



DEPARTMENT OF HEALTH & HUMAN SERVICES

Office of Inspector General

April 22, 2010

Office of Audit Services
Jacob Javits Federal Building
26 Federal Plaza, Room 3900
New York, NY 10278

Report Number: A-02-07-01038

Jennifer Velez, Esq.
Commissioner
New Jersey Department of Human Services
222 South Warren Street
P.O. Box 700
Trenton, NJ 08625-0700

Dear Ms. Velez:

Enclosed is the U.S. Department of Health & Human Services (HHS), Office of Inspector General (OIG), final report entitled *Review of New Jersey's Medicaid Emergency Payment Program for Nonqualified Aliens*. 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-02-07-01038 in all correspondence.

Sincerely,

/James P. Edert/
Regional Inspector General
for Audit Services

Enclosure

HHS Action Official:

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Department of Health & Human Services

**OFFICE OF
INSPECTOR GENERAL**

**REVIEW OF NEW JERSEY'S
MEDICAID EMERGENCY PAYMENT
PROGRAM FOR
NONQUALIFIED ALIENS**



Daniel R. Levinson
Inspector General

April 2010
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Office of Inspector General

<http://oig.hhs.gov>

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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 certain low-income individuals and individuals with disabilities. The Federal Government and State 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.

Emergency Medical Services for Nonqualified Aliens

Pursuant to Section 401(b)(1)(A) of the Personal Responsibility and Work Opportunity Reconciliation Act (PRWORA) of 1996 (P. L. No. 104-193), an alien who is not a qualified alien¹ is not eligible for any Federal public benefit except for emergency assistance under Title XIX of the Act for “care and services that are necessary for the treatment of an emergency medical condition (as defined in Section 1903(v) of the Act)” and that are “not related to an organ transplant procedure.”

Section 1903(v) of the Act and Federal regulations (42 CFR § 440.255) state that Federal Medicaid funding is available to States for medical services provided to nonqualified aliens only when those services are necessary to treat an emergency medical condition. For the purposes of this report, a nonqualified alien is an individual who is not a citizen or national of the United States and is not in a satisfactory immigration status.² This category includes aliens who are not qualified under section 401 of the PRWORA and qualified aliens subject to the 5-year bar specified in section 403 of the PRWORA.

The Act and Federal regulations define an emergency medical condition as a medical condition manifesting itself by acute symptoms of sufficient severity that the absence of immediate medical attention could reasonably be expected to result in placing the patient’s health in serious jeopardy, serious impairment to bodily functions, or serious dysfunction of any bodily organ or

¹ A qualified alien is defined in section 431(b) as (1) an alien lawfully admitted for permanent residence, (2) an alien granted asylum, (3) a refugee admitted to the United States, (4) an alien paroled into the United States for a period of at least 1 year, (5) an alien whose deportation is being withheld, or (6) an alien granted conditional entry. In addition, section 403 of the PRWORA states: “[A]n alien who is a qualified alien (as defined in Section 431) and who enters the United States on or after the date of the enactment of this Act [August 22, 1996] is not eligible for any Federal means-tested public benefit for a period of 5 years beginning on the date of the alien’s entry into the United States with a status within the meaning of the term ‘qualified alien.’ ” However, section 403(c)(2)(a) provides an exception for the care and services described in section 401(b)(1)(A).

² Section 1137(d)(1)(B)(iii) of the Act states that “the term ‘satisfactory immigration status’ means an immigration status which does not make the individual ineligible for benefits under the applicable program.”

part. Federal regulations further specify that there must be “sudden onset” of the condition. CMS allows each State to identify which conditions qualify as emergencies.³

New Jersey’s Medicaid Emergency Payment Program for Aliens

In New Jersey, the Department of Human Services (the State agency) administers the Medicaid Emergency Payment Program for Aliens. In November 1998, the State agency issued guidance to providers regarding the program.⁴ The guidance stated that an alien who does not qualify as an eligible alien but who is a resident of New Jersey and would otherwise qualify for medical assistance is entitled only to care and services necessary for the treatment of an emergency medical condition as defined by section 1903(v)(3) of the Act. To facilitate the payment of claims under the Medicaid Emergency Payment Program for Aliens, the State agency distributed a list of more than 4,000 diagnosis, surgical, transport, and delivery procedures codes that it defined as emergencies. The guidance indicated that claims related to diagnoses not defined as emergencies could be claimed under the program with a signed physician’s certification that the service was an emergency.⁵

During our January 1, 2002, through December 31, 2006, audit period, the State agency claimed \$214,610,127 (\$109,408,996 Federal share) for emergency services provided to nonqualified aliens.

OBJECTIVE, SCOPE AND METHODOLOGY

Objective

Our objective was to determine whether the State agency had adequate internal controls to ensure that, for nonqualified aliens, Federal Medicaid reimbursement was claimed only for what it defined as emergencies.

Scope

Our audit period covered claims for emergency services provided to nonqualified aliens during the period January 1, 2002, through December 31, 2006. We limited our review to the State agency’s internal controls over the Medicaid Emergency Payment Program for Aliens.

We conducted our fieldwork at the State agency’s offices in Mercerville, New Jersey, and at medical providers’ offices throughout the State.

³ In November 1997, CMS issued guidance to the 12 States with the highest nonqualified alien population to report funding for emergency services furnished to nonqualified aliens on Line 27 of the Form CMS-64, “Quarterly Medicaid Statement of Expenditures for the Medical Assistance Program.”

⁴ Division of Medical Assistance and Health Services newsletters (volume 8, numbers 64 and 65).

⁵ Specifically, the attending physician is required to complete the State agency’s Form FD-80, Certification of Treatment of Emergency Medical Condition to confirm the emergency nature of the encounter.

Methodology

To accomplish our objective, we:

- reviewed applicable Federal and State laws, regulations, and guidelines;
- held discussions with State officials to gain an understanding of the State's Medicaid Emergency Payment Program for Aliens;
- ran computer programming applications that identified 159,055 Medicaid claims, totaling \$214,610,127 (\$109,408,996 Federal share), for emergency medical services provided to nonqualified aliens;
- segmented the claims into two sampling frames: (1) a random sample frame that contained 140,921 Medicaid claims, totaling \$190,464,294 (\$96,660,804 Federal share), for emergency medical services; and (2) a judgmental sampling frame that contained 18,134 Medicaid claims, totaling \$24,145,833 (\$12,748,191 Federal share) for emergency medical services which required further examination (e.g., services related to inpatient stays longer than 30 days, dialysis, chemotherapy, dental, psychotherapy);
- separated the random sample frame into two strata: (1) 89,504 claims that contained labor and delivery services (excluding delivery plus sterilization) and (2) 51,417 claims that contained other emergency diagnoses and physician certifications, and used stratified random sampling to select 50 claims from each strata;
- judgmentally selected 35 of the claims in the judgmental sampling frame; and
- obtained and reviewed medical records for the 135 sampled claims to determine whether the claims were eligible for payment under the State's Emergency Payment Program for Aliens.

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 objective.

RESULTS OF REVIEW

The State agency's internal controls were effective for ensuring that, for nonqualified aliens, Federal reimbursement was claimed only for services it defined as emergencies. Therefore, this report contains no recommendations.