



October 22, 2009

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

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

**SUBJECT:** Review of Massachusetts' Compliance With the "Reimbursement of State Costs for Provision of Part D Drugs" Medicare Demonstration Project Requirements (A-01-09-00601)

Attached is an advance copy of our final report on Massachusetts' compliance with the requirements of the "Reimbursement of State Costs for Provision of Part D Drugs" Medicare demonstration project. We will issue this report to the Massachusetts Executive Office of Health and Human Services (the State agency) within 5 business days. The Centers for Medicare & Medicaid Services (CMS) requested this review.

When Medicare Part D was implemented on January 1, 2006, prescription drug coverage for full-benefit dually eligible beneficiaries was transferred from Medicaid to Medicare Part D. Despite CMS's efforts to ensure a smooth transition to Medicare Part D, some full-benefit dually eligible beneficiaries did not enroll in or were not assigned to a Part D plan. As a result, some States paid for these beneficiaries' Medicare Part D drugs during the transition period.

To reimburse States for drug costs and related administrative costs incurred during the transition period, CMS implemented the "Reimbursement of State Costs for Provision of Part D Drugs" Medicare demonstration project. By submitting its "Section 402 Demonstration Application" (Medicare demonstration application) to CMS, Massachusetts agreed to pay for full-benefit dually eligible beneficiaries' drug claims overseen by the State agency. CMS reimbursed the State agency a total of \$17,081,469 for Medicare demonstration project drug costs. The State agency included \$15,230,243 of this amount on its Medicaid Forms CMS-64. State agency officials said that they planned to adjust the Forms CMS-64 after receiving reimbursement through the demonstration project.

Our objectives were to determine whether the State agency (1) complied with certain provisions of the Medicare demonstration application when claiming drug costs for full-benefit dually eligible beneficiaries and (2) claimed drug costs to both the Medicaid program and the Medicare demonstration project.

The State agency complied with certain provisions of the Medicare demonstration application when claiming drug costs for full-benefit dually eligible beneficiaries. However, the State agency claimed some drug costs to both the Medicaid program and the Medicare demonstration project. Specifically, when we initiated our audit in November 2008, the State agency had not adjusted its Forms CMS-64 to reflect \$15,230,243 (\$7,626,837 Federal share) in drug costs that the State agency was reimbursed through the Medicare demonstration project in August and December 2006 and June 2007 for the quarter ended March 31, 2006.

During our audit, the State agency adjusted its Forms CMS-64 for the quarters ended December 31, 2008, and March 31, 2009, to account for \$7,609,992 in drug costs reimbursed through the Medicare demonstration project. State agency officials informed us that they planned to adjust the Form CMS-64 for the quarter ended June 30, 2009, for the remaining \$16,845.

According to State agency officials, the State agency did not promptly adjust its Forms CMS-64 because of an administrative oversight.

We recommend that the State agency:

- refund \$16,845 to the Federal Government and
- make future refunds to the Medicaid program in a timely fashion.

In written comments on our draft report, the State agency agreed with our recommendations.

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](mailto:George.Reeb@oig.hhs.gov) or Michael J. Armstrong, Regional Inspector General for Audit Services, Region I, at (617) 565-2689 or through email at [Michael.Armstrong@oig.hhs.gov](mailto:Michael.Armstrong@oig.hhs.gov). Please refer to report number A-01-09-00601.

Attachment



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Region I  
John F. Kennedy Federal Building  
Room 2425  
Boston, MA 02203  
(617) 565-2684

October 26, 2009

Report Number: A-01-09-00601

JudyAnn Bigby, M.D.  
Secretary  
Executive Office of Health and Human Services  
One Ashburton Place, 11th Floor  
Boston, Massachusetts 02108

Dear Dr. Bigby:

Enclosed is the U.S. Department of Health and Human Services (HHS), Office of Inspector General (OIG), final report entitled "Review of Massachusetts' Compliance With the 'Reimbursement of State Costs for Provision of Part D Drugs' Medicare Demonstration Project Requirements." 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, or contact Curtis Roy, Audit Manager, at (617) 565-9281 or through email at [Curtis.Roy@oig.hhs.gov](mailto:Curtis.Roy@oig.hhs.gov). Please refer to report number A-01-09-00601 in all correspondence.

Sincerely,

/Michael J. Armstrong/  
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 MASSACHUSETTS'  
COMPLIANCE WITH THE  
“REIMBURSEMENT OF STATE COSTS FOR  
PROVISION OF PART D DRUGS”  
MEDICARE DEMONSTRATION PROJECT  
REQUIREMENTS**



Daniel R. Levinson  
Inspector General

October 2009  
A-01-09-00601

# *Office of Inspector General*

<http://oig.hhs.gov>

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## **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**

Title I of the Medicare Prescription Drug, Improvement, and Modernization Act of 2003 (MMA) amended Title XVIII of the Social Security Act (the Act) by establishing Medicare Part D. Medicare Part D provides optional prescription drug coverage for individuals who are entitled to Medicare Part A or enrolled in Medicare Part B. The Centers for Medicare & Medicaid Services (CMS), which administers Medicare, contracts with private prescription drug plans and Medicare Advantage plans to offer prescription drug benefits to eligible individuals.

Full-benefit dually eligible beneficiaries are eligible for benefits under both Medicare and Medicaid. Pursuant to Title I, section 103(c), of the MMA and upon the implementation of Medicare Part D on January 1, 2006, prescription drug coverage for these beneficiaries was transferred from Medicaid to Medicare Part D. Despite CMS's efforts to ensure a smooth transition to Medicare Part D, some full-benefit dually eligible beneficiaries did not enroll in or were not assigned to a Part D plan. As a result, some States paid for these beneficiaries' Medicare Part D drugs during the transition period.

To reimburse States for drug costs and related administrative costs incurred during the transition period, CMS implemented the "Reimbursement of State Costs for Provision of Part D Drugs" Medicare demonstration project pursuant to section 402(a)(1)(A) of the Social Security Amendments of 1967 (codified at 42 U.S.C. § 1395b-1(a)(1)(A) and expressly made applicable to Part D in § 1860D-42(b)). On February 14, 2006, Massachusetts submitted its "Section 402 Demonstration Application" (Medicare demonstration application) to CMS. By submitting its Medicare demonstration application, Massachusetts agreed to pay for full-benefit dually eligible beneficiaries' drug claims overseen by the Executive Office of Health and Human Services (the State agency). The State agency's participation in the demonstration project covered drug claims with dates of service from January 1 through March 15, 2006, and related administrative costs from January 1 through April 7, 2006.

CMS reimbursed the State agency a total of \$17,081,469 for Medicare demonstration project drug costs. The State agency included \$15,230,243 of this amount on its Medicaid Forms CMS-64. State agency officials said that they planned to adjust the Forms CMS-64 after receiving reimbursement through the demonstration project.

### **OBJECTIVES**

Our objectives were to determine whether the State agency (1) complied with certain provisions of the Medicare demonstration application when claiming drug costs for full-benefit dually eligible beneficiaries and (2) claimed drug costs to both the Medicaid program and the Medicare demonstration project.

## **SUMMARY OF FINDINGS**

The State agency complied with certain provisions of the Medicare demonstration application when claiming drug costs for full-benefit dually eligible beneficiaries. For example, the State agency ensured that claims were for covered Part D drugs and for drug costs incurred during the demonstration project's effective dates.

However, the State agency claimed some drug costs to both the Medicaid program and the Medicare demonstration project. Specifically, the State agency did not promptly adjust its Forms CMS-64 to reflect \$15,230,243 (\$7,626,837 Federal share) in drug costs that the State agency was reimbursed through the Medicare demonstration project for the quarter ended March 31, 2006. The State agency received reimbursement for these costs from the Medicare demonstration project in August and December 2006 and June 2007. The State agency had not adjusted its Forms CMS-64 to account for the payments as of November 2008, when we initiated our audit.

During our audit, the State agency adjusted its Forms CMS-64 for the quarters ended December 31, 2008, and March 31, 2009, to account for \$7,609,992 in drug costs reimbursed through the Medicare demonstration project. State agency officials informed us that they planned to adjust the Form CMS-64 for the quarter ended June 30, 2009, for the remaining \$16,845.

According to State agency officials, the State agency did not promptly adjust its Forms CMS-64 to account for drug costs paid through the Medicare demonstration project because of an administrative oversight.

## **RECOMMENDATIONS**

We recommend that the State agency:

- refund \$16,845 to the Federal Government and
- make future refunds to the Medicaid program in a timely fashion.

## **STATE AGENCY COMMENTS**

In written comments on our draft report, the State agency agreed with our recommendations. The State agency's comments are included in their entirety as the Appendix.

# TABLE OF CONTENTS

	<u>Page</u>
<b>INTRODUCTION</b> .....	1
<b>BACKGROUND</b> .....	1
Medicare Part D Prescription Drug Benefit.....	1
Full-Benefit Dually Eligible Beneficiaries .....	1
Medicare Part D Demonstration Project.....	1
Massachusetts’ Participation in the Medicare Part D Demonstration Project .....	2
<b>OBJECTIVES, SCOPE, AND METHODOLOGY</b> .....	3
Objectives .....	3
Scope.....	3
Methodology .....	3
<b>FINDINGS AND RECOMMENDATIONS</b> .....	4
<b>DEMONSTRATION PROJECT DRUG CLAIMS</b> .....	4
<b>DEMONSTRATION PROJECT DRUG COSTS</b> .....	4
<b>RECOMMENDATIONS</b> .....	5
<b>STATE AGENCY COMMENTS</b> .....	5
<b>APPENDIX</b>	
<b>STATE AGENCY COMMENTS</b>	

## INTRODUCTION

### BACKGROUND

#### Medicare Part D Prescription Drug Benefit

Title I of the Medicare Prescription Drug, Improvement, and Modernization Act of 2003 (MMA) amended Title XVIII of the Social Security Act (the Act) by establishing Medicare Part D. Medicare Part D provides optional prescription drug coverage for individuals who are entitled to Medicare Part A or enrolled in Medicare Part B. The Centers for Medicare & Medicaid Services (CMS), which administers Medicare, contracts with private prescription drug plans and Medicare Advantage plans to offer prescription drug benefits to eligible individuals.

#### Full-Benefit Dually Eligible Beneficiaries

Full-benefit dually eligible beneficiaries are eligible for benefits under both Medicare and Medicaid. Pursuant to Title I, section 103(c), of the MMA and upon the implementation of Medicare Part D on January 1, 2006, prescription drug coverage for these beneficiaries was transferred from Medicaid to Medicare Part D. CMS took numerous actions to ensure that full-benefit dually eligible beneficiaries continued to receive medications during the transition to Medicare Part D. For example, if a beneficiary did not choose a prescription drug plan by December 31, 2005, CMS randomly assigned the beneficiary to a plan. In addition, to facilitate enrollment of dually eligible beneficiaries at the point of sale, CMS implemented a new eligibility inquiry process for pharmacies to verify Part D plan assignments and employed contractors.

Despite CMS's efforts to ensure a smooth transition to Medicare Part D, some full-benefit dually eligible beneficiaries did not enroll in or were not assigned to a Part D plan. As a result, some States paid for these beneficiaries' Medicare Part D drugs during the transition period.

#### Medicare Part D Demonstration Project

To reimburse States for drug costs and related administrative costs incurred during the transition period, CMS implemented the "Reimbursement of State Costs for Provision of Part D Drugs" Medicare demonstration project pursuant to section 402(a)(1)(A) of the Social Security Amendments of 1967 (codified at 42 U.S.C. § 1395b-1(a)(1)(A) and expressly made applicable to Part D in § 1860D-42(b)). The demonstration project permitted Medicare to fully reimburse States for full-benefit dually eligible beneficiaries' Part D drugs to the extent that the costs were not recoverable from a Medicare Part D plan.<sup>1</sup>

To participate in the demonstration project and receive reimbursement for their incurred costs, States were required to submit a signed "Section 402 Demonstration Application" (Medicare demonstration application) to CMS. By submitting Medicare demonstration applications, States agreed to (1) require pharmacies to bill the Part D plan before relying on State payment (i.e., the

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<sup>1</sup>In addition, the demonstration project provided payments to States for low-income subsidy-entitled beneficiaries' (partial-benefit dually eligible beneficiaries) Part D drugs and for certain administrative costs.

State was the payer of last resort); (2) provide specific information to CMS on Part D drug claims and administrative costs; (3) ensure that claims submitted were for covered Part D drugs; (4) separate demonstration project claims from those payable under other programs; (5) submit claims only for drug costs (not including beneficiary cost sharing) and administrative costs incurred during the demonstration project's effective dates; (6) report to CMS the number of claims, beneficiaries, and expenditures on a timely basis; and (7) ensure that Medicare funding was not used as State Medicaid matching funds (State Medicaid Director Letter No. 06-001 (Feb. 2, 2006); CMS, Section 402 Demonstration Application Template: Reimbursement of State Costs for Provision of Part D Drugs).

CMS required States to submit demonstration project claims directly to its contractor, Public Consulting Group, which determined whether the claims were eligible for reimbursement. CMS then reimbursed States for eligible claims.

### **Massachusetts' Participation in the Medicare Part D Demonstration Project**

On February 14, 2006, the Massachusetts Executive Office of Health and Human Services (the State agency) submitted its Medicare demonstration application to CMS. The State agency agreed to pay for full-benefit dually eligible beneficiaries' drug claims and for partial-benefit Part D enrollees entitled to assistance from State Pharmaceutical Assistance Programs (SPAP).<sup>2</sup> The State agency's participation in the demonstration project covered drug claims with dates of service from January 1 through March 15, 2006, and related administrative costs from January 1 through April 7, 2006.

The State agency processed drug claims for full-benefit dually eligible beneficiaries through its Medicaid point-of-sale system and claimed the amounts on its Forms CMS-64, "Quarterly Medicaid Statement of Expenditures for the Medical Assistance Program," which CMS subsequently reimbursed at Massachusetts' Federal medical assistance percentage (FMAP).<sup>3</sup> State agency officials stated that they planned to adjust the Forms CMS-64 after receiving reimbursement through the demonstration project. CMS officials were aware that some States had submitted demonstration project costs previously claimed on the Forms CMS-64 and orally advised the States to appropriately adjust their Forms CMS-64 to remove claims paid by Medicare.

The State agency submitted demonstration project claims for drug costs incurred on behalf of full-benefit dually eligible beneficiaries to the Public Consulting Group and subsequently received reimbursement from CMS totaling \$17,081,469. The State agency also claimed \$453,349 for administrative costs related to the Medicare demonstration project.

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<sup>2</sup>The Massachusetts SPAP included residents who were age 65 or older and residents who were under age 65, worked 40 or fewer hours per month, met Commonwealth disability guidelines, and had gross annual household incomes at or below 188 percent of the Federal poverty level.

<sup>3</sup>The FMAP determines the Federal share of the Medicaid program. During our audit period (January 1 through March 15, 2006), the FMAP for drug claims in Massachusetts ranged from 50 to 90 percent.

## **OBJECTIVES, SCOPE, AND METHODOLOGY**

### **Objectives**

Our objectives were to determine whether the State agency (1) complied with certain provisions of the Medicare demonstration application when claiming drug costs for full-benefit dually eligible beneficiaries and (2) claimed drug costs to both the Medicaid program and the Medicare demonstration project.

### **Scope**

The audit covered the State agency's 227,475 drug claims for full-benefit dually eligible beneficiaries submitted under the Medicare Part D demonstration project from January 1 through March 15, 2006. We did not review the State agency's drug claims for partial-benefit dually eligible beneficiaries, nor did we determine whether pharmacies attempted to bill beneficiaries' Part D plans before relying on State payment.

The audit also covered the State agency's Medicare demonstration project drug costs for the period January 1 through March 15, 2006, claimed on the Forms CMS-64. CMS reimbursed the State agency a total of \$17,081,469 for these Medicare demonstration project drug costs. The State agency included \$15,230,243 of this amount on its Medicaid Forms CMS-64.<sup>4</sup> We reviewed only the State agency's claims for drug costs. We did not review whether the State agency complied with demonstration project requirements for administrative costs. We reviewed only those internal controls necessary to achieve our objectives.

We performed fieldwork at the State agency's offices in Boston, Massachusetts, from November 2008 through February 2009.

### **Methodology**

To accomplish our objectives, we:

- reviewed applicable laws, regulations, and guidance;
- interviewed State agency officials to (1) obtain an understanding of their process for identifying and submitting full-benefit dually eligible beneficiary claims under the demonstration project and (2) determine whether they separated demonstration project claims from those payable under other programs;
- obtained from CMS a database of 227,475 drug claims for full-benefit dually eligible beneficiaries paid to the State agency under the demonstration project for the period January 1 through March 15, 2006;

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<sup>4</sup>The remaining \$1,851,226 comprised drug claims paid to the State agency only through the Medicare program.

- reconciled the total dollar amount of drug claims that the State agency reported on its Forms CMS-64 to its computerized claim-processing system for calendar year 2006;
- reviewed a judgmentally selected sample of 30 drug claims paid to the State agency under the demonstration project to determine whether (1) the dates of service were during the demonstration project's effective dates, (2) the drugs were covered by Medicare Part D, and (3) any cost-sharing amounts (copayments) on the part of the beneficiary were not included in the claim;
- reviewed a judgmentally selected sample of 30 beneficiaries whose drug claims were paid under the demonstration project to determine whether these beneficiaries were dually eligible; and
- reviewed guidance issued by the State agency to the pharmacies, including guidance requiring them to submit Part D-eligible drug claims to Part D plans before billing the State agency.

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 objectives.

## **FINDINGS AND RECOMMENDATIONS**

The State agency complied with certain provisions of the Medicare demonstration application when claiming drug costs for full-benefit dually eligible beneficiaries. However, the State agency claimed some drug costs to both the Medicaid program and the Medicare demonstration project.

### **DEMONSTRATION PROJECT DRUG CLAIMS**

The State agency complied with certain provisions of the Medicare demonstration application when claiming drug costs for full-benefit dually eligible beneficiaries. Specifically, the State agency (1) provided specific information to CMS on Part D drug claims; (2) ensured that claims submitted were for covered Part D drugs; (3) separated demonstration project claims from those payable under other programs; (4) submitted claims only for drug costs incurred during the demonstration project's effective dates; and (5) reported to CMS the number of claims, beneficiaries, and expenditures on a timely basis.

### **DEMONSTRATION PROJECT DRUG COSTS**

Pursuant to Office of Management and Budget Circular A-87, "Cost Principles for State, Local, and Indian Tribal Governments," Att. A, §§ C.2.a and C.3.a (2 CFR, pt. 225, App. A, §§ C.2.a and C.3.a), costs submitted under a Federal award must be reasonable and allocable to the Federal award.

The State agency claimed some drug costs to both the Medicaid program and the Medicare demonstration project. Specifically, the State agency did not promptly adjust its Forms CMS-64 to reflect \$15,230,243 (\$7,626,837 Federal share) in drug costs that the State agency was reimbursed through the Medicare demonstration project for the quarter ended March 31, 2006. The State agency received reimbursement for these costs from the Medicare demonstration project in August and December 2006 and June 2007. The State agency had not adjusted its Forms CMS-64 to account for the payments as of November 2008, when we initiated our audit.

During our audit, the State agency adjusted its Forms CMS-64 for the quarters ended December 31, 2008, and March 31, 2009, to account for \$7,609,992 in drug costs reimbursed through the Medicare demonstration project. State agency officials informed us that they planned to adjust the Form CMS-64 for the quarter ended June 30, 2009, for the remaining \$16,845.

According to State agency officials, the State agency did not promptly adjust its Forms CMS-64 to account for drug costs paid through the Medicare demonstration project because of an administrative oversight.

## **RECOMMENDATIONS**

We recommend that the State agency:

- refund \$16,845 to the Federal Government and
- make future refunds to the Medicaid program in a timely fashion.

## **STATE AGENCY COMMENTS**

In written comments on our draft report, the State agency agreed with our recommendations. The State agency's comments are included in their entirety as the Appendix.

# **APPENDIX**

APPENDIX: STATE AGENCY COMMENTS



DEVAL L. PATRICK  
Governor

TIMOTHY P. MURRAY  
Lieutenant Governor

*The Commonwealth of Massachusetts*  
*Executive Office of Health and Human Services*  
*Office of Medicaid*  
*One Ashburton Place*  
*Boston, MA 02108*



JUDYANN BIGBY, M.D.  
Secretary

THOMAS R. DEHNER  
Medicaid Director

August 26, 2009

Michael J. Armstrong  
Regional Inspector General, Audit Services  
HHS/OIG/OAS  
Region I  
JFK Federal Building  
Boston, MA 02203

RE: Audit Report No: A-01-09-00601  
Review of Massachusetts' Compliance with the 'Reimbursement of State Costs for Provision of Part D Drugs 'Medicare Demonstration Project Requirements'

Dear Mr. Armstrong,

Thank you for the opportunity to review and comment on draft Audit Report No: A-01-09-00601 "Review of Massachusetts' Compliance with the 'Reimbursement of State Costs for Provision of Part D Drugs 'Medicare Demonstration Project Requirements'"

We appreciate the time, effort, and comments we received from your team, over the course of this engagement. We are in agreement with the report.

The following is our specific response to recommendations in the report :

- MassHealth will return \$16,845 on the QE 06/09 CMS 64 report
- Mass Health will make future refunds in a timely manner

Thank you and please feel free to call me if you have any questions or concerns.

Sincerely,

Thomas Dehner  
Medicaid Director