on a case-by-case basis, the types and levels of care needed by, and being furnished, to mentally retarded persons.

The State advised HEW that medical-social teams would review each case under which claims were being made and would terminate billings for persons not needing skilled nursing care. The State advised also that such reviews had started, they were scheduled for completion by March 31, 1970, and some billings had already been terminated for persons found not to need skilled nursing care. With regard to the 230 cases which the PHS/SRS team reviewed, the State pointed out that their review of each of these 230 cases indicated that a majority of these cases clearly required a level of care no lower than skilled nursing care.¹ HEW stated that

"*** a review of a five percent sample can only identify and indicate the gross magnitude of the

¹In a letter dated January 8, 1970, from DHCS to the Human Relations Agency, commenting on action taken by the State as a result of our report, DHCS reported that about 57 percent of the approximately 650 cases examined to date were considered to be in need of skilled nursing care and that about 43 percent were considered to be in need of other than skilled nursing care.

problem. Whether the actual figure is 88 percent, a substantial minority, or at some point in between; it is obvious that a very significant amount of Federal funds has been improperly claimed."

The Assistant Secretary, Comptroller, stated that the HEW Audit Agency would make an audit of Medicaid payments made since September 1968 on behalf of patients in the four California institutions. The auditors will be assisted by a combined team of medical personnel drawn from the HEW regional office and the State.

We were advised further that, as a result of a Medical Services Administration, SRS, fact-finding visit to Pennsylvania, an audit of Pennsylvania's claims for funds for care of the mentally retarded under the Medicaid program had been initiated. By memorandum dated January 7, 1970, all Associate Regional Commissioners for Medical Services were advised that problems similar to those in California might exist in other States claiming Medicaid payments for persons in institutions for the mentally retarded. As of March 1970, fact-finding visits had been scheduled in three additional States by HEW central and regional office staffs; visits to other States will also be made.

In regard to the matter of using psychiatric technicians in lieu of licensed practical nurses to satisfy the Medicaid program nurse staffing standards, the State advised HEW that the psychiatric technicians are also licensed practical nurses and, thus, the State considered the facilities as complying with the staffing requirements of the program. HEW stated that the question of compliance can be resolved only by a complete audit of the numbers and credentials of persons actually assigned to the skilled nursing care units during 1969 and that such an audit will be made.

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Because of our continuing interest in this matter, we are asking the Secretary, HEW, to inform us of the outcome of the audits undertaken by HEW in the various States.

CHAPTER 6

SCOPE OF REVIEW

Our review was concerned with evaluating the policies, procedures, and practices followed by the State of California in claiming Federal funds for costs of providing care to individuals in State institutions for the mentally retarded. As part of this effort, we examined the actions taken by the State in certifying significant sections of four institutions as skilled nursing homes. Our work included

- reviewing the basic legislation authorizing the Medicaid program,
- examining pertinent records and documents at the Sacramento, California, offices of the DHCS, Department of Mental Hygiene, and Department of Public Health; and the HEW regional office in San Francisco, California,
- reviewing the PHS/SRS report on its review of the four California State institutions for the mentally retarded and discussing the care and treatment provided the retarded with the doctors who performed the review,
- visiting one of the four State institutions for the mentally retarded, examining individual patient records, and discussing the care being provided to selected individuals with the responsible ward physician, and
- discussing the matters noted during our review with State officials in Sacramento, California, and HEW officials in Washington, D.C.

APPENDIXES



DEPARTMENT OF HEALTH, EDUCATION, AND WELFARE
WASHINGTON, D C 20201

OFFICE OF THE SECRETARY

MAR 4 1970

BEST DOCUMENT AVAILABLE

Mr. John D. Heller
Assistant Director
Civil Division
U. S. General Accounting Office
Washington, D. C. 20548

Dear Mr. Heller:

The Secretary has asked that I reply to the draft report of the General Accounting Office on its review of Medicaid claims by the State of California for the care of persons in State institutions for the mentally retarded.

Enclosed are the Department's comments on the findings and recommendations in your report, and the comments on certain points in the response by the Department of Health Care Services of the State of California.

We appreciate the opportunity to review and comment on your draft report and welcomed your suggestion that the appropriate State officials be afforded the same opportunity.

Sincerely yours,

A handwritten signature in dark ink, appearing to read "James F. Kelly".

James F. Kelly
Assistant Secretary, Comptroller

Enclosures

COMMENTS ON GENERAL ACCOUNTING OFFICE DRAFT REPORT
REVIEW OF MEDICAID CLAIMS BY STATE OF
CALIFORNIA FOR THE CARE OF PERSONS IN
STATE INSTITUTIONS FOR THE MENTALLY RETARDED

The draft report of the General Accounting Office presents a factual picture of the situation in California with reference to inclusion of persons in State institutions for the mentally retarded under the medical assistance program, and is consistent with the findings of the SRS Regional Office on this subject.

In July 1969, the Associate Regional Commissioner for Medical Services in Region IX initiated a study of individuals in the four State institutions for the mentally retarded with respect to whom the State was claiming Federal financial participation in the cost of skilled nursing home care under the medical assistance program. The purposes of the study were to determine whether the persons for whom Federal financial participation was being claimed needed skilled nursing home care and whether the facilities involved meet SRS requirements for participating skilled nursing homes. The onsite reviews were conducted by a team of professional staff of the regional Community Health Service. The study was completed in October 1969. The findings of this study, especially the finding that approximately 88 percent of those for whom Federal financial participation is being claimed do not need and are not receiving skilled nursing home care, were quoted and apparently relied upon by the General Accounting Office in its draft report. A summary report of the findings of the SRS-CHS team is attached. [See GAO note.]

SRS personnel in Region IX have been in frequent touch with officials of the single State Agency in California concerning the inclusion of the mentally retarded in the medical assistance program. The findings of the SRS-CHS study were brought to their attention as were the provisions D-5130 of the Handbook of Public Assistance Administration relating to initial authorization of care and periodic review and reassessment of the medical-social plan for each patient. The State Agency undertook a review of its policies and practices in this area as they applied to recipients in institutions for the mentally retarded.

The draft report of the General Accounting Office was completed and presented to the State for comments early in December. We are transmitting herewith the response of the State Agency to the findings and conclusions stated in the GAO draft report. We are pleased to

GAO note: The summary report has been considered in preparation of our final report but has not been included.

note that the State Agency has initiated actions which should effectively terminate by March 31, 1970 improper billing to the medical assistance program for individuals in institutions for the mentally retarded who do not need and do not receive services covered by the plan. However, neither the response of the State to the GAO draft report nor contacts with the State Agency by SRS personnel have served to dispel the questions surrounding the claims for Federal financial participation in payments for skilled nursing home care to these institutions from September 1968 to the present.

Two significant questions have been raised; first, whether the parts of the institutions certified as skilled nursing homes met title XIX requirements for skilled nursing homes which became effective January 1, 1969, particularly in the matter of staffing; and second, whether the individuals in these units for whom Federal financial participation was claimed were patients in need of skilled nursing home care.

With respect to the staffing requirements, the GAO draft report raises a question as to whether SRS requirements were actually met after January 1, 1969, but the report does not state any audit findings on this point. The State Agency reports that "these facilities are in full compliance with title XIX staffing requirements." On the other hand, the report of the SRS-CHS study written about three months earlier states: "The staffing of the 'Skilled Care' units ... does not meet the requirements for title XIX ..." Such complete disagreement can only be resolved by an audit of the numbers and credentials of persons actually assigned to these units during 1969.

With respect to whether individuals for whom Federal financial participation was claimed were properly patients under the plan, again a complete audit appears to be indicated. Based on a sample review the SRS-CHS study found that 88 percent did not need the care for which the State was claiming. The GAO did not make its own determination of the percentage of recipients involved but relied upon the SRS-CHS finding. The State Agency in its response acknowledged that a minority, of unspecified size, were not properly patients under the plan. Of course, review of a five percent sample can only identify and indicate the gross magnitude of the problem. Whether the actual figure is 88 percent, a substantial minority, or at some point in between; it is obvious that a very significant amount of Federal funds has been improperly claimed. Accordingly, the HEW Audit Agency will undertake an audit of the payments to the four State institutions for the mentally retarded by the Medical Assistance Program in California from September 1968 to the present. The auditors will be assisted by a combined team of medical personnel drawn from the Regional Office and the State.

We agree with the conclusion stated in the draft report that a need exists to more fully enforce Federal requirements for evaluation in each case of the need for skilled nursing home care and periodic evaluation to determine that each patient continues to need such care and that it is in fact being provided to them. We will issue a memorandum to all SRS Regional Commissioners advising them of the findings in Region IX and requesting that they emphasize to State medical assistance agencies the particular importance of these requirements with respect to inclusion of persons in institutions for the mentally retarded under the plan.

The report also recommends that reviews be made to determine the propriety of past claims made by other States that are claiming Federal financial participation in the costs of caring for mentally retarded individuals in State institutions. As a result of an MSA factfinding visit to Pennsylvania in October 1969, an audit of Pennsylvania's coverage of the mentally retarded under the Medicaid program has been initiated. In addition, all Associate Regional Commissioners for Medical Services have been alerted, by memorandum dated January 7, 1970, to the possibility that problems similar to those in California may exist in other States claiming for payments on behalf of persons in institutions for the mentally retarded, and, as of this writing, factfinding visits by Central Office and Regional Office staff have been scheduled in three additional States.

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DEPARTMENT OF HEALTH CARE SERVICES
714 P STREET
SACRAMENTO, CALIFORNIA 95814

January 15, 1970

RESPONSE TO GENERAL ACCOUNTING OFFICE DRAFT REPORT ON MEDICAL CLAIMS FOR CARE OF MENTALLY RETARDED PERSONS IN STATE HOSPITALS

This is our response to statements made in the General Accounting Office Draft Report prepared for the Controller General and the Congress of the United States.

1. Staffing requirements

The report suggests that licensed psychiatric technicians are substituted for licensed vocational nurses, and thus the facilities may not meet the Title XIX staffing requirements for skilled nursing homes. This apparently was the result of a misunderstanding by the Federal inspection team, which found licensed psychiatric technicians in charge of a shift; however, the team did not realize that these licensed psychiatric technicians also are licensed as vocational nurses. We have again checked on the staffing patterns of the State institutions for the mentally retarded, and we have affirmed that the skilled nursing home sections of these facilities are in full compliance with Title XIX staffing requirements.

2. Historical level of care for mentally retarded

The report repeatedly states that mentally retarded persons, as a class, have historically been provided with residential type care. This is not correct. While some mentally retarded individuals have needed -- and received -- only residential type care, many have had associated or additional physical impairments which have necessitated varying levels of inpatient care, ranging from skilled nursing care to acute hospital care. Sweeping conclusions, generalizing about the medical needs of mentally retarded persons as a class, are not warranted.

3. Need for skilled nursing care

On the basis of a review of medical records by an HEW team, a conclusion was reached that 88 percent of the 230 cases reviewed needed neither hospital care nor skilled nursing home care. The State cannot accept this figure as valid because:

- a. The review was of records only. No patients were observed, and some of the records may not have fully reflected the degree of the patients' impairments or their nursing needs.
- b. Some cases were incorrectly classified as "custodial" because of varying semantic interpretations of this term. It has been customary for staff physicians in these facilities to use the term "custodial" for severely impaired persons requiring long-term skilled nursing care.
- c. Since the visits by the HEW review team, the State has undertaken a review of each of the 230 cases reported, utilizing teams composed of a physician, registered nurse, psychiatric technician, and a psychiatric social worker. This team review is completed, and it indicates that the majority of these cases clearly require a level of care no lower than skilled nursing care.

4. Actions taken or planned by the State are:

- a. During December, State review teams, as noted in 3c above, reviewed the 230 cases reviewed by the HEW audit team. Medicaid billing has been terminated for those patients which the State review team deemed not to require skilled nursing care.
- b. During December an additional ten percent of mentally retarded-medicare patients in State hospitals received reviews by the above noted State review teams. Billing has been terminated for the patients in this group found not to need skilled nursing care.

- c. All remaining mentally retarded-medicaid patients in State hospitals are scheduled to receive similar team reviews by March 31, 1970. Billing will be terminated for those patients found not to require skilled nursing care.
- d. For the future the State has adopted a policy for the regular use of review teams to evaluate the need for skilled nursing care.

5. We support the following recommendations in the report:

- "-- require States to determine, on a case-by-case basis, the type and level of care that is essential to satisfying the needs of these mentally retarded persons,
- "-- require that the States periodically evaluate the need of these mentally retarded persons to ensure that the type and level of care that has been prescribed for such individuals under the Medicaid Program is, in fact, being provided to them."

We are pleased to report that these procedures are already being carried out in California's institutions for the mentally retarded as noted above. The need for skilled nursing care in each case is being carefully evaluated in accordance with the definition and criteria noted on the attached guidelines. [See GAO note.] Title XIX will be billed for inpatient care only for beneficiaries found in need of skilled nursing home or hospital care.

Attachment

GAO note: These guidelines have been considered in preparation of our final report but have not been included.

PRINCIPAL OFFICIALS OF THE
DEPARTMENT OF HEALTH, EDUCATION, AND WELFARE
HAVING RESPONSIBILITY FOR THE MATTERS
DISCUSSED IN THIS REPORT

	<u>Tenure of office</u>	
	<u>From</u>	<u>To</u>
SECRETARY OF HEALTH, EDUCATION, AND WELFARE:		
Robert H. Finch	Jan. 1969	Present
Wilbur S. Cohen	Mar. 1968	Jan. 1969
John W. Gardner	Aug. 1965	Mar. 1968
ADMINISTRATOR, SOCIAL AND REHABILITATION SERVICE:		
John D. Twiname	Mar. 1970	Present
Mary E. Switzer	Aug. 1967	Mar. 1970