



November 4, 2010

Report Number: A-07-10-04162

Andrew Allison, Ph.D.
Executive Director
Kansas Health Policy Authority
Room 900-N Landon State Office Building
Topeka, KS 66612

Dear Dr. Allison:

Enclosed is the U.S. Department of Health & Human Services (HHS), Office of Inspector General (OIG), final report entitled *Review of Sterilization Procedures in the Kansas Family Planning Program*. We will forward a copy of this report to the HHS action official noted on the following page 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 this official within 30 days from the date of this letter. Your response should present any comments or additional information that you believe may have a bearing on the final determination.

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 do not hesitate to call me, or contact Debra Keasling, Audit Manager, at (816) 426-3213 or through email at Debra.Keasling@oig.hhs.gov. Please refer to report number A-07-10-04162 in all correspondence.

Sincerely,

/Patrick J. Cogley/
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, IL 60601

Department of Health & Human Services

**OFFICE OF
INSPECTOR GENERAL**

**REVIEW OF STERILIZATION
PROCEDURES IN THE
KANSAS FAMILY PLANNING
PROGRAM**



Daniel R. Levinson
Inspector General

November 2010
A-07-10-04162

Office of Inspector General

<http://oig.hhs.gov>

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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

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 Kansas, the Kansas Health Policy Authority (State agency) is responsible for administering the Medicaid program.

The amount of funding that the Federal Government reimburses to State Medicaid agencies, known as either Federal financial participation (FFP) or Federal share, is determined by the Federal medical assistance percentage (FMAP), which varies based on a State's relative per capita income. The State agency's FMAP ranged from 59.43 percent to 68.31 percent for claims paid from July 1, 2005, through June 30, 2009.

Federal requirements also make provisions for various specified services to be reimbursed at higher rates of FFP. Section 1903(a)(5) of the Act and 42 CFR §§ 433.10(c)(1) authorize reimbursement at an enhanced 90-percent FFP rate for family planning services. Section 4270 of the CMS *State Medicaid Manual* (the manual) states that family planning services include those that prevent or delay pregnancy or otherwise control family size and may include infertility treatments. Pursuant to the provisions of the manual, only items and procedures clearly furnished or provided for family planning purposes may be claimed at the enhanced 90-percent FFP rate (90-percent FFP rate).

During State fiscal years 2006 through 2009, the State agency was reimbursed \$2,973,959 (\$1,802,880 Federal share), for 968 child delivery procedures and family planning sterilization procedures that were performed immediately after the child delivery procedures. We separately reviewed costs totaling \$19,997,484 (\$17,997,736 Federal share) for specifically identified family planning pharmacy claims, child delivery and newborn claims, and selected other family planning services. We are addressing those costs in separate reports.

OBJECTIVE

Our objective was to determine whether the State agency properly claimed Medicaid family planning sterilization procedures for Federal reimbursement for the period July 1, 2005, through June 30, 2009.

SUMMARY OF FINDINGS

The State agency did not always properly claim Medicaid family planning sterilization procedures for Federal reimbursement for the period July 1, 2005, through June 30, 2009, because in most of these cases the State agency claimed Federal reimbursement twice for a single service provided. For sterilization procedures that were performed immediately after child

delivery procedures, the State agency claimed the costs associated with each such procedure two times: first at the FMAP rate of Federal reimbursement and then again as a family planning service at the 90-percent FFP rate, without making adjustments for the amounts previously claimed at the FMAP rate of Federal reimbursement.

These errors occurred due to a weakness in the State agency's internal reporting process. As a result, the State agency received \$485,982 in unallowable Federal reimbursement.

RECOMMENDATIONS

We recommend that the State agency:

- refund \$485,982 to the Federal Government;
- determine and refund the Federal share of any additional amounts, related to family planning sterilization procedures that were performed immediately after child delivery procedures, that the State agency improperly claimed for the years prior to our audit period; and
- strengthen internal controls to ensure that family planning services submitted for Federal reimbursement are accurate by ensuring that Medicaid Management Information System edits appropriately identify claims that are ineligible for reimbursement at the 90-percent FFP rate.

STATE AGENCY COMMENTS

In written comments on our draft report, the State agency concurred with our first and third recommendations.

The State agency described actions it would take to address our second recommendation. Specifically, the State agency said that it will work with CMS to determine the amount of additional funds, if any, that should be refunded to the Federal Government.

With respect to our third recommendation, the State agency said that it has "... already identified the weakness in the State agency's internal reporting process and corrected the process"

The State agency's comments are included in their entirety as Appendix B.

OFFICE OF INSPECTOR GENERAL RESPONSE

The corrective actions that the State agency described in its comments, when fully implemented, will adequately address our recommendations. We verified that the State agency has corrected the weakness in its internal reporting process, but we did not verify the refund to the Federal Government.

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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 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.

Kansas Medicaid Program

In Kansas, the Kansas Health Policy Authority (State agency) is responsible for administering the Medicaid program. The State agency contracts with a fiscal agent, HP Enterprise Services (formerly Electronic Data Systems), to maintain its Medicaid Management Information System (MMIS), a computerized payment and information reporting system that processes and pays Medicaid claims.

The amount of funding that the Federal Government reimburses to State Medicaid agencies, known as either Federal financial participation (FFP) or Federal share, is determined by the Federal medical assistance percentage (FMAP), which varies based on a State's relative per capita income. The State agency's FMAP ranged from 59.43 percent to 68.31 percent for claims paid from July 1, 2005, through June 30, 2009. Federal requirements also make provisions for various specified services to be reimbursed at higher rates of FFP.

Medicaid Coverage of Family Planning Services

Section 1905(a)(4)(C) of the Act requires States to furnish "... family planning services and supplies ... to individuals of child-bearing age (including minors who can be considered to be sexually active) who are eligible under the State plan and who desire such services and supplies" Section 1903(a)(5) of the Act and 42 CFR §§ 433.10(c)(1) authorize reimbursement at a 90-percent FFP rate for family planning services.

Section 4270 of the CMS *State Medicaid Manual* (the manual) states that family planning services include those that prevent or delay pregnancy or otherwise control family size and may also include infertility treatments. In addition, this provision of the manual generally permits an enhanced 90-percent FFP rate (90-percent FFP rate) for the following items and services: counseling services and patient education; examination and treatment by medical professionals pursuant to States' requirements; devices to prevent conception; and infertility services, including sterilization reversals. Pursuant to the provisions of the manual, only items and procedures clearly furnished or provided for family planning purposes may be claimed at the 90-percent FFP rate.

CMS issued *Financial Management Review Guide Number 20* (the guide) to the State agency via Medicaid State Operations Letter 91-9. Section IV, E of the guide also states that sterilization is a family planning service and can be reimbursed at the 90-percent FFP rate as long as a properly completed sterilization consent form has been submitted by the patient to the Medicaid provider.

The State agency administers family planning services through the Kansas Medicaid Family Planning Program. The State plan defines family planning services as any medically approved treatment, counseling, drugs, supplies, or devices that are prescribed or furnished by a provider to individuals of child-bearing age so those individuals can freely determine the number and spacing of their children. The State plan says that family planning services provided by physicians have no limitations; however, the State plan also specifies that services provided in health departments are limited to one initial visit per customer, one annual visit per year, and interim visits as needed.

During State fiscal years 2006 through 2009, the State agency was reimbursed \$2,973,959 (\$1,802,880 Federal share), for 968 child delivery procedures and family planning sterilization procedures that were performed immediately after the child delivery procedures. We separately reviewed costs totaling \$19,997,484 (\$17,997,736 Federal share) for specifically identified family planning pharmacy claims, child delivery and newborn claims, and selected other family planning services. We are addressing those costs in separate reports.

Medicaid Management Information System

Providers enrolled in the Medicaid program submit claims for payment to the State agency's MMIS, which is maintained by the State agency's fiscal agent. The State agency furnishes to providers an MMIS provider manual that contains instructions for the proper completion and submission of claims. The provider must complete certain fields on the electronic claim form to indicate the type of service provided.

Quarterly Medicaid Statement of Expenditures for the Medical Assistance Program

The standard Form CMS-64, Quarterly Medicaid Statement of Expenditures for the Medical Assistance Program (CMS-64 report), summarizes actual Medicaid expenditures for each quarter and is used by CMS to reimburse States for the Federal share of Medicaid expenditures. The amounts reported on the CMS-64 report and its attachments must be actual expenditures with supporting documentation.

OBJECTIVE, SCOPE, AND METHODOLOGY

Objective

Our objective was to determine whether the State agency properly claimed Medicaid family planning sterilization procedures for Federal reimbursement for the period July 1, 2005, through June 30, 2009.

Scope

We reviewed \$2,973,959 (\$1,802,880 Federal share) that the State agency claimed for child delivery procedures and family planning sterilization procedures that were performed immediately after the child delivery procedures and were reimbursed at the FMAP rate. (The same sterilization procedures were also reimbursed at the 90-percent FFP rate from July 1, 2005, through June 30, 2009.) We did not review the overall internal control structure of the State agency or the Medicaid program. Rather, we reviewed only the internal controls that pertained directly to our objective.

We performed fieldwork at the State agency's offices in Topeka, Kansas, from July 2009 through February 2010.

Methodology

To accomplish our objective, we:

- reviewed Federal laws, regulations, guidance and the State plan;
- held discussions with CMS officials and acquired an understanding of CMS requirements and guidance furnished to State agency officials concerning Medicaid family planning claims;
- held discussions with State agency officials to gain an understanding of State agency policies, procedures, and guidance for claiming Medicaid reimbursement for family planning services;
- reconciled current period and prior period family planning claims reported on the CMS-64 report to the State agency's supporting documentation;
- reviewed the State agency's MAR-2140-Q Report (adjustments for the CMS-64 report) and interviewed the personnel responsible for this report to gain an understanding of the State agency's policies and procedures for the use of this report; and
- provided the results of our review to State agency officials on February 11, 2010.

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.

FINDINGS AND RECOMMENDATIONS

The State agency did not always properly claim Medicaid family planning sterilization procedures for Federal reimbursement for the period July 1, 2005, through June 30, 2009, because in most of these cases the State agency claimed Federal reimbursement twice for a single service provided. For sterilization procedures that were performed immediately after child delivery procedures, the State agency claimed the costs associated with each such procedure two times: first at the FMAP rate of Federal reimbursement and then again as a family planning service at the 90-percent FFP rate, without making adjustments for the amounts previously claimed at the FMAP rate of Federal reimbursement.

These errors occurred due to a weakness in the State agency's internal reporting process. As a result, the State agency received \$485,982 in unallowable Federal reimbursement.

FEDERAL REQUIREMENTS

Federal cost principles at 2 CFR pt. 225, *Cost Principles for States, Local, and Indian Tribal Governments* (formerly Office of Management and Budget Circular A-87), Appendix A, § 225(C)(2), state:

Reasonable costs. A cost is reasonable if, in its nature and amount, it does not exceed that which would be incurred by a prudent person under the circumstances prevailing at the time the decision was made to incur the cost. The question of reasonableness is particularly important when governmental units or components are predominately federally funded. In determining reasonableness of a given cost, consideration shall be given to:

- e. Significant deviations from the established practices of the governmental unit which may unjustifiably increase the Federal award's cost.

CMS's *Program Manual – State Medicaid*, Pub. No. 45, Part 2 – State Organization and General Administration, section 2500.1 (B), line 8, states:

Where expenditures have been claimed at an inappropriate reimbursement rate, deduct the original claim on Line 10.B and reclaim it on Line 8 using the revised rate. For example, if you had claimed MMIS expenditures at the 50 percent FFP rate and you later determine that the expenditures should have been claimed at the 75 percent FFP rate, deduct the expenditures at the 50 percent FFP rate on Line 10.B. Reclaim the expenditures at the 75 percent FFP rate on Line 8.

IMPROPERLY CLAIMED MEDICAID FAMILY PLANNING STERILIZATION PROCEDURES

The State agency did not properly claim Medicaid family planning sterilization procedures for Federal reimbursement for the period July 1, 2005, through June 30, 2009, because in most of these cases the State agency claimed Federal reimbursement twice for a single service provided.

Specifically, in 921 of the 968 cases that we reviewed in which the State agency claimed Federal reimbursement for sterilization procedures that were performed immediately after child delivery procedures, the State agency claimed the costs associated with each such procedure two times: first at the FMAP rate of Federal reimbursement and then again as a family planning service at the 90-percent FFP rate. In these 921 cases the State agency claimed \$806,243¹ for sterilization procedures as family planning services at the 90-percent FFP rate without making an adjustment for the amount previously claimed, for the same procedure, at the FMAP rate of Federal reimbursement. The 921 cases in which the State agency improperly claimed Federal reimbursement all took place in the first 13 quarters of our audit period (July 1, 2005, through September 30, 2008).

For the last three quarters of our audit period (October 1, 2008, through June 30, 2009), the State agency made changes in its procedures. We verified that during these three quarters, the State agency did not claim the costs associated with cases twice. Specifically, for the other 47 cases (of the 968 cases we reviewed during the audit) in which sterilization procedures were performed immediately after child delivery procedures, the State agency claimed costs only once.

WEAKNESS IN INTERNAL REPORTING PROCESS

These errors occurred due to a weakness in the State agency's internal reporting process, an established process that had been in place for at least 10 years prior to our audit period.

The State agency's previous fiscal agent established the policy of (1) identifying sterilization procedures from child delivery claims that had been previously reimbursed by the Federal Government, and then (2) claiming Federal reimbursement a second time, for the same sterilization procedures, at the family planning 90-percent FFP rate without making the required reduction to the regular FMAP rate.

UNALLOWABLE FAMILY PLANNING SERVICES

Because the State agency did not properly claim Medicaid family planning sterilization procedures, it received \$485,982 (Federal share) in unallowable Federal reimbursement for the period July 1, 2005, through September 30, 2008.

RECOMMENDATIONS

We recommend that the State agency:

- refund \$485,982 to the Federal Government;

¹ The sterilization amount was the difference between a child delivery with sterilization and a child delivery without sterilization.

- determine and refund the Federal share of any additional amounts, related to family planning sterilization procedures that were performed immediately after child delivery procedures, that the State agency improperly claimed for the years prior to our audit period; and
- strengthen internal controls to ensure that family planning services submitted for Federal reimbursement are accurate by ensuring that MMIS edits appropriately identify claims that are ineligible for reimbursement at the 90-percent FFP rate.

STATE AGENCY COMMENTS

In written comments on our draft report, the State agency concurred with our first and third recommendations.

The State agency described actions it would take to address our second recommendation. Specifically, the State agency said that it will work with CMS to determine the amount of additional funds, if any, that should be refunded to the Federal Government.

With respect to our third recommendation, the State agency said that it has "... already identified the weakness in the State agency's internal reporting process and corrected the process"

The State agency's comments are included in their entirety as Appendix B.

OFFICE OF INSPECTOR GENERAL RESPONSE

The corrective actions that the State agency described in its comments, when fully implemented, will adequately address our recommendations. We verified that the State agency has corrected the weakness in its internal reporting process, but we did not verify the refund to the Federal Government.

APPENDIXES

APPENDIX A: AMOUNT OF QUESTIONED COSTS BY QUARTER
July 1, 2005, through June 30, 2009

Qtr Ending	Total Sterilization Questioned Costs	FMAP¹	Total Sterilization Questioned Costs Federal Share
09/30/2005	\$68,102	61.01%	\$41,549
12/31/2005	97,863	60.41%	59,119
03/31/2006	157,155	60.41%	94,937
06/30/2006	90,509	60.41%	54,677
09/30/2006	77,354	60.41%	46,730
12/31/2006	75,505	60.25%	45,492
03/31/2007	57,687	60.25%	34,756
06/30/2007	35,096	60.25%	21,145
09/30/2007	28,217	60.25%	17,001
12/31/2007	44,012	59.43%	26,156
03/31/2008	24,857	59.43%	14,773
06/30/2008	26,752	59.43%	15,899
09/30/2008	23,134	59.43%	13,748
Total	\$806,243		\$485,982

¹ Federal medical assistance percentage

APPENDIX B: STATE AGENCY COMMENTS



September 29, 2010

Mr. Patrick Cogley
Regional Inspector General
601 East 12th Street
Room 0429
Kansas City, Missouri 64106

Dear Mr. Cogley:

The Kansas Health Policy Authority (KHPA) has received the draft report entitled "Review of Sterilization Procedures in the Kansas family Planning Program." This letter is KHPA's response to the Office of Inspector General (OIG) Audit Report A-07-10-04162.

OIG Recommendation

1. We recommend that the State agency:
 - Refund \$485,982 to the federal Government;
 - Determine and refund the Federal share of any additional amounts, related to family planning sterilization procedures that were performed immediately after child delivery procedures, that the state agency improperly claimed for the years prior to our audit period; and
 - Strengthen internal controls to ensure that family planning services submitted for Federal reimbursement are accurate by ensuring that Medicaid management Information System edits appropriately identify claims that are ineligible for reimbursement at the 90-percent FFP rate.

KHPA Response:

KHPA concurs with the first part of the recommendation and is already taking steps to work with CMS to have them reduce the federal award by \$485,981 for the quarter ending 9-30-10.

In the exit conference, the OIG auditor confirmed that during the period of the audit, State Fiscal Year 2006 – 2009, KHPA inadvertently reported claims for sterilization services due to an internal accounting process which was identified and corrected during the QE 12-31-08. After KHPA learned of this longstanding error, the OIG began its audit process and we waited for confirmation of the amounts owed back to the Federal government in previous quarters. With that confirmation, KHPA

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Medicaid and HealthWave:
Phone: 785-296-3981
Fax: 785-296-4813

State Employee Health Plan:
Phone: 785-368-6361
Fax: 785-368-7180

State Self Insurance Fund:
Phone: 785-296-2364
Fax: 785-296-6995

informed the OIG on August 25th that we are now making the appropriate adjustments for the previous quarters on the CMS 64.

With regard to the second recommendation, KHPA will work with CMS to evaluate an approach that would be required to determine the amount of additional Medicaid funds, if any, that KHPA should refund to the Federal Government.

KHPA concurs with the OIG's third recommendation to strengthen internal controls. KHPA has already identified the weakness in the State agency's internal reporting process and corrected the process during the QE 12-31-08.

KHPA lacks the resources to audit every aspect of the Medicaid program at this level of detail, and recognizes the contribution that this and other external audits make to the integrity of the program. KHPA appreciates the efforts of the OIG staff in conducting this audit and their willingness to discuss issues during the audit process.

Thank you for the opportunity to respond to this draft audit report.

Sincerely,

/Andrew Allison, PhD/
Executive Director