



DEPARTMENT OF HEALTH & HUMAN SERVICES

Office Of Inspector General
Office Of Audit Services

May 16, 2008

Region II
Jacob K. Javits Federal Building
26 Federal Plaza
New York, NY 10278

Report Number: A-02-05-01016

Ms. Jennifer Velez, Esq.
Commissioner
New Jersey Department of Human Services
222 South Warren Street
P.O. Box 700
Trenton, New Jersey 08625-0700

Dear Ms. Velez:

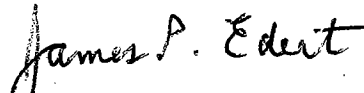
Enclosed is the U.S. Department of Health and Human Services (HHS), Office of Inspector General (OIG) final report entitled "Review of New Jersey Family Planning Claims for the Period July 1, 1997, Through March 31, 2002." We will forward a copy of this report to the HHS action official noted on the following page for review and any action deemed necessary.

The HHS action official will make final determination as to actions taken on all matters reported. We request that you respond to this official within 30 days from the date of this letter. Your response should present any comments or additional information that you believe may have a bearing on the final determination.

Pursuant to the principles of the Freedom of Information Act, 5 U.S.C. § 552, as amended by Public Law 104-231, OIG reports generally are made available to the public to the extent the information is not subject to exemptions in the Act (45 CFR part 5). Accordingly, it will be posted on the Internet at <http://oig.hhs.gov>.

If you have any questions or comments about this report, please do not hesitate to call me, or contact John Madigan, Audit Manager, at (518) 437-9390, extension 224, or through e-mail at John.Madigan@oig.hhs.gov. Please refer to report number A-02-05-01016 in all correspondence.

Sincerely,


James P. Edert
Regional Inspector General
for Audit Services

Enclosure

Direct Reply to HHS Action Official:

Ms. Jackie Garner, Consortium Administrator
Consortium for Medicaid and Children's Health Operations
Centers for Medicare & Medicaid Services
233 North Michigan Avenue, Suite 600
Chicago, Illinois 60601

Department of Health and Human Services

**OFFICE OF
INSPECTOR GENERAL**

**REVIEW OF NEW JERSEY FAMILY
PLANNING CLAIMS FOR THE
PERIOD JULY 1, 1997,
THROUGH MARCH 31, 2002**



Daniel R. Levinson
Inspector General

May 2008
A-02-05-01016

Office of Inspector General

<http://oig.hhs.gov>

The mission of the Office of Inspector General (OIG), as mandated by Public Law 95-452, as amended, is to protect the integrity of the Department of Health and Human Services (HHS) programs, as well as the health and welfare of beneficiaries served by those programs. This statutory mission is carried out through a nationwide network of audits, investigations, and inspections conducted by the following operating components:

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Pursuant to the principles of the Freedom of Information Act, 5 U.S.C. § 552, as amended by Public Law 104-231, Office of Inspector General reports generally are made available to the public to the extent the information is not subject to exemptions in the Act (45 CFR part 5).

OFFICE OF AUDIT SERVICES FINDINGS AND OPINIONS

The designation of financial or management practices as questionable, a recommendation for the disallowance of costs incurred or claimed, and any other conclusions and recommendations in this report represent the findings and opinions of OAS. Authorized officials of the HHS operating divisions will make final determination on these matters.

EXECUTIVE SUMMARY

BACKGROUND

Pursuant to Title XIX of the Social Security Act (the Act), the Medicaid program provides medical assistance to low-income individuals and individuals with disabilities. The Federal and State Governments jointly fund and administer the Medicaid program. At the Federal level, the Centers for Medicare & Medicaid Services (CMS) administers the program. Each State administers its Medicaid program in accordance with a CMS-approved State plan. Although the State has considerable flexibility in designing and operating its Medicaid program, it must comply with applicable Federal requirements.

The Federal share of the Medicaid program is referred to as Federal financial participation (FFP). The Federal share of a State's Medicaid program is determined by the Federal medical assistance percentage (FMAP). During our audit period (July 1, 1997, through March 31, 2002), the FMAP in New Jersey was 50 percent.

Section 1903(a)(5) of the Act provides enhanced 90-percent FFP for family planning services. Pursuant to section 4270 of the CMS "State Medicaid Manual," family planning services prevent or delay pregnancy or otherwise control family size. In addition, the section generally permits 90-percent FFP for pharmaceutical supplies and devices to prevent conception. Only items and procedures clearly furnished or performed for family planning purposes may be claimed at the 90-percent rate of FFP.

Pursuant to State regulations (New Jersey Administrative Code 10:66-2.5(a)), most services provided primarily for the diagnosis and treatment of infertility (including sterilization reversals) and related clinic visits, drugs, laboratory services, radiological and diagnostic services, and surgical procedures, are not covered by New Jersey's Medicaid program, and may not be generally claimed as family planning services.

In 1996, New Jersey awarded a contingency fee contract to Deloitte Consulting (Deloitte). The purpose of the contract was to generate increased Federal reimbursement by identifying and submitting to the Federal Government previously unclaimed State expenses. According to the contract terms, Deloitte was to receive a payment ranging from 6 percent to 7.5 percent of any additional Federal funds recovered. As a result of Deloitte's identification of family planning claims previously submitted and reimbursed under the Medicaid program at 50 percent FFP that, according to Deloitte, were eligible at the enhanced 90 percent rate under the family planning program, the State received an additional \$5,237,816 (Federal share) for claims made during the period July 1, 1997, through March 31, 2002.

OBJECTIVE

Our objective was to determine whether New Jersey improperly claimed Federal Medicaid reimbursement for retroactive family planning claims submitted as a result of its contingency fee contract with Deloitte.

SUMMARY OF FINDINGS

New Jersey claimed \$13,094,539 (\$5,237,816 Federal share) of previously submitted Medicaid claims at the enhanced 90-percent rate available for family planning services. Of these claims, the State did not provide support for \$10,867,467 (\$4,346,987 Federal share). Since we were unable to determine the appropriateness of these claims, we have set aside these costs for resolution by CMS. Of the \$2,227,072 (\$890,829 Federal share) in documented claims, the State included \$786,115 (\$314,446 Federal share) in unallowable costs related to infertility services. The remaining \$1,440,957 (\$576,383 Federal share) in documented claims were in compliance with Federal and State requirements.

New Jersey officials indicated that they had relied on Deloitte to prepare the retroactive family planning claims and that, contrary to Federal requirements, they had not ensured the veracity of those claims.

RECOMMENDATIONS

We recommend that New Jersey:

- work with CMS to resolve the \$4,346,987 in set-aside costs,
- refund \$314,446 to the Federal Government,
- adhere to Federal and State requirements when submitting family planning claims for Federal reimbursement, and
- review all work performed by consultants to ensure the veracity of future Medicaid claims to the Federal Government.

STATE AGENCY COMMENTS

In written comments on our draft report, the State agency concurred with our findings and recommendations. The State agency's comments appear in their entirety as an appendix.

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INTRODUCTION

BACKGROUND

Medicaid Program

Pursuant to Title XIX of the Social Security Act (the Act), the Medicaid program provides medical assistance to low-income individuals and individuals with disabilities. The Federal and State Governments jointly fund and administer the Medicaid program. At the Federal level, the Centers for Medicare & Medicaid Services (CMS) administers the program. Each State administers its Medicaid program in accordance with a CMS-approved State plan. Although the State has considerable flexibility in designing and operating its Medicaid program, it must comply with applicable Federal requirements.

In New Jersey, the Department of Human Services (the State agency) operates the Medicaid program. The Federal share of the Medicaid program is referred to as Federal financial participation (FFP). The Federal share of a State's Medicaid program is determined by the Federal medical assistance percentage (FMAP). During our audit period (July 1, 1997, through March 31, 2002), the FMAP in New Jersey was 50 percent.

Medicaid Coverage of Family Planning Services

Section 1905(a)(4)(C) of the Act requires States to furnish family planning services and supplies to individuals of childbearing age who are eligible under the State plan and who desire such services and supplies. Section 1902(a)(10)(A) of the Act specifies that family planning services be available to "categorically needy" Medicaid beneficiaries, while section 1902(a)(10)(C) specifies that the services may be performed on "medically needy" Medicaid beneficiaries at the State's option. Section 1903(a)(5) of the Act and 42 CFR §§ 433.10(c)(1) and 433.15(b)(2) authorize 90-percent Federal funding for family planning services.

Pursuant to section 4270 of the CMS "State Medicaid Manual," family planning services prevent or delay pregnancy or otherwise control family size. In addition, the section generally permits an enhanced 90-percent rate of FFP for counseling services and patient education; examination and treatment by medical professionals pursuant to State requirements; laboratory examinations and tests; medically approved methods, procedures, pharmaceutical supplies, and devices to prevent conception; and infertility services, including sterilization reversals. The manual indicates that States are free to determine the specific services and supplies that will be covered as Medicaid family planning services as long as those services are sufficient in amount, duration, and scope to reasonably achieve their purpose. However, only items and procedures clearly furnished or performed for family planning purposes may be claimed at the 90-percent rate of FFP.

While the New Jersey Medicaid State plan states that family planning services and supplies are covered benefits, most medical services, medical procedures, and prescription drugs used to promote or enhance fertility are not covered. Pursuant to State regulations (New Jersey Administrative Code 10:66-2.5(a)), services provided primarily for the diagnosis and treatment of infertility, including sterilization reversals, and related clinic visits, drugs, laboratory services,

radiological and diagnostic services, and surgical procedures, are not covered by the New Jersey's Medicaid program. An exception to the regulation is allowed when a service ordinarily considered an infertility service is provided for another purpose. In such a case, the provider must submit supporting documentation with the claim to the State for medical review and approval of payment.

New Jersey's Use of Deloitte Consulting

On December 9, 1996, the New Jersey Department of the Treasury, Office of Management and Budget awarded a contingency fee contract to Deloitte Consulting (Deloitte). The purpose of the contract, known as "Federal Fund Revenue Enhancers for All Federal Programs," was to generate increased Federal reimbursement by identifying and submitting to the Federal Government unclaimed State expenses. According to the terms of the contract, Deloitte was to receive a payment ranging from 6 percent to 7.5 percent of any additional Federal funds recovered.

Recognizing the family planning program's potential for Federal fund enhancements, New Jersey and Deloitte targeted payments for services and other health-related activities made under the Medicaid program which could be eligible to be reimbursed at the enhanced 90-percent rate. As a result of Deloitte's services, the State received an additional \$5,237,816 for claims made during the period July 1, 1997, through March 31, 2002.

OBJECTIVE, SCOPE, AND METHODOLOGY

Objective

Our objective was to determine whether New Jersey improperly claimed Federal Medicaid reimbursement for retroactive family planning claims submitted as a result of its contingency fee contract with Deloitte.

Scope

We reviewed \$13,094,539 (\$5,237,816 Federal share) of Medicaid family planning claims made by New Jersey from July 1, 1997, through March 31, 2002.

We did not review the overall internal control structure of the State's Medicaid program. Rather, we reviewed the State's procedures relevant to the objective of the audit. We performed our fieldwork at the New Jersey Medicaid offices in Mercerville, New Jersey.

Methodology

To accomplish our objective, we:

- reviewed Federal and State laws, regulations, and guidance, and the New Jersey Medicaid State Plan;

- reviewed the New Jersey Office of Management and Budget request for proposal for its contingency fee contract and Deloitte's response to the request for proposal;
- reviewed the contract between the New Jersey Office of Management and Budget and Deloitte;
- reconciled \$13,094,539 of family planning claims included on the Quarterly Medicaid Statements of Expenditures for the Medical Assistance Program, Form CMS-64 (CMS-64), submitted to the Federal Government for reimbursement;
- requested and reviewed documentation supporting these claims to determine whether they were allowable for Federal reimbursement;¹ and
- discussed the audit results with New Jersey Medicaid officials.

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. We believe that the evidence obtained provides a reasonable basis for our findings and conclusions based on our audit objective.

FINDINGS AND RECOMMENDATIONS

New Jersey claimed \$13,094,539 (\$5,237,816 Federal share) of previously submitted Medicaid claims at the enhanced 90-percent rate available for family planning services. Of these claims, the State agency did not provide support for \$10,867,467 (\$4,346,987 Federal share). Since we were unable to determine the appropriateness of these claims, we have set aside these costs for resolution by CMS. Of the \$2,227,072 (\$890,829 Federal share) in documented claims, the State agency included \$786,115 (\$314,446 Federal share) in unallowable costs related to infertility services. The remaining \$1,440,957 (\$576,383 Federal share) in documented claims were in compliance with Federal and State requirements.

New Jersey officials indicated that they had relied on Deloitte to prepare the retroactive family planning claims and that, contrary to Federal requirements, they had not ensured the veracity of those claims.

UNRESOLVED FAMILY PLANNING CLAIMS

Of the \$13,094,539 (\$5,237,816 Federal share) that New Jersey claimed in Federal Medicaid reimbursement at the enhanced 90-percent rate, the State did not provide support for \$10,867,467 (\$4,346,987 Federal share). State officials stated that neither Deloitte nor the State retained records to support the claims. Since we were unable to determine the appropriateness of these claims, we have set aside these costs for resolution by CMS.

¹We requested documentation from the State, which, in turn requested documentation from Deloitte.

UNALLOWABLE FAMILY PLANNING CLAIMS

Pursuant to New Jersey Administrative Code 10:66-2.5(a), services provided primarily for the diagnosis and treatment of infertility, including sterilization reversals, and related clinic visits, drugs, laboratory services, radiological and diagnostic services, and surgical procedures, are not covered by the New Jersey Medicaid program. An exception to the regulation is allowed when a service ordinarily considered an infertility service is provided for another purpose. In such a case, the provider must submit supporting documentation with the claim to the State for medical review and approval of payment.

The State agency included \$786,115 (\$314,446 Federal share) of Medicaid costs which were related to infertility services and, therefore, were unallowable.² The State agency was unable to provide supporting documentation that would justify these claims. During a meeting with the Office of Inspector General, New Jersey officials indicated that they would withdraw \$786,115 (\$314,446 Federal share) from the State's family planning claims by making a credit on the State's CMS-64 report.

NO STATE REVIEW OF FAMILY PLANNING CLAIMS

Pursuant to 42 CFR § 430.30(c), States must submit a CMS-64 not later than 30 days after the end of each quarter in order to receive Federal reimbursement. Instructions on the CMS-64 require States to certify the accuracy of the information provided. New Jersey officials stated that they had relied solely on Deloitte to prepare and document the State's family planning claims and that, contrary to the instructions on the CMS-64, the State agency did not ensure the veracity of its claims before submitting them for Federal reimbursement.

RECOMMENDATIONS

We recommend that New Jersey:

- work with CMS to resolve the \$4,346,987 in set-aside costs,
- refund \$314,446 to the Federal Government,
- adhere to Federal and State requirements when submitting family planning claims for Federal reimbursement, and
- review all work performed by consultants to ensure the veracity of future Medicaid claims to the Federal Government.

STATE AGENCY COMMENTS

In its April 21, 2008, written comments on our draft report, the State agency concurred with our findings and recommendations. The State agency indicated that it will work with CMS to

²The claims were for services such as "female infertility" and "infertility cervical."

resolve the \$4,346,987 of set-aside costs and refund \$314,446 to the Federal government. The State agency further indicated that it is in the process of taking actions to ensure that claims are properly monitored and coded to adhere to Federal and State requirements when submitting family planning claims for Federal reimbursement and that the State will review all work performed by consultants to ensure the veracity of future Medicaid claims to the Federal government.

The State agency's comments appear in their entirety as an appendix.

APPENDIX



State of New Jersey
DEPARTMENT OF HUMAN SERVICES
DIVISION OF MEDICAL ASSISTANCE AND HEALTH SERVICES
PO Box 712

TRENTON NJ 08625-0712
TELEPHONE 1-800-356-1561

April 21, 2008

JON S. CORZINE
Governor

JENNIFER VELEZ
Commissioner

JOHN R. GUHL
Director

James P. Edert
Regional Inspector General
for Audit Services
Office of the Inspector General
Office of Audit Services
Jacob K. Javits Federal Building
26 Federal Plaza
New York, New York 10278

Report Number A-02-05-01016

Dear Mr. Edert:

This is in response to your correspondence dated February 5, 2008 concerning the draft audit report titled "Review of New Jersey Family Planning Claims for the Period July 1, 1997, Through March 31, 2002". The draft audit report cited: that of the \$13,094,539 (\$5,237,816 FFP) that New Jersey claimed for Medicaid reimbursement at the enhanced rate of 90%, the State did not provide support for \$10,867,467 (\$4,346,987 FFP), the State included \$786,115 (\$314,446 FFP) of Medicaid costs which were related to infertility services and therefore were unallowable, the State relied solely on the consultants (Deloitte) to prepare and document the State's family planning claims and did not ensure the veracity of its claims prior to submission for Federal reimbursement.

The draft report includes four recommendations. These recommendations and the State's response are provided below:

Work with CMS to Resolve the \$4,346,987 in set-aside costs:

The State welcomes the opportunity to work with CMS to resolve the issues concerning these claims for family planning services; as supporting documentation for these claims were originally submitted to the local CMS auditors, upon their request when these claims were submitted in the CMS-64 report for Federal reimbursement.

Refund \$314,446 to the Federal Government:

As the draft report states, New Jersey Administrative Code 10:66-2.5(a) indicates that services provided primarily for the diagnosis and treatment of infertility are not covered by the New Jersey Medicaid program with the exception of when a service ordinarily considered an infertility service is provided for another purpose. Based on the lack of readily available supporting documentation and the extensive effort required to review the archived files to prove the exception applied, the State concedes to refund \$314,446 to the Federal government.

James P. Edert
April 21, 2008
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However, the audit report did not provide a break out, by category of service, of the total amount to be refunded to the Federal government. Therefore, the State will make the appropriate Line 8. increasing adjustment at 50% FFP and line 10.A. decreasing adjustment at 90% FFP to Outpatient services for federal fiscal year 2002 on the CMS-64 report upon issuance of the final audit report.

Adhere to Federal and State Requirements When Submitting Family Planning Claims for Federal Reimbursement:

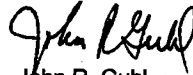
As a result of this and other audits relating to family planning services, the State is in the process of taking actions to ensure that claims are properly monitored and coded to adhere to the Federal and State requirements when submitting family planning claims for Federal reimbursement.

Review All Work Performed by Consultants to Ensure the Veracity of Future Medicaid Claims to the Federal Government:

The State will review all work performed by consultants to ensure the veracity of future Medicaid claims to the Federal government.

If you have any questions or require additional information, please contact me or David Lowenthal at 609-588-7933.

Sincerely,



John R. Guhl
Director

JRG:D
c: Jennifer Velez
David Lowenthal