



STATE OF OHIO
OFFICE OF THE AUDITOR

JIM PETRO, AUDITOR OF STATE

Ohio Medicaid Program

*Review of Medicaid Clinical Laboratory Service
Reimbursements Made to University Hospital Laboratory
Service Foundation*

A Compliance Review by the:

**Fraud, Waste and Abuse
Prevention Division**



STATE OF OHIO
OFFICE OF THE AUDITOR
JIM PETRO, AUDITOR OF STATE

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Harlin Adelman, Assistant General Counsel
University Hospital Law Department
Suite 1100, W. O. Walker Center
10524 Euclid Avenue
Cleveland, Ohio 44106

Dear Mr. Adelman:

We have completed our audit of selected medical services rendered to Medicaid recipients by University Hospital Laboratory Service Foundation for the period January 1, 1996 through September 30, 1998. We identified findings in the amount of \$133,005.77, which must be repaid to the Ohio Department of Job and Family Services. The attached report details the basis for the findings.

Payment arrangements should be made with the Ohio Department of Job and Family Services within 45 days of the date of this report. When making payment, please use the remittance form at the back of this report to ensure proper credit. In accordance with Ohio Revised Code Section 131.02, if payment is not made within 45 days, this matter will be referred to the Ohio Attorney General's Office for collection.

As a matter of courtesy, a copy of this report is being sent to the Ohio Department of Job and Family Services, the Ohio Attorney General and the Ohio State Medical Board. If you have any questions, please contact Johnnie L. Butts, Jr., Chief of the Fraud, Waste and Abuse Prevention Division, at (614) 466-3212.

Yours truly,

JIM PETRO
Auditor of State

April 10, 2001

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ABBREVIATIONS

AOS	Auditor of State
CPT	Current Procedural Terminology
CY	Calendar Years
FWAP	Fraud, Waste, and Abuse Prevention (Division of)
MMIS	Medicaid Management Information System
ODJFS	Ohio Department of Job and Family Services
OAC	Ohio Administrative Code
ORC	Ohio Revised Code
USC	United States Code

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SUMMARY OF RESULTS

The Auditor of State (AOS), reviewed claims filed by University Hospital Laboratory Service Foundation, Provider Number 0195926, doing business at 11400 Euclid Avenue, Suite 100, Cleveland, Ohio 44106. University Hospital Laboratory Service Foundation provides and is reimbursed for services to Ohio Medicaid patients. During this review, we identified findings amounting to \$133,005.77, which are recoverable as they resulted from Medicaid service claims that were unallowable under the Ohio Medical Provider Handbook and the Ohio Administrative Code.

BACKGROUND

The Auditor of State (AOS), working with payment history data from the Medicaid Management Information System (MMIS) of the Ohio Department of Job and Family Services (ODJFS), performs reviews designed to assess Medicaid providers' compliance with Federal and State claims reimbursement rules. A provider renders medical, dental, laboratory, or other services to Medicaid recipients. The ODJFS administers the Medicaid program.

Medicaid is a Federal/State financed program whereby medical, rehabilitative and other health related services are furnished to families with dependent children, the aged, the blind and the disabled, whose income and resources are insufficient to meet the cost of necessary medical care. Medical necessity is a fundamental concept underlying the program.

Pursuant to the Ohio Medicaid Provider Handbook, Chapter 3334, Section IV, Subsection (B), and OAC Section 5101:3-1-172, providers are required to "Maintain all records necessary and in such form so as to fully disclose the extent of services provided and significant business transactions. The provider will maintain such records for a period of six years from the date of receipt of payment or until any initiated audit is completed, whichever is longer."

In addition, rule 5101:3-1-29 (C) of the OAC states: "In all instances of fraud and abuse, any amount in excess of that legitimately due to the provider will be recouped by the department through its surveillance and utilization review section, the state auditor, or the office of the attorney general.

"Abuse" is defined in rule 5101:3-1-29 (B) as "...those provider practices that are inconsistent with professional standards of care; medical necessity; or sound fiscal, business, or medical practices; and result in an unnecessary cost to the medicaid program.."

Additionally, Chapter 3334 § V, Subsection B(6) of the Ohio Medicaid Provider Handbook (OAC § 5101:3-1-198), states that medicaid overpayments, duplicate payments, or payments for services not rendered are recoverable by the department at the time of discovery.

PURPOSE, SCOPE AND METHODOLOGY

This review addressed selected services which the Provider rendered to Medicaid recipients during the period of January 1, 1996 through September 30, 1998. Our review was limited to clinical laboratory services involving chemistry, hematology and urinalysis tests.

The objective of this effort was to determine whether the Provider's reimbursement for these services was in compliance with regulations, and to calculate the amount of any ODJFS Medicaid overpayments if noncompliance occurred.

This review was based on information that ODJFS provides in the form of Medicaid Payment History Files from MMIS data. The MMIS system can provide payment files to reflect the provider's history of services billed with the five-digit procedural codes used to codify procedures and services. We used the ODJFS' Medicaid Provider Handbook and the OAC as guidance in determining the extent of services and applicable reimbursement rates. Work performed on this review was done in accordance with applicable government auditing standards.

The total population of claims paid by ODJFS during the review period was examined to determine whether or not an overpayment occurred and, if so, the amount of the overpayment. Claims were identified and analyzed that had potential payment errors relating to services that were not properly grouped together (bundled) or that were billed twice. Bundling is a term used to describe tests that can be and frequently are done as groups and combinations ("profiles"). Unbundling occurs when Providers inappropriately bill separately for as many as 72 tests (depending on the laboratory equipment), when in actuality, all of the tests were performed from a single specimen using automated multichannel equipment. Double billing occurs when the same Current Procedural Terminology (CPT)¹ code is paid more than once for the same recipient on the same date of service.

A number of Ohio hospitals have already repaid overpayments resulting from unbundling. As part of the Ohio Hospital Project, which was spearheaded by U.S. Attorneys in the Northern and Southern Districts of Ohio, about 185 hospitals (some are still in the negotiation process) have repaid about \$42 million in Medicare and Medicaid overpayments, penalties, and interest to the federal government and Ohio. The AOS assisted the U.S. Attorneys determine the amount of Medicaid overpayments for these providers.

This review used a computer program employed during the Ohio Hospital Project to identify instances of unbundling or duplication, determine the proper payment amount for these cases, and calculate the amount of any overpayment. The Provider was given an opportunity to review our results and provide additional information that might support the performance of separate tests, in lieu of tests of a single specimen performed on automated multichannel equipment.

¹ The CPT is published by the American Medical Association (AMA) for the purpose of providing a uniform language to describe medical services

RESULTS

The OAC § 5101:3-11-03, Subsection (E)(1)(c) states: “. . . The CPT codes for automated multichannel tests must be billed whenever any test or combination of tests are performed simultaneously on an automated, multichannel machine from a single specimen.”

Additionally, OAC § 5101:3-11-03 states for clinical laboratory services the provider must bill the appropriate code.

The Medicare Carriers Manual §§ 7103 and 7103.1B states that a Provider is liable for Medicaid overpayments it receives, and is liable in situations when the error is due to overlapping or duplicate bills.

Based on this criteria and using the computer analysis described above, we identified 11,632 questionable transactions paid during the January 1, 1996 through September 30, 1998 review period. These 11,632 transactions, all of which occurred in calendar years 1996 and 1997, included 5,716 chemistry, 5,851 hematology and 65 urinalysis tests. All transactions tested contained either unbundled charges and/or duplicate charges.

The unbundling and duplicate charges results in findings amounting to \$133,005.77. The Provider was overpaid because the billed tests were not bundled into the appropriate CPT code, and some tests were billed twice, creating a duplicate payment. In the case of unbundling, the overpayment represents the difference between the amount reimbursed to the Provider for the billed individual tests and the maximum fee allowed for the bundled test. For example, by billing individually for 17 procedures for one patient instead of the proper bundled code, the Provider actually received about \$120, instead of about \$20, an overpayment of about \$100. In the case of duplicate payments, the overpayment was the amount of the duplicate payment. Table 1 summarizes the category and amount of overpayment, and the number of instances found.

**Table 1: Summary of Medicaid Overpayments
Review Period: January 1, 1996 through September 30, 1998**

Clinical Service	Overpayment Amount	Number of Transactions
Chemistry	\$121,618.04	5,716
Hematology	\$11,185.74	5,851
Urinalysis	\$201.99	65
Total	\$133,005.77	11,632

PROVIDER'S RESPONSE

A draft of this report was mailed to the Provider on December 8, 2000 to afford the Provider an opportunity to provide additional documentation or otherwise respond in writing. In a January 17, 2001 response, the Provider agreed to refund the overpayments for hematology and urinalysis tests but disagreed with our findings concerning overpayments for chemistry tests. The Provider's detailed response is attached. A summary of the Provider's reasons for disagreement, together with our response, is presented below.

The Provider asked that we separate the audit results for University Hospital Laboratory Service Foundation from the results of our review of claims submitted by University Medical Laboratories, which was acquired by the Provider in 1995. Based on information supplied by the Provider, we confined our review to claims submitted under provider number 0195926, which is the number used for claims submitted by University Hospital Laboratory Service Foundation.

The Provider asserted that during 1996 and 1997 they were allowed to bill separately for certain chemistry tests² because these tests were not specifically included in a list of automated tests billable under CPT codes 80002-80019, which are used to bill bundled tests. The Provider also cited an Ohio Attorney General decision not to prosecute University Hospitals Laboratory Service Foundation for filing false claims as support for their billing practices.

While we concur that the above three chemistry tests were not specifically listed in the CPT code manual until 1998, we disagree with the Provider's premise that their absence in the 1996 and 1997 manuals allowed for separate billing. Our position is based on Medicaid billing rules provided in Section 5101:3-11-03, Subsection (E)(1)(c) of the Ohio Administrative Code, which states "The CPT codes for automated multichannel tests must be billed whenever any test or combination of tests are performed simultaneously on an automated, multichannel machine from a single specimen." Because the Provider did not provide evidence that separate chemistry tests were performed on different specimens, and did not disagree that the tests were run simultaneously on a multichannel testing machine, we concluded that the tests should have been bundled and billed with other tests performed on the same specimen.

We also disagree that the decision by the Attorney General not to prosecute the Provider for filing false claims is relevant to our audit finding. Our audit finding does not allege that fraud or intent to defraud occurred, or that a false claim was filed, only that an overpayment occurred. Moreover, settlements to repay similar overpayments by over 100 Ohio hospitals as part of the Ohio Hospital Project attest to the validity of our position.

² Creatinine kinase (CK/CPK) - CPT Code 82550; Glutamyltransferase, gamma (GGT) - CPT Code 82977; and Triglycerides - CPT Code 84478.

**University Hospitals
Health System**

University Hospitals
of Cleveland

Harlin G. Adelman
Assistant General Counsel

Via Overnight Delivery

January 17, 2001

Sarah Tharp, Manager
Fraud, Waste and Abuse Prevention Division
State of Ohio, Office of the Auditor
35 North Fourth Street
Columbus, Ohio 43216

***Re: University Hospitals Laboratory Services Foundation (Medicaid
Provider # 0195926) and University Medical Laboratories
(Medicaid Provider # 0603887)***

Dear Ms. Tharp:

This letter sets forth the additional findings and responses of University Hospital Laboratory Service Foundation ("UHLSF") with respect to the State of Ohio Office of the Auditor's (hereinafter, the "Auditor's Office") review of outpatient clinical laboratory services rendered to Ohio Medicaid recipients by UHLSF from January 1, 1996 through December 31, 1999.

PRELIMINARY MATTER – UNIVERSITY MEDICAL LABORATORIES, INC.

As a preliminary matter, we first address the Auditor's Office review of outpatient clinical laboratory services rendered to Ohio Medicaid recipients by University Medical Laboratories ("UML") from January 1, 1991 through December 31, 1996. As we have discussed and as I have just recently confirmed, neither University Hospitals Health System, University Hospitals of Cleveland nor UHLSF owned or controlled UML during the period in question (or at any time).

In accordance with my letter to you of December 12th, 2000, the Auditor's Office should direct its findings concerning the UML audit directly to that entity. As stated in my December 12th letter, you offered to pull the Medicaid Provider Agreement for UML to confirm UML's separate status. I trust that you have completed this task and that UML's Medicaid Provider Agreement indicates no relationship to UHLSF. Any confusion stemming from the Auditor's Office may be due to the fact that in October of 1995, UHLSF purchased the assets of UML (excluding any accounts receivable) and took over

UML's lease for space at 11400 Euclid Avenue, Cleveland, Ohio 44106. At no time, however, did UHLSF assume UML's Medicaid Provider Agreement or otherwise bill under or use UML's Medicaid provider number or tax identification number. UHLSF is therefore not the appropriate entity or party to be discussing the Auditor's Office findings with respect to UML.

**UHLSF – ALLEGED OVERPAYMENTS FOR
CHEMISTRY, HEMATOLOGY AND URINALYSIS TESTS**

With respect to UHLSF, the Auditor's Office alleges that overpayments in the amount of \$133,005.77 (the "Total Amount") were made to UHLSF for outpatient clinical laboratory services rendered to Ohio Medicaid recipients between January 1, 1996 and December 31, 1999. Of the Total Amount, the Auditor's Office identified an alleged overpayment of \$121,618.04 (the "Chemistry Overpayment") resulting from 5,716 transactions relating to outpatient clinical laboratory services involving chemistry tests. The Auditor's Office identified an additional alleged overpayment of \$11,185.74 (the "Hematology Overpayment") resulting from 5,851 transactions relating to outpatient clinical laboratory services involving hematology tests. Finally, the Auditor's Office identified an additional alleged overpayment of \$201.99 (the "Urinalysis Overpayment") resulting from 65 transactions relating to outpatient clinical laboratory services involving urinalysis tests.

I. The Alleged Overpayment For Chemistry Tests

The Auditor's Office identification of the Chemistry Overpayment was based on UHLSF's use of the proper CPT Codes for the following chemistry tests: (1) Creatinine kinase (CK/CPK) – CPT Code 82550; (2) Glutamyltransferase, gamma (GGT) – CPT Code 82977; and (3) Triglycerides – CPT Code 84478. According to the Auditor's Office, UHLSF did not comply with the Ohio Administrative Code regulations requiring that the "CPT codes for automated multi-channel tests must be billed whenever any test or combination of tests are performed simultaneously on an automated, multi-channel machine from a single specimen." The Auditor's Office concluded that UHLSF was "overpaid because the billed tests were not bundled into the appropriate CPT code"

UHLSF emphatically disagrees with the findings and conclusions of the Auditor's Office with respect to the Chemistry Overpayment. As the Auditor's Office points out in its draft report of December, 2000, the Ohio Administrative Code requires that "for clinical laboratory services the provider must bill the appropriate code." This is exactly what UHLSF did with respect to the chemistry tests for CK/CPK, GGT and Triglycerides.

UHLSF precisely complied with the Ohio Administrative Code by billing with automated codes only when the tests performed were listed as automated tests in the CPT Code Manual.. Neither the CPT Code Manual for 1996 nor the CPT Code Manual for 1997

(see attached) lists CK/CPK, GGT or Triglycerides as tests that should be included as automated tests billable using CPT codes 80002-80019.. Consider the predicament that UHLSF would have been in had it used CPT Codes 80002-80019 to bill for CK/CPK, GGT or Triglycerides: it would have exposed itself to allegations of submitting false claims by using the 80002-80019 range of codes when the tests at issue were explicitly excluded from the list of codes included in the CPT manual as properly billable within that range. In 1998, when the panel codes were mandated, UHLSF immediately began to use the appropriate CPT Codes to bundle the applicable multi-channel chemistry tests. UHLSF firmly believes that it properly coded and billed for the CK/CPK, GGT and Triglycerides tests performed during the period in question and that there was no overpayment to UHLSF.

We further note that the issue of how CK/CPK, GGT and Triglycerides should be billed is currently being considered by the United States District Court for the Northern District of Ohio in Ohio Hospital Assoc. v. Shalala, Case No. 1:96CV 2165 (N.D. Ohio). In this case, Ohio hospitals asserted that the federal government provided no instructions on how to bill for CK/CPK, GGT and Triglycerides, other than referencing the CPT codebook, and therefore billing CK/CPK, GGT and Triglycerides separately was acceptable since those tests were not in the list of automated tests. Rather than argue against this position on the merits, the government determined to attempt to have the case dismissed on other grounds. Having recently (on January 8, 2001) been rebuffed by the United States Supreme Court, the government is now faced with justifying its position before a federal district court that has characterized its actions as "heavy-handed." We have no doubt that Ohio hospitals will prevail in that litigation.

II. The Alleged Overpayment for Hematology Tests

UHLSF commenced its own investigation regarding the Auditor's Office finding of \$11,185.74 in overpayments stemming from alleged improper billing of hematology tests during the period in question. In order to avoid incurring additional costs related to further investigation and tracking down additional information, UHLSF is prepared to timely refund this alleged overpayment.

III. The Alleged Overpayment for Urinalysis Tests.

UHLSF commenced its own investigation regarding the Auditor's Office finding of \$201.99 in overpayments stemming from alleged improper billing of urinalysis tests during the period in question. In order to avoid incurring additional costs related to further investigation and tracking down additional information, UHLSF is prepared to timely refund this alleged overpayment.

CONFIRMATION OF FINDINGS OF OHIO ATTORNEY GENERAL'S OFFICE

UHLSF takes very seriously the investigation by the Auditor's Office into UHLSF's billing practices for chemistry, hematology and urinalysis tests. As part of its internal controls and in accordance with the requirements of all University Hospitals Health System ("UHHS") affiliates, UHLSF makes every attempt to strictly comply with the UHHS Corporate Integrity Guidelines. UHLSF therefore takes extreme care to ensure compliance and integrity in the manner and method in which it prepares and submits claims for reimbursement. We understand the gravity of the Auditor's Office findings and the importance of remedying any underlying billing impropriety or regulatory non-compliance.

Our own investigations, however, revealed absolutely no fraud or intent to defraud or file a false claim with respect to the chemistry, hematology and urinalysis tests in question (or with respect to other tests). The results of UHLSF's own investigation was supported and confirmed by the Ohio Attorney General's Office. As stated in the September 26th, 2000 letter by Jordan Feingold, Assistant Attorney General, to Robert I. Lidman, Deputy Chief, Fraud, Waste & Abuse Prevention Division, Office of the Auditor, "it appears that the billing procedures utilized by [UHLSF] are based upon their interpretation of the rules" After completing its investigation of UHLSF, the Ohio Attorney General's Office found that it had "insufficient evidence to proceed with a prosecution under the false claims act."

Telephone conversations with Jordan Feingold indicated the Ohio Attorney General's Office position that the Auditor's Office investigation of UHLSF amounted to nothing more than a billing dispute. UHLSF agrees with the Ohio Attorney General's Office – and it further believes that it should not be held accountable for its reasonable interpretation of the rules.

Per my correspondence to you dated December 12th, 2000, UHLSF understands that the Auditor's Office will not issue a final report until at least January 29th, 2001 and that no Medicaid overpayments (if any) would be due until at least 45 days after January 29th, 2001. Additionally, we trust that the Auditor's Office will include a copy of this letter in any final report which it issues. Once issued, please promptly provide UHLSF and me a copy of the Auditor's Office final report.

Sara Tharp, Manager
State of Ohio Office of the Auditor
January 17, 2001
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We look forward to cooperating with the Auditor's Office in order to timely and appropriately resolve the matters discussed herein. Please call me at (216) 983-1053 if you have any questions.

Sincerely,

A handwritten signature in black ink, appearing to read 'Harlin Adelman', with a long horizontal flourish extending to the right.

Harlin Adelman
Assistant General Counsel

cc: Donald Landek
Angeline Marano
James McMonagle, Esq.
Larry Tarr
Anthony Wallish
Seth Wolf, Esq.

PROVIDER REMITTANCE FORM

Make your check payable to the Treasurer of State of Ohio and mail check along with this completed form to:

Ohio Department of Job and Family Services
Post Office Box 182367
Columbus, Ohio 43218-2367

Provider: University Hospital Laboratory Service Foundation
10524 Euclid Avenue
Cleveland, Ohio 44106

Provider Number: 0195926

Review Period: January 1, 1996 through September 30, 1998

AOS Finding Amount: \$133,005.77

Date Payment Mailed: _____

Check Number: _____

IMPORTANT: To ensure that our office properly credits your payment, please also fax a copy of this remittance form to: Charles T. Carle at (614) 728-7398.

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STATE OF OHIO
OFFICE OF THE AUDITOR

JIM PETRO, AUDITOR OF STATE

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UNIVERSITY HOSPITAL LABORATORY SERVICES FOUNDATION

CUYAHOGA COUNTY

CLERK'S CERTIFICATION

This is a true and correct copy of the report which is required to be filed in the Office of the Auditor of State pursuant to Section 117.26, Revised Code, and which is filed in Columbus, Ohio.

Susan Babbitt

CLERK OF THE BUREAU

**CERTIFIED
APRIL 10, 2001**