

ONE HUNDRED FOURTEENTH CONGRESS  
**Congress of the United States**  
**House of Representatives**  
COMMITTEE ON ENERGY AND COMMERCE  
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March 11, 2016

Mr. John Hagg  
Director of Medicaid Audits  
Office of Inspector General  
Department of Health and Human Services  
330 Independence Avenue, S.W.  
Washington, DC 20201

Dear Mr. Hagg:

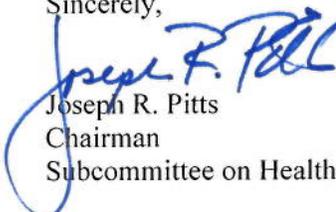
Thank you for appearing before the Subcommittee on Health on February 10, 2016, to testify at the hearing entitled "Examining Medicaid and CHIP's Federal Medical Assistance Percentage."

Pursuant to the Rules of the Committee on Energy and Commerce, the hearing record remains open for ten business days to permit Members to submit additional questions for the record, which are attached. The format of your responses to these questions should be as follows: (1) the name of the Member whose question you are addressing, (2) the complete text of the question you are addressing in bold, and (3) your answer to that question in plain text.

To facilitate the printing of the hearing record, please respond to these questions with a transmittal letter by the close of business on March 25, 2016. Your responses should be mailed to Graham Pittman, Legislative Clerk, Committee on Energy and Commerce, 2125 Rayburn House Office Building, Washington, DC 20515 and e-mailed in Word format to [graham.pittman@mail.house.gov](mailto:graham.pittman@mail.house.gov).

Thank you again for your time and effort preparing and delivering testimony before the Subcommittee.

Sincerely,



Joseph R. Pitts  
Chairman  
Subcommittee on Health

cc: The Honorable Gene Green, Ranking Member, Subcommittee on Health

Attachment

## Attachment — Additional Questions for the Record

### The Honorable Michael Burgess

1. Under the Affordable Care Act, the federal government is paying 100 percent of the costs for Medicaid expansion populations. In addition, due to the ACA's 23 percent bump in the enhanced FMPA, the federal government is currently paying all of the costs for CHIP in 12 states. Does OIG have any concerns that the lack of state contribution will affect state incentives to ensure that Medicaid payments are appropriate and accurate?

### The Honorable Frank Pallone, Jr.

Mr Hagg, during the Energy and Commerce Health Subcommittee Hearing on "Examining Medicaid and CHIPS's Federal Medical Assistance" on February 10, 2016, you were asked a question by Mr. Cardenas which we request clarification on your response. During the hearing, Mr. Cardenas asked you, "One report that OIG has highlighted is a review of Federal reimbursement for family planning services in California, specifically in the San Diego area... ..In this report, over half of the improper claims were noted to be for visits that included testing for sexually transmitted infections. Is it true that after this report, CMS released guidance clarifying that STI testing is classified as family planning services for the purpose of calculating the FMAP?"

In your response, you acknowledged that CMS released a letter on the topic to State Medicaid directors in 2014, but with the caveat that you would be able to more accurately answer the question if you were able to review the letter. Subsequently, you stated that you believed that testing for "sexually transmitted infections would have been classified as family planning related, which would be billed at the regular FMAP rate and not the enhanced family planning FMAP rate."

1. Mr. Hagg, can you please verify the accuracy of your previous response? Is it true that in 2014, CMS released a letter that clarified STI testing should be classified as family planning services for the purposes of calculating the FMAP?
2. In the San Diego report, OIG claimed that 23 out of the 29 claims surveyed were not eligible for *any* federal reimbursement (not even the regular federal match) because the "primary purpose of the visit was not family planning," even though the vast majority of these claims were related to testing and treatment for sexually transmitted infections. The Centers for Medicare and Medicaid Services released a Dear State Medicaid Director Letter on April 16, 2014 clarifying that STI services are always related to family planning. This makes sense, particularly since some STIs, if left untreated, could result in infertility. Given the recent Dear State Medicaid Director Letter, wouldn't you agree that OIG's earlier determination that STI services do not qualify for federal reimbursement because they are unrelated to family planning was incorrect?
3. I am concerned that OIG may be misinterpreting federal statute and implementing federal guidance regarding family planning when it conducts audits. For example, in addition to the reports you cite to today, OIG also conducted an audit of family planning claims in North

Carolina. In that audit report, OIG determined that a majority of pharmacy claims for birth control did not qualify for the 90 percent match because they were prescribed for purposes other than contraception, such as to help regulate menstruation. Isn't it true, though, that regardless of a patient's reasons for using birth control that birth control still works to prevent pregnancy? Why would a patient's reasons for using a contraceptive negate the 90 percent match provided by federal statute when birth control is clearly a family planning service?

4. It is my understanding that Medicaid reimbursement works in two stages. At the first stage, the provider submits a claim to the state (or managed care plan). The state (or managed care plan) reviews the claims and reimburses the provider accordingly. At the second stage, the state seeks the federal match for its expenditures. Is it correct that providers do not directly receive reimbursement from the federal government, and that it is a state's responsibility – not a provider's responsibility – to ensure that only eligible claims receive the enhanced federal match?
5. OIG conducts audits on other services, and has found, for example, that Texas was overpaid more than \$30 million in federal funds for non-emergency transportation services and New York was overpaid nearly \$77 million for disability services. While these services are valuable, family planning care has proven to have tremendous cost-savings, with every \$1 spent on publicly-funded contraceptive care saving more than \$7 in other costs. Is it fair to say that OIG routinely conducts audits for a variety of Medicaid services, that claims for unallowable costs for family planning services are relatively low when compared to other Medicaid services, and that the federal and state governments still benefit from the cost-savings generated from the provision of family planning services?