

STATE OF UTAH
OFFICE OF THE UTAH STATE AUDITOR



TINA M. CANNON
UTAH STATE AUDITOR

**Medicaid Upper Payment Limit
Supplement for Skilled Nursing Facilities**

Audit Report

For the period July 1, 2016 through June 30, 2024

Report No. 25-06

Office of the Utah State Auditor

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Management Letter No. 25-06

April 1, 2026

Tracy Gruber, Executive Director
Department of Health and Human Services
195 North 1950 West
Salt Lake City, UT 84116

Dear Director Gruber:

The Office of the Utah State Auditor (Office) serves as the independent oversight authority responsible for ensuring financial reporting accuracy and accountability among political subdivisions within the State of Utah. The Office received a legislative request to investigate alleged misuse of Medicaid funding for the Utah Skilled Nursing Facility – Upper Payment Limit program.

The Office contacted the Department of Health and Human Services (DHHS) as well as local governments participating in the Skilled Nursing Facility – Upper Payment Limit program. We performed the following procedures:

- Interviewed DHHS and local government employees to gain an understanding of the program.
- Reviewed state and federal Medicaid guidance for Upper Payment Limit programs.
- Traced the process, including seed money paid by local governments, administrative fees charged by DHHS, federal dollars drawn down and remitted to local entities including amounts paid to nursing facilities and amounts retained by the non-state government entities (NSGE).
- Conferred with the Utah Office of Inspector General of Medicaid Services.
- Reviewed NSGE, Nursing Facility Management, and DHHS contracts.

We identified three findings with the Utah Skilled Nursing Facility – Upper Payment Limit (SNF UPL) program, which are explained in the findings and recommendations section. The findings have a commonality in preventing the total SNF UPL funding from being utilized at the nursing facility level. In addition, the background section and appendices provide context to how the program was developed, currently functions, and the scope of money involved.

Our procedures were limited to matters related to the complaint and do not constitute a comprehensive audit of the state Medicaid program or its internal controls. Had we performed additional procedures, other matters may have come to our attention that would have been reported to you. We appreciate the courtesy and assistance extended to us by state and local government employees during our review. We look forward to a continuing professional relationship. If you have any questions, please contact me.

Sincerely,



Tina M. Cannon
Utah State Auditor

Findings & Recommendations

Background

The concept of a Skilled Nursing Facility – Upper Payment Limit program (SNF UPL) existed as early as 1980.¹ In July 2019 the Medicaid and CHIP Payment and Access Commission (MACPAC) found that 25 states reported some type of supplemental payment to nursing facilities.² The Utah State Department of Health (DOH) (Now the Utah Department of Health and Human Services or DHHS) was approached by Rocky Mountain Care in 2012 about the creation of a SNF UPL program in the state of Utah after observing similar programs in other states. The Utah State Medicaid Plan was amended in 2013, which included adding section 942 within Attachment 4.19 – D, allowing for the Utah Skilled Nursing Facility – Upper Payment Limit Program (Utah SNF UPL).

This type of program is referred to as a “Gap” program because the intention is to help close the gap between the amount Medicaid pays for nursing care and the higher amount paid by Medicare for the same services. The Utah SNF UPL allowed by section 4.19 – D of the state Medicaid plan and approved by the Centers for Medicare & Medicaid Services (CMS) requires nursing homes to be owned by a Non-State Government Entity (NSGE) to qualify for a supplemental payment. This is significant because the state plan as currently adopted excludes state hospitals, like the University of Utah Hospital and privately owned nursing facilities, from participating in the SNF UPL program. Participation of those entities could be allowed if the State Medicaid Plan were amended.

The first NSGE approached for the Utah SNF UPL program was Beaver Valley Hospital (BVH). Rocky Mountain Care (RMC) approached Beaver Valley Hospital, a component unit of Beaver City, because of its NSGE status and the fact that it already operated a hospital-based long-term care facility. DHHS, BVH, and RMC worked together to develop program guidelines to keep the Utah SNF UPL in compliance with CMS requirements. Since the last audit conducted by the Office of the Legislative Auditor General (OLAG) in 2018, the program has grown from seven NSGEs with 48 nursing facilities to, at the time of this review, 10 NSGEs that are benefitting from the Utah SNF UPL, representing 75 nursing facilities. There is a concentration where three NSGEs hold licenses for 64 of the 75 nursing facilities: Beaver Valley Hospital (44), Gunnison Valley Hospital (15), and Kane County Hospital (5). Any private nursing care provider willing to change ownership to be licensed under a NSGE can potentially qualify for the Utah SNF UPL, therefore there is a potential growth to program participation.

In practice, the Utah SNF UPL program functions when the NSGE provides local seed money to the state along with an administrative fee. The seed money is used to demonstrate local cost sharing and qualifies the entity to receive federal funding. Federal funds, including the original seed money, are

¹ See H.R. 7765 – Omnibus Reconciliation act of 1980 <https://www.congress.gov/bill/96th-congress/house-bill/7765>

² Medicaid and CHIP Payment and Access Commission report <https://www.macpac.gov/wp-content/uploads/2021/11/Upper-Payment-Limit-Supplemental-Payments.pdf>

then remitted to the state through DHHS, who in turn remits the funds to the NSGEs in separate accounts for each nursing facility. NSGEs that operate multiple facilities then remit funding to those nursing facility management companies.

All nursing facilities participating in the SNF UPL program are contractually required to demonstrate compliance with Rule R414-516, the SNF UPL Quality Improvement Program. As part of this program, DHHS monitors nine quality metrics, and facilities that fail to meet the required thresholds are subject to a 15% reduction in UPL payment for each metric that falls below the established standard.

While these compliance and monitoring mechanisms are in place, evaluating the effectiveness of the R414-516 Quality Improvement Program and the related compliance testing performed by DHHS was outside the scope and purview of this report, and therefore was not audited as part of our review.

Finding 1. Lack of DHHS Oversight - Funding Not Utilized at Nursing Facilities

We analyzed the distribution of the SNF UPL supplemental funds between DHHS, NSGE, and nursing facilities. As detailed in Appendix A, and summarized below, the nursing facilities utilized approximately 49% of the gross funds provided by the program. For the three largest NSGEs from 2016 through 2024 the totals are as follows:³

Gross UPL Payment	\$	922,346,112
Used at Nursing Facilities	\$	450,551,307
Percentage Utilized by Nursing Facilities		49%

This analysis was complicated by differences noted between public facing information regarding the Utah SNF UPL payments to NSGEs, information residing in the PRISM system and records of transactions recorded by the NSGE.

The Contracts between DHHS and the NSGE's make clear that 100% of the supplemental Medicaid payments passed through from DHHS are to be deposited to operating accounts that are accessible to the nursing facilities with the nursing facility retaining ultimate responsibility for the maintenance of accounts. We found that the funds were generally under the control of the NSGE rather than nursing facility management and that the NSGE used a significant portion of the funds to improve care at the

³ Gross UPL amounts depicted in finding 1 and Appendix A were provided by NSGEs. The Office noted differences in amounts provided by NSGEs and DHHS which are attributed to timing differences and corrections that cross year ends.

NSGE Hospital, rather than at the nursing facilities. This appears to be contrary to the purpose of the funds.

Due to the lack of oversight regarding how funds retained at the hospital level are ultimately used, a significant portion of SNF UPL funds are not directed toward nursing facility services. The effect of this lack of oversight is evident in the distribution of funds among the three largest NSGEs. From 2016 through 2024, these entities received a total of \$922,346,112 in SNF UPL funds. Of that amount, only 49% or \$450,551,307 was ultimately used at nursing facilities.

Recommendation

We recommend DHHS correct differences in public facing information and information maintained in PRISM, as well as monitor actual dollars spent at the facility level compared to the dollars remitted to the NSGE to ensure the funds are used according to the State Medicaid Plan and federal guidelines within each nursing facility.

We recommend the state discontinue the practice of allowing SNF UPL funds to be used for NSGE administrative expenditures or modify Section 942 of Attachment 4.19 – D of the State Medicaid plan to clearly allow for the utilization of SNF UPL funds by NSGE’s for administrative expenditures including activities such as improving care at a related NSGE hospital. The State Medicaid Plan should include set amounts or percentages allowed for these types of activities. DHHS should monitor NSGEs to ensure funds are utilized in accordance with the state plan.

Finding 2. Overhead and Administrative Funding Guidance

The DHHS contract with NSGEs stipulates that DHHS charges an administrative fee between 1% and 3% of the gross SNF UPL funds depending on the amount of the allocation. DHHS provided a breakout of their estimated costs to administer the program for the 2025 fiscal year. We compared the estimated costs to the amount DHHS collected from the NSGEs for administrative fees.

Administrative Fees collected by DHHS in 2025	\$2,746,288
DHHS Estimated Administrative Costs in 2025	\$ 863,981
Collections in Excess of estimated costs	\$1,882,307

The court case *V-1 Oil v Utah State Tax Commission* (1997) provides a well established precedence for regulatory fees. Regulatory fees are specific charges which defray the government’s cost of regulating and monitoring the activity. At the state level, the 2025 estimated cost of maintaining the Utah SNF UPL program was substantially less than the fees collected from participating NSGEs.

In addition, the funding retained by the NSGEs exceeds the reasonable costs of administering the program if it were to be considered an administrative fee. Alternatively, the amount retained by NSGEs could be considered compensation of owners. Guidance from the CMS Provider Reimbursement Manual (Publication 15-1) Part 1 Chapter 9 addresses compensation of owners. This guide addresses sole proprietorships, corporations, partnerships, and trusts but does not address local governments as owners of a Skilled Nursing Facility. If the amount retained by NSGEs is justified as compensation of owners then DHHS should track how much of the SNF UPL funds are being retained as compensation and perform the comparative analysis required by CMS to ensure the amounts are reasonable.

From 2016 – 2024 the largest three NSGE hospitals used \$471,794,805 for a combination of owner compensation, administrative costs, and hospital operating expenses with the remaining \$450,551,307 or 49% being used for patient care at the nursing facilities.

Recommendation

We recommend the state modify Section 942 of Attachment 4.19 – D of the State Medicaid plan to stipulate an allowed administrative rate that can be collected by DHHS. Additionally, the State Medicaid Plan should be modified to stipulate allowed administrative rates charged by NSGEs or owner compensation for NSGE with the clarification that all funds outside of the allowed fees be used at the nursing facility level for their intended purpose. The state should work with federal agencies to clarify these requirements.

Finding 3. Seed Money Not Used for Nursing Facilities

Typically, for federal programs requiring local participation, local funds are pledged for a purpose in order to draw down additional federal funding. For example, the local government provides \$100,000 in funding and the state or federal government matches those funds so that \$200,000 is used for the intended services or program.

In the case of the Utah SNF UPL program, NSGEs provide the seed money to the state DHHS, which draws down the federal funding. After allowing funds to sit in an account available to the nursing facility until the end of its fiscal year, the NSGEs then withdraw seed funds. In nine years for the three NSGEs reviewed, seed money was never used at the nursing facilities. The Office verified that the NSGEs receive sufficient funding each year to make the seed payment in compliance with federal guidelines.

Recommendation

We recommend the state ensure compliance with cost sharing requirements by requiring both seed money and federal funds drawn down be used for the nursing facilities. By reimbursing the seed money and only passing federal funds down to the nursing facilities the NSGE propagates the appearance of

violating local cost share required by code. DHHS should adopt procedures to ensure that supplemental funding, including seed money provided, is used for allowable purposes and not absorbed into NSGEs' general operations.

Appendix A

Distribution of SNF UPL funds for the three largest NSGEs⁴

Beaver Valley Hospital - SNF UPL Distribution

Year	Gross Payout from Program	Utilized at Nursing Facilities	Percentage Utilized at Nursing Facilities
2016	\$ 21,754,468	\$ 10,174,753	47%
2017	\$ 71,189,830	\$ 33,938,143	48%
2018	\$ 66,260,255	\$ 31,710,767	48%
2019	\$ 74,379,285	\$ 35,350,150	48%
2020	\$ 84,080,714	\$ 43,264,814	51%
2021	\$ 81,264,231	\$ 42,363,233	52%
2022	\$ 92,684,061	\$ 48,009,751	52%
2023	\$ 103,100,489	\$ 51,439,196	50%
2024	\$ 136,031,728	\$ 62,587,445	46%
	<u>\$ 730,745,061</u>	<u>\$ 358,838,252</u>	<u>49%</u>

Kane County Hospital - SNF UPL Distribution

Year	Gross Payout from Program	Utilized at Nursing Facilities	Percentage Utilized at Nursing Facilities
2018	\$ 2,999,736	\$ 1,400,763	47%
2019	\$ 4,317,165	\$ 2,021,424	47%
2020	\$ 5,084,487	\$ 2,554,930	50%
2021	\$ 5,065,067	\$ 2,510,254	50%
2022	\$ 5,758,867	\$ 2,852,208	50%
2023	\$ 6,324,536	\$ 2,909,387	46%
2024	\$ 5,990,885	\$ 2,663,316	44%
	<u>\$ 35,540,743</u>	<u>\$ 16,912,281</u>	<u>48%</u>

Gunnison Valley Hospital - SNF UPL Distribution

Year	Gross Payout from Program	Utilized at Nursing Facilities	Percentage Utilized at Nursing Facilities
2015	\$ 703,948	\$ 238,748	34%
2016	\$ 1,554,221	\$ 582,870	38%
2017	\$ 1,152,647	\$ 440,799	38%
2018	\$ 4,979,379	\$ 2,259,175	45%
2019	\$ 15,020,959	\$ 6,975,347	46%
2020	\$ 15,588,111	\$ 7,457,244	48%
2021	\$ 26,716,034	\$ 13,360,363	50%
2022	\$ 29,477,687	\$ 14,593,693	50%
2023	\$ 30,436,007	\$ 14,606,922	48%
2024	\$ 31,135,263	\$ 14,524,361	47%
	<u>\$ 156,764,256</u>	<u>\$ 75,039,522</u>	<u>48%</u>

⁴ Information in these tables was provided by the NSGE and may contain differences from DHHS for some reporting periods.

Appendix B

Total Skilled Nursing Facility Upper Payment Limit Funding and Administrative Fee By Year as reported by DHHS

Year	Total SNF UPL	Total State Admin Fee
2015	\$ 9,459,137	\$250,826
2016	\$ 32,759,417	\$689,326
2017	\$ 70,337,219	\$1,436,724
2018	\$ 73,920,725	\$1,456,955
2019	\$ 101,070,878	\$1,903,226
2020	\$ 111,554,263	\$2,047,906
2021	\$ 121,994,633	\$2,349,837
2022	\$ 135,177,730	\$2,487,020
2023	\$ 149,190,527	\$2,538,239
2024	\$ 169,396,980	\$2,760,879
2025	\$ 167,201,217	\$2,746,288

Department of Health and Human Services Cost Estimate 2025

Cost Category	Estimated Cost	Note
Staff	\$ 108,330	Staff time and administrative cost
Technology	\$ 607,450	Allocation of PRISM, Oracle and Server Cost
Audit	\$ 148,201	UPL Facility Audits
Total Estimated Annual Cost	\$ 863,981	

Appendix C - Total SNF UPL Funding and Administrative Fee by Facility and Year – Source DHHS⁵

Facility	Year	Total SNF UPL	Total State Admin Fee
Beaver Valley Hospital	2015	\$ 6,642,724	\$173,663.80
	2016	\$ 27,218,941	\$549,207.21
	2017	\$ 63,985,748	\$1,276,990.50
	2018	\$ 66,260,255	\$1,245,990.80
	2019	\$ 74,280,242	\$1,349,586.70
	2020	\$ 84,080,713	\$1,480,742.20
	2021	\$ 81,264,228	\$1,548,229.10
	2022	\$ 92,684,058	\$1,648,240.70
	2023	\$ 103,534,554	\$1,679,708.97
	2024	\$ 115,538,013	\$1,799,842.64
	2025	\$ 113,880,094	\$1,782,630.57
	Total		\$829,369,570
Canyonlands SSD	2015	\$ 482,184	\$14,465.54
	2016	\$ 900,890	\$23,017.84
	2017	\$ 780,728	\$21,613.91
	2018	\$ 562,043	\$16,240.90
	2019	\$ 1,880,288	\$52,605.79
	2020	\$ 2,845,207	\$85,147.22
	2021	\$ 3,259,182	\$77,883.90
	2022	\$ 3,253,205	\$92,143.38
	2023	\$ 4,985,062	\$94,636.06
	2024	\$ 4,594,117	\$90,941.19
	2025	\$ 3,653,849	\$79,553.77
	Total		\$ 27,196,755
Duchesne County	2017	\$ 1,448,094	\$29,982.83
	2018	\$ 1,481,130	\$29,813.14
	2019	\$ 1,440,004	\$29,400.06
	2020	\$ 1,396,599	\$28,966.00
	2021	\$ 1,271,984	\$29,718.45
	2022	\$ 1,152,490	\$26,901.03
	2023	\$ 1,145,341	\$26,453.43
	2024	\$ 1,820,299	\$33,203.01
	2025	\$ 1,457,852	\$28,622.62
	Total		\$ 12,613,793
Emery County	2015	\$ 181,477	\$5,444.33
	2016	\$ 675,502	\$18,510.10
	2017	\$ 437,595	\$17,305.78
	2018	\$ 319,132	\$9,574.04
	2019	\$ 442,825	\$13,284.79
	2020	\$ 441,586	\$13,247.68
	2021	\$ 385,946	\$11,578.44
	2022	\$ 419,864	\$12,802.06
	2023	\$ 663,443	\$18,268.89
	2024	\$ 1,340,802	\$28,408.05
	2025	\$ 889,901	\$22,798.06
	Total		\$ 6,198,073

⁵ The data presented in this table was provided by DHHS and does not agree to NSGE records due to timing issues and adjustments crossing reporting periods.

Garfield County			
	2023	\$ 135,015	\$11,272.16
	2024	\$ 719,917	\$19,467.07
	2025	\$ 702,093	\$19,041.92
	Total	\$ 1,557,025	\$49,781.15
Gunnison Valley Hospital			
	2015	\$ 561,682	\$16,233.66
	2016	\$ 1,223,496	\$38,732.44
	2017	\$ 1,352,958	\$37,809.36
	2018	\$ 2,849,434	\$102,870.56
	2019	\$ 15,055,986	\$293,644.51
	2020	\$ 15,530,499	\$282,305.26
	2021	\$ 26,523,825	\$487,728.88
	2022	\$ 29,431,238	\$530,805.97
	2023	\$ 30,626,147	\$526,676.56
	2024	\$ 34,709,274	\$569,064.60
	2025	\$ 32,539,987	\$546,583.84
	Total	\$ 190,404,526	\$3,432,455.64
Kane County			
	2019	\$ 5,240,214	\$108,829.93
	2020	\$ 4,324,704	\$98,147.76
	2021	\$ 5,455,628	\$121,394.01
	2022	\$ 5,364,967	\$117,769.29
	2023	\$ 5,641,577	\$117,180.56
	2024	\$ 6,996,985	\$138,176.30
	2025	\$ 5,018,526	\$110,477.06
	Total	\$ 38,042,601	\$811,974.91
Milford Valley			
	2024	\$ 951,433	\$24,514.33
	2025	\$ 7,569,920	\$117,444.45
	Total	\$ 8,521,353	\$141,958.78
Millard County			
	2015	\$ 510,759	\$15,215.19
	2016	\$ 1,075,050	\$25,750.51
	2017	\$ 846,638	\$22,301.02
	2018	\$ 797,634	\$20,952.75
	2019	\$ 856,092	\$22,121.85
	2020	\$ 1,117,668	\$26,176.70
	2021	\$ 1,137,475	\$28,248.59
	2022	\$ 1,489,223	\$28,275.79
	2023	\$ 1,080,054	\$35,248.97
	2024	\$ 1,320,329	\$28,203.32
	2025	\$ 1,026,707	\$25,267.09
	Total	\$ 11,257,629	\$277,761.78
Uintah County			
	2015	\$ 1,080,311	\$25,803.12
	2016	\$ 1,785,700	\$34,107.43
	2017	\$ 1,485,458	\$30,720.60
	2018	\$ 1,651,097	\$31,512.55
	2019	\$ 1,875,227	\$33,752.28
	2020	\$ 1,817,287	\$33,172.89
	2021	\$ 2,696,365	\$45,055.80
	2022	\$ 1,382,685	\$30,081.57
	2023	\$ 1,379,334	\$28,793.34
	2024	\$ 1,405,811	\$29,058.12
	2025	\$ 462,288	\$13,868.71
	Total	\$ 17,021,563	\$335,926.41

Appendix D – Nursing Facilities by Owner

Owner	2015	2016	2017	2018	2019	2020	2021	2022	2023	2024	2025
Beaver Va	10	20	37	40	42	43	43	44	44	44	44
Canyonlar	1	1	1	1	3	3	3	3	3	3	3
Emery Col	1	1	1	1	1	1	1	1	1	1	1
Gunnison	1	2	2	3	9	9	15	15	15	15	15
Millard Cc	1	1	1	1	1	1	1	1	1	1	1
Uintah Co	1	1	1	1	1	1	1	1	1	1	1
Duchesne	0	0	1	1	1	1	1	1	1	1	1
Kane Cour	0	0	0	0	5	5	5	5	5	5	5
Garfield C	0	0	0	0	0	0	0	0	1	1	1
Milford Va	0	0	0	0	0	0	0	0	0	1	3
TOTAL	15	26	44	48	63	64	70	71	84	73	75

Management Response

Beaver Valley Hospital, Gunnison Valley Hospital, and Kane County Hospital

I write on behalf of Beaver Valley Hospital, Gunnison Valley Hospital and Kane County Hospital, in response to the invitation from your office to provide comments and proposed clarifications to the draft audit report. Please consider this letter and the accompanying redline of the audit report as the formal comments from these three hospitals.

Thank you for providing three of the non-state government entities ("*NSGEs*"), participants in the Utah Skilled Nursing Facility - Upper Payment Limit Program ("*SNF UPL Program*"), with a copy of the draft audit report to the Department of Health and Human Services ("*DHHS*"), Report No. 25-06. We appreciate the courtesy of your staff during the audit process and provide these comments and proposed clarifications to the draft audit report, which will hopefully be incorporated into the final audit report. Our desire is to have the audit report more accurately reflect how the SNF UPL Program works in accordance with the DHHS SNF UPL Program Contract (the "*State UPL Contract*") and to share high level insight on how the program has improved care for nursing facility patients. In short, the program's additional federal funding allows Utah nursing homes to provide better care to Utah's most vulnerable residents, at no cost to the State or its residents, and saves the State legislature from appropriating between \$80M and \$100M annually to care for this important population group.

For 13 years, DHHS, participating NSGEs, and the managers of participating nursing homes have hired subject matter experts from Indiana, Washington D.C., and Utah to develop and participate in the SNF UPL Program and to ensure compliance with state and federal law and with the State UPL Contract. NSGEs retain national accounting firms to conduct financial audits to assure the nursing home operations are free from fraud and abuse relating to the UPL funds, and they have retained other national accounting experts to ensure that the terms of the various written agreements between the NSGEs contain terms that are customary in the nursing home market.

In addition, DHHS implemented a more stringent contractual and regulatory framework for Utah's SNF UPL Program than similar programs in any other state, including Indiana, which is the oldest SNF UPL program and has more than 400 participating nursing facilities. DHHS also added and implemented a Quality Improvement Program for participants, in compliance with UAC R414-516 and with the State UPL Contract, which confirms and ensures that SNF UPL Program funds are used to improve nursing home facilities, to enhance nursing home patient care, and to be used to advance healthcare provided by rural NSGEs. This Quality Improvement Program is unique to Utah and speaks to DHHS's careful oversight of the SNF UPL Program.

We appreciate that it can be difficult for any audit team to fully grasp the details of a large government funding program, so we respectfully offer this information and the attached redline of the audit. We believe that these changes make the report more accurate and fulsome. Having witnessed the severe legislative criticism of the 2018 legislative audit report because of its

inaccuracies and misunderstandings about the SNF UPL Program, we believe that the changes proposed in the attached redline of the audit report will avoid similar attacks.

We labored to keep the attached redline of the audit report as untouched or unchanged as possible, but the additions are critical to provide DHHS and the public with the most accurate report possible, given the scope of the audit. In particular, the report includes references to and explanations about compliance with the State UPL Contract, which the draft did not mention. We appreciate the short meeting with you to provide additional information regarding the report and answer any questions.

For starters, we appreciate, as we hope you do, that there were no audit findings indicating a failure to comply with the State UPL Contract, the State Medicaid Plan, or other applicable state and federal law or findings as to any weaknesses or deficiencies in internal controls. The audit manager previously confirmed that fact to some of the NSGEs during the audit. The fact that an audit manager may philosophically dislike a particular state and federal funding program does not equate to an audit finding or a call for recommendations, the implementation of which will literally destroy an essential state program, cause the loss of nearly \$100,000,000 annually for healthcare, cause dozens of nursing facilities to close their doors, and leave thousands of patients annually with no professional care options. The Utah legislature will then need to try to fund that loss with State appropriated funds to avoid this catastrophe.

Specifically, with respect to the audit draft report, we take issue with the statement in the third paragraph of the letter to DHHS that states: "The findings have a commonality in preventing the funding provided from reaching the nursing facility level." We understand this was the chief complaint of the party that triggered the audit, but the statement is fundamentally wrong and libelous. 100% of all SNF UPL Program funds received from DHHS are actually and literally deposited directly by DHHS into nursing facility operating accounts via Medicaid remittances. These funds are then available to those nursing facilities for the purpose of paying nursing facility operating expenses and other budgeted costs during each fiscal year, with the balance of such funds being used for other healthcare purposes, but only after all nursing facility costs have been paid. That structure and that handling of funds is in compliance with state and federal law, with the State Medicaid Plan, and with the State UPL Contract that governs the program.

Under federal law cited in the State UPL Contract, under the State Medicaid Plan, and under the express terms of the State UPL Contract, each participating NSGE makes a quarterly Inter-Governmental Transfer ("**IGT**") to DHHS in response to an invoice calculated and issued by DHHS. This IGT is sometimes referred to as seed money. The IGT must be paid from the NSGEs' separate hospital operating income or from other federally approved sources. The NSGEs also pay a contract administrative charge to DHHS for its administration and oversight of the SNF UPL Program, as required by the State UPL Contract. The IGT is a required condition for each NSGE to qualify for the supplemental federal funding in the SNF UPL Program. Once received, DHHS uses the IGT as matching funds and oversees the disbursement of such additional federal funds directly into individual nursing facilities' accounts as part of its normal Medicaid remittance process. As the licensed operator of each nursing facility, federal law requires the NSGEs to own and control the bank accounts at each of their nursing facilities. The NSGEs, in turn, hire professional nursing facility managers to manage their nursing facilities pursuant to written contracts. Under those written contracts, management companies

contract to manage and run the day-to-day operations of each nursing facility and are authorized to receive and disburse funds necessary for the operation of such nursing facilities from the operating accounts.

An NSGE and its nursing facilities are a unified financial entity in the eyes of the law, the IRS, and Generally Accepted Accounting Principles. They legally constitute a single economic unit, and the operations of the nursing facilities and the parent NSGE Hospital are combined under a single, unified financial audit. The audit team's attempt to "silo" the supplemental funds is an inaccurate, artificial construct and is not consistent with how the law treats the NSGEs or their nursing facilities. For the audit team to suggest that an entity is "misusing" funds by utilizing them for the broad delivery of healthcare services across its own consolidated balance sheet is a gross overreach of the auditor's purview and is inconsistent with applicable law and the State UPL Contract. While written management agreements dictate and control the daily operations of the facilities, the financial risk and the ownership of the nursing facility licenses and operations remain exclusively with the NSGEs. How the owner manages its internal cash flow - consistent with its consolidated audit - is a matter of internal management and should not be a finding of misuse.

As required by federal law, the SNF UPL Program, and in accordance with the express language of the State UPL Contract, all of the funds received at each nursing facility, including the return of the IGT, are deposited into and retained in the nursing facility accounts to pay budgeted and unforeseen operating and other nursing facility costs. Only once it is clear at the end of each fiscal year that such costs have been met, may IGT funds and any balance of additional federal funds be made available to an NSGE to be lawfully used for other healthcare purposes. We raise this here, because the draft audit report states otherwise---that the SNF UPL Program funds are not being deposited or retained in nursing care accounts for the required purposes.

More specifically, for example, the State UPL Contract at Attachment B, Section 5.3 iii and iv provides in part:

5.3. The Contractor (i.e., the NSGE) shall also comply with the following guidance (which is based on guidance from Indiana's Office of Medicaid Policy and Planning dated October 16, 2015):

111. Supplemental Payment funds, unless used for payment of the nursing facility's operation expenses incurred during the fiscal year that such funds are received, must be held in the NSGO nursing facility operating account(s) until after the end of the fiscal year during which the payment is received, before it can be disbursed for any other purpose.

iv. The Supplemental Payment funds deposited into the NSGO nursing facility operating account must be retained in this account and used only for the purpose of paying allowable nursing facility operating expenses, until the close of the nursing facilities current fiscal year.

In addition, Attachment B, Section 5.4 of the State UPL Contract incorporates Indiana's FAQs which includes:

"4) Question: Can the NSGO entity deposit the supplemental payment to the NF net of the IGT payment?

Answer: No. The IGT payment must be made by the NSGO entity (hospital) and 100% of the supplemental payment must be available to the NF for allowable operating expenses until the close of the NF fiscal year. At the close of the FY, the NF may then remit the IGT portion back to the NSGO entity.

There is no mention of the State UPL Contract or of the above-quoted requirements and guidance in the draft audit report. Perhaps that is true because the audit team did not fully understand or appreciate the existence or effect of the State UPL Contract, including its structure and mechanics. Briefly put, the participating NSGEs comply with those and other funding requirements in the State UPL Contract when DHHS deposits 100% of the federal funds into each nursing facility's accounts and when those funds are available and used for facility operations until the end of each fiscal year, when other healthcare related uses become authorized. The auditors found no evidence to the contrary and the report's statements and inferences to the contrary are false.

The audit team also appears not to appreciate or understand the significant regulatory oversight imposed by DHHS and Medicare on the NSGEs and on the NF UPL Program. DHHS regularly receives and scrutinizes copies of the NSGE's audited financial statements, nursing facility cost profiles and related information, reports from nursing facilities, and DHHS and Medicare have access to nursing facility cost reports. DHHS also conducts onsite inspections and meets with NSGEs and facility managers routinely regarding oversight of the SNF UPL Program. In sum, DHHS provides more control and regulatory oversight over the SNF UPL Program than any other health department in the country. That conclusion is according to CMS/Medicare.

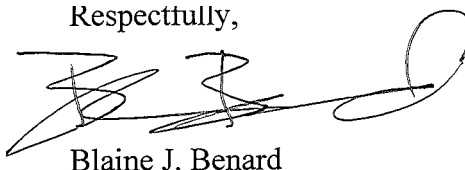
To sow seeds of doubt in a public audit report about the enormously successful SNF UPL Program to a party who has lodged a complaint, whom we know is backed by a plaintiff's law firm that currently has many lawsuits against nursing facilities in the SNF UPL Program, and who uses media sources to advance the law firm's attacks as part of its litigation strategy, is short-sighted at best and vindictive at worst. The party who lodged the complaint and its law firm have made these statements in the media and in litigation without support and are hoping to recruit the State Auditor's office as a participant in their litigation scheme.

We are happy to provide you with as much additional information as you need, but we can assure you that if the recommendations, as currently drafted, remain unchanged and are published and implemented (if implementation is even possible), the result will be the death knell of the SNF UPL Program in Utah. The NSGEs will immediately terminate their respective State UPL Contracts and all written nursing facility contracts for approximately 69 nursing facilities. That termination will likely force many nursing facilities to close their doors to Medicaid patients or close their doors completely and will force the Utah legislature to try to find and appropriate approximately \$100,000,000 each year to support one of the most vulnerable sectors of Utah's population.

Thank you for your thoughtful consideration of our letter, comments and proposed changes to

the draft audit report.

Respectfully,

A handwritten signature in black ink, appearing to read 'Blaine J. Benard', is written over a vertical line that extends from the word 'Respectfully,' down to the printed name below.

Blaine J. Benard
Partner
of Holland & Hart LLP

Department of Health and Human Services (DHHS)

March 27, 2026

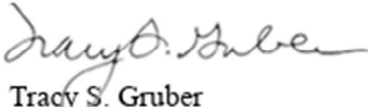
Tina Cannon
Utah State Auditor
Utah State Capitol, Suite 260
Salt Lake City, Utah 84114

Dear State Auditor Cannon,

Thank you for the opportunity to respond to the recommendations in the *Medicaid Upper Payment Limit Supplement for Skilled Nursing Facilities* (Report No. PA-25-06). We would like to thank the Office of the State Auditor for their review of the Skilled Nursing Facility – Upper Payment Limit (UPL) program and for their work with the DHHS staff.

On behalf of the department, we formally concur or partially concur with the recommendations set forth in this report. We view these findings as an opportunity to strengthen our processes and improve the transparency of our program management and associated contracts. We are prepared to implement improvements within the timelines identified in the enclosed response to ensure that UPL program effectively supports the facilities and the populations they serve.

Sincerely,



Tracy S. Gruber
Executive Director

State Headquarters: 195 North 1950 West, Salt Lake City, Utah 84116
telephone: 801-538-4001 | email: dhhs@utah.gov | web: dhhs.utah.gov

Recommendation 1.1. We recommend the Department of Health and Human Services correct differences in public facing information and information maintained in PRISM, as well as monitor actual dollars spent at the facility level compared to the dollars remitted to the NSGE to ensure the funds are used according to the State Medicaid Plan and federal guidelines within each nursing facility.

Department Response: While DHHS concurs with this recommendation, it intends to work with the Centers for Medicare and Medicaid Services (CMS) and other partners to evaluate issues raised in this finding.

The Department is operating the UPL program reviewed in this audit under long-standing approval from CMS. DHHS appreciates the concerns raised in the audit regarding the use of funds in the UPL program. The UPL program is a financing lever that at least 25 states¹, including Utah, have employed to support and sustain their Medicaid service delivery systems. In accordance with Utah's CMS approved SPA, nursing facilities throughout Utah rely on the UPL program for their sustainability, while the NSGEs have opportunities to utilize funding to reinvest in their local hospitals.

What: DHHS agrees to correct discrepancies and align public-facing documentation with PRISM. DHHS will work with CMS, the nursing facility industry, NSGEs and legislative partners, as appropriate, to discuss the recommendation to monitor the allocation of the UPL program.

How: DHHS will update public documentation to reflect PRISM data.

Additionally, to ensure it is operating the program within appropriate state and federal constraints, DHHS will consult with CMS, the nursing facility industry, and NSGEs. In addition, DHHS will engage Utah policymakers to discuss whether Utah's UPL program remains a healthcare policy and financing program that should be updated or modified. DHHS will confirm that Utah's UPL program, including any suggested changes, are in compliance with CMS regulations. DHHS will memorialize this recommendation through a state plan amendment or other instrument, as agreed upon with CMS.

When: DHHS will update public documentation no later than December 31, 2026. DHHS will review potential changes to the State Plan for possible submission by July 1, 2027.

Responsible Staff: John Curless, Director, Office of Reimbursement Coordinated Care & Audit

¹ <https://www.macpac.gov/wp-content/uploads/2021/11/Upper-Payment-Limit-Supplemental-Payments.pdf>

Recommendation 1.2. We recommend the state modify Section 942 of Attachment 4.19 – D of the State Medicaid plan to clearly allow for the utilization of UPL funds in nursing facility adjacent activities such as improving care at a related NSGE hospital including set amounts or percentages allowed for these activities. DHHS should then monitor NSGEs to ensure funds are utilized in accordance with the state plan.

Department Response: DHHS agrees, in part, with this recommendation.

What: While DHHS agrees to seek clarification from CMS on its role to oversee the agreements between the nursing facilities, it will evaluate whether an amendment to the state plan amendment is the appropriate approach.

How: To ensure it is operating the program within appropriate state and federal constraints and to identify its appropriate role, DHHS will consult with CMS, the nursing facility industry, and NSGEs. In addition, DHHS will engage Utah policymakers to discuss DHHS' oversight of Utah's UPL program and any recommendations for updates or modifications. DHHS will confirm that Utah's UPL program, including any suggested changes, are in compliance with CMS regulations. DHHS will memorialize this recommendation through a state plan amendment or other instrument, as agreed upon with CMS.

When: DHHS will review potential changes to the State Plan for possible submission by July 1, 2027.

Responsible Staff: John Curless, Director, Office of Reimbursement Coordinated Care & Audit

Recommendation 2.1. We recommend the state modify Section 942 of Attachment 4.19 – D of the State Medicaid plan to stipulate an allowed administrative rate that can be collected by DHHS. Additionally, the State Medicaid Plan should be modified to stipulate allowed administrative rates charged by NSGEs or owner compensation for NSGE with the clarification that all funds outside of the allowed fees be used at the nursing facility level for their intended purpose. The state should work with federal agencies to clarify these requirements.

Department Response: DHHS partially concurs with this recommendation. It is important to note that Utah Medicaid's practice of including administrative charges in Intergovernmental Transfer (IGT) contract arrangements has been authorized by CMS for decades. The department uses these funds to support the overall administration of its complex Medicaid program. CMS recently notified DHHS that it must modify the method of collecting administrative funds related to IGT arrangements.

As it relates to reviewing administrative rates charged by NSGEs, DHHS will seek clarification from CMS on its role to oversee the agreements between the nursing facilities and NSGEs.

What: DHHS will continue its active engagement with CMS to establish an agreed upon methodology for collecting administrative funds to support the specific work involved with administering the UPL program.

While DHHS agrees to seek clarification from CMS on its role to oversee the agreements between the nursing facilities, it will evaluate whether an amendment to the state plan amendment is the appropriate approach.

How: For funds collected to support Medicaid administration, DHHS will revise its contractual charges based on CMS guidance and approval of Utah's revised contractual charging methodology.

DHHS will convene policymakers, nursing facilities, NSGEs to discuss DHHS' role in stipulating required contractual arrangements between the nursing facilities and the NSGEs. DHHS will memorialize this recommendation through a state plan amendment or other instrument, as agreed upon with CMS.

When: By June 30, 2026, DHHS will provide an update to the State Auditor's Office on the progress of discussions with CMS and will update the implementation timeline accordingly.

Responsible Staff: John Curless, Director, Office of Reimbursement Coordinated Care & Audit

Recommendation 3.1. We recommend the state ensure compliance with cost sharing requirements by requiring both seed money and federal funds drawn down be used for nursing facilities. By reimbursing the seed money and only passing federal funds down to the nursing facilities the NSGE propagates the appearance of violating local cost share required by code. DHHS should adopt procedures to ensure that supplemental funding, including seed money provided, is used for allowable purposes and not absorbed into NSGEs general operations. Alternatively, the State Medicaid Plan can be modified to expressly allow NSGEs to utilize a portion of UPL funds for general operations at the associated hospitals in lieu of at nursing facilities.

Department Response: While DHHS concurs with the recommendation, given CMS' approval of Utah's current state plan, the Department has no reason to believe it is not compliant with cost-sharing requirements of this program.

What: DHHS reviewed 42 CFR 433, Subpart B, and could not locate a specific requirement mandating local entities to "share in the cost" in the manner described in the audit report, but will consult with CMS to verify.

How: DHHS will consult with CMS to confirm its implementation of federal cost sharing guidelines to ensure federal compliance. DHHS, in consultation with CMS, will verify that cost-sharing guidelines allow funding to be used for NSGE general operations. If upon conclusion of these discussions, CMS confirms that use of a portion of funds for general operations is permissible, DHHS will convene policymakers, nursing facilities, NSGEs and clearly communicate that it is allowable for NSGEs to utilize a portion of funds for general operations in the appropriate document, which may include amending that state plan.

When: DHHS will review potential changes to the State Plan for possible submission by July 1, 2027. Should no state plan be needed, DHHS will provide an update to the State Auditor's Office by July 1, 2027.

Responsible Staff: John Curless, Director, Office of Reimbursement Coordinated Care & Audit

Auditor Summation

The Office of the State Auditor has carefully reviewed the management responses provided by the Department of Health and Human Services (DHHS), Beaver Valley Hospital, Gunnison Valley Hospital, and Kane County Hospital in response to the findings and recommendations presented in this report. We appreciate the cooperation of DHHS and participating hospitals throughout the process and their efforts to provide additional clarification and context.

Management indicated, through their legal representation, that the entities believe they have operated in full compliance with the Utah State Medicaid Plan and applicable guidance issued by the Centers for Medicare & Medicaid Services (CMS). Based on the documentation reviewed and the analysis conducted, the Office of the State Auditor maintains that retention of seed money, administrative fees and owner compensation totaling 51% of the total SNF UPL by the Non-State Government Entities (NSGEs) are not included in the State Medicaid Plan and therefore not reviewed and approved by CMS or other applicable federal agencies.

As stewards of taxpayer resources, the Office has a responsibility to promote the prudent administration and transparent use of public funds. Significant practices such as over half the funding intended for nursing facilities being utilized by the NSGE should be expressly approved in the state plan and reviewed by federal oversight agencies. Clearer program guidance and strengthened oversight mechanisms will help ensure greater transparency and accountability, and further safeguard the appropriate use and distribution of public funds.