

TENNCARE REPORT

Lewis County Manor
Hohenwald, Tennessee

Resident Days Reported on the Cost Report for the Period
January 1, 2006, Through October 31, 2008,
and
Resident Accounts for the Period
January 1, 2007, Through May 18, 2009



STATE OF TENNESSEE
COMPTROLLER OF THE TREASURY

Department of Audit
Division of State Audit



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June 10, 2010

The Honorable Phil Bredesen, Governor
and
Members of the General Assembly
State Capitol
Nashville, Tennessee 37243
and
Mr. Darin Gordon, Deputy Commissioner
Bureau of TennCare
Department of Finance and Administration
310 Great Circle Road, 4W
Nashville, Tennessee 37243

Ladies and Gentlemen:

Pursuant to Section 71-5-130, *Tennessee Code Annotated*, and a cooperative agreement between the Comptroller of the Treasury and the Department of Finance and Administration, the Division of State Audit performs examinations of nursing facilities participating in the Tennessee Medical Assistance Program under Title XIX of the Social Security Act (Medicaid).

Submitted herewith is the report of the limited scope examination of the resident days reported on the Medicaid cost report of Lewis County Manor, Hohenwald, Tennessee, for the period January 1, 2006, through October 31, 2008, and resident accounts for the period January 1, 2007, through May 18, 2009.

Sincerely,

Arthur A. Hayes, Jr., CPA
Director

AAH/pn
09/049

State of Tennessee

Audit Highlights

Comptroller of the Treasury

Division of State Audit

TennCare Report

Lewis County Manor

Hohenwald, Tennessee

Resident Days Reported on the Cost Report for the Period

January 1, 2006, Through October 31, 2008,

and

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FINDINGS RECOMMENDING MONETARY REFUNDS

Improper Billing of Resident Hospital Leave Days

Lewis County Manor improperly billed the Medicaid Program for 143 hospital leave days when the facility was operating below the 85% occupancy requirement for the period January 1, 2006, through October 31, 2008. As a result of the improper billing of noncovered leave days, the facility should refund \$17,161.50 to the State of Tennessee.

Residents Inappropriately Charged for Covered Services

Lewis County Manor has charged Medicaid residents' trust fund accounts for diapers, which are Medicaid covered services. As a result of the inappropriate charges, the facility should reimburse 42 Medicaid residents or their responsible parties a total of \$7,240.72.

**Lewis County Manor
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**Lewis County Manor
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and
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INTRODUCTION

PURPOSE AND AUTHORITY OF THE EXAMINATION

The terms of contract between the Tennessee Department of Finance and Administration and the Tennessee Comptroller's office authorize the Comptroller of the Treasury to perform examinations of nursing facilities that participate in the Tennessee Medicaid Nursing Facility Program.

Under their agreements with the state and as stated on cost reports submitted to the state, participating nursing facilities have asserted that they are in compliance with the applicable state and federal regulations covering services provided to Medicaid-eligible recipients. The purpose of our examination is to render an opinion on the nursing facilities' assertions that they are in compliance with such requirements.

BACKGROUND

To receive services under the Medicaid Nursing Facility Program, a recipient must meet Medicaid eligibility requirements under one of the coverage groups included in the *State Plan for Medical Assistance*. The need for nursing care is not in itself sufficient to establish eligibility. Additionally, a physician must certify that recipients need nursing facility care before they can be admitted to a facility. Once a recipient is admitted, a physician must certify periodically that continued nursing care is required. The number of days of coverage available to recipients in a nursing facility is not limited.

The Medicaid Nursing Facility Program provides for nursing services on two levels of care. Level I Nursing Facility (NF-1) services are provided to recipients who do not require an intensive degree of care. Level II Nursing Facility (NF-2) services, which must be under the direct supervision of licensed nursing personnel and under the general direction of a physician, represent a higher degree of care.

Lewis County Manor, Hohenwald, Tennessee, provides both NF-1 and NF-2 services. The facility is owned and operated by Tennessee Health Management, Inc., located in Parsons, Tennessee. The officers/members of the board of directors are as follows:

Mark Davis, Director	James M. Smith, President, Chairman and Director
Anne G. Vise, Director and Treasurer	Jeffery D. Parrish, Secretary

During the examination period, the facility maintained a total of 131 licensed nursing facility beds. The Division of Quality Assurance of the Department of Health licensed the facility for these beds. Eligible recipients receive services through an agreement with the Department of Health. Of the 47,815 available bed days, the facility reported 29,277 for Medicaid NF-1 residents and 0 for Medicaid NF-2 residents for the year ended December 31, 2007. Also, the facility reported total operating expenses of \$6,731,698 for the period.

The Division of Quality Assurance inspected the quality of the facility’s physical plant, professional staff, and resident services. The nursing facility met the required standards.

The following Medicaid reimbursable rates were in effect for the period covered by this examination:

<u>Period</u>	<u>Level I NF (744-0265)</u>	<u>Level II NF (044-5430)</u>
July 1, 2006, through June 30, 2007	\$133.20	\$123.29
July 1, 2007, through June 30, 2008	\$145.52	\$125.78

PRIOR EXAMINATION FINDINGS

This facility has not been examined within the past five years.

SCOPE OF THE EXAMINATION

Our examination covers certain financial-related requirements of the Medicaid Nursing Facility Program. The requirements covered are referred to under management’s assertions specified later in the Independent Accountant’s report. Our examination does not cover quality of care, clinical, or medical provisions.



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Independent Accountant's Report

December 4, 2008

The Honorable Phil Bredesen, Governor
and

Members of the General Assembly
State Capitol
Nashville, Tennessee 37243

and

Mr. Darin Gordon, Deputy Commissioner
Bureau of TennCare
Department of Finance and Administration
310 Great Circle Road, 4W
Nashville, Tennessee 37243

Ladies and Gentlemen:

We have examined management's assertions, included in its representation letter dated December 4, 2008, that Lewis County Manor complied with the following requirements on the "Medicaid Nursing Facility Level 1 Cost Report" for the period January 1, 2006, through October 31, 2008, and to the facility's resident accounts for the period January 1, 2007, through May 18, 2009.

- Resident days reported on the cost report have been counted in accordance with state regulations. Medicaid resident days billed to the state for periods when residents were hospitalized or on therapeutic leave are in accordance with the 85% occupancy rule and hospital and therapeutic leave rule in effect for the period tested.
- Charges to residents' personal funds are in accordance with state and federal regulations.

As discussed in management's representation letter, management is responsible for ensuring compliance with those requirements. Our responsibility is to express an opinion based on our examination.

Our examination was made in accordance with attestation standards established by the American Institute of Certified Public Accountants, and accordingly, included examining on a test basis, evidence about Lewis County Manor's compliance with those requirements and performing such other procedures as we considered necessary under the circumstances. We believe that our examination provides a reasonable basis for our opinion. Our examination does not provide a legal determination on Lewis County Manor's compliance with specified requirements.

Our examination disclosed the following instances of material noncompliance applicable to state and federal regulations:

- Improper billing of resident hospital leave days
- Residents inappropriately charged for covered services

In our opinion, except for the instances of material noncompliance described above, Lewis County Manor complied with, in all material respects, the aforementioned requirements for the "Medicaid Nursing Facility Level 1 Cost Report" for the period January 1, 2006, through October 31, 2008, and for resident accounts for the period January 1, 2007, through May 18, 2009.

This report is intended solely for the information and use of the Tennessee General Assembly and the Tennessee Department of Finance and Administration. However, this report is a matter of public record, and its distribution is not limited.

Sincerely,

A handwritten signature in black ink, appearing to read "Arthur A. Hayes, Jr.", written in a cursive style.

Arthur A. Hayes, Jr., CPA
Director

AAH/pn

FINDINGS AND RECOMMENDATIONS

1. Improper Billing of Resident Hospital Leave Days

Finding

Lewis County Manor improperly billed the Medicaid Program for 143 hospital leave days when the facility was operating below the 85% occupancy requirement for the period January 1, 2006, through October 31, 2008.

Chapter 1200-13-1.06(4)(b) of the *Rules of the Tennessee Department of Finance and Administration* states,

A Level 1 nursing facility (NF) shall be reimbursed . . . for the recipient's bed in that facility during the recipient's temporary absence from the facility in accordance with the following:

Effective October 1, 2005, reimbursement will be made for up to a total of 10 days per state fiscal year while the resident is hospitalized or absent from the facility on therapeutic leave.

The resident intends to return to the NF.

At least 85% of all other beds at the nursing facility are occupied at the time of hospital admission or therapeutic absence.

As a result of the improper billing of resident leave days, the facility was overpaid \$17,161.50 by the Medicaid Program for the 143 noncovered leave days for the period January 1, 2006, through October 31, 2008.

Recommendation

Lewis County Manor should not accumulate or bill the Medicaid Program for hospital leave days when the facility is operating below 85% occupancy. The facility should refund \$17,161.50, representing overpayments by the Medicaid Program, to the State of Tennessee as a result of improper billing of hospital leave days.

Management's Comment

The relevant rule in force at the time is TennCare Rule 1200-13-1-.06(4)(b), and in relevant portion, states, "At least 85% of all other beds in the [nursing facility] are occupied at

the time of the hospital admission or therapeutic absence.” The issue in dispute between Tennessee Health Management (THM) and the State appears to be the “*all other beds*” language. In obtaining a calculation that the specific facility was below an 85% threshold on the days where bed hold payments are being disallowed, it appears that auditors have improperly excluded from the calculation of occupied beds those beds unavailable because of bed hold.

It is THM’s position that the plain language interpretation of the rule necessitates that beds being held under bed hold payments, are in fact “occupied,” and therefore included within the 85% calculation. As a legal matter, occupancy includes the concept of possession and both the use of and the intent to use the rights acquired in a thing. Under the construction of bed hold in Tennessee, so long as a bed is being “held” for an individual, it is that individual’s right to return to that bed. The bed or beds also are not available for the use of any other individuals who would be prospective or returning residents of the facility. Medicare reimbursement principles also supported the interpretation of occupied as “otherwise unavailable for use.”

THM also believes that the interpretation now asserted by the State through these audit findings is a new interpretation. The audit report, other than citing to the existing regulation noted above, points to no new regulation and/or guidance to that regulation supporting the interpretation of the audit finding. To the best of THM’s knowledge, this interpretation has not been enforced in any previous audits done on THM facilities by the Comptroller’s office. THM was unable to find support for this interpretation in the Medicaid Nursing Facility Reimbursement Manual. Exercise of this new interpretation therefore presents a legal deficiency in that each facility failed to have any prior notice of this state’s new position.

THM and Lewis County Manor request the audit findings with respect to the disallowed bed hold days be reversed. We request that costs and bed hold days be deemed as allowable costs. THM and Lewis County Manor reserve any rights they may have under Tennessee law to contest these findings through administrative and/or judicial processes.

Rebuttal

The auditor understands and agrees that a bed reserved for a resident who must be admitted to an acute care hospital facility under the rule cited above must be available for that resident upon his/her return, provided that the absence from the nursing facility does not exceed the 10-day limit. However, the calculation of occupancy in any facility has always been determined by the number of residents actually present in the facility as evidenced by the provider’s census records. It is the auditor’s interpretation of the intent of this rule that the Program is willing to pay for the reservation of a Medicaid-eligible resident’s bed for up to 10 days per year, provided that at least 85% of the other beds in the facility have a resident actually counted as present in the daily census in order to avoid creating a hardship on the resident himself. This 15% cushion also provides the facility more than ample opportunity to reserve said beds without compromising its ability to accept new residents into the facility.

2. Residents Inappropriately Charged for Covered Services

Finding

Lewis County Manor has inappropriately charged Medicaid residents' trust fund accounts for Medicaid covered services. From January 1, 2007, through May 18, 2009, the facility charged 42 residents a total of \$10,584.59 for diapers. Of the \$10,584.59, the facility was only allowed to charge the residents \$3,398.87, which is the difference between the diapers stocked by the facility and the diapers specifically requested by the residents. Hence, the facility overcharged the residents \$7,185.72, which represents the cost of the stock diapers provided by the facility. Also, the facility was unable to provide documentation for diaper charges totaling \$55.00 for one Medicaid resident.

No. 93-2 of the *Medicaid Bulletin* states, “. . . diapers, cloth and/or disposable, is a NF responsibility and considered a covered service.”

No. 94-1 of the *Medicaid Bulletin* states, “For covered items, the NF may charge no more than the difference between the cost of an item and/or service it provides and one specifically requested by name by the resident.”

Paragraph 22,163.420(b)(1) of the *Medicare and Medicaid Guide* requires the facility to “establish and maintain a system that – (i) assures a full and complete accounting of clients' personal funds entrusted to the facility.”

As a result of the inappropriate charges, the resident trust fund accounts for 42 Medicaid residents have been incorrectly charged \$7,240.72 for Medicaid covered services.

Recommendation

Lewis County Manor should not charge Medicaid residents for covered services. The facility can only charge residents the difference between the cost of the diaper stocked by the facility and the cost of the specific diaper requested by the resident. Also, adequate documentation must be maintained to support withdrawals from the resident trust fund accounts. Lewis County Manor should reimburse Medicaid residents or their authorized representatives a total of \$7,240.72.

Management's Comment

With respect to the finding that certain charges to Medicaid resident trust funds were improperly billed as Medicaid covered services, the facility has rectified this finding. The facility is this week completing the reimbursement to 42 residents or their responsible parties a total of \$7,240.72. While not contesting the finding in the report, the facility and THM make no

admission of any inappropriate billing on the part of the facility, nor admission to the violation of any Medicaid law or rule.

SUMMARY OF MONETARY FINDINGS AND RECOMMENDATIONS

Source of Overpayments

Improper billing of resident hospital leave days (see finding 1)	\$17,161.50
Residents inappropriately charged for covered services (see finding 2)	<u>\$ 7,240.72</u>
Total	<u>\$24,402.22</u>

Disposition of Overpayments

Due to the State of Tennessee	\$17,161.50
Due to residents or their authorized representatives	<u>\$ 7,240.72</u>
Total	<u>\$24,402.22</u>