



September 22, 2010

**TO:** Donald M. Berwick, M.D.  
Administrator  
Centers for Medicare & Medicaid Services

**FROM:** /George M. Reeb/  
Acting Deputy Inspector General for Audit Services

**SUBJECT:** Review of New Jersey's Compliance With the Reserve or Rainy Day Fund Requirement for the Increased Federal Medical Assistance Percentage Under the American Recovery and Reinvestment Act (A-02-09-01030)

Attached, for your information, is an advance copy of our final report on New Jersey's compliance with the reserve fund requirement for the increased Federal medical assistance percentage under the American Recovery and Reinvestment Act. We will issue this report to the New Jersey Department of Human Services 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 Robert A. Vito, Acting Assistant Inspector General for the Centers for Medicare & Medicaid Audits, at (410) 786-7104 or through email at [Robert.Vito@oig.hhs.gov](mailto:Robert.Vito@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](mailto:James.Edert@oig.hhs.gov). Please refer to report number A-02-09-01030.

Attachment



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

September 27, 2010

Report Number: A-02-09-01030

Ms. 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 Compliance With the Reserve or Rainy Day Fund Requirement for the Increased Federal Medical Assistance Percentage Under the American Recovery and Reinvestment Act*. 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-02-09-01030 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 JERSEY'S  
COMPLIANCE WITH THE RESERVE OR  
RAINY DAY FUND REQUIREMENT FOR  
THE INCREASED FEDERAL MEDICAL  
ASSISTANCE PERCENTAGE UNDER  
THE AMERICAN RECOVERY AND  
REINVESTMENT ACT**



Daniel R. Levinson  
Inspector General

September 2010  
A-02-09-01030

# *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 & 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:

## *Office of Audit Services*

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.

## *Office of Evaluation and Inspections*

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.

## *Office of Investigations*

The Office of Investigations (OI) conducts criminal, civil, and administrative investigations of fraud and misconduct related to HHS programs, operations, and beneficiaries. With investigators working in all 50 States and the District of Columbia, OI utilizes its resources by actively coordinating with the Department of Justice and other Federal, State, and local law enforcement authorities. The investigative efforts of OI often lead to criminal convictions, administrative sanctions, and/or civil monetary penalties.

## *Office of Counsel to the Inspector General*

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*

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**THIS REPORT IS AVAILABLE TO THE PUBLIC**  
at <http://oig.hhs.gov>

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.

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.

#### Temporary Increases in Federal Medical Assistance Percentages

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. However, pursuant to Section 5001(f)(3) of the Recovery Act, a State is not eligible for the increased FMAP if any amounts attributable (directly or indirectly) to such an increase are deposited or credited into any reserve, or rainy day, fund.

#### New Jersey's Temporary Increase in Federal Medical Assistance Percentage

In accordance with provisions in the Recovery Act, CMS made \$857 million in additional Medicaid funding available to New Jersey Health and Human Services (the State agency) for Federal fiscal year (FY) 2009 (October 2008 through September 2009).<sup>1</sup> For the first two quarters of FY 2009, CMS increased the State agency's FMAP 8.78 percentage points, from 50 percent to 58.78 percent. For the last two quarters of FY 2009, CMS increased the State agency's FMAP an additional 2.81 percent, from 58.78 percent to 61.59 percent.

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<sup>1</sup> After our audit period, CMS adjusted this amount to \$853 million.

## **New Jersey's Reserve or Rainy Day Fund**

The New Jersey Department of the Treasury maintains a restricted reserve fund, the Surplus Revenue Fund, also known as a rainy day fund. New Jersey sets aside money in this fund to prepare for financial contingencies throughout the year.

### **OBJECTIVE, SCOPE, AND METHODOLOGY**

#### **Objective**

Our objective was to determine whether the State agency complied with the Recovery Act reserve or rainy day fund requirement for receiving the increased FMAP.

#### **Scope**

We reviewed the State agency's use of the additional Medicaid funding for FY 2009. We did not review the State agency's overall internal control structure. We limited our review to obtaining an understanding of the procedures the State agency used when allocating FMAP funding.

We performed our fieldwork at the Department of the Treasury's and the State agency's offices in Trenton, New Jersey, in July 2010.

#### **Methodology**

To accomplish our objective, we:

- reviewed applicable Federal laws and CMS guidance,
- interviewed State agency officials to gain an understanding of their procedures for distributing and accounting for Medicaid funds, and
- reviewed Department of the Treasury account information for its reserve or rainy day fund.

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 complied with the with the Recovery Act reserve or rainy day fund requirement for receiving increased FMAP. Specifically, the State agency did not use additional Medicaid funding to supplement any reserve or rainy day account. Therefore, we have no recommendations.