DEPARTMENT OF HEALTH & HUMAN SERVICES

Region V
Health Care Financing
Administration

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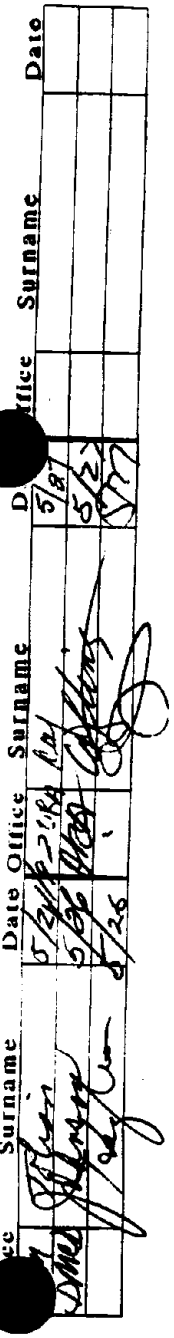
MAY 1993

CHICAGO REGIONAL STATE LETTER NO.: 21-93

Subject: Inpatient Psychiatric Services for Individuals Under Age 21



This letter contains information on recent activities involving the above subject area. Its purpose is to not only emphasize the Federal government's continuing concern with the quality of care provided to psychiatric patients, but also to specifically stress the need to assure your compliance with Federal certification of need requirements.

LEGAL AUTHORITY

The Social Security Amendments of 1972 added inpatient psychiatric services for individuals under age 21 as an optional Medicaid service, effective January 1, 1973. Section 1905(a)(16) and (h) of the Social Security Act, which authorized and defined these services, requires that, for services to be eligible for Federal financial participation (FFP), a team consisting of physicians and other qualified personnel must make a determination that inpatient services are necessary and can reasonably be expected to improve the patient's condition. The Congressional Conference Report, preceding the enactment of this legislation, discussed formal certification by an independent review team consisting of medical and other personnel as a prerequisite for FFP (H.R. Conference Report No. 1605, 92nd Congress, 2nd Session, reprinted in 1972 U.S. Code Cong. & Admin. New 5370, 5398).

Congressional concerns at the time of enactment were that the youths receive appropriate treatment (assuring that they actually need inpatient care), that they be helped to return to their resident community, and that controls be in place to protect them from incarceration. The implementing Federal regulations at 42 CFR 441.152 require that a medical team make a certification that: (1) ambulatory care resources in the community do not meet the needs of the patient; (2) inpatient treatment under the care of a physician is needed; and (3) the services can reasonably be expected to improve the patient's condition, or prevent further regression, so that services will no longer be needed. These assurances are documented through the certification of need process.

FILE COPY

The certification of need process requires the participation of different teams of health professionals on these occasions:

- o Medicaid recipient is admitted -
  The certification of need must be prepared by an independent team of health professionals not associated with the facility;

- o Individual applies for Medicaid while in facility -
  The certification of need must be prepared by the facility treatment team responsible for the patient's plan of care; or

- o Individual undergoes an emergency admission -
  The certification of need must be prepared by the facility treatment team responsible for the patient's plan of care.

Inpatient psychiatric services must involve "active treatment." This means that a team of physicians and other personnel employed by or providing services to patients in the facility must implement a professionally developed and supervised individual plan of care. The individual plan of care must be implemented no later than 14 days after admission. This individual plan should be designed to achieve the recipient's discharge from inpatient status at the earliest appropriate time.

Each individual plan must be reviewed every 30 days by the team developing the plan of care in order to (1) determine that the inpatient services provided were actually necessary, and (2) recommend changes in the plan as indicated by the recipient's overall adjustment as an inpatient.

BACKGROUND

During the late 1980s, the Office of Inspector General (OIG) performed a significant number of audits around the country on this issue that resulted in substantial disallowances, causing many protests from the States. The Congress, through the Omnibus Budget and Reconciliation Act of 1990 (OBRA '90), placed limitations on HCFA that effectively precluded any disallowances for periods prior to November 5, 1990. All related disallowances that had been issued for the pre-November 5 period were withdrawn.

Additionally, all audit reports, which were issued either in draft or in final form, were not processed. However, OBRA '90 did not prevent HCFA from prospectively enforcing these requirements after November 5. The States were advised of this in a letter, dated November 30, 1990, from the Medicaid Bureau Director to each State Medicaid Director. At the present time, 38 States and the District of Columbia offer inpatient youth psychiatric services at a cost of about $2 billion per year (Federal and State shares).

CURRENT OIG REVIEW STATUS

The OIG has recently conducted a two-State survey of inpatient psychiatric services financed by Medicaid program funds for individuals under age 21. OIG is planning to expand its current survey to include additional States, and to determine whether there is a nationwide problem with the certification of need process.

During the conduct of its preliminary survey, the OIG found that the certification of need processes did not always result in proper placement of patients in psychiatric facilities, nor in the preparation of treatment plans necessary to improve patients' quality of life. As a result, the OIG is proposing to perform reviews in eight States to determine whether Medicaid psychiatric patients need such services, and the appropriateness of the services provided.

The OIG's review determined that 25 percent of its sampled patients in one State and 32 percent in the other did not meet the Medicaid youth psychiatric program criteria. Individuals in these two States were inappropriately admitted under the Medicaid youth psychiatric program because they:

- could have improved in a setting other than an inpatient psychiatric setting;
- were in need of juvenile detention;
- could have been treated in a group home;
- needed a trial period of outpatient care before hospitalization;
- had no real need for inpatient psychiatric care; or
- will need long term care hospitalization.

During the review, the OIG also noted that youths receiving inpatient psychiatric services in these States had median lengths-of-stay that were about three times longer than the national median. The OIG compared its length-of-stay information with information provided by the National Institute of Mental Health.

In its conclusions, the OIG stated that its findings in these States show that the current certification of need process is not effectively working as a gatekeeper. The OIG believes these two States are not currently limiting payments for services to patients meeting the specific requirements of the youth psychiatric program. The OIG has concluded that these results, along with the results of its prior reviews, strongly suggest that similar problems exist in other States.

CONGRESSIONAL CONCERNS

The OIG and the Medicaid Bureau (MB) were contacted by staff of the House Select Committee on Children, Youth, and Families, chaired by Congresswoman Pat Schroeder of Colorado. Ms. Schroeder was concerned with provider fraud and abuse, and improper placement of children in psychiatric facilities.

MB staff met with the Committee staff, and they informed us that the Committee was looking at insurance abuse and excessive profits in general, and at psychiatric and substance abuse facilities in particular. The Congressional review included CHAMPUS, Medicare, and Medicaid facilities and funds.

GAO SURVEY

At the request of then Senator Lloyd Bentsen (Texas), Chairman of the Senate Finance Committee, the GAO in Region VI was asked to look into fraud and abuse and program vulnerabilities in psychiatric and substance abuse/drug treatment facilities in one State. The GAO focus was on the oversight functions of the CHAMPUS, Medicare and Medicaid programs. We have been informed that the GAO will be issuing its draft report later this spring.

Recently, a GAO analyst described the problems they identified as follows:

- o inappropriate admissions to psychiatric hospitals, such as juveniles taken from State funded detention facilities in order to claim reimbursement from the three Federal programs;

- o provision of excessive care where juveniles with behavior problems were placed in psychiatric hospitals rather than in outpatient psychiatric care or group homes; and

- o the use of psychiatric hospitals to hold patients in custody until they had "miraculous recoveries" when their insurance benefits ran out.

As a result of these findings, GAO has expanded their review to two additional States.

CONCLUSION

In view of the past history of abuse found in the delivery of inpatient psychiatric services for individuals under 21 years of age, and the heightened interest in the subject, we are alerting you to our continuing work in supporting the OIG's, GAO's, and Congressional efforts in this area. We particularly wish to inform Region V States of the need to assure compliance with Federal certification of need requirements, and to emphasize the Federal government's continuing concern with the quality of care provided to psychiatric patients. We will keep you informed as new events occur.

If you have any questions please contact John Tolian, Chief, Medicaid Financial Management Branch at (312) 886-5344.

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Originating Component: Financial Management Branch
Division of Medicaid

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