



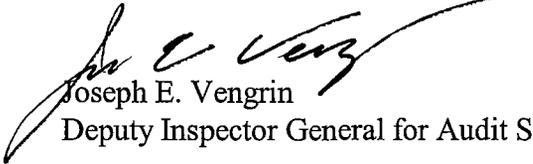
DEPARTMENT OF HEALTH & HUMAN SERVICES

Office of Inspector General

Washington, D.C. 20201

JAN 14 2008

**TO:** Kerry Weems  
Acting Administrator  
Centers for Medicare & Medicaid Services

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

**SUBJECT:** Review of New Jersey Medicaid Contingency Fee Contract Payments for the Period April 1, 1996, Through June 30, 2001 (A-02-06-01006)

Attached is an advance copy of our final report on New Jersey (the State) Medicaid contingency fee contract payments. We will issue this report to the New Jersey Department of Human Services within 5 business days.

The State awarded contingency fee contracts to Deloitte Consulting LLP (Deloitte) and Health Care Resources, Inc (HCR) to generate increased Federal reimbursement by identifying and submitting to the Federal Government unclaimed State expenses. According to the terms of the contracts, Deloitte and HCR were paid fees contingent on additional Federal funds recovered. As a result of work performed, the State paid \$21,017,894 of contingency fees to Deloitte (\$19,681,538) and HCR (\$1,336,356). Our objective was to determine whether the State improperly claimed contractors fees earned under contingency fee arrangements to the Federal Government under the Medicaid program.

The State improperly claimed \$15,956,556 (\$7,978,278 Federal share) in contingency fees paid to Deloitte and HCR under the Medicaid program. Pursuant to Office of Management and Budget (OMB) Circular A-87, States may charge contingency fees when reasonable in relation to the services provided and when not contingent on recovery of the costs from the Federal Government. We recommend that the State refund \$7,978,278 to the Federal Government.

In its comments on our draft report, the State disagreed with our finding and recommendation. Specifically, the State did not concur with our interpretation of OMB Circular A-87 in regard to contingency fee contracts. We continue to maintain that OMB Circular A-87 prohibits Federal reimbursement for consultant services when those services are contingent on recovery of costs from the Federal Government.

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 e-mail at [George.Reeb@oig.hhs.gov](mailto:George.Reeb@oig.hhs.gov) or James P. Edert, Regional Inspector General for Audit Services, Region II, at (212) 264-4620 or through e-mail at [James.Edert@oig.hhs.gov](mailto:James.Edert@oig.hhs.gov). Please refer to report number A-02-06-01006.

Attachment



DEPARTMENT OF HEALTH & HUMAN SERVICES

JAN 15 2008

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

Report Number: A-02-06-01006

Ms. Jennifer Velez, Esq.  
Commissioner  
New Jersey Department of Human Services  
P.O. Box 712  
Trenton, New Jersey 08625-0712

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 Medicaid Contingency Fee Contract Payments for the Period April 1, 1996, Through June 30, 2001." 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, within 10 business days after the final report is issued, it will be posted on the Internet at <http://oig.hhs.gov>.

If you have any questions or comments about this report, please contact John Madigan, Audit Manager, at (518) 437-9390, extension 224, or through e-mail at [John.Madigan@oig.hhs.gov](mailto:John.Madigan@oig.hhs.gov). Please refer to report number A-02-06-01006 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 Medicare and Children's Health Operations  
Centers for Medicare & Medicaid Services  
233 North Michigan Avenue, Suite 600  
Chicago, IL 60601

Department of Health and Human Services

**OFFICE OF  
INSPECTOR GENERAL**

**REVIEW OF NEW JERSEY  
MEDICAID CONTINGENCY FEE  
CONTRACT PAYMENTS FOR THE  
PERIOD APRIL 1, 1996,  
THROUGH JUNE 30, 2001**



Daniel R. Levinson  
Inspector General

January 2008  
A-02-06-01006

# ***Office of Inspector General***

<http://oig.hhs.gov>

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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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**THIS REPORT IS AVAILABLE TO THE PUBLIC**  
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In accordance with the principles of the Freedom of Information Act (5 U.S.C. 552, as amended by Public Law 104-231), Office of Inspector General, Office of Audit Services reports are made available to members of the public to the extent the information is not subject to exemptions in the act. (See 45 CFR part 5.)

## **OAS FINDINGS AND OPINIONS**

The designation of financial or management practices as questionable or a recommendation for the disallowance of costs incurred or claimed, as well as other conclusions and recommendations in this report, represent the findings and opinions of the HHS/OIG/OAS. Authorized officials of the HHS 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 New Jersey, the Department of Health and Senior Services administers the Medicaid program, which sometimes includes contracting with consultants. Federal requirements provide that the costs of consultant services may not be claimed for Federal financial participation if they are contingent on recovery of costs from the Federal Government.

In 1993, the State awarded a contingency fee contract to Health Care Resources, Inc. (HCR) for the purpose of identifying areas for additional or increased Federal funds under the Medicaid program. The contract period was for 1 year, beginning in February 1993. As a result of HCR's efforts, the State received additional Federal funds under the Medicaid program and then paid HCR a fee of \$1,336,356.

In 1996, the State awarded a contingency fee contract to Deloitte Consulting LLP (Deloitte). The purpose of the contract was to generate increased Federal reimbursement by identifying and submitting to the Federal Government unclaimed State expenses. According to the contract terms, Deloitte was to receive a payment ranging from 6 to 7.5 percent of any additional Federal funds recovered. As a result of Deloitte's efforts, the State received additional Federal funds under the Medicaid program and then paid Deloitte a fee of \$19,681,538.

Pursuant to Office of Management and Budget (OMB) Circular A-87, States may charge contingency fees when reasonable in relation to the services provided and when not contingent on recovery of the costs from the Federal Government.

### **OBJECTIVE**

Our objective was to determine whether the State improperly claimed contractors fees earned under contingency fee arrangements to the Federal Government under the Medicaid program.

### **SUMMARY OF FINDINGS**

The State improperly claimed \$15,956,556 (\$7,978,278 Federal share) in contingency fees paid to consultants under the Medicaid program.

### **RECOMMENDATION**

We recommend that the State refund \$7,978,278 to the Federal Government.

## **STATE'S COMMENTS AND OFFICE OF INSPECTOR GENERAL'S RESPONSE**

In comments on the draft report, the State disagreed with our finding and recommendation. Specifically, the State did not concur with our interpretation of OMB Circular A-87 in regard to contingency fee contracts but provided no further explanation. In addition, the State provided us with additional documentation that: (1) the amount we reported as total contingency fees paid to Deloitte was overstated by \$6,516,725 and (2) the State credited \$1,400,000 to the Federal Government for the Federal share of fees recovered from Deloitte since the completion of our fieldwork. The State's comments appear in their entirety as an appendix.

After reviewing the documentation provided by the State, we revised our finding and recommendation. We agree that the total fees paid to Deloitte were \$19,681,538 (\$26,198,263 less \$6,516,725) and that the documentation supports a downward adjustment of \$1,400,000 to the total amount of fees that were claimed and reimbursed by the Federal Government. However, we recommend a refund for the balance of the amount—\$7,978,278 (\$9,378,278 less \$1,400,000)—because we continue to maintain that OMB Circular A-87 prohibits Federal reimbursement for consultant services when those services are contingent on recovery of costs from the Federal Government.

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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 Health and Senior Services administers the Medicaid program.

#### **Medicaid Reporting Requirements**

CMS requires States to report their Medicaid expenditures, both medical assistance and administrative, on the Quarterly Medicaid Statements of Expenditures for the Medical Assistance Program form (CMS-64). The Federal Government pays its share of medical assistance expenditures according to a formula defined in section 1905(b) of the Act. That share is known as the Federal medical assistance percentage. The Federal Government's payment to States for their medical assistance expenditures are referred to as Federal financial participation (FFP). Section 1903(a)(7) of the Act provides FFP for each State's administration of its Medicaid program. The FFP rate for New Jersey was 50 percent during our audit period.

#### **New Jersey's Use of Consultants**

In 1993, the State awarded a contingency fee contract to Health Care Resources, Inc. (HCR) for the purpose of identifying areas for additional or increased Federal funds under the Medicaid program. The contract period was for 1 year, beginning in February 1993. As a result of HCR's efforts, the State received additional Federal funds under the Medicaid program and paid HCR fees totaling \$1,336,356. The State submitted claims for these fees to the Federal Government during the period April 1, 1996, through December 31, 1999.

In 1996, the State awarded a contingency fee contract to Deloitte Consulting LLP (Deloitte). The purpose of the contract was to generate increased Federal reimbursement by identifying and submitting to the Federal Government unclaimed State expenses. According to the contract terms, Deloitte was to receive a payment ranging from 6 to 7.5 percent of any additional Federal funds recovered. As a result of Deloitte's efforts, the State received additional Federal funds under the Medicaid program and paid Deloitte fees totaling \$19,681,538. The State submitted claims for these fees to the Federal Government during the period October 1, 1997, through June 30, 2001.

## **Federal Requirements**

Pursuant to Office of Management and Budget (OMB) Circular A-87, Attachment B, section 33.a, professional and consultant services are allowable when reasonable in relation to the services provided and when not contingent on recovery of the costs from the Federal Government.<sup>1</sup>

## **OBJECTIVE, SCOPE, AND METHODOLOGY**

### **Objective**

Our objective was to determine whether the State improperly claimed contractors fees earned under contingency fee arrangements to the Federal Government under the Medicaid program.

### **Scope**

Our audit period covered costs claimed from April 1, 1996, through June 30, 2001. During our audit, we did not review the overall internal control structure of the State or the Medicaid program. Rather, we reviewed internal controls that pertained directly to the objective of our audit.

We conducted our fieldwork at the State Medicaid agency offices in Mercerville, New Jersey.

### **Methodology**

To accomplish our objective, we:

- reviewed OMB Circular A-87 and CMS's "State Medicaid Manual" and policy letters,
- reviewed State correspondence pertaining to its contract with HCR,
- reviewed the "Federal Fund Revenue Enhancers for All Federal Programs" contract between the New Jersey Office of Management and Budget and Deloitte,
- identified State contingency fee payments to HCR and Deloitte through correspondence with State officials,
- traced the contingency fees paid to HCR and Deloitte through the State's cost allocation plan to the CMS-64 forms submitted to the Federal Government for reimbursement, and
- discussed the audit results with State Medicaid agency officials.

We performed our review in accordance with generally accepted government auditing standards.

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<sup>1</sup>In this report, citations to OMB Circular A-87 are to the May 4, 1995, version. On May 10, 2004, OMB revised the circular, which generally became effective on the May, 10, 2004, publication date. In the May 10, 2004, circular, section 33.a was moved to section 32.a without any change to the substantive language.

## **FINDING AND RECOMMENDATION**

The State improperly claimed \$15,956,556 (\$7,978,278 Federal share) in contingency fees paid to consultants under the Medicaid program.

### **CONTINGENCY FEE CONTRACT ARRANGEMENTS**

Pursuant to OMB Circular A-87, Attachment B, section 33.a, professional and consultant services are allowable when reasonable in relation to the services provided and when not contingent on recovery of the costs from the Federal Government.

#### **Health Care Resources, Inc.**

The State awarded a contingency fee contract to HCR for the purpose of identifying areas for additional or increased Federal funds under the Medicaid program. In accordance with the contract, HCR identified additional Federal funds within the Medicaid program. For these services provided under the contingency fee arrangement, the State paid HCR fees of \$1,336,356. The State claimed these fees as administrative costs under the Medicaid program and received reimbursement of \$668,178.

#### **Deloitte Consulting LLP**

The State awarded a contingency fee contract to Deloitte to generate increased Federal reimbursement by identifying and submitting to the Federal Government unclaimed State expenses. Deloitte received fees of \$19,681,538 from the State for identifying unclaimed Medicaid expenditures under the following contingency fee contract initiatives:

- (1) Medical Assistance Program,
- (2) EPSDT (Early Periodic Screening, Diagnostic, and Treatment) Administrative Outreach in Schools,
- (3) Family Planning Initiative,
- (4) Pharmaceuticals and Other Medical Expenses,
- (5) Charity Care,
- (6) State Operated Psychiatric Hospitals, and
- (7) Reimbursement for Professionals and Consultant Service Costs.

Of the \$19,681,538 paid to Deloitte, the State claimed \$14,620,200 as an administrative cost under the Medicaid program and received reimbursement of \$7,310,100. The State did not claim the remaining \$5,061,338 paid to Deloitte because, according to State officials, they received a CMS directive in November 2002 reiterating CMS's policy that consultant services were

unallowable when contingent on recovery of the costs from the Federal Government, which was pursuant to OMB Circular A-87, Attachment B, section 33.a.

Although State officials indicated that the State had stopped claiming contingency fees after CMS issued its November 2002 directive, the State did not refund to the Federal Government the \$7,978,278 it received for Deloitte contingency fees (\$7,310,100) and HCR contingency fees (\$668,178).

## **RECOMMENDATION**

We recommend that the State refund \$7,978,278 to the Federal Government.

## **STATE'S COMMENTS**

In comments on the draft report, the State disagreed with our finding and recommendation. Specifically, the State did not concur with our interpretation of OMB Circular A-87 in regard to contingency fee contracts but provided no further explanation. In addition, the State provided us with additional documentation that: (1) the amount we reported as total contingency fees paid to Deloitte was overstated by \$6,516,725 and (2) the State credited \$1,400,000 to the Federal Government for the Federal share of fees recovered from Deloitte since the completion of our fieldwork.

The State's comments are included in their entirety as an appendix.

## **OFFICE OF INSPECTOR GENERAL'S RESPONSE**

After reviewing the documentation provided by the State, we revised our finding and recommendation. We agree that the total fees paid to Deloitte were \$19,681,538 (\$26,198,263 less \$6,516,725) and that the documentation supported a downward adjustment of \$1,400,000 to the total amount of fees that were claimed and reimbursed by the Federal Government. However, we recommend a refund for the balance of the amount—\$7,978,278 (\$9,378,278 less \$1,400,000)—because we continue to maintain that OMB Circular A-87 prohibits Federal reimbursement for consultant services when those services are contingent on recovery of costs from the Federal Government.

# **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

JON S. CORZINE  
*Governor*

JENNIFER VELEZ  
*Commissioner*

JOHN R. GUHL  
*Director*

November 7, 2007

James P. Edert  
Regional Inspector General for Audit Services  
Department of Health and Human Services  
Office of Inspector General  
Office of Audit Services Region II  
Jacob K. Javits Federal Building – Room 3900  
New York, NY 10278

**Report Number A-02-06-01006**

Dear Mr. Edert:

I am writing in response to your September 24<sup>th</sup> letter referring to the Department of Health and Human Services, Office of the Inspector General's (OIG) draft audit report entitled "Review of New Jersey Medicaid Contingency Fee Contract Payments for the Period April 1, 1996, Through June 30, 2001". The opportunity to comment on the draft audit report is greatly appreciated.

The audit report contains one finding and one recommendation. The report indicates that New Jersey improperly claimed \$18,756,556 (\$9,378,278 Federal Financial Participation) in contingency fees paid to consultants under the Medicaid program. The report recommends New Jersey refund \$9,378,278 to the Federal government.

Please be advised that New Jersey does not concur with the auditor's interpretation of the OMB Circular A-87 in regard to contingency fee contracts. Therefore, we cannot agree with the finding and recommendation contained in the draft report.

Please note that the total amount of funds paid as contingency fees is overstated in the report by \$6,516,725. This amount was not paid as a contingency fee to the contractor. Additionally, there was a recovery of funds in the amount of \$2,800,000 in which the Federal government was credited with \$1,400,000

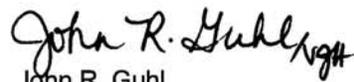
James P. Edert  
November 7, 2007  
Page 2

Federal Financial Participation on New Jersey's CMS-64 submission for the quarter ending September 2006.

It is requested that the audit report be revised to include this additional information.

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: L  
c: Jennifer Velez  
David Lowenthal