**DEPARTMENT OF HEALTH & HUMAN SERVICES** **Office of Inspector General**

**Washington, D.C. 20201**

March 24, 2010

**TO:** Charlene Frizzera
Acting Administrator
Centers for Medicare & Medicaid Services

**FROM:** /Joseph E. Vengrin/
Deputy Inspector General for Audit Services

**SUBJECT:** Review of Colorado's Claims Associated With the Increased Federal Medical Assistance Percentage Under the American Recovery and Reinvestment Act of 2009 (A-07-09-02767)

Attached, for your information, is an advance copy of our final report on the review of Colorado's claims associated with the increased Federal medical assistance percentage under the American Recovery and Reinvestment Act of 2009, P.L. No. 111-5. We will issue this report to the Colorado Department of Health Care Policy and Financing within 5 business days.

If you have any questions or comments about this report, please do not hesitate to call me, or your staff may contact George M. Reeb, Assistant Inspector General for the Centers for Medicare & Medicaid Audits, at (410) 786-7104 or through email at George.Reeb@oig.hhs.gov or Patrick J. Cogley, Regional Inspector General for Audit Services, Region VII, at (816) 426-3591 or through email at Patrick.Cogley@oig.hhs.gov. Please refer to report number A-07-09-02767.

Attachment

**DEPARTMENT OF HEALTH & HUMAN SERVICES** **Office of Inspector General**

**Office of Audit Services, Region VII**
**601 East 12th Street, Room 0429**
**Kansas City, MO 64106**

March 31, 2010

Report Number: A-07-09-02767

Ms. Joan Henneberry
Executive Director
Colorado Department of Health Care Policy and Financing
1570 Grant Street
Denver, CO 80203-1818

Dear Ms. Henneberry:

Enclosed is the U.S. Department of Health & Human Services (HHS), Office of Inspector General (OIG), final report entitled *Review of Colorado's Claims Associated With the Increased Federal Medical Assistance Percentage Under the American Recovery and Reinvestment Act of 2009*. 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.

Section 8L of the Inspector General Act, 5 U.S.C. App., requires that OIG post its publicly available reports on the OIG Web site. Accordingly, this report will be posted at http://oig.hhs.gov.

If you have any questions or comments about this report, please do not hesitate to call me at (816) 426-3591, or contact James Korn, Audit Manager, at (303) 844-7153 or through email at James.Korn@oig.hhs.gov. Please refer to report number A-07-09-02767 in all correspondence.

Sincerely,

/Patrick J. Cogley/
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 Medicaid & Medicare Services
233 North Michigan Avenue, Suite 600
Chicago, IL 60601

Department of Health & Human Services

**OFFICE OF INSPECTOR GENERAL**

# REVIEW OF COLORADO'S CLAIMS ASSOCIATED WITH THE INCREASED FEDERAL MEDICAL ASSISTANCE PERCENTAGE UNDER THE AMERICAN RECOVERY AND REINVESTMENT ACT OF 2009

Daniel R. Levinson
Inspector General

March 2010
A-07-09-02767

# *Office of Inspector General*

http://oig.hhs.gov

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# *Notices*

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Section 8L of the Inspector General Act, 5 U.S.C. App., requires that OIG post its publicly available reports on the OIG Web site.

**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 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 Colorado, the Department of Health Care Policy and Financing (State agency) administers the Medicaid program, which includes developing and maintaining internal controls.

The American Recovery and Reinvestment Act of 2009, P.L. No. 111-5 (Recovery Act), enacted February 17, 2009, provides, among other initiatives, fiscal relief to States to protect and maintain State Medicaid programs in a period of economic downturn. For the recession adjustment period (October 1, 2008, through December 31, 2010), the Recovery Act provides an estimated $87 billion in additional Medicaid funding based on temporary increases in States' Federal medical assistance percentage (FMAP). The Federal Government pays its share of a State's medical assistance expenditures under Medicaid based on the FMAP, which varies depending on that State's relative per capita income.

The Department of Health & Human Services, Office of Assistant Secretary for Planning and Evaluation (ASPE), calculates the increased FMAP on a quarterly basis for the 50 States and the District of Columbia. ASPE provides these increased FMAPs to CMS, which uses them to determine the amount of Federal funds to award to the States through its Medicaid grant process. In a previous audit, we reviewed the ASPE FMAP calculations (*Review of the Calculations of Temporary Increases in Federal Medical Assistance Percentages Under the American Recovery and Reinvestment Act*, A-09-09-00075) and determined that ASPE calculated the increased FMAPs for the first and second quarters of Federal fiscal year (FY) 2009 for all 50 States and the District of Columbia in accordance with applicable provisions of the Recovery Act. In another audit, we reviewed CMS's calculation for the additional FMAP Medicaid funding (*Review of the Calculation of Additional Medicaid Funding Awarded Under the American Recovery and Reinvestment Act*, A-09-09-00080) and determined that, for the first two quarters of FY 2009, CMS had calculated the additional Medicaid funding awarded under the Recovery Act in accordance with Federal law.

The amount to be claimed for the temporary increase in FMAP is not based on total Medicaid expenditures. Section 5001(e) of the Recovery Act lists the Medicaid expenditures that do not qualify for the temporarily increased FMAP: disproportionate share hospital payments, Children's Health Insurance Program expenditures, expenditures subject to an enhanced FMAP described in § 2105(b) of the Social Security Act, and some Temporary Assistance to Needy Families expenditures; expenditures for individuals made eligible through income eligibility expansions after July 1, 2008; and expenditures not based on the FMAP. Furthermore, section 5001(f)(5) of the Recovery Act states that no increase in a State's FMAP may result in an FMAP

that exceeds 100 percent. For the first and second quarters of FY 2009, the State agency's regular FMAP rate was 50.00 percent, and the temporarily increased FMAP rate was 58.78 percent.

The State agency claimed medical assistance payments of approximately $997 million for Federal reimbursement on its standard Forms CMS-64, Quarterly Medicaid Statement of Expenditures for the Medical Assistance Program for the period of October 1, 2008, through March 31, 2009. Recovery Act funds of approximately $142 million were included in this reimbursement.

## OBJECTIVES

Our objectives were to determine whether the State agency's $142 million in claims associated with the temporarily increased FMAP was computed using the Medicaid expenditure base specified in the Recovery Act and whether the expenditures were supported by the State agency's accounting records.

## SUMMARY OF FINDING

The State agency's $142 million in claims associated with the temporarily increased FMAP was computed using the Medicaid expenditure base specified in the Recovery Act, and the expenditures were supported by the State agency's accounting records. In addition, the State agency had policies and procedures in place to segregate Medicaid expenditures that qualified for the temporarily increased FMAP and to ensure that those Medicaid expenditures that did not qualify were not being claimed for reimbursement at the temporarily increased FMAP.

However, the State agency had not documented all of these policies and procedures intended to ensure that its claims were computed on Medicaid expenditures that qualified for the temporarily increased FMAP under the provisions of the Recovery Act. Documenting policies and procedures would increase the likelihood that future claims for Recovery Act funds would qualify and be supported by accounting records.

A State agency official stated that the primary reason the policies and procedures had not been documented was that the State agency had not had sufficient time to do so. The official added that the State agency was also awaiting additional guidance from CMS.

## RECOMMENDATION

We recommend that the State agency document all of its policies and procedures for claiming the temporary increase in FMAP.

## STATE AGENCY COMMENTS

In written comments on our draft report, the State agency partially concurred with our recommendation because, it said, a number of policies and procedures were in place or in draft form at the time of the audit. The State agency added that it is currently working on reviewing

current policies and procedures for reporting expenditures that qualify for increased FMAP and is updating these policies and procedures when necessary. The State agency's comments are included in their entirety as the Appendix.

## OFFICE OF INSPECTOR GENERAL RESPONSE

While we acknowledge that the State agency had a number of policies and procedures in place or in draft form at the time of our audit, all written policies and procedures for claiming the temporary increase in FMAP were not finalized. Therefore, we maintain that our recommendation remains valid.

## TABLE OF CONTENTS

# 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.

Pursuant to section 1905(b) of the Act, the Federal Government pays its share of a State's medical assistance expenditures under Medicaid based on the Federal medical assistance percentage (FMAP), which varies depending on the State's relative per capita income. Although FMAPs are adjusted annually for economic changes in the States, Congress may increase FMAPs at any time.

States report Medicaid expenditures to CMS on the Form CMS-64, Quarterly Medicaid Statement of Expenditures for the Medical Assistance Program (CMS-64).

In Colorado, the Department of Health Care Policy and Financing (State agency) administers the Medicaid program, which includes developing and maintaining internal controls.

### American Recovery and Reinvestment Act of 2009

The American Recovery and Reinvestment Act of 2009, P.L. No. 111-5 (Recovery Act), enacted February 17, 2009, provides, among other initiatives, fiscal relief to States to protect and maintain State Medicaid programs in a period of economic downturn. For the recession adjustment period (October 1, 2008, through December 31, 2010), the Recovery Act provides an estimated $87 billion in additional Medicaid funding based on temporary increases in States' FMAPs. Section 5000 of the Recovery Act provides these increases to help avert cuts in health care provider payment rates, benefits, or services and to prevent changes in income eligibility requirements that would reduce the number of individuals eligible for Medicaid. For the first two quarters of Federal fiscal year (FY) 2009, CMS made available to States, beginning February 25, 2009, approximately $16 billion in additional Medicaid funding based on the increased FMAP for each State. Since then, CMS has provided guidance to State Medicaid agencies (in the form of letters to State Medicaid directors) regarding implementation of the provisions of the Recovery Act, including provisions for the temporarily increased FMAP.

The Department of Health & Human Services, Office of Assistant Secretary for Planning and Evaluation (ASPE), calculates the increased FMAP on a quarterly basis for the 50 States and the District of Columbia. ASPE provides these increased FMAPs to CMS, which uses them to determine the amount of Federal funds to award to the States through its Medicaid grant

process. In a previous audit, we reviewed the ASPE FMAP calculations (*Review of the Calculations of Temporary Increases in Federal Medical Assistance Percentages Under the American Recovery and Reinvestment Act,* A-09-09-00075) and determined that ASPE calculated the increased FMAPs for the first and second quarters of FY 2009 for all 50 States and the District of Columbia in accordance with applicable provisions of the Recovery Act. In another audit, we reviewed CMS's calculation for the additional FMAP Medicaid funding (*Review of the Calculation of Additional Medicaid Funding Awarded Under the American Recovery and Reinvestment Act,* A-09-09-00080) and determined that, for the first two quarters of FY 2009, CMS had calculated the additional Medicaid funding awarded under the Recovery Act in accordance with Federal law.

The amount to be claimed for the temporary increase in FMAP is not based on total Medicaid expenditures. Section 5001(e) of the Recovery Act lists the Medicaid expenditures that do not qualify for the temporarily increased FMAP: disproportionate share hospital payments, Children's Health Insurance Program expenditures, expenditures subject to an enhanced FMAP described in § 2105(b) of the Act, and some Temporary Assistance to Needy Families expenditures; expenditures for individuals made eligible through income eligibility expansions after July 1, 2008; and expenditures not based on the FMAP.

Pursuant to section 5001(f)(5) of the Recovery Act, no increase in a State's FMAP may result in an FMAP that exceeds 100 percent. For the first and second quarters of FY 2009, the State agency's regular FMAP rate was 50.00 percent, and the temporarily increased FMAP rate was 58.78 percent.

The State agency claimed medical assistance payments of approximately $997 million for Federal reimbursement on its CMS-64s for the period of October 1, 2008, through March 31, 2009. Recovery Act funds of approximately $142 million were included in this reimbursement.

## OBJECTIVES, SCOPE, AND METHODOLOGY

### Objectives

Our objectives were to determine whether the State agency's $142 million in claims associated with the temporarily increased FMAP was computed using the Medicaid expenditure base specified in the Recovery Act and whether the expenditures were supported by the State agency's accounting records.

### Scope

We reviewed the amount claimed on the CMS-64s for the first two quarters of FY 2009 (October 1, 2008, through March 31, 2009). We reviewed the State agency's internal controls to the extent necessary to accomplish our objective.

We did not audit expenditures made by the State agency during this period to assure that they qualified for Federal Medicaid reimbursement.

We performed fieldwork at the State agency's offices in Denver, Colorado, in August 2009.

**Methodology**

To accomplish our objectives, we:

- reviewed applicable Federal laws and regulations and CMS guidance;
- reviewed the State agency's policies and procedures for segregating the Medicaid expenditures that qualified for the temporarily increased FMAP from those that did not;
- reviewed the State agency's State Medicaid plan;
- reviewed Colorado's FY 2008 A-133 audit[1] and interviewed personnel in the Colorado State Auditor's Office for insight on possible internal control weaknesses found during that office's review of the State agency;
- interviewed State agency personnel in charge of compiling the CMS-64s to understand the procedures used to calculate the reported Medicaid expenditures;
- identified the Medicaid expenditures that did and did not qualify for the temporarily increased FMAP, as reported on the CMS-64s for the first two quarters of FY 2009;
- traced selected Medicaid expenditure line item amounts (both those that qualified for the temporarily increased FMAP and those that did not qualify) as reported on the CMS-64s to the high-level accounting records and supporting documentation; and
- discussed our finding with State agency 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 finding and conclusions based on our audit objectives.

[1] The Office of Management and Budget (OMB) issued Circular A-133, *Audits of States, Local Governments, and Non-Profit Organizations*, pursuant to the Single Audit Act of 1984, P.L. 98-502, and the Single Audit Act Amendments of 1996, P.L. 104-156, to set forth standards for obtaining consistency and uniformity among Federal agencies for the audit of States, local governments, and nonprofit organizations expending Federal awards. A single audit requires an audit of the State's financial statements and expenditures of Federal awards.

## FINDING AND RECOMMENDATION

The State agency's $142 million in claims associated with the temporarily increased FMAP was computed using the Medicaid expenditure base specified in the Recovery Act, and the expenditures were supported by the State agency's accounting records. In addition, the State agency had policies and procedures in place to segregate Medicaid expenditures that qualified for the temporarily increased FMAP and to ensure that those Medicaid expenditures that did not qualify were not being claimed for reimbursement at the temporarily increased FMAP.

However, the State agency had not documented all of these policies and procedures intended to ensure that its claims were computed on Medicaid expenditures that qualified for the temporarily increased FMAP under the provisions of the Recovery Act. Documenting policies and procedures would increase the likelihood that future claims for Recovery Act funds would qualify and be supported by accounting records.

A State agency official stated that the primary reason the policies and procedures had not been documented was that the State agency had not had sufficient time to do so. The official added that the State agency was also awaiting additional guidance from CMS.

## FEDERAL GUIDANCE

OMB Circular A-87, Attachment A, § A.2.a.(1) states: "Governmental units are responsible for the efficient and effective administration of Federal awards through the application of sound management practices."

The General Accounting Office's *Standards for Internal Control in the Federal Government* identifies sound management practices that can be applied by non-Federal entities. It states (in "Control Activities," page 11): "Internal control activities help ensure that management's directives are carried out" and (in "Examples of Control Activities," page 15): "Internal control … and other significant events need to be clearly documented, and the documentation should be readily available for examination. The documentation should appear in management directives, administrative policies, or operating manuals …."

## POLICIES AND PROCEDURES

For the first two quarters of FY 2009, the State agency computed its Medicaid claims of $142 million associated with temporarily increased FMAP using the Medicaid base specified in the Recovery Act and had records to support its claims. The State agency did so by segregating the Medicaid expenditures that qualified for the temporarily increased FMAP and by ensuring that those Medicaid expenditures that did not qualify were not being claimed for reimbursement at the temporarily increased FMAP.

Although the State agency had developed and implemented policies and procedures as part of its internal controls to ensure that it claimed only Medicaid expenditures that qualified for the temporarily increased FMAP under the provisions of the Recovery Act, all of these policies and procedures had not been documented.

Documenting policies and procedures would increase the likelihood that future claims for Recovery Act funds would qualify and be supported by accounting records. Documenting operational policies and procedures helps ensure that operations are performed effectively and efficiently by eliminating oversights, giving new personnel sufficiently detailed instructions, assuring continuity, and specifying quality assurance functions.

A State agency official stated that the primary reason the policies and procedures had not been documented was that the State agency had not had sufficient time to do so. The official added that the State agency was also awaiting additional guidance from CMS.

## RECOMMENDATION

We recommend that the State agency document all of its policies and procedures for claiming the temporary increase in FMAP.

## STATE AGENCY COMMENTS

In written comments on our draft report, the State agency partially concurred with our recommendation because, it said, a number of policies and procedures were in place or in draft form at the time of the audit. The State agency added that it is currently working on reviewing current policies and procedures for reporting expenditures that qualify for increased FMAP and is updating these policies and procedures when necessary. The State agency's comments are included in their entirety as the Appendix.

## OFFICE OF INSPECTOR GENERAL RESPONSE

While we acknowledge that the State agency had a number of policies and procedures in place or in draft form at the time of our audit, all written policies and procedures for claiming the temporary increase in FMAP were not finalized. Therefore, we maintain that our recommendation remains valid.

# APPENDIX

# APPENDIX: STATE AGENCY COMMENTS

COLORADO DEPARTMENT OF HEALTH CARE POLICY & FINANCING

1570 Grant Street, Denver, CO 80203-1818 • (303) 866-2993 • (303) 866-4411 Fax • (303) 866-3883 TTY

Bill Ritter, Jr., Governor • Joan Henneberry, Executive Director

February 2, 2010

Mr. Jim Korn
Dept. of Health & Human Services
Office of Inspector General

Audit Identification Number: CIN A-07-09-02767

Dear Mr Korn:

Please find attached the Department of Health Care Policy and Financing's response to the draft review of Colorado Claims Associated with the Increased Federal Medical Assistance Percentage report.

If you have any questions or concerns, please contact me at (303) 866-2590 or laurie.simon@state.co.us.

Sincerely,

Laurie Simon

Laure Simon
Audit Coordinator

Department of Health Care Policy and Financing's Response to Draft Report
Office of the Inspector General's
Review of Colorado's Claims Associated with the
Increased Federal Medical Assistance Percentage
Under the American Recovery and Reinvestment Act (A-07-09-02767)
December 2009

**Recommendation #1: We recommend that the State agency document its policies and procedures for claiming the temporary increase in FMAP.**

*The Department of Health Care Policy and Financing's response to Recommendation #1:*

*Partially Concur.*

*The Department partially concurs because a number of policies and procedures were in place or in draft form at the time this audit was conducted and the test work was concluded. These policies and procedures included the Department's documented responses to the five attestations related to the Department's acceptance of the increased Federal Medical Assistance Percentage (FMAP) provided by the American Recovery and Reinvestment Act (ARRA) and the drawing of such funds from the Payment Management System sub account, an Office of the State Controller Alert # 184 regarding the coding requirements established on a statewide basis for ARRA monies, and a draft of the Department's policies and procedures related to the recording of expenditures on the CMS-64, including expenditures that qualified for increased FMAP provided by ARRA.*

*The Department is currently working on reviewing its current policies and procedures for reporting expenditures on the CMS-64, including expenditures that qualify for increased FMAP provided by ARRA, and are updating those policies and procedures when necessary.*