DEPARTMENT OF HEALTH & HUMAN SERVICES

Office Of Inspector General
Office Of Audit Services

Region II
Jacob Javits Federal Building
26 Federal Plaza - Room 3900
New York, NY 10278

May 29, 2009

Report Number: A-02-08-02006

Richard F. Daines, M.D.
Commissioner
New York State Department of Health
14th Floor, Corning Tower
Empire State Plaza
Albany, New York 12237

Dear Dr. Daines:

Enclosed is the U.S. Department of Health and Human Services (HHS), Office of Inspector General (OIG), final report entitled "Review of the New York State Department of Health's Compliance With the Ryan White CARE Act Payer-of-Last-Resort Requirement." We will forward a copy of this report to the HHS action official noted below.

Pursuant to the Freedom of Information Act, 5 U.S.C. § 552, OIG reports generally are made available to the public to the extent that information in the report is not subject to exemptions in the Act. Accordingly, this report will be posted on the Internet at http://oig.hhs.gov.

If you have any questions or comments about this report, please direct them to the HHS action official. Please refer to report number A-02-08-02006 in all correspondence.

Sincerely,

James P. Edert

James P. Edert
Regional Inspector General
for Audit Services

Enclosure

HHS Action Official:

Team Leader, Compliance Team, OFAM/DFI
Health Resources and Services Administration
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Rockville, Maryland 20857

Department of Health and Human Services

OFFICE OF INSPECTOR GENERAL

REVIEW OF THE NEW YORK STATE DEPARTMENT OF HEALTH'S COMPLIANCE WITH THE RYAN WHITE CARE ACT PAYER-OF-LAST-RESORT REQUIREMENT

Daniel R. Levinson
Inspector General

May 2009
A-02-08-02006

Office of Inspector General

http://oig.hhs.gov

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EXECUTIVE SUMMARY

BACKGROUND

The Ryan White Comprehensive AIDS Resources Emergency (CARE) Act of 1990, P. L. 101-381, funds health care and support services for people who have HIV/AIDS and who have no health insurance or are underinsured. As the Federal Government's largest source of funding specifically for people with HIV/AIDS, the CARE Act assists more than 500,000 individuals each year. Within the U.S. Department of Health and Human Services, the Health Resources and Services Administration administers the CARE Act.

Title II of the CARE Act, sections 2611-2631 of the Public Health Service Act, provides grants to States and territories to fund the purchase of medications through AIDS Drug Assistance Programs (ADAP) and other health care and support services. Pursuant to 42 U.S.C. § 300ff-27(b)(6)(F), these grant funds may not be used to pay for items or services that are eligible for coverage by other Federal, State, or private health insurance. This provision is commonly referred to as the "payer of last resort" requirement.

During our audit period (grant years 2003–2005), the New York State Department of Health (the State agency) claimed Title II drug expenditures totaling $360,695,546.

OBJECTIVE

Our objective was to determine, for grant years 2003-2005, whether the State agency complied with the Title II payer-of-last-resort requirement that funds not be used to pay for drugs that are eligible for coverage by other Federal, State, or private health insurance.

SUMMARY OF RESULTS

The Department appeared to have complied with the Title II payer-of-last-resort requirement that funds not be used to pay for drugs that are eligible for coverage by other Federal, State, or private health insurance. However, because we did not contact private insurers to determine whether ADAP clients had private insurance coverage, we would not have identified any instances in which ADAP clients had such coverage but had not informed the State agency. This report contains no recommendations.

TABLE OF CONTENTS

INTRODUCTION

BACKGROUND

The Ryan White Comprehensive AIDS Resources Emergency (CARE) Act of 1990, Public Law 101-381, funds health care and support services for people who have HIV/AIDS and who have no health insurance or are underinsured. As the Federal Government's largest source of funding specifically for people with HIV/AIDS, the CARE Act assists more than 500,000 individuals each year. Within the U.S. Department of Health and Human Services, the Health Resources and Services Administration (HRSA) administers the CARE Act.

Title II Grant Funds

Title II of the CARE Act, sections 2611-2631 of the Public Health Service Act, provides grants to States and territories to fund the purchase of medications through AIDS Drug Assistance Programs (ADAP) and other HIV/AIDS health and support services, such as outpatient care, home and hospice care, and case management.

In New York State, the Department of Health (the State agency) administers the Title II program. During the period April 1, 2003, through March 31, 2006, the State agency claimed Title II drug expenditures totaling $360,695,546.

Payer-of-Last-Resort Requirement

Title II of the CARE Act stipulates that grant funds not be used to pay for items or services that are eligible for coverage by other Federal, State, or private health insurance. This provision is commonly referred to as the "payer of last resort" requirement. Specifically, section 2617(b)(6)(F) of the Public Health Service Act (42 U.S.C. § 300ff-27(b)(6)(F)) states:

> [T]he State will ensure that grant funds are not utilized to make payments for any item or service to the extent that payment has been made, or can reasonably be expected to be made, with respect to that item or service –
>
> (i) under any State compensation program, under an insurance policy, or under any Federal or State health benefits program; or
>
> (ii) by an entity that provides health services on a prepaid basis.[1]

In addition, HRSA Program Policy No. 97-02, issued February 1, 1997, and reissued as DSS[2] Program Policy Guidance No. 2 on June 1, 2000, reiterates the statutory requirement that "funds received . . . will not be utilized to make payments for any item or service to the extent that payment has been made, or can reasonably be expected to be made . . ." by sources other than

[1]Subsequent to the audit period in question, The Ryan White HIV/AIDS Treatment Modernization Act of 2006, §§ 204(c)(1)(A) and (c)(3), Pub. Law No. 109-415 (December 19, 2006), redesignated this provision as section 2617(b)(7)(F) (42 U.S.C. § 300ff-27(b)(7)(F)) and amended subparagraph (ii) to prohibit the State from using these grant funds for any item or service that should be paid for "by an entity that provides health services on a prepaid basis (except for a program administered by or providing the services of the Indian Health Service)."

[2]DSS is the Division of Service Systems, a component of HRSA's HIV/AIDS Bureau.

Title II funds. The guidance then provides: "At the individual client level, this means that grantees and/or their subcontractors are expected to make reasonable efforts to secure other funding instead of CARE Act funds whenever possible."

OBJECTIVE, SCOPE, AND METHODOLOGY

Objective

Our objective was to determine, for grant years 2003–2005, whether the State agency complied with the Title II payer-of-last-resort requirement that funds not be used to pay for drugs that are eligible for coverage by other Federal, State, or private health insurance.

Scope

Our review covered the period April 1, 2003, through March 31, 2006 (grant years 2003–2005). On its Federal financial status reports for that period, the State agency claimed ADAP expenditures totaling $360,695,546 for HIV/AIDS drugs dispensed.

We did not assess the State agency's overall internal controls for administering Title II funds. Rather, we limited our review to gaining an understanding of those significant controls related to the claiming of HIV/AIDS drug costs. Because of concerns about protecting program clients' personally identifiable identification, we did not contact private health insurance companies to confirm health insurance coverage. We conducted our fieldwork at the State agency's offices in Albany, New York from December 2008 to February 2009.

Methodology

To accomplish our objective, we:

- reviewed applicable Federal laws, regulations, and guidance;
- reviewed documentation provided by the State agency for grant years 2003–2005, including notice of grant awards, financial status reports and supporting accounting records, and the ADAP drug formulary (a list of drugs authorized for purchase by the program);
- held discussions with State agency officials to identify policies, procedures, and guidance used to identify other insurance coverage and for billing HIV/AIDS drugs to other Federal or State programs and private insurance plans;
- analyzed the State agency's procedures for accounting for and dispensing drugs to Title II clients;
- obtained a file of 2,118,836 ADAP claims totaling $647,759,939 (includes both Federal and State funded ADAP drugs);

- eliminated from the file 929,352 ADAP claims, totaling $48,166,767, which had individual claim values below $150;

- identified a sampling frame of 1,189,484 claims totaling $599,593,172 (includes both Federal and State funded ADAP drugs);

- selected a simple random sample of 100 claims from the sampling frame of 1,189,484 claims and:

    - reviewed the State's Medicaid eligibility database to determine whether clients were enrolled in Medicaid,

    - reviewed the State agency's files to determine whether clients were enrolled in other health insurance plans, and

    - reviewed the State agency's payment invoices to identify the cost of dispensed drugs; and

- visited a judgmentally selected sample of nine registered pharmacies[3] that distributed ADAP drugs to determine how the pharmacies dispensed and claimed ADAP drugs.

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.

RESULTS OF REVIEW

The Department appeared to have complied with the Title II payer-of-last-resort requirement that funds not be used to pay for drugs that are eligible for coverage by other Federal, State, or private health insurance. However, because we did not contact private insurers to determine whether ADAP clients had private insurance coverage, we would not have identified any instances in which ADAP clients had such coverage but had not informed the State agency. This report contains no recommendations.

[3]All licensed New York State pharmacies are eligible to register with the State to distribute ADAP drugs if actively enrolled in the State's Medicaid program, the State's Elderly Pharmaceutical Insurance Coverage program, and one or more Medicare prescription drug plans. In addition, pharmacies must be able to submit claims electronically.