

# Feds Cracking Down on State Medicaid Programs

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State Medicaid programs face a wave of enforcement actions after a recent audit uncovered millions of dollars in improper reimbursements made to New Jersey's Medicaid agency.

Medicaid programs depend on federal reimbursements to stay afloat, and increased scrutiny by government auditors could spell financial disaster.

The audit uncovered widespread deficiencies in claims the New Jersey program submitted to the federal government for reimbursement for services provided to state residents, and recommended that New Jersey pay back the federal government \$54.7 million.

## Snapshot

- State Medicaid payments are being scrutinized by federal auditors
- Threat to federal Medicaid reimbursements could damage state programs

The New Jersey report is the seventh state Medicaid-based report the Health and Human Services Office of Inspector General has issued in 2018, and all have uncovered problems ranging from defects in Medicaid nursing home surveys to improper federal reimbursements for Medicaid physician-administered drugs. In addition to New Jersey, the reports addressed programs in New York, Arkansas, California, Arizona, and North Carolina.

Overall federal outlays for Medicaid topped \$349.8 billion in 2015, up 16 percent from the previous year, according to the government's most recent [actuarial report](#) on the program. Federal payments accounted for 63 percent of the total spending on Medicaid in 2015 (\$553.8 billion), according to the report.

The current work plan for the OIG has several more audits in the works focused on Medicaid spending and state oversight, including one on Medicaid payments for school-based health services and another on how funds are used by Medicaid managed care organizations, Ellyn Sternfield, a health-care attorney with Mintz, Levin, Cohn, Ferris, Glovsky and Popeo PC in Washington, told Bloomberg Law.

Upcoming audits will focus on how states determine who's eligible for Medicaid and how effective state programs are in reporting and collecting Medicaid overpayments.

Sternfield previously served as the director of the Oregon Department of Justice's Medicaid Fraud Control Unit.

Of the five states with the highest Medicaid enrollment—California, New York, Illinois, Texas, and Florida—the first three expanded their programs through the Affordable Care Act, boosting patient populations and increasing their federal reimbursements. High enrollment states may be at a particular risk of enforcement because they have such huge patient populations and rely on the federal government for a significant portion of their funding.

## Wake-Up Call

The \$54.7 million figure is a very large amount for a state Medicaid program to be asked to refund, and it should be a wake-up call for other states that have Medicaid-covered partial hospitalization services, Judith Waltz, a health-care attorney with Foley & Lardner LLP in San Francisco, told Bloomberg Law.

Waltz works on a variety of Medicare and Medicaid overpayment cases and previously served as assistant regional counsel for the Department of Health and Human Services in San Francisco.

It's likely that the New Jersey Medicaid program will look to the hospitals to refund the deficient claims to the state, Waltz said, so the report should be reviewed by providers working in state Medicaid programs as well as the state Medicaid programs themselves.

Waltz said she also assumed that the New Jersey Medicaid program will step up provider oversight, but increased oversight can raise costs for both the state and providers.

Partial hospitalization services have always been difficult to provide and document appropriately, and have been the focus of many false claims cases, Waltz said. The OIG's report noted that it was a follow-up to an earlier report examining adult partial hospitalization, which suggests that states that have had trouble with their adult program should be on the alert because of the new report, Waltz said.

## Stronger Scrutiny

It's increasingly likely that Medicaid programs in general will be facing more scrutiny over the next few years than they have historically, Waltz said. The Centers for Medicare & Medicaid Services Medicaid Integrity Program auditors are in high gear, in conjunction with state program integrity functions, and the ACA gave states more enforcement tools, Waltz said.

"Medicaid programs receive a lot of federal money, and there is a lot of talk about a need for Medicaid reform, which suggests more scrutiny for fraud, waste, and abuse," Waltz said.

Federal Medicaid Integrity Program contractors review provider activities, audit claims, identify overpayments, and educate providers on proper behavior.

## Red Tape

The New Jersey [audit](#) doesn't relate to any outright fraud but is instead concerned with what Sternfield referred to as "government red tape." The audit doesn't allege that any hospitals billed for children's services that were never provided,

and there are no allegations children received sub-par treatment, Sternfield said.

The states are charged with administering the Medicaid program and making sure that providers comply with state standards, Sternfield said. The New Jersey report highlighted that the state and the federal government had different licensing standards for facilities providing outpatient hospital services.

The New Jersey Department of Human Services, which runs the state Medicaid program, didn't respond to a request for comment on the report. The American Hospital Association and the New Jersey Hospital Association also did not respond to requests for comments.

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