

Report to the Social Services Appropriations Subcommittee

Status of Recommendations from
Office of the Legislative Auditor General's
October 2017

“A Performance Audit of Beaver Valley
Hospital's Medicaid Upper Payment Limit
Program” Report

Prepared by the Division of Medicaid and Health Financing

July 6, 2018



Purpose

The purpose of this report is to provide a status update on the Utah Department of Health's (Department's) efforts to address the recommendations included in the Office of Legislative Auditor General's (OLAG's) "A Performance Audit of Beaver Valley Hospital's Medicaid Upper Payment Limit Program" report.

The Department is committed to addressing the risks identified and the recommendations made in the OLAG audit. Excerpts from the referenced report are included below followed by the Department's status update.

Recommendation 3

We recommend that the Department of Health continue to seek legal advice from Medicaid experts, or the Centers for Medicare and Medicaid Services (CMS) to ensure that the UPL program, administrative fees, and seed funding, as currently in practice, are complying with CMS requirements.

We concur with this recommendation. As stated in the background section above, the Department sought advice from CMS, the Attorney General's Office, and Covington & Burling Law firm. The CMS review is still in process and the Department will continue to follow-up with CMS in order to obtain additional perspective on the program's compliance with CMS's requirements. In addition, as the Department contemplates significant changes to the NF UPL program, it will continue to seek advice from these experts to help ensure compliance with CMS's requirements.

Contact: Nate Checketts, Deputy Director, Utah Department of Health, 801-538-6689
Implementation Date: Ongoing activity

Department's Status Update

The Department requested technical assistance from CMS in 2016 when the contract with Beaver Valley Hospital was being amended to expand the Nursing Facility Upper Payment Limit (NF UPL) program. The Department followed-up multiple times during 2017 with CMS to determine the status of the request for technical assistance. In February 2018, CMS requested information and related documentation to gain an understanding of the program in an effort to provide better technical assistance.

On March 7, 2018, the Department and CMS had the first technical assistance call. In this call, the Department and CMS discussed several key components of the existing NF UPL program at a high level. CMS and the Department determined that it would be more effective to schedule additional technical assistance calls to discuss each significant component of the program in detail and to determine whether each of the key components are properly implemented in the existing NF UPL program in Utah. The next call is scheduled for this summer.

In addition, and as a result of the initial technical assistance call with CMS, the Department is drafting questions and plans to request legal opinions on these questions from its external legal experts on Medicaid issues, the Covington & Burling Law firm. The Department will continue

to request legal opinions from Covington & Burling Law firm and the Attorney General's Office, as needed during the technical assistance process.

Recommendation 5

We recommend that the Department of Health continue to work with Beaver Valley Hospital and other hospitals in the UPL program to provide technical assistance and develop an oversight program that will reduce the risk of misusing UPL funds.

We concur with this recommendation. The Department will continue to provide technical assistance to BVH and to other owners participating in the State's NF UPL program through the CHOW process. In addition, the Department will send auditors and Department staff to BVH to review and provide assistance with finances, seeding, and recording of seed. The Department will also continue to monitor and evaluate the requirements of the contract and will take appropriate action if BVH is determined to be in violation of any of the contract requirements.

Contact: John Curless, Director, Bureau of Coverage and Reimbursement Policy, 801-538-6149
Implementation Date: December 31, 2017

Department's Status Update

In an effort to obtain additional information on Indiana's NF UPL program, the Department sent three representatives to accompany the two auditors from the Office of the Legislative Auditor General to Indiana in early December 2017. While in Indiana, the group met with representatives from Indiana's Medicaid program along with Myers & Stauffer, the CPA firm the State of Indiana engages to operate its NF UPL program. In this meeting, the group discussed specific components of Indiana's NF UPL program to better understand how the program is designed and administered. In addition, the Department obtained the FAQ guidance based on CMS directives that Indiana provides to its NSGEs. The FAQs provides guidance related to how the NSGEs must structure their relationships with their nursing facilities in order to comply with federal requirements.

After meeting with the Indiana Medicaid representatives, the group also met with the Indiana Office of Fiscal Management and Analysis to understand the Legislative perspective on the Indiana NF UPL program, the Indiana Health Care Association to understand the hospital perspective on the Indiana NF UPL program, and Milliman to understand the budgeting and forecasting of the Indiana NF UPL program.

Following the visit to Indiana, the Department sent five representatives and a contracted CPA firm representative to Beaver Valley Hospital December 11-12, 2017 to better understand how Beaver Valley Hospital has structured their relationship with their nursing facilities and to provide additional guidance on the NF UPL program. The team discussed Beaver Valley Hospital's oversight of their nursing facilities, how the UPL funding is used by the nursing facilities to improve the quality of services provided, and the funding sources used for the state share of the program to determine whether those sources are permissible. Finally, the Department provided the FAQs obtained from Indiana to the staff at Beaver Valley Hospital.

Since the on-site visit with Beaver Valley Hospital, the Department has continued to provide assistance to all NSGE facilities as requested. The Department is also working with the NSGEs to amend the NF UPL contracts to include requirements based on the guidance obtained from Indiana. In addition, the Department will be amending its contract with Beaver Valley Hospital to formally incorporate the Indiana guidance into Utah's NF UPL program.

Recommendation 6

We recommend that the Department of Health implement additional measures to assure that Beaver Valley Hospital has the funding capability, such as a bond, to pay back any Upper Payment Limit funds if required to do so by a federal or state entity.

We concur with this recommendation. The Department recognizes the risks associated with a potential federal disallowance for this program. If CMS issued a federal disallowance, the Department would be required to return the federal share of the disallowed NF UPL payments in the next quarter following the written communication of the disallowance. In accordance with the contract, the Department would then seek to recover the disallowance from BVH. If BVH did not refund the amount disallowed within 30 days of notification, as required by the contract, the Department would attempt to collect the disallowance by offsetting the amount owed against future claims submitted by BVH and its nursing facilities.

To help ensure that BVH has the funding capability to repay a federal disallowance, the Department will work with BVH to identify measures they can employ to mitigate this risk. The Department's contract with BVH will be amended to include the additional risk mitigation measures.

Contact: John Curless, Director, Bureau of Coverage and Reimbursement Policy, 801-538-6149
Implementation Date: June 30, 2018

Department's Status Update

During the 2018 General Session, the Utah Legislature approved and Governor Herbert signed House Bill 417. The bill prohibits the Department from requiring Non-State Government Entities (NSGE) to purchase insurance, post a bond or create a reserve account of any kind as a condition of participation in the NF UPL Program. As a result, the Department has been working with the NSGE's on a contract amendment to help mitigate the risk to the State of a disallowance. The proposed amendment adds a provision that would require the NSGEs to include provisions in their respective management contracts stating that the management entity is responsible to reimburse the Department for their respective share of any disallowance. This proposed provision is in addition to the existing provision that requires Beaver Valley Hospital to reimburse the Department for a disallowance. This proposed provision would survive the termination of the contract between the Department and Beaver Valley Hospital. The Department will continue to consider additional means to reduce the risk to the State of a disallowance.