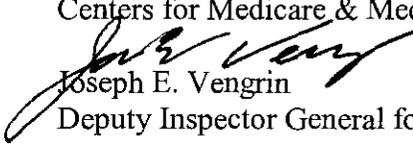




APR - 4 2005

**TO:** Dennis G. Smith  
Director, Center for Medicaid and State Operations  
Centers for Medicare & Medicaid Services

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

**SUBJECT:** Review of Missouri's Retroactive Family Planning Claim (A-07-04-01012)

Attached is an advance copy of our final report on Missouri's retroactive family planning claim for the quarter that ended March 31, 2001. We will issue this report to Missouri within 5 business days. We conducted the audit as part of a multistate initiative requested by the Centers for Medicare & Medicaid Services (CMS).

In October 1995, Missouri established its Medicaid managed care programs and began claiming expenditures, including those for family planning, at the regular Federal matching rates. Missouri did not claim family planning costs at the enhanced rate available for family planning services until the quarter that ended March 31, 2001. At that time, Missouri retroactively claimed the \$11.1 million difference between the regular rates and the enhanced 90-percent rate for prior family planning expenditures made since October 1995.

Our objective was to determine whether Missouri's retroactive claim for enhanced Federal reimbursement for Medicaid family planning expenditures complied with Federal regulations.

Missouri's retroactive claim did not fully comply with Federal regulations. Federal regulations generally limit reimbursement of State expenditures to claims filed within 2 years of the expenditure. Of the \$11.1 million claimed, \$6,467,583 did not meet this limitation and therefore was unallowable.

We recommend that Missouri refund \$6,467,583 to the Federal Government and ensure that future retroactive claims submitted for Medicaid reimbursement comply with Federal regulations.

In commenting on our draft report, Missouri did not agree that its retroactive claim was subject to the 2-year rule. Missouri referenced a CMS memorandum dated July 3, 2001, which stated that the 2-year rule applied to "all claims filed on or after the date of the memorandum." Missouri also said that it already had internal controls to claim appropriate costs.

We disagree with Missouri's assertion that its retroactive claim was not subject to the 2-year rule. Regulations establishing the 2-year rule have been in effect since 1981. In addition, the

Page 2 – Dennis G. Smith

Departmental Appeals Board has repeatedly ruled that retroactive claims must meet the 2-year rule requirements. Therefore, we continue to recommend that Missouri refund the \$6,467,583.

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 James P. Aasmundstad, Regional Inspector General for Audit Services, Region VII, at (816) 426-3591. Please refer to report number A-07-04-01012 in all correspondence.

Attachment



APR - 8 2005

Office of Audit Services  
Region VII  
601 East 12<sup>th</sup> Street, Room 284A  
Kansas City, MO 64106  
(816) 426-3591

Report Number: A-07-04-01012

Q. Michael Ditmore, M.D.  
Interim Director  
Division of Medical Services  
615 Howerton Court  
P.O. Box 6500  
Jefferson City, Missouri 65102-6500

Dear Dr. Ditmore:

Enclosed are two copies of the Department of Health and Human Services (HHS), Office of Inspector General (OIG) final report entitled "Review of Missouri's Retroactive Family Planning Claim." The report covers a retroactive claim for enhanced Medicaid reimbursement for the quarter that ended March 31, 2001. A copy of this report will be forwarded to the HHS action official noted below 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 the HHS action official within 30 days. Your response should present any comments or additional information that you believe may have a bearing on the final determination.

In accordance with the principles of the Freedom of Information Act (5 U.S.C. § 552, as amended by Public Law 104-231), OIG reports issued to the Department's grantees and contractors are made available to members of the press and general public to the extent the information is not subject to exemptions in the Act that the Department chooses to exercise (see 45 CFR part 5).

Please refer to report number A-07-04-01012 in all correspondence.

Sincerely,

A handwritten signature in black ink, appearing to read "James P. Aasmundstad".

James P. Aasmundstad  
Regional Inspector General  
for Audit Services

Enclosures

cc: Michael Rehagen

Page 2 – Q. Michael Ditmore, M.D.

**Direct Reply to HHS Action Official:**

Mr. Thomas Lenz  
Acting Regional Administrator, Region VII  
Centers for Medicare & Medicaid Services  
Department of Health and Human Services  
Richard Bolling Federal Building, Room 227  
601 East 12<sup>th</sup> Street  
Kansas City, Missouri 64106

**Department of Health and Human Services**

**OFFICE OF  
INSPECTOR GENERAL**

**REVIEW OF MISSOURI'S  
RETROACTIVE FAMILY  
PLANNING CLAIM**



**APRIL 2005  
A-07-04-01012**

# *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:

## *Office of Audit Services*

The OIG's Office of Audit Services (OAS) provides all 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 in order to reduce waste, abuse, and mismanagement and to promote economy and efficiency throughout the department.

## *Office of Evaluation and Inspections*

The OIG's Office of Evaluation and Inspections (OEI) conducts short-term management and program evaluations (called inspections) that focus on issues of concern to the department, the Congress, and the public. The findings and recommendations contained in the inspections reports generate rapid, accurate, and up-to-date information on the efficiency, vulnerability, and effectiveness of departmental programs. The OEI also oversees State Medicaid fraud control units, which investigate and prosecute fraud and patient abuse in the Medicaid program.

## *Office of Investigations*

The OIG's Office of Investigations (OI) conducts criminal, civil, and administrative investigations of allegations of wrongdoing in HHS programs or to HHS beneficiaries and of unjust enrichment by providers. The investigative efforts of OI lead to criminal convictions, administrative sanctions, 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 in OIG's internal operations. The OCIG imposes program exclusions and civil monetary penalties on health care providers and litigates those actions within the department. The OCIG also represents OIG in the global settlement of cases arising under the Civil False Claims Act, develops and monitors corporate integrity agreements, develops compliance program guidances, renders advisory opinions on OIG sanctions to the health care community, and issues fraud alerts and other industry guidance.

# *Notices*

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

In accordance with the principles of the Freedom of Information Act (5 U.S.C. 552, as amended by Public Law 104-231), Office of Inspector General, Office of Audit Services reports are made available to members of the public to the extent the information is not subject to exemptions in the act. (See 45 CFR part 5.)

## **OAS FINDINGS AND OPINIONS**

The designation of financial or management practices as questionable or a recommendation for the disallowance of costs incurred or claimed, as well as other conclusions and recommendations in this report, represent the findings and opinions of the HHS/OIG/OAS. Authorized officials of the HHS divisions will make final determination on these matters.



## **EXECUTIVE SUMMARY**

### **BACKGROUND**

The Medicaid program promotes family planning services, which the Centers for Medicare & Medicaid Services (CMS) defines as services that prevent or delay pregnancy or otherwise control family size. The Federal Government reimburses the costs of these services at an enhanced 90-percent matching rate.

In October 1995, Missouri established its Medicaid managed care programs and began claiming expenditures, including those for family planning, at the regular Federal matching rates. Missouri did not claim family planning costs at the enhanced rate until the quarter that ended March 31, 2001. At that time, Missouri retroactively claimed the \$11.1 million difference between the regular rates and the enhanced 90-percent rate for prior family planning expenditures made since October 1995.

### **OBJECTIVE**

Our objective was to determine whether Missouri's retroactive claim for enhanced Federal reimbursement for Medicaid family planning expenditures complied with Federal regulations.

### **SUMMARY OF FINDING**

Missouri's retroactive claim for enhanced Federal reimbursement did not fully comply with Federal regulations. Federal regulations generally limit reimbursement of State expenditures to claims filed within 2 years of the expenditure. Of the \$11.1 million claimed, \$6,467,583 did not meet this limitation and therefore was unallowable.

### **RECOMMENDATIONS**

We recommend that Missouri:

- refund \$6,467,583 to the Federal Government and
- ensure that future retroactive claims submitted for Medicaid reimbursement comply with Federal regulations.

### **MISSOURI'S COMMENTS**

In commenting on our draft report, Missouri did not agree that its retroactive claim was subject to the 2-year rule. Missouri referenced a CMS memorandum dated July 3, 2001, which stated that the 2-year rule applied to "all claims filed on or after the date of the memorandum." Missouri also said that it already had internal controls to claim appropriate costs. Missouri's response is included in its entirety as Appendix B.

## **OFFICE OF INSPECTOR GENERAL'S RESPONSE**

We disagree with Missouri's assertion that its retroactive claim was not subject to the 2-year rule. Regulations establishing the 2-year rule have been in effect since 1981. In addition, the Departmental Appeals Board (DAB) has repeatedly ruled that retroactive claims must meet the 2-year rule requirements. Therefore, we continue to recommend that Missouri refund the \$6,467,583.

## INTRODUCTION

### BACKGROUND

#### Medicaid Family Planning Services

The Medicaid program, established by Title XIX of the Social Security Act (the Act), provides grants to States for medical and health-related services for eligible low-income persons. The Federal and State Governments jointly fund the program.

CMS administers the Medicaid program at the Federal level and is responsible for ensuring that State Medicaid programs meet all Federal requirements. Each State submits a comprehensive written State plan to CMS describing the nature and scope of the program. If the State plan meets Federal requirements, the Federal Government shares in the cost of Medicaid spending based on the State's per capita income. States report Medicaid expenditures, including the Federal share amounts, on Form CMS-64, Quarterly Medicaid Statement of Expenditures for the Medical Assistance Program.

Congress amended sections 1903(a)(5) and 1905(a)(4) of the Act in 1972 to promote family planning services. Although not specified in the Act, CMS defines family planning services as services that prevent or delay pregnancy or otherwise control family size (section 4270 of the State Medicaid Manual). These services include sterilization; counseling services and patient education; examination and treatment by medical professionals in accordance with State requirements; laboratory examinations and tests; medically approved methods, procedures, pharmaceutical supplies, and devices to prevent conception; and infertility services, including sterilization reversals. As part of the Medicaid program, the Federal Government reimburses the expenditures for these services at an enhanced 90-percent matching rate.

#### Missouri Family Planning Services

In Missouri, the Department of Social Services, Division of Medical Services administers the Medicaid program and is responsible for providing family planning services. Missouri's Medicaid recipients receive care through either a fee-for-service system or a managed care system, depending on where they live.

In October 1995, Missouri established its managed care programs and began claiming expenditures, including those for family planning, at the regular Federal matching rates.<sup>1</sup> Upon recognizing that family planning expenditures qualify for the enhanced 90-percent rate, Missouri retroactively claimed the difference between the regular matching rates and the enhanced rate for prior family planning expenditures. Missouri submitted this retroactive claim on the Form CMS-64 for the quarter that ended March 31, 2001.<sup>2</sup> The claim totaled \$11.1 million in enhanced Federal reimbursement for prior periods beginning October 1995.

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<sup>1</sup>The regular Federal matching rates in Missouri ranged from 60.04 to 61.23 percent during our audit period.

<sup>2</sup>The claim for the quarter ended March 31, 2001, was submitted June 4, 2001.

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

### **Objective**

Our objective was to determine whether Missouri's retroactive claim for enhanced Federal reimbursement for Medicaid family planning expenditures complied with Federal regulations.

### **Scope**

Our review covered Missouri's retroactive Federal claim, submitted on the CMS-64 report for the quarter that ended March 31, 2001, for which Missouri received \$11.1 million. We limited our review of internal controls to those controls pertinent to Missouri's retroactive claiming of family planning in accordance with Federal laws and regulations.

We conducted fieldwork at the Missouri Division of Medical Services in Jefferson City, MO, from January through April 2004.

### **Methodology**

To meet our objective, we:

- identified the amounts retroactively claimed for family planning under managed care on the CMS-64 expenditure report,
- reviewed the Act and Federal Medicaid regulations, and
- reviewed DAB decisions.

We performed the review in accordance with generally accepted government auditing standards.

## **FINDING AND RECOMMENDATIONS**

Missouri's retroactive claim for enhanced Federal reimbursement for family planning expenditures did not fully comply with Federal regulations. Federal regulations limit reimbursement of State expenditures to claims filed within 2 years of the expenditure, with four exceptions. Of the \$11.1 million claimed, \$6,467,583 did not meet this limitation and did not qualify for any of the prescribed exceptions. Therefore, the \$6,467,583 was unallowable.

### **TWO-YEAR LIMIT FOR FILING CLAIMS**

Federal regulations (45 CFR § 95.7) limit reimbursement of State expenditures to those claims filed within 2 years after the calendar quarter in which the State made the expenditure. This 2-year rule does not apply (45 CFR § 95.19) to any claim:

- resulting from an audit exception,

- resulting from a court-ordered retroactive payment,
- for which the Secretary decides there was good cause for the State’s not filing within the time limit, or
- for an adjustment to prior-year costs.

## **FAMILY PLANNING COSTS CLAIMED BEYOND 2-YEAR LIMIT**

Of the \$11.1 million of enhanced Federal funding claimed, \$4.6 million complied with Federal laws and regulations. However, the claim for expenditures totaling \$6,467,583 was not filed within the 2-year period required by Federal regulations and did not meet any of the exceptions to the 2-year rule. The 2-year rule limited reimbursement to quarters that ended after March 31, 1999. The \$6,467,583 applied to quarters before that date and was therefore unallowable. Details on the retroactive claim are presented as Appendix A.

DAB, the Department’s final administrative decisionmaking body for disputes with external parties, has repeatedly upheld the 2-year rule requirements. DAB has held that retroactive submissions for enhanced Federal reimbursement do not meet the exceptions of 45 CFR § 95.19. For example, New Jersey Department of Human Services, DAB No. 1655 (1998), states that retroactive claims for enhanced Federal funding are not adjustments to prior-year costs (as defined by 45 CFR § 95.4), but are new and separate requests that are subject to the 2-year limit.

## **RECOMMENDATIONS**

We recommend that Missouri:

- refund \$6,467,583 to the Federal Government and
- ensure that future retroactive claims submitted for Medicaid reimbursement comply with Federal regulations.

## **MISSOURI’S COMMENTS**

In commenting on our draft report, Missouri did not agree that its retroactive claim was subject to the 2-year rule. Missouri referenced a CMS memorandum dated July 3, 2001, which stated that the 2-year rule applied to “all claims filed on or after the date of the memorandum.” Missouri also stated that: “It is not appropriate for the auditors to apply the policy described in the July 3, 2001 memorandum to claims filed before its effective date.”

As to our second recommendation, Missouri stated that it already had internal controls to claim appropriate costs. Missouri’s complete comments are included as Appendix B.

## OFFICE OF INSPECTOR GENERAL'S RESPONSE

We disagree with Missouri's assertion that its retroactive claim was not subject to the 2-year rule. The Adoption Assistance and Child Welfare Act of 1980 amended the Act and added section 1132, which limited reimbursement of State expenditures to claims filed within 2 years of the expenditure. The preamble to the final rule (46 Federal Register 3527, January 15, 1981) of the implementing regulations (45 CFR § 95) explained that the intent of the law was to enable the Department to determine its total obligations within a reasonable time after the end of each year. The preamble specifically stated: "Lateness of a claim attributable to a State's neglect or administrative inadequacies is not considered good cause."

DAB has repeatedly upheld the 2-year rule requirements. Therefore, the CMS memorandum does not make the 2-year limit any less applicable to retroactive claims that did not initially qualify as an exception under 45 CFR § 95.19. The following DAB cases demonstrate that retroactive claims must meet the 2-year rule requirements:

- Massachusetts Department of Social Services, DAB No. 1308 (1992), states that a retroactive claim involving a change to a rate method does not qualify as an adjustment to prior-year costs (as defined by 45 CFR § 95.4). Instead, the claim is a new and separate request subject to the 2-year limit.
- California Department of Health Services, DAB No. 1472 (1994), and Massachusetts Department of Public Welfare, DAB No. 796 (1986), state that, pursuant to the definition of "adjustment to prior year costs" in 45 CFR § 95.4, the exception for retroactive rate adjustments applies only to circumstances in which the prior claim was based on an interim rate for Medicaid services. DAB explained that "interim rate" means the State reimbursement amount, such as the per diem or per capita amount, that is subject to change as part of an interim and final cost settlement process.
- California Department of Health Services, DAB No. 1472 (1994), and New York State Department of Social Services, DAB No. 521 (1984), state that the "prior year adjustment" exception should be applied only when a delay in filing the claim for adjustment was unavoidable.

DAB also ruled in New Jersey Department of Human Services, DAB No. 1655 (1998), that retroactive claims for enhanced Federal funding are not adjustments to prior-year costs (as defined by 45 CFR § 95.4), but are new and separate requests that are subject to the 2-year limit.

In addition, after our audit period, DAB ruled in Maryland Department of Health and Mental Hygiene, DAB No. 1909 (2004), that a retroactive claim for enhanced Federal reimbursement involving a family planning factor did not affect the amount expended for a particular cost item. Thus, Maryland's claim (submitted in 2002 for State FYs 1999–2000) did not qualify as an adjustment to prior-year costs (as defined by 45 CFR § 95.4). Instead, the claim was a new and separate request that was subject to the 2-year limit.

Missouri's claim for enhanced Federal reimbursement did not meet the definition of an adjustment to prior-year costs or any of the other exceptions of 45 CFR § 95.19. Further, there was no indication that the delay in filing the claim was due to circumstances beyond Missouri's control. Based on Federal regulations and DAB decisions, we continue to recommend that Missouri refund the \$6,467,583.

# **APPENDIXES**

**APPENDIX A**

**FAMILY PLANNING EXPENDITURES SUBMITTED ON THE RETROACTIVE CLAIM FOR THE QUARTER ENDED MARCH 31, 2001 (FILED JUNE 4, 2001)**

<b>Federal Fiscal Year</b>	<b>Total Expenditures</b>	<b>Federal Share</b>		<b>Difference (B – A)</b>
		<b>Previously Claimed at Regular Rates (A)</b>	<b>Computed at 90-Percent Rate (B)</b>	
<b>Retroactive Claim Not Submitted Within 2 Years of Expenditures:</b>				
1996	\$4,338,974	\$2,605,988	\$3,905,077	\$1,299,089
1997	6,427,552	3,859,102	5,784,797	1,925,695
1998	7,272,695	4,413,071	6,545,426	2,132,355
1999*	<u>3,731,332</u>	<u>2,247,755</u>	<u>3,358,199</u>	<u>1,110,444</u>
<b>Subtotal</b>	<b>\$21,770,553</b>	<b>\$13,125,916</b>	<b>\$19,593,499</b>	<b>\$6,467,583</b>
<b>Retroactive Claim Submitted Within 2 Years of Expenditures:</b>				
1999*	\$4,016,548	\$2,419,568	\$3,614,893	\$1,195,325
2000	9,140,081	5,530,663	8,226,073	2,695,410
2001	<u>2,480,039</u>	<u>1,513,568</u>	<u>2,232,035</u>	<u>718,467</u>
<b>Subtotal</b>	<b>\$15,636,668</b>	<b>\$9,463,799</b>	<b>\$14,073,001</b>	<b>\$4,609,202</b>
<b>Total Claim</b>	<b><u>\$37,407,221</u></b>	<b><u>\$22,589,715</u></b>	<b><u>\$33,666,500</u></b>	<b><u>\$11,076,785**</u></b>

\*For FY 1999, the \$3,731,332 covers the first and second quarters (October 1, 1998, through March 31, 1999), and the \$4,016,548 covers the third and fourth quarters (April 1, 1999, through September 30, 1999).

\*\*Represents the retroactive claim.



MATT BLUNT  
GOVERNOR

MISSOURI  
DEPARTMENT OF SOCIAL SERVICES  
DIVISION OF MEDICAL SERVICES  
P.O. BOX 6500  
JEFFERSON CITY  
65102-6500

January 20, 2005

Relay Missouri  
for hearing and speech impaired  
TEXT TELEPHONE  
1-800-735-2966  
VOICE  
1-800-735-2466

James P. Aasmundstad  
Regional Inspector General for Audit Services  
Office of Inspector General  
Federal Office Building  
601 East 12<sup>th</sup> Street, Room 284A  
Kansas City, MO 64106

Re: Report Number A-07-04-01012

Dear Mr. Aasmundstad:

This is in response to the recommendation in the draft report entitled, "Review of Missouri's Retroactive Family Planning Claims" dated December 27, 2004.

1. We recommend that Missouri refund \$6,467,583 to the Federal Government.

**Response:** The Centers for Medicare and Medicaid Services issued a memorandum dated July 3, 2001 stating that the two-year filing limit will be applied when a State timely files a claim for Federal financial participation (FFP) at one matching rate and later determines that all or part of that claim should have been claimed at a higher rate. This memorandum states the policy is applicable "to all claims filed on or after the date of the memorandum." The claims at issue were filed in March 2001, prior to the date of the memorandum. It is not appropriate for the auditors to apply the policy described in the July 3, 2001 memorandum to claims filed before its effective date.

2. We recommend that Missouri ensure that future retroactive claims submitted for Medicaid reimbursement comply with Federal regulations.

**Response:** The Department of Social Services/Division of Medical Services has internal controls in place to claim costs that are appropriate.

Please feel free to contact me at 573/751-6922 if you have additional questions.

Sincerely,

Christine Rackers  
Director

CR:jw