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[Required Contributions by Relatives of Medicaid Nursing Home Patients]. HRD-77-90; B-164031(3). May 26, 1977. 11 pp.

Report to Sen. Frank Church, Chairman, Senate Special Committee on Aging; by Elmer B. Staats, Comptroller General.

Issue Area: Health Programs: Compliance With Financing Laws and Regulations (1207); Consumer and Worker Protection: Consumers Protection from Unfair or Deceptive Trade Practices, Advertising, and Warranties (913).

Contact: Human Resources and Development Div.

Budget Function: Health: General Health Financing Assistance (555); Health: Nursing Homes (557).

Organization Concerned: Department of Health, Education, and Welfare.

Congressional Relevance: Senate Special Committee on Aging.

Authority: Social Security Act, as amended (42 U.S.C. 1396 et seq.). 45 C.F.R. 250.30(a) (8). H.R. 92 (95th Cong.).

A sample of nursing homes in Florida, Georgia, Ohio, and Utah was reviewed to determine whether nursing homes were requiring contributions from the families of Medicaid patients as a condition of the patients' admittance or continued residence. Findings/Conclusions: There were no clear cases of forced contributions, although some families had felt "pressured" into contributing. At present, Federal laws or regulations do not specify what nursing homes may or may not do in soliciting contributions. The four states allowed contributions, but only Florida forbade solicitation through coercion or as a condition for admission or continued residence. The lack of Federal guidance may have allowed subtle pressures to be brought on the patients' families by taking advantage of guilt feelings they might have over placing relatives in nursing facilities rather than keeping them at home, and by creating a fear that the home drop out of the Medicaid program, resulting in the removal of these patients. Recommendations: HEW should issue a policy statement to all states defining its position on soliciting contributions. A standard form should be developed to be signed by the parties concerned clearly stating legal issues and rights concerning contributions. Congress should amend Social Security legislation to prevent possible abuses in this area. (DJM)

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COMPTROLLER GENERAL OF THE UNITED STATES  
WASHINGTON, D.C. 20548

B-164031(3)

MAY 26 1977

The Honorable Frank Church  
Chairman, Special Committee on Aging  
United States Senate

Dear Mr. Chairman:

At the request of the Chairman, Subcommittee on Long-Term Care, Senate Special Committee on Aging, we reviewed a sample of nursing homes in Florida, Georgia, Ohio, and Utah to determine whether nursing homes were requiring contributions from the families of Medicaid patients as a condition of the patients' admittance or continued residence at the nursing homes.

Federal Medicaid law and regulations make no reference to contributions. However, on January 4, 1977, legislation (H.R. 92, 95th Congress) was introduced in the House which would clearly make the solicitation or acceptance of any donation as a precondition for admitting a Medicaid patient to a nursing home a misdemeanor under section 1909 of the Social Security Act.

State laws in three of the four States we reviewed did not address the subject. In the fourth, Florida, legislation dealing with contributions has recently been passed. Although policies on contributions varied in the four States, they generally followed Federal Medicare reimbursement principles which state the rules for considering contributions in determining reimbursable costs but do not address the solicitation of contributions.

We found no clear-cut cases of forced contributions. However, several patients' families in Florida and Georgia told us they believed that nursing homes had exerted pressure to obtain contributions. HEW and State efforts relating to the contribution issue varied in the States we reviewed, but were generally limited.

We reviewed 11 nursing homes in the four States and interviewed relatives of 131 Medicaid patients in those homes. We also reviewed the regulations and activities of the State agencies and the Department of Health, Education, and Welfare (HEW) relating to contributions.

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We believe the Secretary of HEW should require that Medicaid patients and their families be fully informed of their rights concerning contributions. We also recommend enactment of legislation similar to that portion of section 17 of H.R. 92 which would make the solicitation of contributions or acceptance of donations as a precondition for admitting a Medicaid patient to a nursing home more clearly subject to prosecution under section 1909 of the Social Security Act.

FEDERAL MEDICAID LAW  
AND REGULATIONS

Federal Medicaid legislation and regulations do not specifically address the subject of nursing homes soliciting contributions. Title XIX of the Social Security Act, as amended (42 U.S.C. 1396 et seq.), authorizes the Medicaid program but does not specifically address the subject of contributions.

Legislation (H.R. 92) introduced in the House on January 4, 1977, to amend section 1909 of the Social Security Act included a provision (section 17) to penalize anyone who

"\* \* \* charges, solicits, accepts, or receives any money, gift, or consideration over and above the rates established by the State or charges, solicits, accepts, or receives any gift, money, donation, or consideration as a precondition of admitting a patient to a long-term care facility  
\* \* \*."

Such action would constitute a misdemeanor, punishable by a fine and/or imprisonment. As of April 4, 1977, this legislation had not been enacted and hearings had not been held.

HEW's regulations (45 C.F.R. 250.30(a)(8)) require nursing facilities that participate in the Medicaid program to accept the States' reimbursements as payment-in-full for the cost of covered services provided to Medicaid patients. The regulations do not cover contributions to nursing homes. However, some States use Medicare guidelines, set forth in the "Medicare Provider Reimbursement Manual," to administer the provider reimbursement portion of their Medicaid programs. To the extent that States follow Medicare cost reimbursement principles to determine the amount of Medicaid payments to nursing homes, these guidelines specify when contributions are to be deducted from allowable costs in computing reimbursements. However, they do not address the issue of soliciting contributions.

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In a memorandum to the region IV (Atlanta) Commissioner, Social and Rehabilitation Service, 1/ an assistant regional attorney stated region IV did not object to voluntary contributions to nursing homes or to solicitations by nursing homes for voluntary contributions. However, he said the region did object to the use of coercion in seeking contributions and recognized that the subject of free will contributions was a vague, ill-defined, and highly subjective legal matter because what appeared coercive to some did not to others.

STATES' LAWS AND POLICIES  
CONCERNING CONTRIBUTIONS

The four States had varying policies on contributions to nursing homes by families of Medicaid patients. They all permit nursing homes to receive contributions, but only Florida had legislation specifically addressing the subject of contributions.

Florida Laws and policies

Florida permits nursing homes participating in Medicaid to solicit and receive contributions from families of nursing home patients. Such contributions are considered available income to meet the nursing homes' costs of caring for the patients unless the contributor submits a written statement to the State to show that the contribution is not intended for any specific patient.

Under legislation which became effective October 1, 1976, solicitation of contributions through coercion or as a condition of admission or of continued residence is grounds for denial, suspension, or revocation of license for any nursing home for which the contributions were solicited. Other legislation, also effective October 1, 1976, provides that:

"Any person \* \* \* who knowingly bills the recipient of benefits under such a program [Medicaid] or his family for an amount in excess of that provided for by law or regulation, \* \* \* or who in anyway knowingly receives, attempts to receive, or aids

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1/Medicaid was administered at the Federal level by the Social and Rehabilitation Service until March 8, 1977, when it was abolished and administrative responsibility was transferred to the new Health Care Financing Administration.

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and abets in the receipt of unauthorized payment  
\* \* \* is guilty of a crime \* \* \*."

The legislation provides a basis for criminal prosecution, either as a misdemeanor or a felony depending on whether the amount of funds involved is more than \$200 in any consecutive 12-month period.

According to an attorney in Florida's Department of Health and Rehabilitative Services, the State enacted this legislation because of a lack of specific legislation and regulations at both the State and Federal levels. The attorney told us that, although Florida now has a specific statute dealing with contributions, the State needs to concentrate on enforcing it.

#### Georgia policies

Georgia permits nursing homes participating in Medicaid to solicit and receive free will contributions. Georgia's policy manual on nursing home services incorporated the payent-in-full provision of Federal Medicaid regulations and provisions from the "Medicare Provider Reimbursement Manual" regarding reimbursement principles relating to contributions.

Georgia has no laws specifically addressing contributions, according to a State assistant attorney general. He said Georgia's law concerning Medicaid merely states that Federal regulations will be followed. The attorney suggested that clear regulations dealing with this issue are needed and that they must have a definite statutory base since Federal laws and regulations on Medicaid do not cover the solicitation of contributions. He also suggested that the law should provide for administrative rather than criminal procedures to expedite the review process in handling contribution problems.

#### Ohio policies

Ohio does not have any laws specifically addressing the subject of contributions; instead, it relies mainly on Federal regulations for guidance, according to the assistant director, Ohio Department of Public Welfare. He said that Ohio permits nursing homes participating in the Medicaid program to solicit and receive contributions.

Ohio's State Medicaid plan incorporates the "Medicare Provider Reimbursement Manual" provisions concerning the treatment of contributions for reimbursement purposes, and

the State's "Medical Assistance Program Handbook" for long-term care facilities incorporates the payment-in-full provision of Federal regulations.

The section of the State plan dealing with income emphasizes that, in computing the amount of the State's reimbursement, contributions restricted for the care of a particular patient must be deducted from the home's cost of care; however, the income section does not discuss unrestricted contributions--contributions not designated for a specific purpose. According to the assistant director, Ohio Department of Public Welfare, the State's concern is that restricted contributions are properly accounted for so that it will not pay more than it should. He said that since nursing homes can use unrestricted contributions as they wish, the State is concerned only that such contributions are voluntary and are solicited on general grounds rather than on the grounds that the State's Medicaid reimbursement is inadequate.

#### Utah policies

Utah permits nursing homes participating in Medicaid to receive contributions from relatives of Medicaid patients. Utah's "Provider Manual for Nursing Facilities" states that such contributions should be deducted from the State's Medicaid reimbursement. According to the director of medical services, Utah Department of Social Services, these are considered restricted contributions. He said other contributions of a general nature, such as to the nursing home itself rather than to or for a specific patient, are considered unrestricted. The nursing home must report unrestricted contributions, but it can use them as it wishes without deducting them from the State's Medicaid reimbursement.

Utah's "Provider Manual" incorporates the Federal requirement that nursing homes accept the State's Medicaid reimbursement as payment-in-full for the cost of providing services covered by Medicaid.

The director said that he did not know of any State law specifically addressing the subject of contributions. He said that Utah does not have a problem with contributions, but that legislation covering this subject would be beneficial as a preventative measure.

CONTRIBUTIONS TO NURSING HOMES

Nursing homes in all four States received contributions. Each of the homes we visited in Florida and Georgia had solicited and received contributions.

Of the four homes we visited in Ohio, only one (a church-related, nonprofit home) had solicited and received general contributions, and another had received restricted contributions. In Utah, 1/ although the State had identified minor amounts of contributions in other homes, none of the three facilities we visited had solicited or received contributions in recent years.

From here on, our comments will be based on our work in Florida and Georgia since we found no evidence in Ohio or Utah of a current problem regarding the inappropriate solicitation of contributions.

Methods nursing homes use to generate contributions in Florida and Georgia

While we found no clear-cut cases where nursing homes forced families of Medicaid patients to contribute, we did find that some families "felt" they had been pressured into contributing. Fifteen of 44 contributors we interviewed said they felt their contributions were not completely voluntary. They felt compelled to contribute because of inferences the nursing homes made either directly or through the news media.

The four nursing homes we reviewed, three in Georgia and one in Florida, used various methods to generate contributions, including letters, discussions with responsible parties, and telephone calls.

In Florida, 8 of 11 contributing families we interviewed considered their contributions to be less than voluntary, but they contributed because they wanted their relatives to remain in the nursing home and receive good care. One person told us that she contributed because the nursing home required it; however, she stopped contributing after the home sent her a letter stating that she did not have to contribute. Members

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1/ Family members of patients in one nursing home in Utah said they had felt pressure to contribute during 1970 to 1973. There has been no problem in the nursing home since the change of general managers in October 1973.

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of two other families told us they felt pressured to contribute. A member of one family said he contributed because he believed his grandmother would have to be moved to another nursing home if he did not. Members of the other family said they felt pressured to contribute because the nursing home sent them precompleted contribution forms with the amount to be given filled out. They did not sign the forms but did contribute after receiving a final bill which included a \$50 contribution. They said they paid the total bill because the patient had received good care and they wanted to settle all the individual's debts.

At the completion of our work in the Florida nursing home, the president and the administrator told us the home no longer billed contributors for their donations and did not pressure anyone to contribute.

In Georgia, 6 of 10 contributing families we interviewed involving one nursing home told us that their contributions were not voluntary. Of a total of 23 interviews with contributing parties for the other two homes in Georgia, we found only one person who said that their contribution had not been voluntary.

The administrator of one nursing home in Georgia said he worked on the families' guilt feelings to obtain contributions. He used a column in the home's monthly newsletter to remind patients and families that contributions were necessary since costs were exceeding the State's Medicaid reimbursement and that without adequate contributions the home might have to drop out of the Medicaid program or lower the overall quality of care.

Late in 1975, some Georgia nursing homes stated publicly that they would have to drop out of the Medicaid program if the State did not increase the amount of its reimbursement. The publicity caused some families to contribute so the homes would not have to drop out of the Medicaid program.

HEW ACTIVITIES CONCERNING FORCED  
CONTRIBUTIONS TO NURSING HOMES

HEW regional officials in Atlanta recognized that the contributions issue was a problem. However, they had limited records concerning the problem in Georgia and Florida. Their involvement has been mainly through correspondence with State officials, with no action directed at nursing homes. HEW claims to have insufficient resources to effectively review the contributions situation.

HEW's Audit Agency and Office of Investigations in the Atlanta region had not reviewed contributions to nursing homes.

HEW headquarters officials were aware of the contributions issue in Florida and Georgia. They disagreed, however, with State attorneys in Florida and Georgia who claimed that federal regulations were inadequate. While admitting that the regulations do not specifically address the issue, they told us that existing regulations were adequate to deal with the problem. They pointed out that the regulation which specifies that providers must accept the Medicaid reimbursement as payment-in-full for the cost of care for Medicaid patients is strong enough to be interpreted as the governing regulation for the question of forced contributions.

HEW headquarters officials told us that if nursing homes solicit contributions on the basis of inadequate State reimbursement through Medicaid, they may be risking their eligibility to participate in the program since they have already agreed to accept Medicaid as payment-in-full for Medicaid patients.

The HEW headquarters officials agreed that HEW should provide a statement to the regions and the States describing its policy and its interpretation of the regulations as they apply to the solicitation of contributions. However, as of April 1977, no guidance had been provided.

#### STATE OFFICE ACTIVITIES CONCERNING FORCED CONTRIBUTIONS

State office activities vary with the degree of significance attached to the contributions problem. In Florida, forced contributions seemed to be widespread among nursing homes, and the State has taken a forceful role in dealing with the problem. Although Georgia officials did not consider forced contributions to be a problem, the State had taken steps to maintain surveillance over all contributions.

#### State activities in Florida

Florida's Department of Health and Rehabilitative Services and the fraud division of the Auditor General's office are attempting to curb abuses involving contributions to nursing homes. Most activity has been centered in the Health and Rehabilitative Services' internal audit section.

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The internal audit section determined that at least two of nine nursing homes it investigated in 1976 used some form of coercion to obtain contributions from families of Medicaid patients.

The determination at one nursing home was based on reviews of the nursing home's records and on contributors' responses to questionnaires. The responses showed that contributions were not voluntary but were exacted as a condition of the patients' admittance or continued residence. The State plans to take legal action against this nursing home to recover Medicaid payments which the State considers to be overpayments.

Another nursing home did not keep records of contributions, but families responding to a questionnaire used by the internal audit section indicated that contributions were required either as a condition of admission or continued residence. Still another home refused the auditors access to records necessary for completing their investigation. At the completion of our review, the State was planning to take legal action against these two homes.

The supervisor of the internal audit section told us that the State had 14 additional audits underway in November 1976 and had contracted with 5 accounting firms to audit 72 nursing homes for the fiscal year ending June 30, 1977. All of these audits are to include specific coverage of the contributions issue.

#### State activities in Georgia

State offices in Georgia had not audited or investigated the solicitations of contributions by nursing homes.

Georgia's main activity was to correspond with HEW and with two nursing homes concerning letters the nursing homes were using to solicit contributions from families of Medicaid patients. The State and HEW considered the letters too strong for solicitation purposes and asked the nursing homes to re-write them.

Since August 1, 1975, Georgia has required nursing homes to report monthly to the State any voluntary contributions they receive. Of the 333 Georgia Medicaid nursing homes, 61 (18 percent) reported receiving \$115,168 between January and June 1976.

The State plans to start using a new form that each contributor will have to sign and submit to the State for each contribution. The form was designed to provide a standardized method of reporting, to define restricted and unrestricted contributions, to tell contributors that nursing homes must accept the Medicaid payment as payment-in-full for services covered by the Medicaid program, and to explain to contributors that nursing homes cannot provide inferior treatment to patients whose relatives do not contribute.

#### CONCLUSIONS AND RECOMMENDATIONS

The issue of contributions by Medicaid patients' families is difficult to deal with because of the lack of Federal laws or regulations specifying what nursing homes may or may not do in soliciting contributions.

State laws and policies in the four States we reviewed do not prohibit the solicitation of contributions, but one, Florida, has recently enacted legislation prohibiting such solicitation through coercion or as a condition of admission or continued residency in a nursing home.

We believe that the lack of Federal guidance may have allowed nursing homes to bring subtle pressures on the families of Medicaid patients by

- taking advantage of guilt feelings the families might have for placing relatives in nursing facilities rather than keeping them at home, and
- creating a fear that the nursing home would drop out of the Medicaid program, which would result in the removal of Medicaid patients.

#### RECOMMENDATION TO THE SECRETARY OF HHS

We recommend that the Secretary of HHS direct the Administrator of the Health Care Financing Administration to issue a policy statement to all States clearly showing HHA's position on the solicitation of contributions by facilities participating in Medicaid. In conjunction with the statement, the Administrator should develop a standard form which the Medicaid patient (if possible), the patient's family, and nursing home administrator (or other designated official) must sign during admissions, which clearly states the legal issues and the patients' families' rights concerning contributions.

RECOMMENDATION TO  
THE COMMITTEE

Since title XIX of the Social Security Act does not specifically address the solicitation of contributions, we recommend that the Committee initiate action to amend it to provide a clear statutory basis for prosecution in the event contributions are solicited by nursing homes as a precondition for admittance or as a requirement for continued stay.

If H.R. 92 is used as the basis for an amendment, the Committee may wish to delete that portion of the bill which provides penalties for anyone who "\* \* \* charges, solicits, accepts, or receives any money, gift, or consideration over and above the rates established by the State \* \* \*." Such a requirement may be too restrictive because it would not allow the acceptance of any good faith donations, such as Christmas gifts and voluntary contributions.

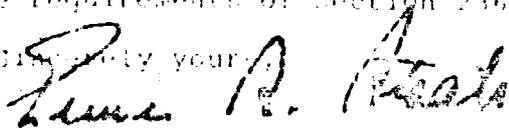
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We discussed the contents of this report with HEW officials and considered their comments. At the request of the Subcommittee staff, we did not obtain comments from the States included in our review.

As agreed with the Subcommittee staff, we are providing copies of this report to Senator Lawton Chiles.

This report contains a recommendation to the Secretary, HEW, which is set forth on page 10. As you know, section 236 of the Legislative Reorganization Act of 1970 requires the head of a Federal agency to submit a written statement on actions taken on our recommendations to the House Committee on Government Operations and the Senate Committee on Governmental Affairs not later than 60 days after the date of the report and to the House and Senate Committees on Appropriations with the agency's first request for appropriations made more than 60 days after the date of the report. We will be in touch with your office in the near future to arrange for copies of this report to be sent to the Secretary and the four Committees to set in motion the requirements of section 236.

Sincerely yours,



Controller General  
of the United States