**DEPARTMENT OF HEALTH & HUMAN SERVICES** **Office of Inspector General**

**Washington, D.C. 20201**

July 27, 2011

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

**FROM:** /Lori S. Pilcher/
Acting Deputy Inspector General for Audit Services

**SUBJECT:** Review of Medicaid Payments for Services Provided Under New Jersey's Section 1915(c) Community Care Waiver by Elwyn New Jersey From January 1, 2005, Through December 31, 2007 (A-02-09-01033)

Attached, for your information, is an advance copy of our final report on Medicaid payments for services provided under New Jersey's section 1915(c) Community Care Waiver at Elwyn New Jersey. 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 Brian P. Ritchie, Assistant Inspector General for the Centers for Medicare & Medicaid Audits, at (410) 786-7104 or through email at Brian.Ritchie@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-02-09-01033.

Attachment

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

July 28, 2011

Report Number: A-02-09-01033

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

Dear Ms. Velez:

Enclosed is the U.S. Department of Health & Human Services (HHS), Office of Inspector General (OIG), final report entitled *Review of Medicaid Payments for Services Provided Under New Jersey's Section 1915(c) Community Care Waiver by Elwyn New Jersey From January 1, 2005, Through December 31, 2007*. 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 Brenda Tierney, Audit Manager, at (518) 437-9390, extension 222, or through email at Brenda.Tierney@oig.hhs.gov. Please refer to report number A-02-09-01033 in all correspondence.

Sincerely,

/James P. Edert/
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 MEDICAID PAYMENTS FOR SERVICES PROVIDED UNDER NEW JERSEY'S SECTION 1915(C) COMMUNITY CARE WAIVER BY ELWYN NEW JERSEY FROM JANUARY 1, 2005, THROUGH DECEMBER 31, 2007

Daniel R. Levinson
Inspector General

July 2011
A-02-09-01033

# *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 a State has considerable flexibility in designing and operating its Medicaid program, it must comply with Federal requirements.

Section 1915(c) of the Act authorizes Medicaid home and community-based services (HCBS) waiver programs. A State's HCBS waiver program must be approved by CMS and allows a State to claim Federal reimbursement for services not usually covered by Medicaid.

The New Jersey Department of Human Services (State agency) administers New Jersey's (the State) Medicaid program and provides oversight for compliance with Federal requirements. The State's Community Care Waiver (CCW) program allows the State agency to claim Medicaid reimbursement for HCBS provided to mentally retarded or developmentally disabled individuals who would otherwise require institutionalization in an Intermediate Care Facility for the Mentally Retarded (ICF/MR).

The State agency administers the CCW program through its Division of Developmental Disabilities (division). Under the CCW program, each beneficiary is required to have a plan of care (individual habilitation plan) and a level-of-care assessment completed every 12 months. For an individual to be assessed eligible for the CCW program, a qualified mental retardation professional must certify that the beneficiary is assessed to need an ICF/MR level of care. The division must maintain documentation of each habilitation plan and assessment for at least 3 years.

During calendar years 2005 through 2007, the State agency claimed Federal reimbursement totaling $1.4 billion for services provided under the CCW program. During this period, Elwyn New Jersey (Elwyn), a CCW program service provider located in Vineland, New Jersey, received Medicaid reimbursement for 11,640 beneficiary-months totaling $69.7 million ($34.8 million Federal share). A beneficiary-month includes all CCW program services for a State beneficiary for 1 month.

### OBJECTIVE

Our objective was to determine whether the State agency's claim for Medicaid reimbursement for CCW program services provided by Elwyn complied with certain Federal and State requirements.

## SUMMARY OF FINDINGS

The State agency claimed Federal Medicaid reimbursement for some CCW program services provided by Elwyn that did not comply with certain Federal and State requirements. Of the 110 beneficiary-months in our random sample, the State agency properly claimed Medicaid reimbursement for all CCW program services in 64 beneficiary-months. However, the State agency claimed Medicaid reimbursement for services that were not allowable for the remaining 46 beneficiary-months. Specifically, services totaling $55,944 (Federal share) in 46 beneficiary-months did not comply with certain Federal and State requirements. Of these 46 beneficiary-months, 7 contained more than 1 deficiency.

The claims for unallowable services were made because: (1) Elwyn and the division did not ensure that they only claimed for documented, allowable CCW program services, (2) the division did not ensure and document that all beneficiaries were assessed and certified to require an ICF/MR level of care, and (3) the division did not ensure that CCW program services were provided only to beneficiaries with completed and approved individual habilitation plans.

Based on our sample results, we estimated that the State agency improperly claimed $903,375 in Federal Medicaid reimbursement for CCW program services provided by Elwyn that did not comply with certain Federal and State requirements during calendar years 2005 through 2007.

## RECOMMENDATIONS

We recommend that the State agency:

- refund $903,375 to the Federal Government;
- require Elwyn and the division to ensure that they only claim for documented, allowable CCW program services;
- require the division to ensure and document that all CCW program beneficiaries approved for services have been assessed and certified to need an ICF/MR level of care; and
- require the division to ensure that CCW program services are provided only to beneficiaries for whom there is a completed and approved individual habilitation plan.

## STATE AGENCY COMMENTS AND OFFICE OF INSPECTOR GENERAL RESPONSE

In written comments on our draft report, the State agency agreed with part of our first recommendation and described actions that it has taken or planned to take to address the remaining findings and recommendations. For the first recommendation, the State agency requested that we remove three sample items and recalculate the refund amount. For those three sample claims, the State agency indicated that the corresponding case file contained supporting documentation for a period after our sampled beneficiary-month. The State agency said it would

be unreasonable to assume that a beneficiary would be ineligible for CCW program services before the documented service period.

After reviewing the State agency's comments, we maintain that our findings and recommendations are valid. The State agency's comments appear in their entirety as Appendix D.

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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 a State has considerable flexibility in designing and operating its Medicaid program, it must comply with Federal requirements. The New Jersey Department of Human Services (State agency) administers New Jersey's (the State) Medicaid program and provides oversight for compliance with Federal requirements.

### Home and Community-Based Services Waivers

Section 1915(c) of the Act authorizes Medicaid home and community-based services (HCBS) waiver programs. A State's HCBS waiver program must be approved by CMS and allows a State to claim Federal reimbursement for services not usually covered by Medicaid. HCBS are generally provided to Medicaid-eligible beneficiaries in the community rather than an institutional setting.

Section 1915(c)(1) of the Act and Federal regulations (42 CFR § 441.301(b)(1)(iii)) provide that HCBS may be provided only to recipients who have been determined would, in the absence of such services, require the Medicaid covered level of care provided in a hospital, nursing facility, or intermediate care facility for persons with mental retardation. Pursuant to section 1915(c)(1) of the Act and Federal regulations (42 CFR § 441.301(b)(1)(i)), HCBS must be furnished under a written plan of care subject to approval by each State's State agency. In addition, Federal regulations (42 CFR § 441.302(c)) require a State agency to provide for an initial evaluation of the recipient's need for the level of care that would be provided in an institution unless the individual receives HCBS. The regulations further require at least annual reevaluations of each recipient receiving HCBS.

According to section 4442.6 of CMS's *State Medicaid Manual*, an assessment of the individual to determine the services needed to prevent institutionalization must be included in the plan of care. In addition, the plan of care must specify the medical and other services to be provided, their frequency, and the type of provider. No Federal financial participation is available under a section 1915(c) waiver for HCBS furnished without a written plan of care.

### New Jersey's Community Care Waiver Program

The State's HCBS waiver program includes the Community Care Waiver (CCW) program, which is administered by the State agency through its Division of Developmental Disabilities (division). The division is responsible for the implementation and operation of the CCW

program.[1] The CCW program allows the State agency to claim Medicaid reimbursement on a fee-for-service basis for HCBS provided to mentally retarded or developmentally disabled individuals who would otherwise require institutionalization in an Intermediate Care Facility for the Mentally Retarded (ICF/MR). Most of the CCW program services are provided through State contracts with private organizations or individuals.[2]

According to the State's waiver agreement with CMS, to be eligible for the State's CCW program, a beneficiary must be a Medicaid recipient, be diagnosed as mentally retarded or developmentally disabled, and be assessed to need an ICF/MR level of care. In addition, each beneficiary is required to have a plan of care (individual habilitation plan) and a level-of-care assessment completed every 12 months. For the assessment, a qualified mental retardation professional, who may be employed by either the service provider or the division, must certify that the beneficiary was assessed to need an ICF/MR level of care. The division must maintain documentation of each individual habilitation plan and assessment for at least 3 years. The State agency must also ensure financial accountability for funds expended for HCBS, as well as maintain appropriate financial records documenting the cost of services provided under the waiver.

During calendar years 2005 through 2007, the State agency claimed Federal reimbursement totaling $1.4 billion for services provided under the CCW program.

### Elwyn New Jersey

Elwyn New Jersey (Elwyn), located in Vineland, New Jersey, provides individual support, day programs, and supported employment services for people with developmental disabilities and medical challenges. Elwyn was the largest provider of services under the State's CCW program during calendar years 2005 through 2007. During this period, Elwyn received Medicaid reimbursement for CCW program services totaling $69.7 million ($34.8 million Federal share).

## OBJECTIVE, SCOPE, AND METHODOLOGY

### Objective

Our objective was to determine whether the State agency's claim for Medicaid reimbursement for CCW program services provided by Elwyn complied with certain Federal and State requirements.

[1] According to its waiver agreement with CMS, the State agency's Division of Medical Assistance and Health Services has "final responsibility" for the oversight of the program.

[2] The CCW program includes case management, respite care, day habilitation (assistance with improvement in self-help, socialization, and adaptive skills in a nonresidential setting), supported employment, environmental and vehicle adaptation, personal emergency response systems, individual support (in a residential facility or a beneficiary's home), and integrated therapies services.

## Scope

Our review covered the State agency's claims for Medicaid reimbursement for HCBS provided by Elwyn under the CCW program during calendar years 2005 through 2007. During this period, the State agency claimed $69.7 million ($34.8 million Federal share) for services provided by Elwyn in 11,640 beneficiary-months.[3] We will be issuing a separate report (A-02-09-01034) on CCW service claims submitted by Bancroft NeuroHealth from January 1, 2005, through December 31, 2007.

The scope of our audit did not require us to perform a medical review or an evaluation of the medical necessity for the services that Elwyn provided and claimed for reimbursement.

We did not assess the State agency's overall internal control structure or all the internal controls over the CCW program. Rather, we limited our review of internal controls to those applicable to our objective. We reviewed Elwyn's and the division's internal controls for documenting CCW program services billed and claimed for reimbursement. We did not assess the appropriateness of HCBS payment rates.

We performed our fieldwork at Elwyn's offices in Vineland, New Jersey, and at the division's offices in Trenton, New Jersey.

## Methodology

To accomplish our objective, we:

- reviewed applicable Federal and State Medicaid HCBS waiver laws, regulations, and guidance;

- met with CMS financial and program management officials to gain an understanding of the HCBS waiver approval, administration, and assessment processes;

- met with State agency officials to discuss the State agency's administration and monitoring of the CCW program;

- interviewed Elwyn and division officials regarding their CCW program policies and procedures;

- reconciled the CCW program services claimed for Federal reimbursement by the State agency on the Form CMS-64, Quarterly Medicaid Statement of Expenditures for the Medical Assistance Program, to the population of all payments for CCW program services made to providers statewide obtained from the State's Medicaid Management Information System for the quarter April 1, 2007, through June 30, 2007;

[3] A beneficiary-month includes all CCW program services for a beneficiary for 1 month. A beneficiary-month could include multiple services.

- obtained from the State's Medicaid Management Information System a sampling frame of 11,640 beneficiary-months with CCW program services for which Elwyn claimed reimbursement totaling $69.7 million ($34.8 million Federal share) from January 1, 2005, through December 31, 2007;

- selected a stratified random sample of 110 beneficiary-months from the sampling frame of 11,640 beneficiary-months and for each beneficiary-month:

  - determined whether the beneficiary was assessed by a qualified mental retardation specialist to be eligible for the CCW program,

  - determined whether CCW program services were provided in accordance with an approved individual habilitation plan,

  - determined whether the staff members who provided the services met qualification and training requirements,

  - determined whether documentation supported the CCW program services billed, and

  - identified services that were not provided or documented in accordance with Federal and State requirements;

- estimated the unallowable Federal Medicaid reimbursement paid in the total population of 11,640 beneficiary-months; and

- provided the results of our review to Elwyn officials.

Appendix A contains the details of our sample design and methodology. Appendix B contains our sample results and estimates.

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 claimed Federal Medicaid reimbursement for some CCW program services provided by Elwyn that did not comply with certain Federal and State requirements. Of the 110 beneficiary-months in our random sample, the State agency properly claimed Medicaid reimbursement for CCW program services in 64 beneficiary-months. The State agency claimed Medicaid reimbursement for services that were not allowable for the remaining 46 beneficiary-months. Specifically, services totaling $55,944 (Federal share) in 46 beneficiary-months did not comply with certain Federal and State requirements. Of the 46

beneficiary-months, 7 contained more than 1 deficiency. Appendix C contains a summary of deficiencies, if any, identified for each sampled beneficiary-month.

The claims for unallowable services were made because: (1) Elwyn and the division did not ensure that they only claimed for documented, allowable CCW program services, (2) the division did not ensure and document that all beneficiaries were assessed and certified to require an ICF/MR level of care, and (3) the division did not ensure that CCW program services were provided only to beneficiaries with completed and approved individual habilitation plans.

Based on our sample results, we estimated that the State agency improperly claimed $903,375 in Federal Medicaid reimbursement for CCW program services provided by Elwyn that did not comply with certain Federal and State requirements during calendar years 2005 through 2007.

## UNALLOWABLE COMMUNITY CARE WAIVER PROGRAM SERVICES

### Services Not Documented

Section 1902(a)(27) of the Act (42 U.S.C. § 1396a(a)(27)) mandates that States have agreements with Medicaid providers under which providers agree to keep such records as are necessary to disclose fully the extent of the services provided to individuals receiving assistance under the State plan. Pursuant to Office of Management and Budget Circular A-87, *Cost Principles for State, Local, and Tribal Governments*, Att. A, § C.1.j (2 CFR § 225, App. A § C.1.j), costs must be adequately documented to be allowable under Federal awards. According to section 2500.2 of CMS's *State Medicaid Manual*, States are to report only expenditures for which all supporting documentation, in readily reviewable form, has been compiled and that is immediately available when the claim is filed.[4]

For 32 beneficiary-months, the State agency claimed reimbursement for some services that were not adequately documented. For these services, Elwyn did not maintain documentation to support the services billed.

### Services Not Provided

Section 1902(a)(27) of the Act (42 U.S.C. § 1396a(a)(27)) mandates that States have agreements with Medicaid providers under which providers agree to keep such records as are necessary to disclose fully the extent of the services provided to individuals receiving assistance under State plans. According to section 2497.1 of CMS's *State Medicaid Manual*, Federal financial participation is available only for allowable actual expenditures made on behalf of eligible recipients for covered services rendered by certified providers.

[4] Supporting documentation includes as a minimum the following: date of service; name of recipient; Medicaid identification number; name of provider agency and person providing the service; nature, extent, and units of service; and place of service.

For 12 beneficiary-months, the State agency claimed Federal reimbursement for some services that were not provided. The division submitted claims for reimbursement on behalf of Elwyn for both respite care and community support services. However, Elwyn's records indicated that the community support services were not provided.

**Level-of-Care Assessment Not Documented**

Pursuant to section 1915(c)(1) of the Act and 42 CFR § 441.301(b)(1)(iii), HCBS are to be provided only to a recipient who would, in the absence of these services, need the Medicaid level of care provided in a hospital, nursing facility, or ICF/MR. Federal regulations (42 CFR §§ 441.302(c) and 441.303(c)) require a State agency to provide for an initial evaluation and periodic reevaluations, at least annually, of the recipient's need for the level of care that would be provided in an institution unless the individual receives HCBS. According to the State's waiver agreement with CMS, an eligible CCW program beneficiary must be assessed and certified by a qualified mental retardation professional to need an ICF/MR level of care every 12 months, and the division must maintain documentation of the assessments for at least 3 years.

For six beneficiary-months, the State agency claimed reimbursement for CCW program services provided to beneficiaries for whom the ICF/MR level-of-care assessment was not approved by a qualified mental retardation professional.

**Individual Habilitation Plan Not Available**

Pursuant to section 1915(c)(1) of the Act and Federal regulations (42 CFR § 441.301(b)(1)(i)), HCBS are to be provided only under a written plan of care subject to approval by a State Medicaid agency. Pursuant to the State's waiver agreement with CMS, an eligible CCW program beneficiary must have an individual habilitation plan completed by a qualified mental retardation professional every 12 months, and the division and the CCW program service provider must maintain documentation of the individual habilitation plans for at least 3 years.

For three beneficiary-months, the State agency claimed reimbursement for some services provided to beneficiaries for whom neither the division nor Elwyn could provide individual habilitation plans.

## CAUSES OF UNALLOWABLE CLAIMS

The State agency did not ensure that it claimed reimbursement only for allowable and documented CCW program services provided by Elwyn. Specifically, for some services, Elwyn either did not maintain documentation to support the services billed or records indicating that services were provided. Because of its cost reimbursement contract with the division, Elwyn received fixed monthly payments based on an annual budget regardless of how many beneficiaries it served. The division, through the State agency, claimed reimbursement under the CCW program based on Elwyn's monthly attendance reports but did not verify that the services were actually provided or adequately documented in daily training records and progress notes. For periods of respite care provided by Elwyn, the State agency claimed additional

reimbursement for community support services without verifying Elwyn's monthly attendance reports.

In addition, the division did not ensure and document that all CCW program beneficiaries were assessed and certified to need an ICF/MR level of care. Specifically, for some beneficiaries, the CCW certification section of the individual habilitation plan was incomplete and no other documentation was available to show that the required annual level-of-care assessment was performed. For our audit period, the State agency did not have a standard form for assessing a program applicant's level of care, and the CCW certification section of the individual habilitation plan was the only documentation of the beneficiary's need for an ICF/MR level of care.[5]

The division also did not ensure that individual habilitation plans were complete and approved. Specifically, for some beneficiaries who were not residents in Elwyn-operated group homes, division and Elwyn case managers did not verify that individual habilitation plans were completed and approved for CCW program services.

## RECOMMENDATIONS

We recommend that the State agency:

- refund $903,375 to the Federal Government;

- require Elwyn and the division to ensure that they only claim for documented, allowable CCW program services;

- require the division to ensure and document that all CCW program beneficiaries approved for services have been assessed and certified to need an ICF/MR level of care; and

- require the division to ensure that CCW program services are provided only to beneficiaries for whom there is a completed and approved individual habilitation plan.

## STATE AGENCY COMMENTS

In written comments on our draft report, the State agency agreed with part of our first recommendation and described actions that it has taken or planned to take to address the remaining recommendations. For the first recommendation, the State agency requested that we remove three sample claims and recalculate the refund amount. For those three sample claims, the State agency indicated that the corresponding case file contained supporting documentation for a period after our sampled beneficiary-month. The State agency said it would be unreasonable to assume that a beneficiary would be ineligible for CCW program services before the documented period. The State agency's comments appear in their entirety as Appendix D.

[5] The State agency issued a Self Care Assessment Tool in November 2005, but it was not approved by CMS until after our audit period.

## OFFICE OF INSPECTOR GENERAL RESPONSE

After reviewing the State agency's comments on our draft report, we maintain that our findings and recommendations are valid.

Federal regulations (42 CFR §§ 441.302(c) and 441.303(c)) require the State agency to provide for an initial evaluation and periodic reevaluations, at least annually, of the recipient's need for the level of care that would be provided in an institution unless the individual receives HCBS. Pursuant to the State's waiver agreement with CMS, an eligible CCW program beneficiary must be assessed and certified by a qualified mental retardation professional to need an ICF/MR level of care every 12 months. For all three sampled items, the level-of-care assessments in the case files did not cover the sampled beneficiary-month. For the first two sampled items noted in the State agency's comments, the individual habilitation plan and ICF/MR level-of-care assessment subsequent to our sampled beneficiary-month were incomplete and not signed by a qualified mental retardation professional. For the third sampled item, the division informed us during our fieldwork that Elwyn indicated that the corresponding beneficiary did not reside at its facility in the sampled beneficiary-month.

# APPENDIXES

# APPENDIX A: SAMPLE DESIGN AND METHODOLOGY

## POPULATION

The population consisted of beneficiary-months of service provided by Elwyn New Jersey (Elwyn) for which the New Jersey Department of Human Services (State agency) received Medicaid reimbursement under New Jersey's Community Care Waiver (CCW) program during calendar years 2005 through 2007.

## SAMPLING FRAME

The sampling frame was an Access file containing 11,640 beneficiary-months of service totaling $69,660,778 ($34,830,389 Federal share). The data for beneficiary-months of service under the New Jersey CCW program was extracted from the New Jersey Medicaid Management Information System.

## SAMPLE UNIT

The sample unit was a beneficiary-month during calendar years 2005 through 2007 for which the State agency claimed Medicaid reimbursement for services provided by Elwyn under the CCW program. A beneficiary-month is defined as all CCW program services for one beneficiary for 1 month.

## SAMPLE DESIGN

We used a stratified random sample to review Medicaid payments made for services provided by Elwyn on behalf of beneficiaries enrolled in the New Jersey CCW program. To accomplish this, we separated the sampling frame into three strata, as follows:

- Stratum 1: beneficiary-months with total payments less than or equal to $5,000—3,027 beneficiary-months totaling $5,827,414 ($2,913,707 Federal share).

- Stratum 2: beneficiary-months with total payments greater than $5,000 and less than or equal to $10,000—8,603 beneficiary-months totaling $63,704,008 ($31,852,004 Federal share).

- Stratum 3: beneficiary-months with total payments greater than $10,000—10 beneficiary-months, totaling $129,356 ($64,678 Federal share).

## SAMPLE SIZE

We selected a sample of 110 beneficiary-months of service, as follows:

- 50 beneficiary-months from stratum 1,
- 50 beneficiary-months from stratum 2, and
- 10 beneficiary-months from stratum 3.

## SOURCE OF RANDOM NUMBERS

The source of the random numbers was the Office of Audit Services statistical software, RAT-STATS 2007. We used the random number generator for our stratified random sample.

## METHOD OF SELECTING SAMPLE ITEMS

We consecutively numbered the sample units in each of the first two strata. After generating 50 random numbers for each stratum, we selected the corresponding frame items. We selected for review all 10 beneficiary-months in stratum 3. We then created a list of 110 sampled items.

## ESTIMATION METHODOLOGY

We used RAT-STATS to calculate our estimates. We used the lower limit of a 90-percent confidence interval to estimate the overpayment associated with the unallowable services in the beneficiary-months.

## APPENDIX B: SAMPLE RESULTS AND ESTIMATES

### Sample Details and Results

| Stratum | Beneficiary-Months in Frame | Value of Frame (Federal Share) | Sample Size | Value of Sample (Federal Share) | No. of Beneficiary-Months With Unallowable Services | Value of Unallowable Services (Federal Share) |
|---|---|---|---|---|---|---|
| 1 | 3,027 | $2,913,707 | 50 | $49,858 | 23 | $5,143 |
| 2 | 8,603 | $31,852,004 | 50 | $180,751 | 13 | $12,723 |
| 3 | 10 | $64,678 | 10 | $64,678 | 10 | $38,078 |
| **Total** | **11,640** | **$34,830,389** | **110** | **$295,287** | **46** | **$55,944** |

### Estimated Value of Unallowable Services (Federal Share)
***(Limits Calculated for a 90-Percent Confidence Interval)***

| | |
|---|---|
| **Point Estimate** | $2,538,461 |
| **Lower Limit** | $903,375 |
| **Upper Limit** | $4,173,547 |

## APPENDIX C: SUMMARY OF DEFICIENCIES FOR EACH SAMPLED BENEFICIARY-MONTH

**Legend**

| | |
|---|---|
| **1** | Services Not Documented |
| **2** | Services Not Provided |
| **3** | Level-of-Care Assessment Not Documented |
| **4** | Individual Habilitation Plan Not Available |

**Office of Inspector General Review Determinations for the 110 Sampled Beneficiary-Months**

| Sample Beneficiary-Month | Deficiency 1 | Deficiency 2 | Deficiency 3 | Deficiency 4 | No. of Deficiencies |
|---|---|---|---|---|---|
| S1-1 | | X | | | 1 |
| S1-2 | | | | | |
| S1-3 | X | | | | 1 |
| S1-4 | X | X | | | 2 |
| S1-5 | | X | | | 1 |
| S1-6 | X | | | | 1 |
| S1-7 | | | | | |
| S1-8 | | | | X | 1 |
| S1-9 | | | | | |
| S1-10 | X | | | | 1 |
| S1-11 | | X | | | 1 |
| S1-12 | | | | | |
| S1-13 | X | | | | 1 |
| S1-14 | X | | | | 1 |
| S1-15 | | | | | |
| S1-16 | | | | | |
| S1-17 | | | | | |
| S1-18 | | | | | |
| S1-19 | | | X | | 1 |
| S1-20 | X | X | | | 2 |
| S1-21 | X | | | | 1 |
| S1-22 | X | | | | 1 |
| S1-23 | | | | | |
| S1-24 | | | | | |
| S1-25 | | X | | | 1 |
| S1-26 | | | | | |
| S1-27 | | | | | |
| S1-28 | | | | | |

| Sample Beneficiary-Month | Deficiency 1 | Deficiency 2 | Deficiency 3 | Deficiency 4 | No. of Deficiencies |
|---|---|---|---|---|---|
| S1-29 | | | | | |
| S1-30 | | | | | |
| S1-31 | | | | | |
| S1-32 | | | | | |
| S1-33 | | | | | |
| S1-34 | | | | | |
| S1-35 | | | | | |
| S1-36 | | | | | |
| S1-37 | | | | | |
| S1-38 | | | | | |
| S1-39 | | | | | |
| S1-40 | | | | | |
| S1-41 | | | | | |
| S1-42 | | | | | |
| S1-43 | | | | | |
| S1-44 | | | | | |
| S1-45 | | | | | |
| S1-46 | | | | | |
| S1-47 | | | | | |
| S1-48 | X | | | | 1 |
| S1-49 | | | | | |
| S1-50 | | | | | |
| S2-1 | X | | | | 1 |
| S2-2 | X | | | | 1 |
| S2-3 | X | | | | 1 |
| S2-4 | | | | | |
| S2-5 | | | | | |
| S2-6 | | | | | |
| S2-7 | X | | | | 1 |
| S2-8 | X | | | | 1 |
| S2-9 | | | | | |
| S2-10 | | | | | |
| S2-11 | | | | | |
| S2-12 | X | | X | | 2 |
| S2-13 | | | | | |
| S2-14 | X | | | | 1 |
| S2-15 | | | | | |
| S2-16 | | | | | |
| S2-17 | | | | | |

| Sample Beneficiary-Month | Deficiency 1 | Deficiency 2 | Deficiency 3 | Deficiency 4 | No. of Deficiencies |
|---|---|---|---|---|---|
| S2-18 | | X | | X | 2 |
| S2-19 | X | | | | 1 |
| S2-20 | | | | | |
| S2-21 | | | | | |
| S2-22 | | | | | |
| S2-23 | X | | | | 1 |
| S2-24 | X | | | | 1 |
| S2-25 | X | | | | 1 |
| S2-26 | X | | | | 1 |
| S2-27 | X | | | | 1 |
| S2-28 | | X | | | 1 |
| S2-29 | | X | | | 1 |
| S2-30 | X | | | | 1 |
| S2-31 | | | | | |
| S2-32 | | X | X | | 2 |
| S2-33 | | X | X | | 2 |
| S2-34 | | | X | | 1 |
| S2-35 | | | | | |
| S2-36 | | | | | |
| S2-37 | X | | | | 1 |
| S2-38 | X | | | | 1 |
| S2-39 | | | | | |
| S2-40 | X | | | | 1 |
| S2-41 | X | | | | 1 |
| S2-42 | | | | | |
| S2-43 | | | | | |
| S2-44 | | | | | |
| S2-45 | | | | | |
| S2-46 | | | | | |
| S2-47 | | | | | |
| S2-48 | | | | | |
| S2-49 | | | | | |
| S2-50 | | | | | |
| S3-1 | | | | | |
| S3-2 | X | | | | 1 |
| S3-3 | X | | X | | 2 |
| S3-4 | | | | | |
| S3-5 | X | | | | 1 |
| S3-6 | | | | X | 1 |

| Sample Beneficiary-Month | Deficiency 1 | Deficiency 2 | Deficiency 3 | Deficiency 4 | No. of Deficiencies |
|---|---|---|---|---|---|
| S3-7 | X | | | | 1 |
| S3-8 | | X | | | 1 |
| S3-9 | | | | | |
| S3-10 | | | | | |
| **Category Totals** | 32 | 12 | 6 | 3 | 53 |
| **46 Beneficiary-Months in Error** | | | | | |

# APPENDIX D: STATE AGENCY COMMENTS

State of New Jersey
DEPARTMENT OF HUMAN SERVICES
DIVISION OF MEDICAL ASSISTANCE AND HEALTH SERVICES
P.O. Box 712
Trenton, NJ 08625-0712

CHRIS CHRISTIE
*Governor*

KIM GUADAGNO
*Lt. Governor*

JENNIFER VELEZ
*Commissioner*

VALERIE HARR
*Director*

December 16, 2010

James P. Edert
Regional Inspector General for Audit Services
Department of Health and Human Services
Office of Inspector General
Office of Audit Services Region II
Jacob K. Javits Federal Building
26 Federal Plaza – Room 3900
New York, NY 10278

**Report Number: A-02-09-01033**

Dear Mr. Edert:

This serves as response to your letter dated October 14, 2010 concerning the Department of Health and Human Services, Office of the Inspector General's (OIG) draft report entitled *"Review of Medicaid Payments for Services Provided Under New Jersey's Section 1915 (c) Community Care Waiver by Elwyn New Jersey From January 1, 2005, Through December 31, 2007."* Your letter provides the opportunity to comment on the draft report.

The objective of this review was to determine whether the Division of Medical Assistance and Health Services (DMAHS) claim for Medicaid reimbursement for Community Care Waiver (CCW) program services provided by Elwyn complied with certain Federal and State requirements.

The draft audit report concluded that New Jersey's claims for reimbursement for some CCW program services provided by Elwyn did not fully comply with certain Federal and State requirements. While 64 beneficiary-months of the 110 beneficiary-months in the random sample were properly claimed for Medicaid reimbursement for all CCW program services, the remaining 46 beneficiary-months were not allowable for Medicaid reimbursement for services. The draft report states that claims for unallowable services were made because (1) Elwyn did not ensure that it documented services billed and claimed reimbursement only for allowable CCW program services, (2) the Division of Developmental Disabilities (Division) did not ensure and document that all beneficiaries were assessed and certified to require ICF/MR level of care, and (3) the Division did not ensure that waiver program services were provided only to beneficiaries with completed

and approved individual habilitation plans. Based upon the sample results, the auditor estimated that New Jersey was improperly reimbursed $903,375 in Federal Medicaid funds for CCW program services provided by Elwyn during the calendar years 2005 through 2007 audit period.

We appreciate the opportunity to provide this response to the draft OIG audit report. Following are the auditors' recommendations and the Division of Medical Assistance and Health Services responses:

**Recommendation 1:**

**The OIG recommends that New Jersey refund $903,375 to the Federal Government.**

The State concurs with some but not all of the findings concerning claims for unallowable community care waiver program services. The State respectively requests that the amount of the refund be recalculated based upon level of care certifications subsequently provided to the auditor and noted below in the section "Level of Care Assessment Not Documented". Our response to each of the auditor's findings is as follows:

**UNALLOWABLE COMMUNITY CARE WAIVER PROGRAM SERVICES**

**Services Not Documented**

**Finding:**

Section 1902(a)(27)(A) of the Act, 42 U.S.C. paragraph 1396a(a)(27) mandates that States have agreements with Medicaid providers under which providers agree to keep such records as are necessary fully to disclose the extent of the services provided to individuals receiving assistance under the State plan. Costs must be adequately documented in order to be allowable under Federal awards. For 32 beneficiary-months, the State agency claimed reimbursement for some services that were not adequately documented.

**Response:**

The DMAHS agrees with the auditor's findings.

**Services Not Provided**

**Finding:**

Pursuant to section 2497.1 of CMS's *State Medicaid Manual* states, Federal financial participation is available only for allowable actual expenditures made on behalf of

eligible recipients for covered services rendered by certified providers. For 12 beneficiary-months, the State agency claimed Federal reimbursement for some services that were not provided. Claims were submitted for reimbursement on behalf of Elwyn for both respite care and community support services. However, Elwyn's records indicated that the community support services were not provided.

**Response:**

The DMAHS agrees with the auditor's findings.

**Level of Care Assessment Not Documented**

**Finding:**

Pursuant to the State's waiver agreement with CMS, an eligible CCW program beneficiary must be assessed and certified by a qualified mental retardation professional to need ICF/MR level of care every 12 months, and the Division must maintain documentation of the assessments for at least 3 years. For 6 beneficiary-months, the State agency claimed reimbursement for services provided to beneficiaries for whom the ICF/MR level of care assessment was not approved by a qualified mental retardation professional for CCW program services.

**Response:**

The DMAHS and the Division have provided supporting documentation to the auditor for the following cited "Missing Level of Care"

Sample S2-33 and S2-34 for March of 2005 and May of 2005 respectively had a level of care certification present in the file for 8/05 to 8/06 signed by a QMRP indicating ICF-MR level of care. It would be unreasonable to assume that this individual was without such deficits within the previous six month period.

Sample S3-3 for April of 2005 had a level of care certification for May 2005 to May 2006 signed by a QMRP which indicates ICF-MR level of care. It would be unreasonable to conclude that such deficits were not present one month prior.

The Division respectfully requests that these cites be removed based upon the documentation provided mitigating the findings.

**Individual Habilitation Plan Not Complete**

**Finding:**
Pursuant to the State's waiver agreement with CMS, an eligible CCW program beneficiary must have an individual habilitation plan completed every 12 months, and

the Division and the CCW program service provider must maintain documentation of the individual habilitation plans for at least 3 years.

**Response:**

The DMAHS agrees with the auditor's findings.

**CAUSES OF UNALLOWABLE CLAIMS**

**Recommendation 2:**

**The OIG recommends the New Jersey require Elwyn to ensure that it documents services billed and claims reimbursement only for allowable CCW program services:**

Where services were not documented, 28 of the 32 cites (87.5%) reflected Daily Training Records in day habilitation programs that conflicted with the attendance record. The Division will provide a written statement to Elwyn regarding the requirement that Daily Training Records must be consistent with the attendance records. In addition, the Division will provide training to all Elwyn day training supervisors regarding documentation of services and consistency between documents (e.g. daily training records and attendance records).

Where services were not provided the Division notes that the Division began transitioning to an electronic billing process in 2003. The Division identified a potential deficit in the system in late 2007 and built in an edit in the form of a Pre claim duplicative report that allows the Division to identify attendance records which are submitted for respite and individual supports provided to the same individual simultaneously. At that time the provider agency (ies) are contacted and verification is received for the actual service rendered before billing occurs. Billing is then claimed only for the correct service rendered. The errors noted occurred prior to the institution of the duplicative report for these procedure codes.

**Recommendation 3:**

**The OIG recommends that New Jersey require the Division to ensure and document that all CCW program beneficiaries approved for services have been assessed and certified to ICF/MR level of care:**

**Recommendation 4:**

**The OIG recommends that New Jersey require the Division to ensure that waiver program services are provided only to CCW program beneficiaries for whom there is a completed and approved individual habilitation plan:**

The Division submits that in conjunction with the DMAHS, and the waiver administrators for the other four (4) 1915(c) Home and Community Based Service Waivers, mandatory trainings were conducted for all case managers statewide serving any of the 1915(c) HCBS waivers. The training addressed the six basic assurances. Level of Care and Service Planning for case managers were addressed in the training. This training was based upon the "Training for Case Managers: Home and Community-Based Services (HCBS) Waiver Assurances to Improve Quality" developed by the University of Southern Maine, Muskie School of Public Service out of a contract with CMS. Trainings were conducted with case management supervisors on September 22, 2010 and September 24, 2010. Trainings were conducted with case managers on October 19, 2010, October 21, 2010 and October 26, 2010. A final training is scheduled for December 14, 2010. The Division's Waiver Administrator will repeat this training for all Elwyn case managers.

If you have any questions or require additional information, please contact me or Richard Hurd at 609-588-2550.

Sincerely,

Valerie Harr

Valerie Harr
Director

VJH:H
c: Jennifer Velez
Richard Hurd
Ralph F. Lollar