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

Office of Audit Services, Region V
233 North Michigan Avenue
Suite 1360
Chicago, IL 60601

August 17, 2010

Report Number: A-05-09-00022

Mr. Cal Ludeman
Commissioner
Minnesota Department of Human Services
P.O. Box 64998
St. Paul, MN 55164-0998

Dear Mr. Ludeman:

Enclosed is the U.S. Department of Health & Human Services (HHS), Office of Inspector General (OIG), final report entitled *Review of Minnesota's Reporting Fund Recoveries for Federal and State Programs on the CMS-64 for the Period October 1, 2005, Through December 31, 2008*. 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 Lynn Barker, Audit Manager, at (317) 226-7833 ext. 21 or through email at Lynn.Barker@oig.hhs.gov. Please refer to report number A-05-09-00022 in all correspondence.

Sincerely,

/James C. Cox/
Regional Inspector General
for Audit Services

Enclosure

Direct Reply to HHS Action Official:

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 MINNESOTA'S REPORTING FUND RECOVERIES FOR FEDERAL AND STATE PROGRAMS ON THE CMS-64 FOR THE PERIOD OCTOBER 1, 2005, THROUGH DECEMBER 31, 2008

Daniel R. Levinson
Inspector General

August 2010
A-05-09-00022

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 certain 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 Minnesota, the Minnesota Department of Human Services (State agency) provides oversight for Minnesota's Medicaid program, known as Medical Assistance, for compliance with Federal requirements and the State's counties administer the program. The State agency uses a statewide surveillance and utilization control program to safeguard against unnecessary or inappropriate use of Medicaid services and excess payments. The State agency, through the Surveillance and Integrity Review (SIRs) unit, conducted audits of Medicaid providers. When SIRs identified overpayments, they sent letters on behalf of the State agency to the providers that (1) identified the overpayment amounts and (2) informed providers of their payment options.

Section 1903(d)(2) of the Act, requires the State to refund the Federal share of a Medicaid overpayment. Implementing regulations (42 CFR § 433.312) require the State agency to refund the Federal share of an overpayment to a provider at the end of the 60-day period following the date of discovery, whether or not the State agency has recovered the overpayment. The date of discovery for situations other than fraud or abuse is the date that a provider was first notified in writing of an overpayment and the specified dollar amount subject to recovery (42 CFR § 433.316(c)). Federal regulations (42 CFR § 433.304) define an overpayment as " . . . the amount paid by a Medicaid agency to a provider in excess of the amount that is allowable for the services furnished under section 1902 of the Act and which is required to be refunded under section 1903 of the Act." Because the "Quarterly Medicaid Statement of Expenditures for the Medical Assistance Program," Form CMS-64 (CMS-64), is due on a quarterly basis, the CMS *State Medicaid Manual* requires the Federal share of the overpayments be reported no later than the quarter in which the 60-day period ends.

OBJECTIVE

Our objective was to determine whether Medicaid overpayments identified by the State agency were reported on the CMS-64 in accordance with Federal requirements.

SUMMARY OF FINDINGS

The State agency did not report all Medicaid overpayments on the CMS-64 in accordance with Federal requirements. For the period October 1, 2005, through December 31, 2008, the State agency did not report Medicaid overpayments totaling $57,837 ($28,922 Federal share) in accordance with Federal requirements.

Of the 109 overpayments we reviewed, 104 were reported, but 5 were only partially reported on the CMS-64. In addition, the State agency did not report 26 of the 109 overpayments in our sample within the 60-day time requirement.

The State agency did not report Medicaid overpayments from SIR audits at the correct Federal Medical Assistance Percentages (FMAP). The State agency reported Medicaid overpayments totaling $1,501,068 at the incorrect FMAP rate, which resulted in a $21,961 understatement of the Federal share.

The State agency did not properly report these overpayments because it had not developed and implemented internal controls to ensure that it correctly reported overpayments on the CMS-64.

RECOMMENDATIONS

We recommend that the State agency:

- include unreported Medicaid overpayments of $57,837 on the CMS-64 and refund $28,922 to the Federal Government,

- refund $21,961 in Federal share that was reported incorrectly for Medicaid overpayments claimed on the CMS-64, and

- develop and implement internal controls to correctly report and refund the Federal share of identified Medicaid overpayments on the CMS-64.

STATE AGENCY COMMENTS AND OFFICE OF INSPECTOR GENERAL RESPONSE

In written comments to our draft report, the State agency agreed with our recommendations to refund $28,922 related to unreported overpayments and to develop and implement internal controls to correctly report and refund the Federal share of identified overpayments. However, the State agency disagreed with our recommendation to refund $21,961 in Federal share reported using an incorrect FMAP rate because these overpayments did not relate to a specific period. According to the State agency, the current FMAP rate should be used to report the Federal share of the overpayment when a specific period for the overpayment cannot be identified. The State agency acknowledged that some overpayments may have been reported at different FMAPs than the applicable FMAP at the time the expenditure occurred. However, the State agency said the practice of using the FMAP when the State identified the overpayment is consistent with the *State Medicaid Manual* Section 2500.6 subsection B. The State agency's comments are included in their entirety as the appendix.

We continue to recommend the State agency refund $21,961 to the Federal Government because the State agency or providers identified specific periods for the reported overpayments. Pursuant to the *State Medicaid Manual* Section 2500(D)(2), the State agency is required to use the FMAP rate in effect at the time of the overpayment when an overpayment is identified for a specific period.

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STATE AGENCY COMMENTS

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 Federal requirements.

The Federal Government pays its share (Federal share) of State Medicaid expenditures according to a defined formula. To receive Federal reimbursement, State Medicaid agencies are required to report expenditures on the Quarterly Medicaid Statement of Expenditures for the Medical Assistance Program, Form CMS-64 (CMS-64).

In Minnesota, the Minnesota Department of Human Services (State agency) provides oversight for Minnesota's Medicaid program, known as Medical Assistance, for compliance with Federal requirements. The State agency's county human services offices administer the program. The State Medicaid agency implements a statewide surveillance and utilization control program to safeguard against unnecessary or inappropriate use of Medicaid services and excess payments. The State agency, through the Surveillance and Integrity Review (SIRs) unit, conducted surveillance and utilization review audits of Medicaid providers. When SIR identified overpayments, they sent letters on behalf of the State agency to the providers that (1) identified the overpayment amounts and (2) informed providers of their payment options.

Federal Requirements for Medicaid Overpayments

The Federal government does not participate financially in Medicaid payments for excessive or erroneous expenditures. Section 1903(d)(2)(A) of the Act requires the Secretary to recover the amount of a Medicaid overpayment. Federal regulations (42 CFR § 433.304) define an overpayment as "…the amount paid by a Medicaid agency to a provider in excess of the amount that is allowable for services furnished under section 1902 of the Act and which is required to be refunded under section 1903 of the Act." A State has 60 days from the discovery of a Medicaid overpayment to a provider to recover or attempt to recover the overpayment before the Federal share of the overpayment must be refunded to CMS. Section 1903(d)(2) of the Act, as amended by the Consolidated Omnibus Budget Reconciliation Act of 1985, and Federal regulations at 42 CFR part 433, subpart F, require a State to refund the Federal share of overpayments at the end of the 60-day period following discovery whether or not the State has recovered the overpayment from the provider.[1] Pursuant to 42 CFR § 433.316(c), an overpayment that is not a result of fraud or abuse is discovered on the earliest date:

[1] Section 1903(d)(2)(C) and (D) of the Act and Federal regulations (42 CFR § 433.312) do not require the State to refund the Federal share of uncollectable amounts paid to bankrupt or out-of-business providers.

> (1) … on which any Medicaid agency official or other State official first notifies a provider in writing of an overpayment and specifies a dollar amount that is subject to recovery; (2) … on which a provider initially acknowledges a specific overpaid amount in writing to the medicaid agency; or (3) …. on which any State official or fiscal agent of the State initiates a formal action to recoup a specific overpaid amount from a provider without having first notified the provider in writing.

In addition, Federal regulations (42 CFR § 433.320) require that the State refund the Federal share of an overpayment on its quarterly Form CMS-64. Provider overpayments must be credited on the CMS-64 submitted for the quarter in which the 60-day period following discovery ends.

OBJECTIVE, SCOPE, AND METHODOLOGY

Objective

Our objective was to determine whether Medicaid overpayments identified by the State agency were reported on the CMS-64 in accordance with Federal requirements.

Scope

Our review covered Medicaid provider overpayments identified in overpayment letters issued to providers during the period of October 1, 2005, through September 30, 2008 and that should have been reported on the CMS-64 during the period of October 1, 2005, through December 31, 2008. We reviewed 109 overpayments totaling $5,691,155. The identified overpayment letters represent overpayments of $10,000 or more for Medicaid services that were subject to the 60-day rule.

We did not review the overall internal control structure of the State agency. We limited our internal control review to obtaining an understanding of the identification, collection, and reporting policies and procedures for Medicaid overpayments.

We performed fieldwork at the State agency offices in St. Paul, Minnesota from December 2008 through March 2010.

Methodology

To accomplish our audit objective, we:

- reviewed Federal laws, regulations, and other requirements governing Medicaid overpayments;

- interviewed State agency officials regarding policies and procedures relating to Medicaid overpayments subject to the 60-day rule and reporting overpayments on the CMS-64;

- identified 834 overpayments for Medicaid services subject to the 60-day rule, which totaled $6,765,593;

- selected a judgmental sample of 109 overpayments that were identified by the SIRs unit between October 1, 2005 and September 30, 2008 and the original overpayment identified was greater than or equal to $10,000;

- established the dates of discovery using the dates that SIRs notified Medicaid providers in writing, on behalf of the State agency, of the overpayments and the dollar amount subject to recovery;

- determined the quarter in which the 60-day period following discovery of the overpayment ended;

- reviewed the CMS-64 to determine whether the Medicaid overpayments were reported for the quarter in which the 60-day period following discovery ended;

- reviewed the CMS-64 to determine whether Medicaid overpayments were reported during any subsequent quarter through June 30, 2009;

- determined whether overpayments were processed directly through the Medicaid Management Information System and included on other lines of the CMS-64;[2]

- determined if providers selected as part of our sample were bankrupt or out of business;

- computed the potentially higher interest expense to the Federal Government resulting from overpayments and income not reported within the required timeframe using the number of days between required reporting dates and the State fiscal year ending June 30, 2009.[3]

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 objective. 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 report all Medicaid overpayments on the CMS-64 in accordance with Federal requirements. For the period October 1, 2005, through December 31, 2008, the State

[2] The State agency traced the claims history for some sample items in verifying overpayments that were recovered through the system.

[3] We calculated the interest expense using the applicable interest rates pursuant to the Cash Management Improvement Act of 1990, P.L. No. 101-453.

agency did not report Medicaid overpayments totaling $57,837 ($28,922 Federal share) in accordance with Federal requirements.

Of the 109 overpayments we reviewed, 104 were reported, but 5 were only partially reported on the CMS-64. In addition, 26 of the 109 overpayments in our sample were not reported within the 60-day time requirement.

The State agency did not report Medicaid overpayments from SIR audits at the correct Federal Medical Assistance Percentages (FMAP). The State agency reported Medicaid overpayments totaling $1,501,068 at the incorrect FMAP rate, which resulted in a $21,961 understatement of the Federal share.

The State agency did not properly report these overpayments because it had not developed and implemented internal controls to ensure that overpayments were reported correctly on the CMS-64.

Because the overpayments were not properly reported on the CMS-64, the Federal Government may have incurred increased interest expense of $27,821

OVERPAYMENTS NOT REPORTED

Pursuant to 42 CFR § 433.312(a)(2), the State agency ". . . must refund the Federal share of overpayments at the end of the 60-day period following discovery . . . whether or not the State has recovered the overpayment from the provider." The regulation provides an exception only when the State is unable to recover the overpayment amount because the provider is bankrupt or out of business (42 CFR § 433.318).

Pursuant to 42 CFR § 433.320(c)(1), a downward adjustment is: ". . . is allowed only if it is properly based on the approved State plan, Federal law and regulations governing Medicaid, and the appeals resolution processes specified in State administrative policies and procedures." In addition, the Departmental Appeals Board (DAB) has determined that the burden is on the state to establish why it no longer regards its initial audit determinations as reliable (e.g. California Department of Health Services, DAB No. 1240 (1991)).

For the period October 1, 2005, through December 31, 2008, the State agency did not report Medicaid overpayments totaling $57,837 ($28,922 Federal share) in accordance with Federal requirements. Of the 109 Medicaid overpayments reviewed, 5 overpayments totaling $57,837 ($28,922 Federal share) were partially reported on the CMS-64 due to unexplained downward adjustments or unsupported collections.

OVERPAYMENTS REPORTED USING AN INCORRECT FMAP RATE

Pursuant to the *State Medicaid Manual* Section 2500.6(B), the State agency "Include refunds from overpaid Medicaid providers or recipients. . . Upon receipt of such funds, determine the date or period of the expenditure for which the refund is made to establish the FMAP (Federal

Medical Assistance Percentages) at which the original expenditure was matched by the Federal government. Make refunds of the Federal share at the FMAP for which you were reimbursed."

The State agency did not report Medicaid overpayments from SIR audits at the correct Federal Medical Assistance Percentages (FMAP). The State agency reports Medicaid overpayments at the current quarter FMAP rate, rather than the FMAP rate current at the time the claim was submitted on the CMS-64. As a result, the State agency reported Medicaid overpayments totaling $1,501,068 at the incorrect FMAP rate, which resulted in the understatement of the Federal share totaling $21,961.

OVERPAYMENTS NOT REPORTED TIMELY

Pursuant to 42 CFR § 433.312(a)(2), the State agency ". . . must refund the Federal share of overpayments at the end of the 60-day period following discovery . . . whether or not the State has recovered the overpayment from the provider." In addition, Federal regulation (42 CFR § 433.316(c)) defines the date of discovery as the date that a provider was first notified in writing of an overpayment and the specified dollar amount subject to recovery. These regulations do not allow for extending the date.

The State agency did not report all Medicaid provider overpayments in accordance with the 60-day requirement. The State agency reported all 109 overpayments on the CMS-64, which includes 5 overpayments that were only partially reported. However, 26 of the 109 overpayments, totaling $2,059,291 ($1,031,830 Federal share), were not reported on the CMS-64 at the end of the 60-day period. The untimely reporting resulted from using the date of the final decision or the date that the State agency collected the overpayment rather than the date of discovery.

POTENTIALLY HIGHER INTEREST EXPENSE

Because the State agency did not report some overpayments completely and was not timely in reporting others, the Federal Government did not have the use of these funds. As a result, the Federal Government potentially incurred an increased interest expense of $27,821. However, we did not include this Federal interest expense in the amount of overpayments we recommend that the State agency refund.

INTERNAL CONTROLS NOT IMPLEMENTED

The State agency did not develop and implement internal controls to ensure that it correctly reported on the CMS-64 the Medicaid overpayments identified from the State's SIRs unit.

RECOMMENDATIONS

We recommend that the State agency:

- include unreported Medicaid overpayments of $57,837 on the CMS-64 and refund $28,922 to the Federal Government,

- refund $21,961 in Federal share that was reported incorrectly for Medicaid overpayments claimed on the CMS-64, and

- develop and implement internal controls to correctly report and refund the Federal share of identified Medicaid overpayments on the CMS-64.

OTHER MATTERS

The State agency did not report Medicaid overpayments from the SIRs unit on the correct line of the CMS-64 as stated in the CMS *State Medicaid Manual*. Of the 109 sampled overpayments that were reported on the CMS-64, 57 were reported incorrectly.

STATE AGENCY COMMENTS AND OFFICE OF INSPECTOR GENERAL RESPONSE

In written comments to our draft report, the State agency agreed with our recommendations to refund $28,922 related to unreported overpayments and to develop and implement internal controls to correctly report and refund the Federal share of identified overpayments. However, the State agency disagreed with our recommendation to refund $21,961 in Federal share reported using an incorrect FMAP rate because these overpayments did not relate to a specific period. According to the State agency, the current FMAP rate should be used to report the Federal share of the overpayment when a specific period for the overpayment cannot be identified. The State agency acknowledged that some overpayments may have been reported at different FMAPs than the applicable FMAP at the time the expenditure occurred. However, the State agency said the practice of using the FMAP when the State identified the overpayment is consistent with the *State Medicaid Manual* Section 2500.6 subsection B. The State agency's comments are included in their entirety as the appendix.

We continue to recommend the State agency refund $21,961 to the Federal Government because the State agency or providers identified specific periods for the reported overpayments. Pursuant to the *State Medicaid Manual* Section 2500(D)(2), the State agency is required to use the FMAP rate in effect at the time of the overpayment when an overpayment is identified for a specific period.

APPENDIX

APPENDIX: STATE AGENCY COMMENTS

Minnesota Department of **Human Services**

July 8, 2010

James C. Cox
Regional Inspector General for Audit Services
Office of Audit Services, Region V
233 North Michigan Avenue, Suite 1360
Chicago, IL 60601

Re: Review of Minnesota's Reporting Fund Recoveries for Federal and State Programs on the CMS-64 for the Period October 1, 2005 through December 31, 2008

Audit Report Number: A05-09-00022

Dear Mr. Cox:

Thank you for the opportunity to review and comment on your report covering CMS-64 for the period of October 1, 2005 through December 31, 2008, which encompassed the review of over 2000 cases. It is our understanding that our response will be published in the Office of the Inspector General's final audit report. The report contained the following recommendations:

Recommendation #1

Include unreported Medicaid overpayments of $57,837 on the CMS-64 and refund $28,922 to the Federal Government.

Department comments:

The Department agrees with the recommendation.

Recommendation #2

Refund $21,921 in Federal share that was reported incorrectly for Medicaid overpayments claimed on the CMS-64.

Department comments:

The Department agrees some overpayments may have been reported at a different Federal Medical Assistance Percentages (FMAP) than the applicable FMAP at the time the expenditure occurred. The Department's practice has been to report the overpayment amounts at the applicable FMAP for the quarter in which they are identified. Provider overpayments often span several months or years, and may not be capable of being directly tied to individual claims (random sampling and extrapolation to a

universe of claims, for example). This is done regardless of whether our FMAP is higher or lower than the applicable FMAP at the time the expenditure occurred. This is also consistent with the cash basis reporting used on the expenditure side of the CMS-64. Lastly, the investment in time and effort required to attempt to track the original payment date of each claim to the applicable FMAP is not cost-effective given the small differences that would result from such efforts.

We also note that the draft report cites section 2500.6, subsection B of the *State Medical Manual*, but ellipses an important sentence. The entire subsection provides:

> **B. Return of the Federal Share of Recoveries and Collections.** --Form HCFA-64 also shows the Federal share of recoveries from any source of expenditures claimed in prior quarters.
>
> Include refunds from overpaid Medicaid providers or recipients, cancelled, uncashed or voided checks and vouchers (see 42 CFR 433.40), or settlements from liable third parties such as private insurance and casualty related court settlements.
>
> Upon receipt of such funds, determine the date or period of the expenditure for which the refund is made to establish the FMAP at which the original expenditure was matched by the Federal government. Make refunds of the Federal share at the FMAP for which you were reimbursed. *When recoveries cannot be related to a specific period, compute the Federal share at the FMAP rate in effect at the time the refund was received.* (Emphasis added). Make adjustments to prior periods in subsequent HCFA-64 forms to reflect the correct FMAP rate.

This paragraph requires that recoveries that can be related to a specific payment should be adjusted on subsequent CMS-64s, and allows for the circumstance in which a recovery cannot be related back to a specific payment. In that case, the correct FMAP rate is the rate in effect at the time the refund is received.

Recommendation #3

Develop and implement internal controls to correctly report and refund the federal share of identified Medicaid overpayments on the CMS-64.

Department comments:

The Department agrees to review the internal controls surrounding Medicaid overpayments reported on the CMS-64. The Department will conduct a review our operational procedures and update and/or modify them so that the case file documentation is adequate to support changes in recovered amounts.

James C. Cox
July 8, 2010
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The Department of Human Services will continue to evaluate the progress being made to resolve all audit findings until full resolution has occurred. If you have any further questions, please contact David Ehrhardt, Internal Audit Director, at (651) 431-3619.

Sincerely,

Cal R. Ludeman
Commissioner

Cc: Lynn Barker, HHS OIG