



May 20, 2010

TO: Marilyn Tavenner
Acting Administrator and Chief Operating Officer
Centers for Medicare & Medicaid Services

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

SUBJECT: Review of New York State's Compliance With the Political Subdivision Requirement for the Increased Federal Medical Assistance Percentage Under the American Recovery and Reinvestment Act of 2009 (A-02-09-01029)

Attached, for your information, is an advance copy of our final report on New York State's compliance with the political subdivision requirement for the increased Federal medical assistance percentage under the American Recovery and Reinvestment Act of 2009. We will issue this report to the New York State Department of Health within 5 business days.

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 or James P. Edert, Regional Inspector General for Audit Services, Region II, at (212) 264-4620 or through email at James.Edert@oig.hhs.gov. Please refer to report number A-02-09-01029.

Attachment



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

May 26, 2010

Report Number: A-02-09-01029

Richard F. Daines, M.D.
Commissioner
New York State Department of Health
Corning Tower
Empire State Plaza
Albany, NY 12237

Dear Dr. Daines:

Enclosed is the U.S. Department of Health & Human Services (HHS), Office of Inspector General (OIG), final report entitled *Review of New York State's Compliance With the Political Subdivision Requirement for the Increased Federal Medical Assistance Percentage Under the American Recovery and Reinvestment Act of 2009*. 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-02-09-01029 in all correspondence.

Sincerely,

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

Enclosure

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, IL 60601

Department of Health & Human Services

**OFFICE OF
INSPECTOR GENERAL**

**REVIEW OF NEW YORK STATE'S
COMPLIANCE WITH THE
POLITICAL SUBDIVISION
REQUIREMENT FOR THE INCREASED
FEDERAL MEDICAL ASSISTANCE
PERCENTAGE UNDER THE
AMERICAN RECOVERY AND
REINVESTMENT ACT OF 2009**



Daniel R. Levinson
Inspector General

May 2010
A-02-09-01029

Office of Inspector General

<http://oig.hhs.gov>

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 & 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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The Office of Audit Services (OAS) provides auditing services for HHS, either by conducting audits with its own audit resources or by overseeing audit work done by others. Audits examine the performance of HHS programs and/or its grantees and contractors in carrying out their respective responsibilities and are intended to provide independent assessments of HHS programs and operations. These assessments help reduce waste, abuse, and mismanagement and promote economy and efficiency throughout HHS.

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The Office of Evaluation and Inspections (OEI) conducts national evaluations to provide HHS, Congress, and the public with timely, useful, and reliable information on significant issues. These evaluations focus on preventing fraud, waste, or abuse and promoting economy, efficiency, and effectiveness of departmental programs. To promote impact, OEI reports also present practical recommendations for improving program operations.

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The Office of Counsel to the Inspector General (OCIG) provides general legal services to OIG, rendering advice and opinions on HHS programs and operations and providing all legal support for OIG's internal operations. OCIG represents OIG in all civil and administrative fraud and abuse cases involving HHS programs, including False Claims Act, program exclusion, and civil monetary penalty cases. In connection with these cases, OCIG also negotiates and monitors corporate integrity agreements. OCIG renders advisory opinions, issues compliance program guidance, publishes fraud alerts, and provides other guidance to the health care industry concerning the anti-kickback statute and other OIG enforcement authorities.

Notices

THIS REPORT IS AVAILABLE TO THE PUBLIC
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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.

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 York, the Department of Health (State agency) administers the Medicaid program and oversees compliance with Federal and State requirements.

Pursuant to section 1905(b) of the Act, the Federal Government pays its share of a State's medical assistance expenditures under Medicaid based on the Federal medical assistance percentage (FMAP), which varies depending on the State's relative per capita income. Although FMAPs are adjusted annually for economic changes in the States, Congress may increase FMAPs at any time. A State may require its political subdivisions to contribute to its non-Federal portion of Medicaid expenditures.

American Recovery and Reinvestment Act of 2009

The American Recovery and Reinvestment Act of 2009 (Recovery Act), P.L. No. 111-5, enacted February 17, 2009, provides, among other initiatives, fiscal relief to States to protect and maintain State Medicaid programs in a period of economic downturn. For the recession adjustment period (October 1, 2008, through December 31, 2010), the Recovery Act will provide an estimated \$87 billion in additional Medicaid funding based on temporary increases in States' FMAPs. Section 5000 of the Recovery Act provides these increases to help avert cuts in health care provider payment rates, benefits, or services and to prevent changes in income eligibility requirements that would reduce the number of individuals eligible for Medicaid.

Pursuant to section 5001(g)(2) of the Recovery Act, a State is not eligible for the increased FMAP if it requires its political subdivisions to pay a greater percentage of the non-Federal share of Medicaid expenditures than the percentage required under the State Medicaid plan on September 30, 2008. For the purposes of this report, we refer to this subsection as the political subdivision requirement for receiving the increased FMAP under the Recovery Act.

State Requirements

Pursuant to section 367-b.6 of the New York Social Services Law, each of the State's 58 social services districts (i.e., political subdivisions) is required to pay the State agency a share of the State's Medicaid expenditures attributable to that district.¹

The formula for calculating costs attributable to each social services district is found in chapter 58, part C, section 1 of the 2005 Laws of New York. According to the formula, each district's share of Medicaid costs is set at the district's calendar year 2005 costs adjusted by an annual trend factor, resulting in an "expenditure cap amount" for each district. Each district is required to pay a fixed weekly installment of the district's expenditure cap to the State agency throughout the State's fiscal year. At the conclusion of the fiscal year, the State agency reconciles the district's share of net Medicaid expenditures with the district's expenditure cap amount.²

For the period October 1, 2008, through March 31, 2009, the State agency claimed qualifying Medicaid program expenditures of approximately \$22.3 billion.³ Recovery Act funds of approximately \$1.9 billion (8.78 percent of qualifying expenditures) related to the increased FMAP were included in the reimbursement.⁴ In general, the State agency allocated the increased FMAP benefit to each of its social services districts in the form of two lump-sum payments (in March 2009) and, if necessary, a third payment (in December 2009) after it reconciled the districts' expenditure cap amounts for the State fiscal year ended March 31, 2009.

OBJECTIVE, SCOPE, AND METHODOLOGY

Objective

Our objective was to determine whether the State agency complied with the political subdivision requirement for receiving the increased FMAP under the Recovery Act.

¹ In New York State, each county is considered its own social services district except the five counties comprising New York City, which are considered a single district.

² For each State fiscal year (April 1 through March 31), the State agency is required to maintain an accounting of the net amount each district would have owed for Medicaid expenditures under the local share formula in effect January 1, 2005. If the district's expenditure cap amount exceeds the net expenditures, the State agency refunds the difference. Costs above the expenditure cap are the State agency's responsibility.

³ Section 5001(e) of the Recovery Act lists the Medicaid expenditures that do not qualify for the temporarily increased FMAP: disproportionate share hospital payments, Children's Health Insurance Program expenditures, expenditures subject to an enhanced FMAP described in § 2105(b) of the Act, and some Temporary Assistance to Needy Families expenditures; expenditures for individuals made eligible through income eligibility expansions after July 1, 2008; and expenditures not based on the FMAP.

⁴ During our audit period, the FMAP for New York State was increased from 50 to 58.78 percent. The State allocated \$1.7 billion of its \$1.9 billion increased FMAP benefit to the social services districts.

Scope

We reviewed the impact of the State's increased FMAP on the social services districts' contributions to the non-Federal share of the State's Medicaid expenditures for the period October 1, 2008, through March 31, 2009.

We did not assess the State agency's overall internal control structure. We limited our review of internal controls to those applicable to our objective, which did not require an understanding of all internal controls over the Medicaid program. We reviewed the State agency's procedures for disbursing the increased FMAP benefit to the social services districts.

We performed our fieldwork at the State agency's offices in Albany, New York, and at 10 social services districts' offices throughout New York State from August to November 2009.

Methodology

To accomplish our objective, we:

- reviewed applicable Federal and State Medicaid laws, regulations, and guidance;
- met with CMS regional program management officials to identify New York State's requirements for local financial participation toward Medicaid claims;
- met with State agency officials to gain an understanding of the State agency's procedures for determining the social services districts' share of Medicaid payments and any changes made to the districts' payments beginning October 1, 2008;
- obtained and reviewed a State agency spreadsheet detailing the State agency's calculation for allocating the increased FMAP benefit to the social services districts;
- obtained and reviewed State Medicaid Management Information System source data for the State agency's calculation of amounts allocated to the social services districts;
- selected a judgmental sample of 10 of the State's 58 social services districts and, for each of the 10 districts:
 - met with officials to discuss the State agency's calculation of the district's share of the non-Federal portion of Medicaid expenditures,

- determined the district’s share of the non-Federal portion of Medicaid expenditures on September 30, 2008—the date prescribed in the political subdivision requirement for receiving increased FMAP under the Recovery Act,⁵
- determined the district’s share of the non-Federal portion of Medicaid expenditures after the State agency disbursed the increased FMAP benefit,⁶ and
- verified from financial records the State agency’s payment of the increased FMAP benefit;
- verified, for each of the 58 social services districts, the State agency’s calculation for the district’s share of the non-Federal portion of Medicaid expenditures on September 30, 2008, and after the State agency disbursed the increased FMAP benefit; and
- determined, for each of the 58 social services districts, the State agency’s compliance with the political subdivision requirement for receiving the increased FMAP under the Recovery Act by comparing the two percentages for the district’s share.

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 objective. 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 complied with the political subdivision requirement for receiving the increased FMAP under the Recovery Act. Specifically, the State agency did not require its social services districts (i.e., political subdivisions) to contribute a greater percentage of the non-Federal share of Medicaid expenditures than the percentage required under the State Medicaid plan on September 30, 2008. Therefore, we have no recommendations.

⁵ To determine this share, we: (1) recalculated the district’s State fiscal year 2009 expenditure cap amount pursuant to the 2005 Laws of New York, (2) verified the district’s weekly payments to the State agency, (3) obtained the district’s actual Medicaid expenditures from the Medicaid Management Information System and validated what would have been the district’s share without the expenditure cap amount, (4) reviewed the State agency’s reconciliation of the district’s expenditures at the conclusion of the fiscal year, and (5) verified the State agency’s calculation for the district’s share of the non-Federal portion of Medicaid expenditures before the disbursement of the increased FMAP benefit.

⁶ To determine this share, we: (1) determined the amount of State agency’s lump-sum payments to the district related to the increased FMAP benefit, (2) reviewed the State agency’s reconciliation of the district’s Medicaid expenditure cap amount for State fiscal year 2009, (3) obtained documentation from the district for any adjusting payment(s) after the State agency’s reconciliation, and (4) verified the State agency’s calculation of the district’s share of the non-Federal portion of Medicaid expenditures after the disbursement of the increased FMAP benefit.