



UNITED STATES GENERAL ACCOUNTING OFFICE  
WASHINGTON, D.C. 20548

~~92214~~  
127890

HUMAN RESOURCES  
DIVISION

March 20, 1985

Carolyn K. Davis, Ph.D.  
Administrator, Health Care Financing  
Administration  
Department of Health and Human Services



127880

Dear Dr. Davis:

Subject: Medicaid Overpayments Made to Hawaii  
Should Be Disallowed (GAO/HRD-85-47)

During a review of state Medicaid operations, we found that Hawaii was not always following federal statutory requirements that other insurance available to Medicaid recipients be used before Medicaid. Medicaid law requires the states, which administer payments under the Medicaid program, to take all reasonable measures to ascertain the legal liability of third parties to pay for health services provided to recipients and to assure that such liable parties pay rather than Medicaid. The law also prohibits the use of federal funds for paying claims for which a third party would have been liable except for an exclusion of coverage for persons eligible for Medicaid.

However, we found that Hawaii, under its no-fault motor vehicle insurance law, had allowed insurers to exclude medical coverage for Medicaid recipients in certain circumstances such as when recipients were injured while driving their vehicles. In those circumstances when coverage for Medicaid recipients was not excluded, Hawaii was not actively pursuing collections from the no-fault insurers. We estimate that during fiscal years 1982-84, Hawaii paid about \$1.4 million in federal funds for health services that it would not have paid if it had followed Medicaid's third party liability provisions.

BACKGROUND

The Medicaid program, authorized by title XIX of the Social Security Act (42 U.S.C. 1396), is a federally aided, state-administered medical assistance program for low-income people. The Department of Health and Human Services (HHS) has overall responsibility at the federal level for administering Medicaid. Within HHS, the Health Care Financing Administration (HCFA) is responsible for developing program policies, setting standards, and ensuring compliance with federal Medicaid legislation and regulations.

(106269)

033157

In fiscal year 1984, Hawaii's Medicaid program spent about \$138 million to pay for the health services provided to about 95,000 Medicaid recipients. Hawaii and the federal government shared in these costs equally. The state's Department of Social Services and Housing administers the Medicaid program.

Since 1974, Hawaii state law has required that all motor vehicles have no-fault insurance coverage to compensate those who sustain injuries or damages as a result of an accident. Insurance policies must cover, without regard to fault, \$15,000 of medical rehabilitation and wage loss benefits for any person who sustains injury because of the operation of an insured vehicle. State law also provides that a civil action brought to determine liability for accident-related injuries generally cannot include medical costs unless those costs exceed \$5,200.

To help ensure that motor vehicles are covered by insurance, state law mandates insurance without charge to Medicaid recipients who cannot afford to purchase it. This insurance includes no-fault medical benefits as well as personal injury and property damage liability coverage. The cost of this insurance is borne by Hawaii's motor vehicle insurers and presumably is used in the computation of rates for those who pay for insurance. As of June 30, 1984, about 8,000 motor vehicles belonging to Medicaid recipients were covered by insurance without cost to the recipient.

#### HAWAII EXCLUDES NO-FAULT MEDICAL COVERAGE FOR MEDICAID RECIPIENTS

The Congress intended that, as a public assistance program, Medicaid would pay for health care only after Medicaid recipients had used any other available health care resources. Public Law 95-142 (approved Oct. 25, 1977) added to the Medicaid law section 1903(o) which prohibits the federal government from participating in payments when private insurers treat Medicaid as the primary payer. This amendment was designed to remedy situations in which state-regulated private insurance plans contained provisions limiting insurers' liability to the amount not paid by Medicaid, thus making Medicaid the primary payer. In 1980, HHS issued implementing regulations (42 C.F.R. 433.136) that included casualty insurers that provide medical benefits for injuries in the definition of private insurers.

Hawaii's no-fault insurance law excludes coverage of no-fault medical benefits for Medicaid recipients who receive the insurance without charge. As a consequence, Medicaid pays the medical costs for a Medicaid recipient who was injured in an automobile covered by insurance obtained without charge to the recipient although this insurance's no-fault benefits would cover the medical costs for non-Medicaid passengers or a non-Medicaid driver in the same vehicle. Under state law,

therefore, Medicaid is treated as the primary payer. Section 1903(o), in our opinion, precludes federal participation in Medicaid payments made because of this exclusion.

HAWAII DOES NOT ACTIVELY PURSUE  
RECOVERIES FROM NO-FAULT INSURERS

In certain circumstances, no-fault motor vehicle insurers are obligated under Hawaii law for medical services provided to Medicaid recipients. Such circumstances include when (1) the Medicaid recipient was injured as a pedestrian or a passenger in a non-Medicaid person's vehicle or (2) Medicaid incurred over \$5,200 of medical costs and, through a civil action, another party is determined to be at fault. Enclosure I contains further details on the conditions in which motor vehicle insurers become liable for the medical costs of Medicaid recipients. In such cases, Medicaid regulations require that states take all reasonable measures to identify third parties obligated to pay for medical services provided to recipients and recover from these third parties any payments made by Medicaid. When the state does not take these measures, Medicaid regulations (42 C.F.R. 433.140(a)(1)) provide that the federal government will not share in the state expenditures for the services involved.

Hawaii has a system for identifying Medicaid claims that result from motor vehicle accidents, but the state was not pursuing recovery on about 80 percent of these claims. Hospitals and physicians who provide Medicaid services indicate on their Medicaid claim form when the medical services provided are a result of motor vehicle accidents. Each quarter the state produces a computer list of all accident-related claims paid under Medicaid for the purpose of pursuing recovery from liable insurers. However, because of an apparent administrative oversight, the state did not use the computer list as a basis for pursuing recovery from motor vehicle insurers. Rather, the state followed up only on accidents reported by recipients during routine interviews by caseworkers.

Between July 1, 1981, and June 30, 1984, according to the computer list, Medicaid paid medical costs for 12,684 Medicaid recipients injured in motor vehicle accidents. During this 3-year period, however, the state followed up only on the approximately 2,500 accident cases that recipients reported to caseworkers. The state obtained recoveries on 941 or about 38 percent of the followed up cases. The state did not follow-up on the other 10,100 accident-related claims.

FEDERAL OVERPAYMENTS RESULTED  
BECAUSE OF THESE PROBLEMS

When Medicaid is not treated as secondary payer, federal participation in the Medicaid payment is not allowed. We estimated that between October 1, 1981, and September 30, 1984,

the state paid about \$1.4 million in federal funds for claims related to automobile accidents for which Medicaid was not treated as a secondary payer. Information was not available to allow us to determine how much of this amount could be attributed to each of the two problems we identified. We also did not determine overpayments occurring before October 1981 because HHS regulations do not require the state to retain Medicaid records for more than 3 years.

The following table illustrates how we estimated the amount of federal Medicaid overpayments related to Hawaii's no-fault automobile insurance.

Federal fiscal year	Medicaid payments for motor vehicle accidents <sup>a</sup>	Casualty insurance collections <sup>b</sup>	Unrecovered Medicaid costs for accident injuries	<u>OVERPAYMENT</u> Federal share of unrecovered Medicaid costs <sup>c</sup>
1982	\$1,086,678	\$182,718	\$ 903,960	\$ 451,980
1983	1,420,118	268,620	1,151,498	575,749
1984	1,158,813	451,814	706,999	353,500
Total	\$3,665,609	\$903,152	\$2,762,457	\$1,381,229

<sup>a</sup>Paid Medicaid claims resulting from auto accidents as shown in Hawaii's computer records.

<sup>b</sup>Taken from Hawaii's Third Party Liability Collections and Cost Avoidance report submitted to HCFA. This figure reflects all casualty insurance collections and as such would include collections from both motor vehicle insurers and other liability insurers. For purposes of calculating overpayments, this figure is conservative because it overstates recoveries from motor vehicle insurance and thus understates the amount of unrecovered Medicaid costs.

<sup>c</sup>Unrecovered Medicaid costs for accident injuries multiplied by the 50-percent federal matching rate.

Enclosure II includes more detail on the basis for our estimate of erroneous federal Medicaid sharing.

#### STATE MEDICAID AGENCY COMMENTS

We discussed the results of our review with the state Medicaid administrator and his staff. While these officials generally agreed with our findings, they viewed the Medicaid overpayments as a technicality of which they were not aware. They told us that, in their opinion, the state should be given

the opportunity to take corrective action before federal Medicaid funds are disallowed. Specifically:

- To resolve the problem with motor vehicle insurance excluding no-fault medical coverage for Medicaid recipients, officials told us that the state may consider paying for the part of the Medicaid recipients' no-fault medical benefits that are presently excluded. They said that funds to pay for these benefits could be partially obtained by eliminating some administrative expenses of its current system. Administrative savings would be realized if Medicaid were treated as secondary payer because the state could avoid the expense of paying and then recovering accident-related claims.
- Concerning the finding that Hawaii was not actively pursuing recoveries from no-fault insurers, state Medicaid officials told us that this would be remedied immediately. They told us that caseworkers were instructed during our visit to follow up on computer lists containing accident-related Medicaid claims.

We discussed HCFA's flexibility to waive overpayments with an official of the HCFA's Bureau of Program Operations who is knowledgeable about recovering Medicaid overpayments. He told us that neither Medicaid law nor regulations authorize HCFA to waive recovery of overpayments of this nature or to allow the state a grace period to take corrective action.

#### CONCLUSION

When Medicaid recipients are injured in motor vehicle accidents, Hawaii has often treated Medicaid as a primary payer rather than a secondary payer as required by law. In these cases, Medicaid payments are not eligible for federal funding and federal overpayments of about \$1.4 million to Hawaii's Medicaid program occurred during fiscal years 1982-84. Because there is no authority to waive the overpayments, HCFA is required to recover them.

#### RECOMMENDATION TO THE ADMINISTRATOR OF HCFA

We recommend that you recoup the federal portion of Medicaid payments for which Hawaii did not treat Medicaid as secondary payer and disallow future Medicaid claims of this nature.

#### OBJECTIVE, SCOPE, AND METHODOLOGY

Our objective was to determine if federal Medicaid funds were properly used as a secondary resource to pay for medical

costs that resulted from motor vehicle accidents in Hawaii. In addition to reviewing applicable Medicaid law and regulations:

--We determined the extent that Hawaii permitted Medicaid to be the primary payer for motor-accident-related injuries. For fiscal years 1982-84, we obtained from the state a computerized list of Medicaid claims for motor vehicle accident injuries. We performed a limited random sample to check the accuracy of the computer-generated data against the original claim forms from which the data were extracted. We did not attempt to determine the degree, if any, to which accidents had occurred but were not reported as such on the claim form. To determine the extent that Hawaii was recovering these accident-related medical costs from motor vehicle insurers, we reviewed Hawaii's Third Party Liability Collections and Cost Avoidance report, which is submitted quarterly to HCFA (HCFA form 64.9a).

--We identified the reasons why Medicaid funds were used as the primary resource to pay for motor vehicle accident-related injuries by reviewing various state reports, laws, and procedures. To test if state laws and procedures were being followed, we randomly sampled 200 claim files closed between July 1, 1983, and June 30, 1984, where the state had taken follow-up action to recover Medicaid costs from automobile insurers. We also interviewed state Medicaid officials and officials from the Insurance Division of the State Department of Commerce and Consumer Affairs.

We conducted our review in accordance with generally accepted government auditing standards. Fieldwork was completed in December 1984.

- - - -

We would appreciate hearing from you within 30 days on the action taken or planned in response to our recommendation.

Sincerely yours,



Thomas Dowdal  
Group Director

Enclosures - 2

STATE OF HAWAII MOTOR VEHICLE  
STATUTE PROVISIONS DICTATING  
WHO PAYS WHEN MEDICAID RECIPIENTS  
ARE INJURED IN AUTO ACCIDENTS

When a Medicaid recipient is involved in a motor vehicle accident, Hawaii's no-fault insurance law calls for either the exclusion of coverage for no-fault insurance of medical benefits for the Medicaid recipient or the obligation of the no-fault insurers to pay for medical costs. The following table, according to state officials, shows the most common situations under which insurers become obligated for Medicaid recipients' medical costs.

MEDICAID RECIPIENT INJURED	PRIMARY LIABILITY
<p style="text-align:center"><u>A</u></p> While an occupant of a vehicle with free insurance coverage.	In A and B, Medicaid pays because no-fault medical benefits are excluded for Medicaid recipients. Medicaid also pays in situation C because owner operating vehicle without insurance is not eligible for uninsured motorist benefits. However, in all three cases, if another party is determined through a civil proceeding to be at fault with medical costs normally exceeding \$5,200, the insurers pay.
<p style="text-align:center"><u>B</u></p> By a vehicle with free insurance coverage while a pedestrian or bicyclist.	
<p style="text-align:center"><u>C</u></p> While driving his/her own vehicle without any insurance coverage.	
<p style="text-align:center"><u>D</u></p> While an occupant of a vehicle with paid insurance coverage.	Motor vehicle insurer
<p style="text-align:center"><u>E</u></p> By a vehicle with paid insurance or no insurance coverage while a pedestrian, bicyclist, or passenger in such vehicle.	

CALCULATION OF ESTIMATED MEDICAID OVERPAYMENTS  
TO HAWAII RESULTING FROM TREATING MEDICAID  
AS PRIMARY PAYER FOR INJURIES  
SUSTAINED IN MOTOR VEHICLE ACCIDENTS

Our calculation of the \$1,381,229 estimated overpayment on page 4 is subject to two limitations. First, as shown in the table in enclosure I, motor vehicle insurers are generally liable for Medicaid costs in accident situations where no-fault benefits were not excluded. An exception occurs in some cases when Medicaid recipients who do not enroll in the insurance program are injured when driving their own vehicle. While Hawaii could not provide data to show the extent to which the unrecovered Medicaid costs could be attributable to this exception, it is probably not significant. According to state officials, the state maintains an active program to assure that vehicles are insured. The state requires the operator to present evidence of insurance coverage annually during the required vehicle safety inspection, at vehicle registration, at driver license renewals, and when requested by law enforcement officials handling motor vehicle violations. State Insurance Division officials told us that those driving without insurance coverage generally let their insurance lapse between annual inspections to avoid the premium costs. Because insurance is available at no cost to Medicaid recipients, they receive no comparable advantage from not enrolling. Further, their no-cost insurance policies do not require renewal but remain in effect as long as they are eligible for Medicaid.

The second limitation in the overpayment calculation relates to the portion of some claims that exceed \$15,000. In accident cases in which a Medicaid recipient is at fault, Medicaid could collect or avoid up to the \$15,000 no-fault limit if such coverage was not excluded. Amounts exceeding \$15,000 in these cases would still be paid by Medicaid since no other insurance resource would be available. The calculation would therefore be overstated to the extent that such amounts are included. The state did not have data readily available for us to determine the extent of the Medicaid auto accident claims that would exceed the \$15,000 limit. However, we did not take this factor into account because a state insurance official estimated that this would account for less than 5 percent of the \$1.4 million in estimated overpayments.