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 5, 2011

Report Number: A-07-11-01097

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 Costs for Inpatient Services 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-07-11-01097 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 COSTS FOR INPATIENT SERVICES IN THE COLORADO MEDICAID FAMILY PLANNING PROGRAM

Daniel R. Levinson
Inspector General

October 2011
A-07-11-01097

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 family planning services performed in an inpatient setting (family planning inpatient services). In Colorado, an inpatient sterilization procedure for an individual under the age of 21 is not a Medicaid covered benefit. Further, Federal and State regulations require that informed consent for a sterilization procedure be given at least 30 days before the expected date of delivery. During FYs 2006 through 2009, the State agency had claims for family planning inpatient services of $2,766,536 ($2,489,882 Federal share).

OBJECTIVE

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

SUMMARY OF FINDINGS

The State agency did not always claim costs for family planning inpatient services during FYs 2006 through 2009 pursuant to Federal and State requirements. Of the 100 claims in our sample, 97 qualified as family planning services and were allowable for reimbursement at the 90-percent rate. However, the 3 remaining claims in our sample contained errors totaling $2,295 in unallowable Federal reimbursement. Specifically, 2 of the claims lacked proper consent for inpatient sterilization procedures and were therefore not allowable for any Federal

reimbursement. The other claim was not allowable for Federal reimbursement at the 90-percent rate (but was allowable for Federal reimbursement at the FMAP rate) because the service in question was not performed for a family planning purpose.

These errors occurred because the State agency's internal controls that would identify which claims for inpatient services were allowable for Federal reimbursement at the 90-percent rate were not always effective.

RECOMMENDATIONS

We recommend that the State agency:

- refund $2,295 to the Federal Government and

- strengthen internal controls to ensure that inpatient services 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 concurred with our recommendations and described corrective actions that it planned to implement. The State agency's comments are included in their entirety as the Appendix.

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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 Inpatient Services

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. Federal regulations require that informed consent for a sterilization procedure be given at least 30 days before the expected date of delivery.

The State agency receives Federal reimbursement at the 90-percent rate for family planning services performed in an inpatient setting (family planning inpatient services).

Family Planning Inpatient Services Claims in Colorado

To classify claims that include family planning inpatient services, the State agency uses indicators such as procedure codes, diagnosis codes, surgical procedure codes, and modifiers. Based upon these indicators, the State agency allocates the portion of the costs that relates to family planning. For each claim that includes a sterilization procedure, the State agency obtains and reviews a consent form before paying that claim. Further, an inpatient sterilization procedure for an individual under the age of 21 is not a Medicaid covered benefit in Colorado.

During FYs 2006 through 2009, the State agency had claims for family planning inpatient services of $2,766,536 ($2,489,882 Federal share). During this same period the State agency received Federal reimbursement totaling $32,271,332 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 costs for family planning inpatient services during FYs 2006 through 2009 pursuant to Federal and State requirements.

Scope

We reviewed $2,766,536 ($2,489,882 Federal share) that the State agency claimed for family planning inpatient services in Colorado during FYs 2006 through 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 in Denver, Colorado, from March through November 2010.

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 inpatient services;

- 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 costs claimed as family planning inpatient services costs for 100 inpatient services claims;

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

- provided one medical record to our Chief Medical Officer, who performed a medical review to determine whether the relevant procedure was performed for a family planning purpose as defined by Federal requirements[1]; and

- discussed the results of our review with State agency officials on August 18, 2011.

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 costs for family planning inpatient services during FYs 2006 through 2009 pursuant to Federal and State requirements. Of the 100 claims in our sample, 97 qualified as family planning services and were allowable for reimbursement at the 90-percent rate. However, the 3 remaining claims in our sample contained errors totaling $2,295 in unallowable Federal reimbursement.[2] Specifically, 2 of the claims lacked proper consent for inpatient sterilization procedures and were therefore not allowable for any Federal reimbursement. The other claim was not allowable for Federal reimbursement at the 90-percent rate (but was allowable for Federal reimbursement at the FMAP rate) because the service in question was not performed for a family planning purpose.

These errors occurred because the State agency's internal controls that would identify which claims for inpatient services were allowable for Federal reimbursement at the 90-percent rate were not always effective.

[1] This record was associated with the service addressed in our second finding.

[2] Our statistical projection policies specify that we project the results of our sample to the universe if we identify 6 or more errors. Because we identified only 3 errors in this sample, we did not project the results and are questioning only those costs associated with the errors we identified.

UNALLOWABLE FAMILY PLANNING SERVICES

Improper Consent for Sterilization Procedures

Federal regulations (42 CFR § 441.253) state that Federal reimbursement is available in expenditures for the sterilization of an individual only if "[t]he individual is at least 21 years old at the time consent is obtained" and "[a]t least 30 days, but not more than 180 days, have passed between the date of informed consent and the date of the sterilization, except in the case of premature delivery.…" The same section states that "[i]n the case of premature delivery, the informed consent must have been given at least 30 days before the expected date of delivery."

State regulations (10 Code of Colorado Regulations 2505-10, section 8.730.2.C) state that a sterilization for an individual who is under the age of 21 is not a Medicaid covered benefit in Colorado. In addition, section 8.730.2.B requires that, in the case of premature delivery, informed consent be given at least 30 days before the expected date of delivery.

Contrary to these Federal and State requirements, the State agency improperly claimed $1,747 in Federal reimbursement for 2 inpatient claims with sterilization procedures. For one claim, the provider obtained consent and performed the sterilization while the patient was under the age of 21. For the other claim, which included a premature delivery, informed consent was not given at least 30 days before the expected due date of delivery. These two claims were not allowable for any Federal reimbursement.

Inpatient Service 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."[3]

Contrary to the Federal requirement and administrative law ruling, the State agency improperly claimed Federal reimbursement at the 90-percent rate for 1 inpatient claim that did not include a service related to family planning. Our medical review determined that the procedure performed, a laparoscopic sleeve gastrectomy, was not performed for a family planning purpose. Therefore, the inpatient service costs related to this procedure were not

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

allowable for reimbursement at the 90-percent rate (but were allowable for Federal reimbursement at the FMAP rate), which resulted in $548 in excessive Federal reimbursement.

INEFFECTIVE CONTROLS

These errors occurred because the State agency's internal controls that would identify which claims for inpatient services were allowable for Federal reimbursement at the 90-percent rate were not always effective. Specifically, the State agency's process to review consent forms for sterilization procedures did not always prevent Federal reimbursement in cases when consent was not obtained pursuant to Federal and State requirements. Also, the State agency's internal controls used indicators to automatically classify portions of the costs for inpatient services as family planning services even if the procedure may have been performed for another (non-family planning) purpose.

RECOMMENDATIONS

We recommend that the State agency:

- refund $2,295 to the Federal Government and

- strengthen internal controls to ensure that inpatient services 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 concurred with our recommendations and described corrective actions that it planned to implement. The State agency's comments are included in their entirety as the Appendix.

APPENDIX

APPENDIX: 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 25, 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 Costs for Inpatient Services in the Colorado Medicaid Family Planning Program* (Report Number A-07-11-01097).

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 Costs for Inpatient Services in the Colorado Medicaid Family Planning Program
Control Number A-07-11-01097
August 2011

Recommendation #1:

We recommend that the State Agency:

- **refund $2,295 to the Federal Government.**

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

Concur.

The Department agrees to refund the federal financial participation of $2,295 for unallowable federal reimbursement at the 90-percent rate. This $2,295 in federal financial participation will be refunded on the CMS-64 in the quarter in which this report is finalized and submitted to the Department as final.

Recommendation #2:

We recommend that the State Agency:

- **strengthen internal controls to ensure that inpatient services 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 #2:

Concur.

The Department agrees that internal controls should be strengthened to ensure that inpatient services costs submitted for Federal reimbursement appropriately identify claims that are eligible for reimbursement at the 90-percent rate.

Current controls require that all claims for sterilization procedures be submitted to the Department's fiscal agent on paper with the attached sterilization consent form. The fiscal agent is instructed to deny these claims when the consent form has not been properly completed. The Department will conduct further training with fiscal agent claims processors to ensure that fiscal agent staff understand and follow all instructions regarding the conditions that must be met in order for the claim to be approved and paid. This training will be conducted no later than February 2012. The Department will also continue to encourage and enforce correct procedure and diagnosis coding by Medicaid providers to the fullest extent possible.