



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

December 23, 2009

Report Number: A-01-09-00609

Brenda M. Harvey  
Commissioner  
Department of Health and Human Services  
221 State Street  
State House Station 11  
Augusta, Maine 04333

Dear Commissioner Harvey:

Enclosed is the U.S. Department of Health and Human Services (HHS), Office of Inspector General (OIG), final report entitled "Review of Maine's 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 below.

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 direct them to the HHS action official. Please refer to report number A-01-09-00609 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 MAINE'S COMPLIANCE WITH  
THE "REIMBURSEMENT OF STATE COSTS  
FOR PROVISION OF PART D DRUGS"  
MEDICARE DEMONSTRATION PROJECT  
REQUIREMENTS**



Daniel R. Levinson  
Inspector General

December 2009  
A-01-09-00609

# *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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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**

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, Maine submitted its "Section 402 Demonstration Application" (Medicare demonstration application) to CMS. By submitting its Medicare demonstration application, Maine agreed to pay for full-benefit dually eligible and low-income subsidy beneficiaries' drug claims overseen by the Department 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 31, 2006, and related administrative costs from January 1 through September 1, 2006.

CMS reimbursed the State agency a total of \$6,709,381 for Medicare demonstration project drug costs. The State agency did not report this amount on its Medicaid Forms CMS-64.

### **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.

### **RESULTS OF REVIEW**

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. In addition, the State agency did not claim drug costs to the Medicaid program and the Medicare demonstration project. Accordingly, this report contains no recommendations.

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# 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' 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.

### **Maine's Participation in the Medicare Part D Demonstration Project**

On February 14, 2006, the Maine Department 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 low-income subsidy beneficiaries 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 31, 2006, and related administrative costs from January 1 through September 1, 2006.

The State agency processed demonstration project drug claims for full-benefit dually eligible and low-income subsidy beneficiaries through its Medicaid point-of-sale system. The State agency submitted drug claims to the Public Consulting Group and subsequently received reimbursement from CMS totaling \$6,709,381. The State agency also was reimbursed \$19,503 for administrative costs related to the Medicare demonstration project.

## **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 128,651 drug claims for full-benefit dually eligible beneficiaries submitted under the Medicare Part D demonstration project from January 1 through

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<sup>2</sup>The Maine SPAP included residents who were citizens or lawfully admitted to the U.S., 62 or over or age 19 through 61 and meet the disability criteria for Supplemental Security Income under Title XVI of the Social Security Act, and the gross monthly income must be equal to or less than 185 percent of the Federal poverty level.

March 31, 2006. We did not review the State agency's drug claims for low-income subsidy 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 31, 2006, claimed on the Forms CMS-64. CMS reimbursed the State agency a total of \$6,709,381 for these Medicare demonstration project drug costs. 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 Augusta, Maine, from June through December 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 128,651 drug claims for full-benefit dually eligible beneficiaries paid to the State agency under the demonstration project for the period January 1 through March 31, 2006;
- 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 60 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.

## **RESULTS OF REVIEW**

The State agency complied with certain provisions of the Medicare demonstration application when claiming drug costs for full-benefit dually eligible beneficiaries. For instance, the State agency ensured that claims were for covered Part D drugs and for drug costs incurred during the demonstration project's effective dates. In addition, the State agency did not claim drug costs to the Medicaid program and the Medicare demonstration project. Accordingly, this report contains no recommendations.