



DEPARTMENT OF HEALTH & HUMAN SERVICES

Office of Inspector General
Offices of Audit Services

October 29, 2004

Region VII
601 East 12th Street
Room 284A
Kansas City, Missouri 64106

Report Number: A-07-04-01009

Vivianne M. Chaumont
Director
Medical Assistance Office
State of Colorado
Department of Health Care Policy and Financing
1570 Grant Street
Denver, Colorado 80203-1818

Dear Ms. Chaumont:

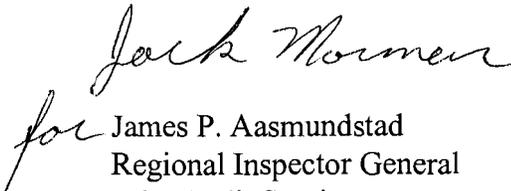
Enclosed are two copies of the U.S. Department of Health and Human Services (HHS), Office of Inspector General, Office of Audit Services' (OAS) report entitled "Contingency Fees Claimed by Colorado as Medicaid Reimbursement" for the quarters ending June 30, 2002 and December 31, 2003. A copy of this report will be forwarded to the action official listed on the following page for his review and any action deemed necessary.

Final determination as to actions taken on all matters reported will be made by the HHS action official named below. We request that you respond to the HHS action 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.

In accordance with the principles of the Freedom of Information Act (5 U.S.C. 552, as amended by Public Law 104-231), OIG, OAS reports issued to the department's grantees and contractors are made available to members of the press and general public to the extent information contained therein is not subject to exemptions in the Act which the department chooses to exercise. (See 45 CFR Part 5.)

Please refer to report number A-07-04-01009 in all correspondence.

Sincerely yours,


for James P. Aasmundstad
Regional Inspector General
for Audit Services

Enclosures - as stated

Page 2 – Ms. Chaumont

Direct Reply to HHS Action Official:

Mr. Richard Allen
Centers for Medicare and Medicaid Services
Branch Chief, Region VIII
1600 Broadway, Suite 700
Denver, Colorado 80202

Department of Health and Human Services

**OFFICE OF
INSPECTOR GENERAL**

**CONTINGENCY FEES CLAIMED
BY COLORADO AS MEDICAID
REIMBURSEMENT**



**OCTOBER 2004
A-07-04-01009**

Office of Inspector General

<http://oig.hhs.gov>

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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 information contained therein 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 awarding agency will make final determination on these matters.



EXECUTIVE SUMMARY

BACKGROUND

The Medicaid program was established by Title XIX of the Social Security Act (the Act) and is jointly funded by the Federal and state governments to provide medical assistance for persons with limited income and resources. Each state Medicaid program is administered in accordance with a state plan approved by the Centers for Medicare & Medicaid Services (CMS) to ensure compliance with Federal requirements. In Colorado, the Department of Health Care Policy and Financing (Colorado) is the state agency responsible for administering the Medicaid program.

One of the Medicaid programs is family planning. The Federal share, or Federal financial participation (FFP), of providing family planning services is 90 percent of the total costs. For most other medical services in Colorado, the Federal government reimburses approximately 50 percent of the costs.

Colorado entered into a contingency fee contract with Heath Management Systems (HMS) in 2001 to maximize Federal reimbursement for the family planning costs related to Medicaid managed care (family planning). Before contracting with HMS, Colorado received approximately 50 percent FFP for family planning services. HMS developed a methodology that enabled Colorado to increase its reimbursement for family planning services to 90 percent FFP. Colorado paid HMS a set percentage of the Federal dollars recovered.

Based on Federal recoveries of \$5,829,844, Colorado paid HMS \$358,535. Colorado claimed the entire payment as Medicaid administrative expenditures for the quarters ending June 30, 2002 and December 31, 2003. The Federal share of the expenditures was \$179,267

OBJECTIVE

The objective of our review was to determine whether Colorado claimed consultant fees, related to identifying family planning costs for Medicaid managed care, in accordance with Federal laws and regulations.

SUMMARY OF FINDINGS

Colorado did not claim payments made to a consultant in accordance with Federal laws and regulations. As a result, Colorado received \$179,267 that does not qualify for Federal Medicaid reimbursement. The payments were not allowable because the amounts were contingent upon the recovery of costs from the Federal Government, which does not comply with the requirements of Office of Management and Budget (OMB) Circular A-87. Colorado officials stated these overpayments occurred because they were unaware that contingency fee costs could not be charged to Federal programs.

RECOMMENDATIONS

We recommend Colorado:

- refund \$179,267 to the Federal government, and
- implement adequate controls to ensure all claims for Medicaid reimbursement involving payments made to consultants are submitted in accordance with Federal laws and regulations.

Colorado agreed with our findings and recommendations and has initiated actions to address those issues. Colorado's response is included in its entirety on the Appendix.

INTRODUCTION

BACKGROUND

The Medicaid program was established by Title XIX of the Act and is jointly funded by the Federal and state governments to provide medical assistance for persons with limited income and resources. Each state Medicaid program is administered in accordance with a state plan approved by CMS to ensure compliance with Federal requirements. In Colorado, the Department of Health Care Policy and Financing is the state agency responsible for administering the Medicaid program. The Federal government reimburses state agencies 50 percent of the costs of administering the state plan. These costs must comply with OMB Circular A-87, which establishes principles and standards for determining costs reimbursed to state governments.

Congress amended sections 1903(a)(5) and 1905(a)(4) of the Act in 1972 to promote family planning services. Although not specified in the Act, CMS defines family planning as services that prevent or delay pregnancy, or otherwise control family size. The Federal share of providing family planning services is 90 percent of the total costs. For most other medical services in Colorado, the Federal government reimburses approximately 50 percent of the costs.

Colorado entered into a contingency fee contract with HMS in 2001 to maximize Federal reimbursement for the family planning costs related to Medicaid managed care. Before contracting with HMS, Colorado received approximately 50 percent FFP for family planning services. HMS developed a methodology that enabled Colorado to increase its reimbursement for family planning services to 90 percent FFP. The contract stipulated HMS would receive 6.15 percent of the Federal dollars recovered between the two FFP rates. Based on Federal recoveries of \$5,829,844, Colorado paid HMS \$358,535. Colorado claimed the entire payment as Medicaid administrative expenditures on the CMS-64, *Quarterly Medicaid Statement of Expenditures For the Medical Assistance Program* (expenditure report), for the quarters ending June 30, 2002 and December 31, 2003. The Federal share of the expenditures was \$179,267.

OBJECTIVES, SCOPE AND METHODOLOGY

Objective

The objective of our review was to determine whether Colorado claimed consultant fees, related to identifying family planning costs for Medicaid managed care, in accordance with Federal laws and regulations.

Scope

We limited our analysis to the fees Colorado paid consultants to identify the family planning portion of Medicaid managed care during October 1, 2001 through December 31, 2003. We limited our review of internal controls to the policies and procedures Colorado had in place to claim payments it made to consultants related to family planning services.

Methodology

To accomplish our objective we:

- reviewed OMB Circular A-87 to determine the allowability of contingency fees based on recovery of Federal funds,
- interviewed Colorado officials regarding payments made to consultants,
- reviewed the service contract between Colorado and HMS,
- reviewed consultant's invoices supporting the Medicaid reimbursements, and
- reviewed the expenditure reports with Colorado officials to determine the Federal funds recovered and the amount of contingency fees claimed for Medicaid reimbursement.

Our fieldwork was performed at the Department of Health Care Policy & Financing located in Denver, Colorado. We performed our review in accordance with generally accepted government auditing standards.

FINDINGS AND RECOMMENDATIONS

Colorado did not claim payments made to a consultant in accordance with Federal laws and regulations. As a result, Colorado received \$179,267 that does not qualify for Medicaid reimbursement. The payments were not allowable for Medicaid reimbursement because the amounts were contingent upon the recovery of costs from the Federal Government, which does not comply with the requirements of OMB Circular A-87. Colorado officials stated these overpayments occurred because they were unaware that contingency fee costs could not be charged to Federal programs.

Contingent Fees are Unallowable for Federal Reimbursement

The OMB Circular A-87, Attachment B.33.a. states the "... cost of professional and consultant services...are allowable...when reasonable in relation to the services rendered and when not contingent upon recovery of the costs from the Federal Government. "

Contingency Fee Payments Claimed Incorrectly

Colorado incorrectly claimed payments made to consultants that were contingent on the recovery of costs from the Federal government. Colorado paid the consultant a set rate (6.15 percent) for recoveries made between the enhanced FFP rate (90 percent) and the normal FFP rate (approximately 50 percent). Based upon Federal recoveries of \$5,829,844 related to Medicaid family planning, Colorado paid the contractor \$358,535. Colorado claimed the entire payment as Medicaid administrative expenditures for the quarters ending June 30, 2002 and December 31, 2003. The Federal share of the expenditures, \$179,267, was not allowable.

Colorado Unaware of Federal Regulations

This problem occurred because Colorado officials stated they were not aware that contingency fee costs could not be charged to Federal programs.

Colorado Overpaid \$179,267

As a result, Colorado received \$179,267 that did not qualify for Federal Medicaid reimbursement, which included:

- \$90,039 for the quarter ending June 30, 2002, and
- \$89,228 for the quarter ending December 31, 2003.

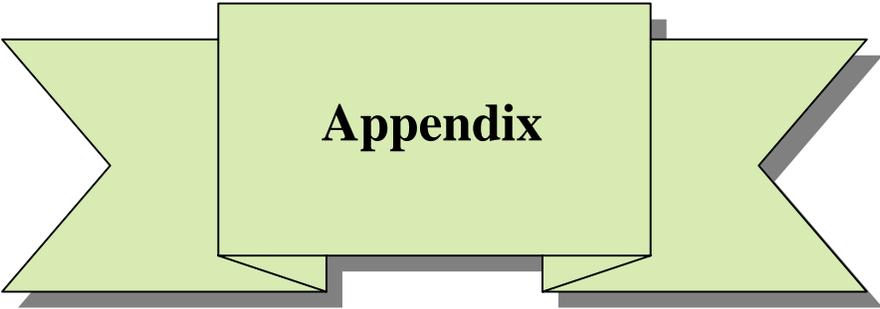
RECOMMENDATIONS

We recommend Colorado:

- refund \$179,267 to the Federal government, and
- implement adequate controls to ensure all claims for Medicaid reimbursement involving payments made to consultants are submitted in accordance with Federal laws and regulations.

AUDITEE'S RESPONSE AND OIG COMMENTS

Colorado agreed with our findings and recommendations and has initiated actions to address those issues. We commend Colorado for identifying appropriate corrective actions and incorporating improvements into its claiming for Medicaid reimbursement involving payments made to consultants. Colorado's response is included in its entirety on the Appendix.



STATE OF COLORADO

DEPARTMENT OF HEALTH CARE POLICY & FINANCING

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Bill Owens
Governor

Karen Reinertson
Executive Director

October 6, 2004

Mr. Lloyd Schmeackle
Office of Inspector General
Offices of Audit Services
Region VII
601 East 12th Street
Room 284A
Kansas City, Missouri 64106

Regarding: OIG Report Number A-07-04-01009

Dear Mr. Schmeackle:

Please find the State of Colorado's response to the recommendations in the audit report referenced above. If you have any questions about the State's response, please contact our Department Controller Phil Reed by phone at 303-866-2764 or by email at philip.reed@state.co.us.

Sincerely,

Vivianne M. Chaumont
Director
Medical Assistance Office

VMC/pjr

Department of Health and Human Services**OFFICE OF INSPECTOR GENERAL****CONTINGENCY FEES CLAIMED BY COLORADO AS MEDICAID
REIMBURSEMENT****RECOMMENDATIONS**

We recommend Colorado:

- refund \$179,267 to the Federal government, and
- implement adequate controls to ensure all claims for Medicaid reimbursement involving payments made to consultants are submitted in accordance with Federal laws and regulations.

Response:

The Colorado Department of Health Care Policy and Financing agrees with the audit finding and recommendations. In the quarter ending December 31, 2004, the Department will repay the \$179,267, which was inappropriately charged to the Federal government. The Department is now fully aware of the prohibition against using federal funds to pay contingency-based contractor fees when the contractor's fees are contingent upon recoveries from the Federal government, and is preventing a reoccurrence of this situation through its contract review processes.

ACKNOWLEDGMENTS

This report was prepared under the direction of James P. Aasmundstad, Regional Inspector General for Audit Services. Other principal Office of Audit Services staff who contributed include:

Chris Bresette, *Audit Manager*
Lloyd Schmeeckle, *Senior Auditor*
James Carter, *Auditor*
Mary Rowland, *Auditor*

Technical Assistance

Gerald Thompson, *Independent Reviewer*
Office Administrative Personnel

For information or copies of this report, please contact the Office of Inspector General's Public Affairs office at (202) 619-1343.