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

MANPOWER AND WELFARE
DIVISION

OCT 21 1974



Mr. James B. Cardwell
Commissioner of Social Security
Department of Health, Education,
and Welfare

Dear Mr. Cardwell:

Our review of the manner in which independent laboratories are regulated and reimbursed under federally funded health programs disclosed a situation in Arizona involving Medicare which we are bringing to your attention. We noted that a laboratory facility in Phoenix, Arizona, has received two Medicare certifications from the Bureau of Health Insurance (BHI) and is currently participating in the program under two different names. Under one of the names, the laboratory charges higher fees than under the other name and offers physicians who refer work to the laboratory with the higher fees a percentage of the profits earned on the laboratory work.

In November 1970, Automated Pathology Services, Inc., applied for and subsequently received a Medicare participation certificate. The State of Arizona Articles of Incorporation dated September 9, 1970, show that Gerald Marshall and Robert D. Collins were the incorporators of Automated. The current address of Automated is 1120 West Watkins, Phoenix, Arizona. Gerald Marshall is the director of Automated.

In September 1972, Consolidated Medical Services, 1120 West Watkins, Phoenix, Arizona, applied for and received a Medicare participation certificate. Gerald Marshall is the director of Consolidated. The Articles of General Partnership of Consolidated Medical Services, dated September 20, 1972, show the following:

1. The partners in the agreement are Gerald Marshall; Robert D. Collins; and Phoenix Medical Associates, Ltd., a corporation of physicians.
2. Automated is to furnish Consolidated with space, testing equipment and supplies, reagents, utilities, and certain services in exchange for a percentage of gross receipts ranging from 26 to 30 percent, depending on Consolidated's gross receipts.

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3. Twenty to 25 percent of the net profits of Consolidated is to be provided to two of the partners--Gerald Marshall and Robert D. Collins. The remaining profits are to be provided to the other partner--the corporation of physicians. To become a member of the corporation of physicians and participate in the arrangement, a physician must contribute \$1,000 to the partnership.

A document apparently prepared by Consolidated for the purpose of inducing physicians to participate in the partnership shows that Consolidated provides practicing physicians with an opportunity to make a profit on work referred to an independent laboratory. The document also shows that a physician can earn profits of over \$10,000 a year by referring approximately \$112 in laboratory work per day to Consolidated.

Work referred by physicians to Consolidated is performed in the same facility with the same equipment and in some cases the same personnel as work performed by Automated. However, patients of physicians participating in the arrangement apparently receive no additional benefits although they do pay higher prices for identical tests. Following are examples of the variances in fees between Consolidated and Automated as shown on their current price lists:

<u>Procedure</u>	<u>Consolidated</u>	<u>Automated</u>
Chem-12 Profile	\$12.00	\$ 5.00
Bicarbonate (CO-2)	6.00	2.50
Calculi identification	11.00	5.00
Cholinesterase, plasma and cells	22.00	5.00
Alkaloids	33.00	15.00

During the 15-month period ended in March 1974, Medicare claims for laboratory services performed by Consolidated and Automated totaled \$32,218 and \$2,875, respectively. Following are instances of differences between amounts charged by the laboratory and allowed by Aetna Insurance Company for work performed by Consolidated and Automated.

<u>Procedure</u>	<u>Consolidated</u>		<u>Automated</u>	
	<u>Claimed</u>	<u>Allowed</u>	<u>Claimed</u>	<u>Allowed</u>
Sugar (glucose), blood	\$ 5.50	\$ 4.00	\$ 4.00	\$ 2.80
Iron binding capacity, chemical	11.00	10.00	8.20	8.20
Blood count, complete	6.60	6.00	4.40	4.40
Culture, blood, sensitivity up to 10 antibiotic discs	11.00	8.50	6.00	6.00
Chem-12 Profile	12.00	12.00	5.00	5.00

Officials of the Bureau of Health Insurance (BHI) in Baltimore, and in the San Francisco Regional Office have been aware of certain aspects of this matter since late 1973. To assist the BHI in its investigation, in April 1974 we furnished copies of documents which highlight the above information to a Regional Program Integrity Specialist. However, as of June 1974, the Regional Office was still investigating the matter. In the meantime, Consolidated Medical Services--apparently formed primarily to charge increased fees and provide a method whereby physicians can obtain a percentage of the profits earned on laboratory work--continues to be certified to provide services to Medicare beneficiaries.

Section 1877(b) of the Social Security Act, as amended by section 242(b) of the Social Security Amendments of 1972 (H.R.1), provides that:

"Whoever furnishes items of services to an individual for which payment is or may be made under this title /title XVIII/ and who solicits, offers, or receives any--(1) kickback or bribe in connection with the furnishing of such items or services or the making or receipt of such payment, or (2) rebate of any fee or charge for referring any such individual to another person for the furnishing of such items or services, shall be guilty of a misdemeanor and upon conviction thereof shall be fined not more than \$10,000 or imprisoned for not more than one year, or both."

Section 1842(b)(3) of the Social Security Act as amended by section 224(a) of the Social Security Amendments of 1972, provides that:

" * * * In the case of medical services, supplies, and equipment (including equipment servicing) that, in the judgment of the Secretary, do not generally vary significantly in quality from one supplier to another, the charges incurred after December 31, 1972, determined to be reasonable may not exceed the lowest charge levels at which such services, supplies, and equipment are widely and consistently available in a locality except to the extent and under the circumstances specified by the Secretary. * * * "

We understand that SSA has made only limited progress in implementing this provision, although the report of the Senate Finance Committee on H.R.1 stated that it believed that special reasonable charge rules could readily be established for routine laboratory work.

We believe there is a need to investigate the circumstances surrounding Medicare reimbursement for laboratory services provided by the Consolidated Medical Services laboratory to ascertain whether there have been violations of the provisions of section 1877(b) of the Social Security Act.

Also, we believe that the situation described above, where significantly different reasonable charges are established for the same laboratory procedures performed by a laboratory under two different laboratory names, is a type of arrangement that section 224(a) was intended to prevent. Additionally, implementation of section 224(a) of the Social Security Amendments of 1972 with regard to commonly supplied laboratory services could help to minimize physicians from profiting on such services furnished under arrangements such as discussed above or other similar arrangements.

Therefore, we recommend that SSA expedite the investigation into the circumstances surrounding Medicare reimbursement for services provided by the Consolidated Medical Services laboratory and ascertain whether violations of section 1877(b) of the Social Security Act have occurred. We also recommend that in the implementation of section 224(a) of the Social Security Amendments of 1972, SSA consider giving priority to establishing reasonable charge levels for the more commonly furnished laboratory services.

Because of indications that there may have been violations of a Federal criminal statute as discussed above, we are bringing this matter to the attention of the Special Agent of the Federal Bureau of Investigation (FBI) responsible for FBI activities in Phoenix, Arizona.

We would appreciate your comments on this matter and advice as to any actions taken.

Copies of this letter report are being sent to the Assistant Secretary, Comptroller, and the Director of the HEW Audit Agency.

Sincerely yours,

Robert E. Iffert, Jr.

Robert E. Iffert, Jr.
Assistant Director