



LIMITED-SCOPE PERFORMANCE AUDIT REPORT

Osawatomie State Hospital: Reviewing the Hospital's Recent Loss of Federal Funding

AUDIT ABSTRACT

Osawatomie State Hospital's Medicare funding was terminated in December 2015 because it failed to comply with federal regulations related to staff and patient safety. The Kansas Department for Aging and Disability Services (KDADS), which oversees the facility, plans to seek recertification for 60 of the facility's 206 beds. However, officials from the Centers for Medicare and Medicaid Services (CMS) and KDADS offered significantly different estimates of the time it will take to recertify the 60 beds (9-15 months versus 2-4 months). As of June 2016, the loss of Medicare funding and additional expenses to address the deficiencies have cost an estimated \$15 million. Finally, even if the 60 beds are recertified, the hospital will continue to lose significant Medicare funding until the entire facility is recertified.

**A Report to the Legislative Post Audit Committee
By the Legislative Division of Post Audit
State of Kansas
July 2016**

From the Legislative Post Auditor:

This limited-scope audit was authorized by the Legislative Post Audit Committee at its April 26, 2016 meeting. It addresses the following question:

What prompted the federal government to terminate funding for Osawatomi State Hospital and what is the anticipated fiscal impact on the state?

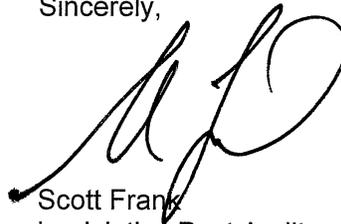
To answer this question, we interviewed officials from the Centers for Medicare and Medicaid Services (CMS) to understand the reasons why the hospital's Medicare funding was terminated and how long they think it will take for recertification to occur and start receiving Medicare payments. We also reviewed relevant documents from CMS. We talked to officials from the Kansas Department of Health and Environment to understand their role in the recertification process. We interviewed Kansas Department for Aging and Disability Services (KDADS) officials and Osawatomi State Hospital officials to determine how they plan to respond to the hospital losing Medicare funding, how much federal funding has been lost, and how much they have spent to address the deficiencies CMS identified that contributed to the decertification. We also interviewed a consultant KDADS hired to assist both KDADS and Osawatomi State Hospital official during the recertification process. Finally, we also talked to officials from the Kansas Legislative Research Department and Division of Budget.

We conducted this performance audit in accordance with generally accepted government auditing standards. Those standards require that we plan and perform the audit to obtain sufficient, appropriate evidence to provide a reasonable basis for our findings and conclusions based on our audit objectives. Overall, we believe the evidence obtained provides a reasonable basis for our findings and conclusions based on our audit objectives.

Audit standards require that we report on any work we did related to internal controls, but a review of internal controls was not part of the scope of the audit as approved by the Legislative Post Audit Committee.

This audit was requested by Representative Henry Helgerson and conducted by Brad Hoff. Chris Clarke was the audit manager. If you need any additional information about the audit's findings, please contact Brad at (785) 296-3792.

Sincerely,



Scott Frank
Legislative Post Auditor
July 27, 2016

What Prompted the Federal Government to Terminate Funding for Osawatomie State Hospital and What is the Anticipated Fiscal Impact on the State?

Background Information

Osawatomie State Hospital is a state psychiatric facility that served more than 2,000 patients in fiscal year 2015. The Kansas Legislature established Osawatomie State Hospital in 1863. The hospital serves individuals 18 years of age and older and partners with 14 community health centers throughout the state to provide mental health services. It is one of two state hospitals providing inpatient psychiatric services and mental health services to adults who are unable to access these services elsewhere (Larned State Hospital is the other). (In addition, KDADS has contracted with a private facility to provide an additional 12 beds for these types of services.) Several treatment options include individual, group, family, activity, and work therapies. Detox services are available for patients dealing with substance abuse. Patients receive services regardless of their ability to pay or legal status.

In fiscal year 2015, Osawatomie State Hospital admitted about 2,300 patients. KDADS officials are projecting only 1,300 patients in fiscal year 2016, primarily because of the temporary closure of buildings for renovations. This closure caused the hospital to limit its census to no more than 146 patients—60 fewer patients than its licensed capacity of 206. KDADS officials told us the reduction in admissions numbers reflects both the temporary reduction in beds and that as of December 2014, Osawatomie State Hospital has not gone above the licensed bed capacity.

Osawatomie State Hospital spent about \$32 million and employed about 350 FTE staff in fiscal year 2015. Of the \$32 million, \$13 million were state general fund dollars, \$9 million from Medicaid, \$8 million from Medicare and \$2 million from other sources. In fiscal year 2015, Osawatomie State Hospital was authorized for 483 FTE positions but only 341 FTE positions were filled. As of June 2016, Osawatomie State Hospital has 349 FTE positions filled, resulting in a 28% vacancy rate.

Several state and federal entities have a role in managing and overseeing Osawatomie State Hospital. KDADS manages Osawatomie State Hospital. Within KDADS, the Behavioral Health Services Commission manages mental health services and oversees Osawatomie State Hospital.

In addition, the Kansas Department of Health and Environment (KDHE) licenses each of the state hospitals. KDHE completes annual on-site inspections of the facilities, including Osawatomie State Hospital, to ensure compliance with state laws and regulations.

Finally, the federal Centers for Medicare and Medicaid Services (CMS) are responsible for providing federal oversight. Hospitals participating in the Medicare program must meet health and safety standards for patients and staff, also known as conditions of participation. CMS administers these standards to ensure compliance. CMS performs this responsibility by working

with KDHE staff to complete on-site inspections of Osawatomie State Hospital. CMS also certifies that hospitals are eligible to receive Medicare reimbursements.

Finding #1: Osawatomie State Hospital's Medicare Funding Was Terminated in December 2015 Because it Failed to Comply with Federal Regulations Related to Staff and Patient Safety

CMS threatened to terminate Osawatomie State Hospital's Medicare funding several times between October 2014 to December 2015. On-site surveyors made multiple visits to the hospital over a one-year period. Those visits repeatedly uncovered safety deficiencies, prompting CMS to threaten Medicare termination several times over this period. Termination means Medicare would not pay for any hospital services provided to a patient. A timeline describing the inspections, deficiencies cited and results is summarized below.

- **October 30, 2014 – CMS surveyors identified numerous safety issues and threatened Medicare termination by December 8, 2014.** Both CMS and KDADS officials told us this visit was prompted because of concerns that Osawatomie State Hospital was serving more people than its licensed capacity. The surveyors confirmed this concern and found the hospital had 258 patients, which was more than 50 patients over its licensed capacity of 206.

In addition, CMS placed Osawatomie State Hospital on immediate jeopardy status because of other significant findings. CMS determined Osawatomie State Hospital posed an immediate and serious threat to the health and safety of patients because it was not in compliance with the Medicare regulations related to Nursing Services and Pharmaceutical Services. Specifically, the surveyors concluded there was a lack of documentation to determine whether patients received their necessary medications, nursing staff failed to notify a physician of a change to a patient's medical needs, and there was a lack of documentation showing nurses conducted follow-up assessments as directed by the physician. Finally, Osawatomie State Hospital was deficient in several other Medicare conditions of participation, including patient rights, physical environment, and infection control.

CMS notified Osawatomie State Hospital officials on November 13, 2014 the Medicare agreement would be terminated on December 8, 2014, if not addressed.

- **December 3, 2014 – A follow-up inspection found some progress and CMS extended the deadline for compliance to February 13, 2015.** KDHE surveyors completed this follow up on-site inspection of Osawatomie State Hospital to determine if the deficiencies were still present. The surveyors found the deficiencies from the October visit were resolved. However, the surveyors found Osawatomie State Hospital was still non-compliant with other Medicare conditions of participation. Some of these include strangulation hazards present at the facility and failure to maintain an infection control system. CMS notified Osawatomie State Hospital officials the date of Medicare termination had been extended to February 13, 2015.
- **January 23, 2015 – A follow-up inspection found additional violations and CMS extended the deadline by 10 days, to February 23, 2015.** KDHE surveyors completed a follow up on-site inspection in January 2015 and found the hospital was not in compliance regarding patient rights and nursing services, including not providing a safe environment for suicidal and violent patients. For example, surveyors found staff failed to secure furniture or remove potential strangulation hazards. Additionally, surveyors cited a lack of evidence nursing staff completed ongoing patient assessments.

In one case, nursing staff failed to assess whether a patient's medication was working. The next day, the patient was found unresponsive with a distended abdomen. The patient was transported to the hospital and died three hours later from an intestinal infection.

Based on these new findings, CMS rescinded the previous termination date of February 13, 2015, and revised the Medicare termination date to February 23, 2015. The dates were changed to give KDADS officials the opportunity to remove and resolve the immediate jeopardy findings.

- **April 15, 2015 – CMS accepted Osawatomi State Hospital's plan of correction and extended the termination date to November 1, 2015.** Following the January 2015 inspection, KDADS submitted a plan of correction and time schedule to fix the deficiencies. This plan addressed improvements to the physical environment to address safety risks for suicidal and violent patients that include fixing light fixtures, securing furniture, and removing or installing door handles and closet door handles. Also, the correction plan included strategies to increase staff training and number of nursing staff. CMS notified Osawatomi State Hospital officials the hospital's plan of correction had been accepted, and extended the Medicare termination date to November 1, 2015.
- **July 15, 2015 – A follow-up inspection identified issues with medical records and lack of nursing staff, and CMS maintained the termination date of November 1, 2015.** CMS surveyors completed a follow up on-site visit of Osawatomi State Hospital and found the hospital did not maintain medical records and failed to have sufficient nursing staff. CMS notified hospital officials these deficiencies needed to be corrected in order to avoid Medicare termination on November 1, 2015.
- **August 24, 2015 – CMS accepted Osawatomi State Hospital's plan of correction and after discussions with KDADS officials, extended the termination date to February 1, 2016.** CMS officials notified hospital officials they accepted the hospital's plan to correct the deficiencies identified at the July 15, 2015 visit. CMS notified hospital officials in writing that surveyors would make an unannounced visit prior to the Medicare termination date. Subsequently, in October 2015, CMS officials extended the Medicaid termination date to February 1, 2016. CMS extended the termination date to give Osawatomi State Hospital time to separate the facility into two separate units—a unit of 60 Medicare certified beds and a unit of 146 licensed only beds.
- **November 3, 2015 – A follow-up inspection, prompted by a patient raping a staff member, found significant safety issues that posed an immediate and serious threat to patients, and CMS revised the termination date back to December 21, 2015.** KDHE surveyors visited the facility on November 3, 2015 and noted deficiencies related to nursing services. Specifically, surveyors found the hospital failed to ensure nursing staff provided oversight for the provision of patient care, failed to ensure appropriate safety round checks were performed, and failure to supervise patients in showers and bathrooms with strangulation hazards.

As part of this visit, surveyors also interviewed staff and patients about the incident where a patient raped a staff member in October 2015. Hospital staff members told the surveyors that security staff were not performing their rounds every 10 minutes as required, or would leave the unit before their replacement reported on duty.

CMS concluded the hospital conditions posed an immediate and serious threat to the health and safety of patients and concluded the hospital no longer meets the requirements receive Medicare payments. The Medicare termination date was amended from February 1, 2016 to December 21, 2015.

- **December 18, 2015 – A follow-up inspection identified ongoing issues related to patient safety and determined the hospital does not meet Medicare requirements.** Surveyors visited the hospital again on December 18, 2015 and noted significant violations. Specifically, surveyors found

the hospital failed to ensure nursing staff provided oversight for the provision of patient care and failed to protect patients from other patients' aggressive behaviors. In addition, nursing staff did not supervise a patient close enough to prevent self-inflicted harm including a suicide attempt. CMS concluded the hospital no longer meets Medicare requirements. CMS officials confirmed the Medicare termination was effective December 21, 2015.

- **December 21, 2015 – CMS terminated Medicare funding.** Medicare funding was terminated for any hospital services provided to a patient admitted after that date. For those patients admitted prior to the date, Medicare payments would continue for up to 30 days of inpatient hospital services, or until January 20, 2016. All Medicare payments ceased late January 2016. As of July 2016, funding had not been restored.

Finding #2: KDADS and CMS Officials Offered Significantly Different Estimates of the Time it Will Take to Recertify a 60-Bed Unit

KDADS plans to seek recertification for only a portion of the hospital. Osawatomi State Hospital received Medicare reimbursement for 206 beds in calendar year 2014, before on-site surveyors identified over-capacity issues at the hospital. In May 2015, KDADS removed 60 beds from use and started making improvements to this part of the facility to address the safety concerns the on-site surveyors had identified during an April 2015 visit. KDADS officials told us their current plan is to recertify only these 60 beds. Regardless of the number of certified beds, the entire facility can continue to operate and treat patients. However, the hospital will not receive Medicare funding for any patients in non-certified beds.

Before this 60-bed unit can be recertified, CMS must determine the deficiencies have been corrected and will not recur. Federal regulations require the facility requesting recertification to show sufficient justification to indicate the reasons for termination no longer exist. The facility also must show it has met all of the applicable statutory and regulatory requirements. Finally, the facility must provide reasonable assurance the deficiencies that caused the termination will not recur in either the short term or the long term. The standard process for recertification is summarized below.

- **KDADS and Osawatomi State Hospital officials develop a correction plan to resolve the deficiencies.** The correction plan will include the hospital's strategy to correct the deficiencies the surveyors identified. The plan must have the completion date of the correction.
- **KDADS officials apply for recertification.** KDADS officials notify both CMS and KDHE officials that Osawatomi State Hospital is ready for surveyors to inspect the facility.
- **KDHE surveyors complete a limited on-site survey.** In most cases, the first survey is a partial survey designed to ensure the deficiencies causing decertification have been resolved. Generally, it is completed within 30 days of the application date.
- **CMS develops a reasonable assurance period.** After the first survey, if KDHE surveyors conclude the deficiencies no longer exist or find substantial compliance, CMS will establish a reasonable assurance period. This is generally between 30-120 days, but can be shortened or extended

depending on the circumstances. Its purpose is to ensure the facility can operate for a certain period of time without have deficiencies recur that caused the termination. The reasonable assurance period of time begins on the first survey's completion date.

- **KDHE surveyors complete a full on-site survey at Osawatomi State Hospital.** A second, more extensive on-site inspection is completed at the end of the reasonable assurance period. This inspection is a full survey to ensure it meets all Medicare conditions of participation.
- **If both surveys find Osawatomi State Hospital to be in compliance with Medicare requirements, CMS will grant recertification.** Osawatomi State Hospital will be issued a new Medicare provider agreement effective the date of the second survey.

CMS officials told us if Osawatomi State Hospital is found not to be in compliance and deficiencies are present, the reasonable assurance process will start over and delay the facility's ability to become Medicare certified.

KDADS officials estimate the 60-bed recertification process will take between two to four months. KDADS and Osawatomi State Hospital officials must submit the application to both KDHE and CMS. KDADS officials are currently working on the application for recertification and told us they plan to submit sometime in the summer 2016. As noted earlier, KDADS' plan is to seek recertification and Medicare reimbursement for 60 beds at the hospital at this time, not the entire facility.

KDADS officials hired a consultant to assist them in the recertification process. KDADS officials and the consultant told us they are confident Osawatomi State Hospital will be recertified for the 60 beds. KDADS officials pointed to several improvements of the physical environment to Osawatomi State Hospital to eliminate hazards such as installing new door handles, secured locking plates for outlets, and safer hospital beds. Further, KDADS officials told us they have made several changes in staffing and operational practices at Osawatomi State Hospital. These include reorganizing the nursing service to ensure nursing oversight for the care of patients, increased therapy contacts, and increased security on the unit, among other changes. In addition, the consultant told us she has seen hospitals receive recertification with far more egregious deficiencies than Osawatomi State Hospital. The consultant told us a two to four month timeframe is realistic to obtain recertification after the application is submitted.

CMS officials estimated the recertification process is more likely to take between nine and 15 months. We spoke with CMS officials who are working on the Osawatomi case. Based on their experience, they told us recertifying 60 beds at Osawatomi State Hospital will take at least nine months in a best-case scenario and up to 15 months in a more likely scenario from the date of application. This wide range takes into account the possibility on-site surveyors will find deficiencies at Osawatomi State Hospital during the reasonable assurance period. If this is the case, the reasonable assurance period (30-120 days) will start over and add time to the recertification process.

Finding #3: As of June 2016, the Loss of Medicare Funding and Additional Expenses to Address the Deficiencies Have Cost An Estimated \$15 Million

Through June 2016, Osawatomi State Hospital has lost about \$6 million in Medicare funding, and will continue to lose more each month until the hospital is recertified.

According to KDADS officials, the hospital has lost about \$1 million per month because of Medicare decertification. This includes about \$400,000 in direct payments for patient care, and about \$600,000 in supplemental payments for serving low-income or uninsured patients.

As of June 2016, KDADS officials estimated spending nearly \$8 million to address the concerns identified by CMS. State general fund and capital improvement funds were used to make improvements to a 60-bed unit at Osawatomi State Hospital. These improvements include providing safer hospital beds, replacing drinking fountains, installing new door handles, secured locking plates for outlets, and contracting with a private facility to provide 12 offsite patient beds. The hospital made these changes to eliminate strangulation hazards for patients and improve the overall safety of the environment for staff and patients.

Finally, KDADS has hired two consultants to help with recertification. As of May 2016, these consultants have been paid nearly \$700,000 to assist KDADS officials through the recertification process and identify any weaknesses in how they are addressing the deficiencies.

KDADS officials told us most of the physical improvements made to Osawatomi State Hospital were for projects that needed to happen regardless of decertification. These projects would have been completed in phases as funding allowed, though the CMS surveys accelerated this timeline.

In May 2016, the Legislature appropriated nearly \$15 million in supplemental funds to make up for the loss in Medicare payments (\$6 million), cover other expenses (\$8 million), and pay for increasing nursing and direct care staff salaries (\$1.3 million). Of the \$15 million, nearly \$6 million was to make up for six months of lost Medicare funding. Another \$7.5 million was added to cover contracting for additional beds at a private facility, capital outlay expenditures for improvements, recertification consultants and other operating expenses. Finally, the Legislature added \$1.3 million to increase direct care staff salaries including nurses. These were one-time payments.

Finding #4: Even if the 60-Bed Unit is Recertified, the Hospital Will Continue to Lose Significant Medicare Funding Until the Entire Facility is Recertified

Prior to decertification, KDADS officials estimate Osawatomi State Hospital received about \$1 million per month in Medicare for operating a facility with 146 patient beds. As a decertified facility, Osawatomi State Hospital is not entitled to receive any Medicare reimbursements, even

though it continues to operate. KDADS officials told us their immediate plan is to seek recertification for 60 beds in the summer of 2016, leaving the remaining beds uncertified and not eligible for Medicare funding. We estimate the facility will receive about \$400,000 per month in Medicare funding for 60 certified beds. This is roughly \$600,000 less per month in Medicare funding than it used to receive when it had 146 certified beds, and is about \$1 million less per month than it would receive if certified to full capacity (206 beds).

As of June 2016, KDADS officials do not know when they plan to seek recertification for the remaining beds at Osawatomie State Hospital. Officials told us they likely will seek additional appropriations from the Kansas Legislature to help fill the gap in lost Medicare funding in fiscal year 2017. Additionally, KDADS officials are anticipating generating additional revenue by focusing on more accurate billing of services patients receive at the hospital.

Recommendations

None

Agency Response

On June 27th, we provided copies of the draft audit report to the Kansas Department for Aging and Disability Services for an official response. We made a few minor changes and clarifications to the final report as a result of KDADS' review, but those changes did not affect any of our findings or conclusions.

Kansas Department for Aging and Disability Services officials generally agreed with the audit's findings, but provided additional clarification and context. KDADS officials pointed out that it was not until October 2015 that CMS required Osawatomie State Hospital to completely separate the two units, which KDADS intended to become certified, from the rest of the hospital. Also, KDADS officials responded they believe the extensive changes made in staffing and operational practices have led to the most significant improvements in patient care and the quality of the hospital.

Finally, KDADS officials questioned the differences of opinions between KDADS and CMS in estimating the time it will take to recertify Osawatomie State Hospital. KDADS officials told us their estimate was based on the advice and counsel of an expert KDADS hired, but they were not clear what CMS was basing their estimate on.

The full text of KDADS' response is on file and available from Legislative Post Audit.