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

Office of Audit Services, Region VII
601 East 12th Street, Room 0429
Kansas City, MO 64106

October 17, 2011

Report Number: A-07-11-01095

Ms. Susan E. Birch
Executive Director
Colorado Department of Health Care Policy and Financing
1570 Grant Street
Denver, CO 80203

Dear Ms. Birch:

Enclosed is the U.S. Department of Health and Human Services (HHS), Office of Inspector General (OIG), final report entitled *Review of Prescribed Drug Costs in the Colorado Medicaid 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.

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If you have any questions or comments about this report, please do not hesitate to call me at (816) 426-3591, or contact Chris Bresette, Audit Manager, at (816) 426-3591 or through email at Chris.Bresette@oig.hhs.gov. Please refer to report number A-07-11-01095 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 and Human Services

OFFICE OF INSPECTOR GENERAL

REVIEW OF PRESCRIBED DRUG COSTS IN THE COLORADO MEDICAID FAMILY PLANNING PROGRAM

Daniel R. Levinson
Inspector General

October 2011
A-07-11-01095

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 Colorado, the Department of Health Care Policy and Financing (the State agency) is responsible for administering the Medicaid program.

The amount that the Federal Government reimburses to State Medicaid agencies, known as 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 rates ranged from 50.00 percent to 61.59 percent for claims paid during Federal fiscal years (FY) 2006 through 2009 (October 1, 2005, through September 30, 2009).

Federal requirements also allow for various specified services to be reimbursed at higher FFP rates. Section 1903(a)(5) of the Act and 42 CFR §§ 433.10(c)(1) and 433.15(b)(2) authorize Federal reimbursement at an enhanced 90-percent rate (90-percent rate) for family planning services. Section 4270 of the CMS *State Medicaid Manual* describes family planning services as those that prevent or delay pregnancy or otherwise control family size.

The State agency receives Federal reimbursement at the 90-percent rate for certain prescribed drugs associated with family planning services. Most of these prescribed drugs (family planning prescribed drugs) are used for birth control or for the stimulation of ovulation in infertile women. In Colorado, the State agency considered oral, topical, and implantable contraceptives as family planning prescribed drugs. During FYs 2006 through 2009, the State agency had claims for family planning prescribed drugs of $8,957,020 ($8,061,318 Federal share).

OBJECTIVE

Our objective was to determine whether the State agency claimed family planning prescribed drug costs during FYs 2006 through 2009 pursuant to Federal and State requirements.

SUMMARY OF FINDINGS

The State agency did not always claim family planning prescribed drug costs during FYs 2006 through 2009 pursuant to Federal and State requirements. Of the 100 claims in our sample, 73 qualified as family planning services and were allowable for reimbursement at the 90-percent rate. However, the 27 remaining claims in our sample totaling $1,172 ($1,055 Federal share) contained errors. Specifically, 26 of the claims were not allowable for Federal reimbursement at the 90-percent rate (but were allowable for Federal reimbursement at FMAP rates) because the

contraceptive drugs in question were not prescribed for family planning purposes. The other claim was not allowable for any Federal reimbursement pursuant to Federal and State requirements because it lacked supporting documentation.

Based on the results of our sample, we estimated that the State agency received $617,999 in unallowable Federal reimbursement. These errors occurred primarily because the State agency lacked internal controls that would accurately identify which prescribed drug claims were allowable for Federal reimbursement at the 90-percent rate. Specifically, the State agency's internal controls automatically classified contraceptive drugs as family planning services even if the medication may have been prescribed for another (non-family planning) purpose.

RECOMMENDATIONS

We recommend that the State agency:

- refund $617,999 to the Federal Government;

- determine and refund the Federal share of any additional amounts related to family planning prescribed drugs that the State agency improperly claimed subsequent to our audit period; and

- strengthen internal controls to ensure that prescribed drug costs submitted for Federal reimbursement appropriately identify claims that are eligible for reimbursement at the 90-percent rate.

STATE AGENCY COMMENTS

In written comments on our draft report, the State agency partially concurred with each of our three recommendations. The State agency concurred with our recommendations with regard to the one claim that lacked appropriate supporting documentation and described corrective actions that it planned to implement.

However, the State agency did not concur with the majority of our findings and recommendations. Specifically, the State agency disagreed that Federal reimbursement for drugs prescribed for non-family planning purposes should be limited to FMAP rates. The State agency said that individuals receive family planning benefits when contraceptive drugs are prescribed for another (non-family planning) purpose. Further, the State agency stated that the only way to ensure that contraceptive drugs were prescribed only for family planning purposes would require implementing a methodology that would place an undue, disproportionate burden on prescribers of contraception and pharmacies.

The State agency also stated that we misinterpreted Federal requirements regarding State Medicaid agency claims for family planning prescribed drug costs and that our findings were therefore not consistent with other issued Office of Inspector General (OIG) audits.

The State agency's comments appear in their entirety as Appendix C.

OFFICE OF INSPECTOR GENERAL RESPONSE

Nothing in the State agency's written comments caused us to change our findings or our recommendations. We correctly applied Federal requirements to each of the reviewed claims.

Furthermore, the State agency's statement, that our interpretation of Federal requirements during this audit is inconsistent with other issued OIG audits, is inaccurate. For this audit, our methodology was different than the methodology used in previous audits. Specifically, we performed an additional audit step that was not performed in other OIG audits.

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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.

The standard Form CMS-64, Quarterly Medicaid Statement of Expenditures for the Medical Assistance Program (CMS-64 report), reports 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.

Colorado Medicaid Program

In Colorado, the Department of Health Care Policy and Financing (the State agency) is responsible for administering the Medicaid program. The amount that the Federal Government reimburses to State Medicaid agencies, known as 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 rates ranged from 50.00 percent to 61.59 percent for claims paid during Federal fiscal years (FY) 2006 through 2009 (October 1, 2005, through September 30, 2009).

Medicaid Coverage of Family Planning Prescribed Drugs

Section 1905(a)(4)(C) of the Act requires States to furnish family planning services and supplies to individuals of childbearing 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) and 433.15(b)(2) authorize Federal reimbursement at an enhanced 90-percent rate (90-percent rate) for family planning services.

Section 4270 of the CMS *State Medicaid Manual* (the manual) describes family planning services as those that prevent or delay pregnancy or otherwise control family size. Family planning services include, but are not limited to, the following items and services: counseling services and patient education; examination and treatment by medical professionals pursuant to States' requirements; devices to prevent conception; sterilization procedures; and infertility services, including sterilization reversals.

The State agency receives Federal reimbursement at the 90-percent rate for certain prescribed drugs associated with family planning services. Most of these prescribed drugs (family planning prescribed drugs) are used for birth control or for the stimulation of ovulation in infertile women.

CMS issued *Financial Management Review Guide Number 20* (the guide) to the State agency via Medicaid State Operations Letter 91-9. The guide allows the State agency to use a variety of coding systems and codes for medications for which the State agency reimburses providers under Medicaid. Most of the medications covered as family planning prescribed drugs are used for birth control or for the stimulation of ovulation in infertile women. Other medications can be classified as family planning prescribed drugs if they are used incident to, or as part of, procedures performed for family planning purposes, such as pain medications following a sterilization procedure. However, the guide does not specifically list what pharmaceutical codes may be reimbursed at the 90-percent rate.

Family Planning Prescribed Drug Claims in Colorado

To classify claims that include family planning services, the State agency uses indicators such as procedure codes, diagnosis codes, surgical procedure codes, and modifiers. For family planning prescribed drugs, the State agency classified medications according to national drug codes. Specifically, the State agency considered oral, topical, and implantable contraceptives as family planning prescribed drugs.

During FYs 2006 through 2009, the State agency had claims for family planning prescription drugs of $8,957,020 ($8,061,318 Federal share). During this same period the State agency received Federal reimbursement totaling $26,699,896 for all other family planning services, which we are separately reviewing.

OBJECTIVE, SCOPE, AND METHODOLOGY

Objective

Our objective was to determine whether the State agency claimed family planning prescribed drug costs during FYs 2006 through 2009 pursuant to Federal and State requirements.

Scope

We reviewed $8,957,020 ($8,061,318 Federal share) that the State agency claimed for family planning prescribed drugs related to family planning services in Colorado during FYs 2006 through 2009.[1] 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 in Denver, Colorado, from March through November 2010.

[1] The amount reviewed included $282,563 which was claimed for the quarter ending December 31, 2009.

Methodology

To accomplish our objective, we:

- reviewed applicable Federal laws, Federal and State regulations, CMS guidance, and the State plan;

- held discussions with CMS officials to gain 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 how the State agency claimed Medicaid reimbursement for family planning services, including family planning prescribed drugs;

- reconciled current-period and prior-period family planning claims reported on the CMS-64 reports back to the State agency's supporting documentation;

- selected a simple random sample of 100 family planning prescribed drug claims (each claim had one prescribed drug);

- obtained and reviewed the supporting documentation for each sampled claim to determine the allowability of the claim for Federal reimbursement;

- requested, for claims in which a family planning purpose was not explicitly indicated in the supporting documentation, that prescribing physicians state whether the drug associated with that claim was prescribed for a family planning purpose (as defined in the manual); and

- provided the results of our review to State agency officials on June 2, 2011.

Appendixes A and B contain the details of our sampling and projection methodologies.

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 claim family planning prescribed drug costs during FYs 2006 through 2009 pursuant to Federal and State requirements. Of the 100 claims in our sample, 73 qualified as family planning services and were allowable for reimbursement at the 90-percent rate. However, the 27 remaining claims in our sample totaling $1,172 ($1,055 Federal share) contained errors. Specifically, 26 of the claims were not allowable for Federal reimbursement

at the 90-percent rate (but were allowable for Federal reimbursement at FMAP rates) because the contraceptive drugs in question were not prescribed for family planning purposes. The other claim was not allowable for any Federal reimbursement pursuant to Federal and State requirements because it lacked supporting documentation.

Based on the results of our sample, we estimated that the State agency received $617,999 in unallowable Federal reimbursement. These errors occurred primarily because the State agency lacked internal controls that would accurately identify which prescribed drug claims were allowable for Federal reimbursement at the 90-percent rate. Specifically, the State agency's internal controls automatically classified contraceptive drugs as family planning services even if the medication may have been prescribed for another (non-family planning) purpose.

UNALLOWABLE FAMILY PLANNING SERVICES

Prescribed Drugs Unrelated to Family Planning

Section 4270 of the manual defines family planning services as those that prevent or delay pregnancy or otherwise control family size. Specifically, section 4270(B)(2) of the manual states: "Only items and procedures clearly provided or performed for family planning purposes may be [claimed] at the 90 percent rate." (Emphasis added.)

For family planning services, the U.S. Department of Health and Human Services Departmental Appeals Board (the DAB) has provided additional guidance regarding Federal reimbursement at the 90-percent rate. The DAB has ruled that "… the State [agency] bears the burden of justifying claims for enhanced rates…. It is not enough that the claims could possibly relate to family planning, or that the diagnoses do not preclude such a determination. Rather, the State [agency] must affirmatively document that the services were sought for family planning reasons."[2]

Contrary to the Federal requirement and administrative law ruling, the State agency improperly claimed Federal reimbursement at the 90-percent rate for 26 claims. Specifically, the State agency did not affirmatively document that the prescribed drugs for these 26 claims were sought for family planning reasons. In fact, the responses that we received from the prescribing physicians' offices stated that the drugs associated with these claims were not prescribed for a family planning purpose at it is defined in the manual. (For some of these claims, the responses indicated the actual, non-family-planning purpose of the prescription.) Therefore, the prescribed drug costs related to the 26 claims were not allowable for reimbursement at the 90-percent rate (but were allowable for Federal reimbursement at FMAP rates).

[2] New York State Department of Social Services, DAB No. 1364 (1992).

Lack of Documentation

Section 1902(a)(27) of the Act and 42 CFR §§ 431.17(c) and 433.32 require that services claimed for Medicaid reimbursement be documented. In addition, 10 Code of Colorado Regulations 2505-10, section 8.040.2, states that records must be maintained for 6 years. Contrary to these Federal and State requirements, the State agency improperly claimed Federal reimbursement for drug costs associated with 1 claim, with a March 17, 2006, date of service, that was not allowable for reimbursement because the provider could not provide documentation to support the services billed. Specifically, neither the prescribing physician nor the pharmacy that filled the prescription had documentation to support the prescribed drug. Therefore, this claim was not allowable for Federal reimbursement.

INADEQUATE CONTROLS

These errors occurred primarily because the State agency lacked internal controls that would accurately identify which prescribed drug claims were allowable for Federal reimbursement at the 90-percent rate. Specifically, the State agency's internal controls automatically classified contraceptive drugs as family planning services even if the medication may have been prescribed for another (non-family planning) purpose.

UNALLOWABLE FAMILY PLANNING CLAIMS

Of the 100 prescribed drug claims in our sample, 27 claims totaling $1,172 ($1,055 Federal share) contained errors. Based on the results of our sample, we estimated that the State agency received $617,999 in unallowable Federal reimbursement.

RECOMMENDATIONS

We recommend that the State agency:

- refund $617,999 to the Federal Government;
- determine and refund the Federal share of any additional amounts related to family planning prescribed drugs that the State agency improperly claimed subsequent to our audit period; and
- strengthen internal controls to ensure that prescribed drug costs submitted for Federal reimbursement appropriately identify claims that are eligible for reimbursement at the 90-percent rate.

STATE AGENCY COMMENTS

In written comments on our draft report, the State agency partially concurred with each of our three recommendations. The State agency concurred with our recommendations with regard to the one claim that lacked appropriate supporting documentation and described corrective actions that it planned to implement.

However, the State agency did not concur with the majority of our findings and recommendations. Specifically, the State agency disagreed that Federal reimbursement for drugs prescribed for non-family planning purposes should be limited to FMAP rates. The State agency stated that the only way to ensure that contraceptive drugs were prescribed only for family planning purposes would be to require that (1) prescribing physicians include diagnosis codes on their prescriptions and (2) pharmacies include those diagnosis codes on claims submitted to the State agency. The State agency contended that this requirement "… is not consistent with current medical practice and places an undue, disproportionate burden on prescribers of contraception and pharmacies alike…."

Further, the State agency said that it was entitled to the 90-percent rate for all contraceptive drugs because they "… could prevent a pregnancy despite the client's medical records not accurately reflecting the client's … reasons for taking a contraceptive drug."

The State agency also stated that we misinterpreted Federal requirements regarding State Medicaid agency claims for family planning prescribed drug costs and that our findings were therefore not consistent with other issued Office of Inspector General (OIG) audits. Specifically, the State agency said that Federal requirements permit it to establish a system by which all contraceptive drugs could be claimed at the 90-percent rate, which the State agency believes is consistent with other States' Medicaid policies. The State agency also said that in the majority of the other OIG reports of other State agencies, "OIG found no issue with states claiming enhanced FFP on all claims for prescriptions with drugs that had been appropriately assigned to the contraceptive therapeutic classification code." The State agency stated that "[a]ll of the 100 sampled claims in Colorado's audit contained the appropriate therapeutic classification codes … [to be classified as a contraceptive drug]."

The State agency's comments appear in their entirety as Appendix C.

OFFICE OF INSPECTOR GENERAL RESPONSE

Nothing in the State agency's written comments caused us to change our findings or our recommendations. We correctly applied Federal requirements to each of the reviewed claims.

Regarding the 26 claims for which contraceptive drugs were not prescribed for family planning purposes, we received statements from the prescribing physicians' offices that confirmed that the contraceptive drugs were not prescribed for a family planning purpose. Moreover, the prescribing physicians indicated that some of the recipients were either pregnant or had previously received sterilization procedures. Therefore, we maintain that these claims were not allowable for Federal reimbursement at the 90-percent rate (but were allowable for Federal reimbursement at FMAP rates).

Accordingly, we believe we have correctly interpreted and consistently applied the Federal requirements, including the U.S. Department of Health and Human Services Departmental Appeals Board ruling which states that "… the State [agency] bears the burden of justifying claims for enhanced rates…. It is not enough that the claims could possibly relate to family

planning, or that the diagnoses do not preclude such a determination. Rather, the State [agency] must affirmatively document that the services were sought for family planning reasons."

Furthermore, the State agency's statement, that our interpretation of Federal requirements during this audit is inconsistent with other issued OIG audits, is inaccurate. In other audits, the OIG designed its tests to determine whether the other State agencies had systems in place to correctly identify contraceptive therapeutic classification codes. For this audit, not only did we verify that the claims contained these required codes, but we also performed an additional step in that we asked the prescribing physicians whether the prescriptions were actually intended for family planning purposes. This additional audit step was not performed in other OIG audits.

APPENDIXES

APPENDIX A: SAMPLE DESIGN AND METHODOLOGY

POPULATION

The population consists of prescribed drug claims for which the Colorado Department of Health Care Policy and Financing (the State agency) claimed Federal reimbursement at the enhanced 90-percent Federal financial participation rate for family planning services. The State agency claimed these family planning prescribed drugs for Federal fiscal years (FY) 2006 through 2009 (October 1, 2005, through September 30, 2009).

SAMPLING FRAME

The sampling frame is a database of paid family planning prescribed drug claims consisting of 204,935 records totaling $8,957,020 ($8,061,318 Federal share) for which the State agency claimed Federal reimbursement during FYs 2006 through 2009. (The amount reviewed included $282,563, which was claimed for the quarter ending December 31, 2009.) Each claim had one prescribed drug.

SAMPLE UNIT

The sampling unit is a paid family planning prescribed drug claim.

SAMPLE DESIGN

We used a simple random sample.

SAMPLE SIZE

We selected 100 sample units.

SOURCE OF RANDOM NUMBERS

We generated the random numbers with the Office of Inspector General, Office of Audit Services, statistical software (RAT-STATS).

ESTIMATION METHODOLOGY

We used RAT-STATS to estimate the unallowable payments for family planning services. Because the Federal medical assistance percentage rate varied from quarter to quarter, we made separate estimations for the total unallowable costs and for the Federal share of those unallowable costs.

APPENDIX B: SAMPLE RESULTS AND ESTIMATES

SAMPLE RESULTS

Frame Size	Frame Value	Sample Size	Value of Sample	Number of Claims With Unallowable Federal Reimbursement	Amount of Unallowable Federal Reimbursement
204,935	$8,061,318	100	$4,146	27	$455

ESTIMATES OF UNALLOWABLE FEDERAL REIMBURSEMENT

(Limits Calculated for a 90-Percent Confidence Interval)

	Total Estimated Unallowable Federal Reimbursement
Point estimate	$ 931,934
Lower limit	$ 617,999
Upper limit	$ 1,245,870

APPENDIX C: STATE AGENCY COMMENTS

COLORADO DEPARTMENT OF HEALTH CARE POLICY & FINANCING

1570 Grant Street, Denver, CO 80203-1818 • (303) 866-2993 • (303) 866-4411 Fax • (303) 866-3883 TTY

John W. Hickenlooper, Governor • Susan E. Birch MBA, BSN, RN, Executive Director

August 1, 2011

Patrick J. Cogley, Regional Inspector General for Audit Services
Office of the Inspector General
Office of Audit Services, Region VII
601 E. 12th St., Room 0429
Kansas City, MO 64106

Mr. Cogley:

Please see the attached document that contains the Department of Health Care Policy and Financing's submission of responses to the draft report entitled *Review of Prescribed Drug Costs in the Colorado Medicaid Family Planning Program* (Report Number A-07-11-01095).

If you have any questions or comments, please contact me at 303-866-6575 or kim.nguyen@state.co.us.

Sincerely:

Kim Nguyen
Audit Tracker and Analyst, Audits and Compliance Division
Department of Health Care Policy and Financing

Department of Health Care Policy and Financing's
Initial Response to the
Department of Health & Human Services
Office of Inspector General
Review of Prescribed Drug Costs in the Colorado Medicaid Family Planning Program
Control Number A-07-11-01095
August 2011

Recommendation #1:

We recommend that the State Agency:

- **Refund $617,999 to the Federal Government.**

The Department of Health Care Policy and Financing's Response to Recommendation #1:

Partially concur.

The Department disagrees with the Office of the Inspector General's (OIG's) recommendation that the majority of the estimated $617,999 be returned to the federal government because the pharmaceuticals on 26 of the 100 sampled claims may have been prescribed for purposes other than family planning. The Department asserts that the only way to ensure that claims for pharmaceuticals in the contraceptive therapeutic classification are only claimed at the enhanced match rate when prescribed specifically for the purposes of family planning would be to require pharmacies to include a diagnosis code on the claim. Pharmacies would be unable to do this unless the prescriber included the diagnosis code on the prescription. Requiring the diagnosis code on the prescription is not consistent with current medical practice and places an undue, disproportionate burden on prescribers of contraception and pharmacies alike and unfairly segregates a certain class of medication to be processed differently. Most importantly, it could impede access since, while family planning services, supplies, and pharmaceuticals are copayment-exempt, other pharmaceuticals are not. If the Department were to extend its current copayment requirement for non-family planning pharmaceuticals to include family planning pharmaceuticals for non-family planning diagnoses, a client may be deterred from filling her prescription and an unintended pregnancy could result.

Second, the Department wishes to address the issue of the stigma that some women associate with discussing and requesting contraception. It is not uncommon for individuals to withhold sensitive and deeply personal information from health care providers, especially regarding sexual activity. Some women may feel more comfortable requesting contraceptives to manage dysmenorrhea or menorrhagia rather than for birth control. Further, at the client's request, providers may document a non-family planning purpose as the primary reason for the prescription in order to allay fears a client may have regarding privacy. Also, in the majority of the 26 claims in question, the clinical records do not indicate that these clients were unable to conceive, so while a client may request contraception for another reason, it still could prevent a pregnancy despite the client's medical records not accurately reflecting the client's sexual

activity and/or reasons for taking a contraceptive drug. Finally, Section 4270 of the State Medicaid Manual leaves it to states to establish a way to identify family planning services and supplies for the enhanced match. Therefore, the Department maintains that all pharmaceuticals in the contraceptive therapeutic class should be eligible for the enhanced family planning matching rate.

Lastly, The Department believes that OIG is not consistent across state audits in its interpretation and application of the guidance in the Centers for Medicare and Medicaid Services (CMS') Financial Management Review Guide #20 regarding states' claiming of enhanced federal financial participation (FFP) for family planning services and supplies. Nor, the Department believes, is OIG consistent across state audits in its interpretation and application of Section 4270 of the State Medicaid Manual or the cited 1992 Departmental Appeals Board administrative law ruling.

During the course of the audit, the Department explained to OIG that Colorado's enhanced claiming for family planning pharmacy claims was governed by therapeutic classification code. It appears that many other states use this methodology for claiming the enhanced family planning match on pharmacy claims. In other audits conducted by OIG of states' enhanced family planning pharmacy claiming, the Department found that in only one of these audits were the specific prescription diagnoses questioned. In the majority of these audits, OIG found no issue with states claiming enhanced FFP on all claims for prescriptions with drugs that had been appropriately assigned to the contraceptive therapeutic classification code. Specifically, in one audit report released five months ago, OIG states, "We reviewed [part of the federal share] of claims for family planning services and supplies that did not contain ... approved therapeutic classification codes. ***We did not review the remaining [federal share] because these claims contained the appropriate... therapeutic classification codes.*** *" [Emphasis added]. All of the 100 sampled claims in Colorado's audit contained the appropriate therapeutic classification codes and pharmaceuticals that were appropriately assigned to those therapeutic classification codes, so the Department again disagrees with OIG's recommendation to return the enhanced FFP for a quarter of its family planning pharmacy claims.*

The Department partially concurs with the recommendation, however, given the finding that one of the 100 sampled pharmacy claims was not supported by clinical documentation. For this claim, OIG found that neither the prescribing physician nor the pharmacy that filled the prescription had documentation to support that the drug had been prescribed at all. The Department concurs that this claim was therefore not eligible for FFP.

Recommendation #2:

We recommend that the State Agency:

- **Determine and refund the Federal share of any additional amounts related to family planning prescribed drugs that the State agency improperly claimed subsequent to our audit period.**

The Department of Health Care Policy and Financing's Response to Recommendation #2:

Partially Concur.

To the extent that the Department may have claimed FFP subsequent to the audit period for family planning pharmacy claims for which neither the pharmacy nor the prescriber can produce supporting documentation that the pharmaceutical was prescribed at all, the Department concurs that such FFP should be returned.

Recommendation #3:

We recommend that the State Agency:

- **Strengthen internal controls to ensure that prescribed drug costs submitted for Federal reimbursement appropriately identify claims that are eligible for reimbursement at the 90-percent rate.**

The Department of Health Care Policy and Financing's Response to Recommendation #3:

Partially concur.

The Department believes that its internal controls for appropriate claiming of enhanced match for family planning pharmaceuticals are adequate and exceed that of other states. As noted above, 100 percent of sampled claims included the appropriate therapeutic classification codes and pharmaceuticals that were appropriately assigned to those therapeutic classification codes as opposed to several other states. As discussed in its response to Recommendation #1, the Department asserts that the only way to ensure that claims for pharmaceuticals in the contraceptive therapeutic classification are only claimed at the enhanced match rate when prescribed specifically for the purposes of family planning would be to require pharmacies to include a diagnosis code on the claim. Pharmacies would not be able to do this unless the prescriber included the diagnosis code on the prescription. Requiring the diagnosis code on the prescription is not consistent with current medical practice and places an undue, disproportionate burden on prescribers of contraception and pharmacies alike.

With regard to the one claim that lacked appropriate documentation that the pharmaceutical was prescribed at all, the Department will engage in broad-based provider education efforts to ensure that prescribers and pharmacies are documenting and maintaining client records to support the billed services.