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

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

July 16, 2010

Report Number: A-05-09-00102

Douglas E. Lumpkin
Director
Ohio Department of Job and Family Services
30 E. Broad St
Columbus, Ohio 43215

Dear Mr. Lumpkin:

Enclosed is the U.S. Department of Health & Human Services (HHS), Office of Inspector General, final report entitled *Review of Ohio's Reporting Fund Recoveries for Federal and State Programs on the CMS-64 for Fiscal Years 2008 Through 2009*. 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 extension 21 or through email at Lynn.Barker@oig.hhs.gov. Please refer to report number A-05-09-00102 in all correspondence.

Sincerely,

/James C. Cox/
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 & Human Services

OFFICE OF INSPECTOR GENERAL

REVIEW OF OHIO'S REPORTING FUND RECOVERIES FOR FEDERAL AND STATE PROGRAMS ON THE CMS-64 FOR FISCAL YEARS 2008 THROUGH 2009

Daniel R. Levinson
Inspector General

July 2010
A-05-09-00102

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 Ohio, the Department of Job and Family Services (State agency) administers the Medicaid 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 contracted with Health Care Excel, Inc. (HCE), and Permedion to conduct State Medicaid audits of Medicaid providers. In addition, the Office of Fiscal and Monitoring Services (OFMS) and the Medicaid Fraud Control Unit (MFCU) conducted audits and investigations, respectively of Medicaid providers. When they identified overpayments, OFMS, HCE, and Permedion sent letters on behalf of the State agency to the providers that (1) identified the overpayment amounts and applicable interest charges and (2) directed the providers to send payments to the State agency, or notified providers of future payments offsets.

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 is first notified in writing of an overpayment and the specified dollar amount subject to recovery (42 CFR § 433.316(c)). For provider overpayments resulting from fraud or abuse, discovery occurs on the date of the State's final written notice of the overpayment determination (42 CFR §433.316(d)). 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." In addition, Federal regulations (45 CFR § 92.21(f)(2)) require the State agency to report interest earned on overpayments before requesting additional Federal funds. 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 refunded no later than the quarter in which the 60-day period ends.

OBJECTIVE

Our objective was to determine whether Medicaid overpayments and the interest earned on those overpayments were reported on the CMS-64 in accordance with Federal regulations.

SUMMARY OF FINDINGS

Although the State agency reported Medicaid overpayments on the CMS-64, it did not always do so within the 60-day time requirement. In addition, the State agency did not report interest it collected on seven overpayments totaling $24,823 ($14,645 Federal share).

The State agency had not developed and implemented internal controls to ensure that it correctly reported Medicaid overpayments and the associated interest it collected from recovered overpayments on the CMS-64.

RECOMMENDATIONS

We recommend that the State agency:

- include unreported interest collected on Medicaid recoveries totaling $24,823 on the CMS-64 and refund $14,645 to the Federal Government, and

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

STATE AGENCY COMMENTS

In written comments on our draft report, the State agency concurred with our recommendations. The State agency's comments are included in their entirety as Appendix B.

TABLE OF CONTENTS

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 Ohio, the Department of Job and Family Services (State agency) administered the Medicaid 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 contracted with Health Care Excel, Inc. (HCE), and Permedion to conduct surveillance and utilization review audits of Medicaid providers. The Office of Fiscal and Monitoring Services (OFMS) conducted federally required audits and provided overpayment findings to the State. The State Medicaid Fraud Control Unit (MFCU) obtained settlements from Medicaid providers in situations related to fraud and abuse investigations. All together, OFMS, MFCU, HCE, and Permedion issued 15,398 audit reports, settlement agreements, and overpayment letters to the State agency or Medicaid providers on behalf of the State agency. In addition, the agreements and letters directed the providers to send payment either to the appropriate contractor or to the State agency or notified providers of future payment offsets.

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)(C) 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) … 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.

Under 42 CFR § 433.316(d), an overpayment resulting from fraud or abuse is discovered on the date of the final written notice of the State's overpayment determination that a Medicaid agency official or other State official sends to the provider. For overpayments identified through Federal reviews, 42 CFR § 433.316(e) provides that an overpayment is discovered when the Federal official first notifies the State in writing of the overpayment and the dollar amount subject to recovery.

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.

Federal Requirements for Interest Earned

Federal regulations (45 CFR § 92.21(f)(2)) state that "… grantees and subgrantees shall disburse program income, rebates, refunds, contract settlements, audit recoveries and interest earned on such funds before requesting additional [Federal] cash payments." Federal grant administration regulations (45 CFR part 92) became applicable to the Medicaid program on September 8, 2003. For prior periods, similar provisions (45 CFR part 74) were applicable. In addition, the Departmental Appeals Board (DAB) has determined that where Federal funds are used to produce interest payments, these payments constitute an applicable credit within the meaning of Office of Management and Budget Circular A-87 (2 CFR part 225). CMS is entitled to a share in the amount of any interest collected (e.g., New Jersey Department of Human Services, DAB No. 480 (1983)).

Section 2500.1 of CMS's *State Medicaid Manual* instructs the State to report the Federal share of any interest received or earned on Medicaid recoveries on the CMS-64 Summary Sheet.

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

OBJECTIVE, SCOPE, AND METHODOLOGY

Objective

Our objective was to determine whether Medicaid overpayments and the interest earned on those overpayments were reported on the CMS-64 in accordance with Federal regulations.

Scope

Our review covered Medicaid provider overpayments that were identified in audit reports, settlement agreements, and overpayment letters issued to providers that should have been reported on the CMS-64 during Federal fiscal years (FY) 2008 and 2009. We reviewed 131 of the 15,398 identified overpayments totaling $324,616,292. The identified audit reports, settlement agreements, and overpayment letters represent overpayments of $1,000 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 and related interest collected.

We performed fieldwork at the State agency in Columbus, Ohio, from August 2009 through January 2010.

Methodology

To accomplish our audit objective, we:

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

- interviewed State agency and OFMS officials regarding policies and procedures relating to Medicaid audits and reporting overpayments on the CMS-64;

- identified 15,398 overpayments of $1,000 or more for Medicaid services subject to the 60-day rule, which totaled $324,616,292;

- selected a stratified random sample of 131 overpayments: 100 from 15,367 overpayments of $1,000 to $1 million and all 31 overpayments of more than $1 million (Appendix A);

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

- established dates of discovery using the settlement agreement date for the MFCU investigations of the overpayment and interest 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 and interest earned were reported for the quarter in which the 60-day period following discovery ended;

- reviewed the CMS-64 to determine whether Medicaid overpayments and interest collected were reported during any subsequent quarter through December 31, 2009;

- determined whether overpayments were processed directly through the MMIS system and included on other lines of the CMS-64;

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

- 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 Ohio FY ending December 31, 2009.[2]

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

Although the State agency reported Medicaid overpayments on the CMS-64, it did not always do so within the 60-day time requirement. In addition, the State agency did not report interest it collected on seven overpayments totaling $24,823 ($14,645 Federal share).

The State agency had not developed and implemented internal controls to ensure that it correctly reported Medicaid overpayments and the associated interest it collected from recovered overpayments 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 $19,877.

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

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." For situations other than fraud and abuse, 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. For overpayments resulting from fraud or abuse, the date of discovery is defined at 42 CFR § 433.316(d) as the date of the final written notice of the overpayment determination that the State sends to the provider. For overpayments identified through Federal reviews, CMS will consider the overpayment discovered on the date the Federal official first notifies the State in writing of the overpayment amount. 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. Of the 131 sampled overpayments, the State agency reported 113[3] overpayments on the CMS-64. For the 113 overpayments that were reported, 77 overpayments totaling $3,473,887 ($2,103,893 Federal share) were not reported on the CMS-64 at the end of the 60-day period. The untimely reporting resulted from the State agency's unwritten policy of allowing the provider appeals process to occur for non fraud and abuse overpayments rather than the date of discovery.

INTEREST NOT REPORTED

Pursuant to 45 CFR § 92.21(f)(2), the State agency "… shall disburse program income, rebates, refunds, contract settlements, audit recoveries and interest earned on such funds before requesting additional [Federal] cash payments." Federal grant administration regulations (45 CFR part 92) became applicable to the Medicaid program on September 8, 2003. For prior periods, similar provisions (45 CFR part 74) were applicable. In addition, the Departmental Appeals Board (DAB) has determined that where Federal funds are used to produce interest payments, these payments constitute an applicable credit within the meaning of Office of Management and Budget Circular A-87 (now codified at 2 CFR part 225). CMS is entitled to a share in the amount of any interest collected (e.g., New Jersey Department of Human Services, DAB No. 480 (1983)).

In accordance with Federal requirements, section 2500.1 of the *State Medicaid Manual* instructs State agencies to report interest earned on Medicaid recoveries on the CMS-64 Summary Sheet.

As a result of State Medicaid audits issued from FYs 2008 through 2009, the State agency collected interest on recovered overpayments. For the 131 Medicaid overpayments reviewed, the State agency collected interest totaling $61,194 for seven overpayments and should have reported $24,823 ($14,644 Federal share) on the CMS-64.

[3] 18 of the selected overpayments were not required to be reported on the CMS-64. Seven overpayments represented the Federal share only and were paid directly to the Federal government through the court system; six overpayments represented the State share only; one overpayment was a bankruptcy; and the remaining four overpayments were reduced to zero in our audit period.

POTENTIALLY HIGHER INTEREST EXPENSE

Because the State agency did not report some overpayments 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 $19,877. However, we did not include this Federal interest cost in the amount of the overpayments we recommend that the State agency should 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 interest it collected from recovered overpayments.

RECOMMENDATIONS

We recommend that the State agency:

- include unreported interest it collected on Medicaid recoveries totaling $24,823 on the CMS-64 and refund $14,645 to the Federal Government, and

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

STATE AGENCY COMMENTS

In written comments on our draft report, the State agency concurred with our recommendations. The State agency's comments are included in their entirety as Appendix B.

OTHER MATTERS

The State agency did not report Medicaid overpayments from State Medicaid audits on the correct line of the CMS-64. Of the 113 sampled overpayments that were reported on the CMS-64, 78 were reported incorrectly. In addition, the State agency did not report Medicaid overpayments from State Medicaid audits at the correct Federal Medical Assistance Percentages (FMAP). Currently, the State agency reports Medicaid overpayments at the current quarter FMAP rate, rather than the FMAP rate at the time the claim was submitted on the CMS-64.

APPENDIXES

APPENDIX A: SAMPLING METHODOLOGY

POPULATION

The population consists of overpayments that have an initial finding date during August 1, 2007 through August 10, 2009. Each record represents a Medicaid overpayment identified by Federal and State audits. The State uses various subcontractors to conduct Medicaid audits, therefore the data will be coming from several different sources.

SAMPLING FRAME

The Office of Job and Family Services (State agency) provided lists of Medicaid overpayments identified by the Office of Fiscal and Monitoring Services, Health Care Excel Inc., Permedion, and the Medicaid Fraud Control Unit for the period of August 2007 through August 2009. The sampling frame was limited to overpayments exceeding $1,000.

The sampling frame is an excel file containing 15,398 Medicaid overpayments with total projected recovery of $324,616,292. The sampling frame was separated into 2 strata. Stratum 1 consists of 15,367 State agency identified Medicaid overpayments between $1,000 and $1,000,000, with a total projected recovery of $190,965,951. Stratum 2 consists of 31 State agency identified Medicaid overpayments exceeding $1,000,000 with a total projected recovery of $133,650,341.

SAMPLE UNIT

The sample unit was a Medicaid provider overpayment.

SAMPLE DESIGN

We used a stratified random sample, defined as follows:

Stratum 1: 15,367 Medicaid overpayments between $1,000 and $1,000,000, with a total projected recovery of $190,965,951. This stratum contains only State agency generated audits.

Stratum 2: 31 Medicaid overpayments exceeding $1,000,000, with total a projected recovery of $133,650,341. This stratum contains only State agency generated audits.

SAMPLE SIZE

We selected a random sample of 100 items from the sampling frame of 15,367 Medicaid provider overpayments in stratum 1 and reviewed all 31 sample items in stratum 2.

SOURCE OF RANDOM NUMBERS

Random numbers were generated by the Department of Health & Human Services, Office of Inspector General (OIG), Office of Audit Service's (OAS) RAT-STATS statistical software package.

ESTIMATION METHODOLOGY

We used the OIG/OAS statistical software to estimate the amount of Medicaid provider overpayments not properly reported.

APPENDIX B: STATE AGENCY COMMENTS

Ohio | Department of Job and Family Services

Ted Strickland, Governor
Douglas E. Lumpkin, Director

June 25, 2010

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

RE: Report Number A-05-09-00102

Dear Jim:

Please let this letter serve as the Ohio Department of Job and Family Services' response to your letter dated May 28th concerning the above referenced review. As requested, we have responded to each issue listed in the report.

Thank you for the opportunity to provide our responses to the final report to be issued. If you have any further questions or require any addition information please do not hesitate to contact Al Hammond, Audit Resolution Section Chief @[redacted], or e-mail him at [redacted]

Sincerely,

Michael Colbert (/67)

Michael Colbert, Chief Fiscal Officer
The Ohio Department of Jobs and Family Services

Enclosures

c: Tracy Plouck, State of Ohio Medicaid Director
Heather Burdette, ODJFS, OHP, CFO
Cynthia Callender-Dungey, ODJFS, OHP, Assistant Deputy Director
Alfred T. Hammond, Jr, ODJFS, OFMS, Audit Resolution Chief

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ODJFS Official Responses to the findings and recommendations:

(1) **INTEREST NOT REPORTED**
Pursuant to 45 CFR § 92.21(f)(2), the State agency "… shall disburse program income, rebates, refunds, contract settlements, audit recoveries and interest earned on such funds before requesting additional [Federal] cash payments." Federal grant administration regulations (45 CFR part 92) became applicable to the Medicaid program on September 8, 2003. For prior periods, similar provisions (45 CFR part 74) were applicable. In addition, the Departmental Appeals Board (DAB) has determined that where Federal funds are used to produce interest payments, these payments constitute an applicable credit within the meaning of Office of Management and Budget Circular A-87 (now codified at 2 CFR part 225). CMS is entitled to a share in the amount of any interest collected (e.g., New Jersey Department of Human Services, DAB No. 480 (1983)).

In accordance with Federal requirements, section 2500.1 of the *State Medicaid Manual* instructs State agencies to report interest earned on Medicaid recoveries on the CMS-64 Summary Sheet.

As a result of State Medicaid audits issued from FYs 2008 through 2009, the State agency collected interest on recovered overpayments. For the 131 Medicaid overpayments reviewed, the State agency collected interest totaling $61,194 for seven overpayments and should have reported $24,823 ($14,644 Federal share) on the CMS-64.

ODJFS Response:
ODJFS concurs with the interest portion of this finding.
Corrective Action Plan – ODJFS will report interest paid on all Medicaid audits from the date of discovery to the date of repayment by the provider on the CMS-64. This interest will be identified and paid at the correct FMAP rate for the periods in question. ODJFS will implement this new procedure immediately. In addition, ODJFS will make the necessary adjustment in reporting for $14,644 once this plan has been approved.

(2)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." For situations other than fraud and abuse, 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. For overpayments resulting from fraud or abuse, the date of discovery is defined at 42 CFR § 433.316(d) as the date of the final written notice of the overpayment determination that the State sends to the provider. For overpayments identified through Federal reviews, CMS will consider the overpayment discovered on the date the Federal official first notifies the State in writing of the overpayment amount. 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. Of the 131 sampled overpayments, the State agency reported 113

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overpayments on the CMS-64. For the 113 overpayments that were reported, 77 overpayments totaling $3,473,887 ($2,103,893 Federal share) were not reported on the CMS-64 at the end **of** the 60-day period. The untimely reporting resulted from the State agency's unwritten policy of allowing the provider appeals process to occur for non fraud and abuse overpayments rather than the date of discovery.

ODJFS Response:
ODJFS concurs with this finding, however subsequent law changes mitigates this issue. Corrective Action Plan - Recent legislative changes, effective March 23, 2010, have been made which change the current identification period by which Medicaid overpayments must be reported to the federal government for repayment. It is the ODJFS's opinion that Section 6506 of H.R. 3590 appropriately addresses Medicaid overpayments as it amends Section 1303 (d)(2), subsections (C) and (D) as follows:

(C) For purposes of this subsection, when an overpayment is discovered, which was made by a State to a person or other entity, the State shall have a period of ~~60 days~~ ***1 year*** in which to recover or attempt to recover such overpayment before adjustment is made in the Federal payment to such State on account of such overpayment. Except as otherwise provided in subparagraph (D), the adjustment in the Federal payment shall be made at the end of the ~~60 days~~ ***1-year period***, whether or not recovery was made.

(D) (i) In any case where the State is unable to recover a debt which represents an overpayment (or any portion thereof) made to a person or other entity on account of such debt having been discharged in bankruptcy or otherwise being uncollectible, no adjustment shall be made in the Federal payment to such State on account of such overpayment (or portion thereof).

(ii) In any case where the State is unable to recover a debt which represents an overpayment (or any portion thereof) made to a person or other entity due to fraud within 1 year of discovery because there is not a final determination of the amount of the overpayment under an administrative or judicial process (as applicable), including as a result of a judgment being under appeal, no adjustment shall be made in the Federal payment to such State on account of such overpayment (or portion thereof) before the date that is 30 days after the date on which a final judgment (including, if applicable, a final determination on an appeal) is made.

Section 6506 further makes this change to federal law effective upon the "date of enactment" of the Act. The "date of enactment" is the date the Act was signed by the President---March 23, 2010.

Based on the recent federal rule changes, it is the ODJFS's opinion we are in compliance with the revised federal regulations and no changes to our identification and notification process are required at this time. The Department currently reports all Medicaid overpayments within the 60-day notification period, except for the vendor identified overpayments for inpatient hospital claims which were within 180 days. The Department believes we are now permitted 1 year from

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discovery to report identified Medicaid overpayments on the CMS-64 and that we are therefore currently in compliance with the federal rules.

(3)POTENTIALLY HIGHER INTEREST EXPENSE
Because the State agency did not report some overpayments 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 $19,877. However, we did not include this Federal interest cost in the amount of the overpayments we recommend that the State agency should refund.

ODJFS Response:
ODJFS concurs with this finding, however subsequent law changes mitigates this issue.
Corrective Action Plan – ODJFS will meet the new requirements of repayment within one year of all identified Medicaid overpayments. Meeting this time requirement will negate any future interest due the Federal Government. We appreciate the auditor's notation in most cases ODJFS did adhere to the 60-day rule and did not recommend repayment of the implied interest for those audits not repaid within the 60 days.

(4) **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 State Medicaid audits and interest it collected from recovered overpayments.

ODJFS Response:
ODJFS concurs with this issue and has identified the corrective action that will take place in the future in issue number 1.

(5) **OTHER MATTERS**
The State agency did not report Medicaid overpayments from State Medicaid audits on the correct line of the CMS-64. Of the 113 sampled overpayments that were reported on the CMS-64, 78 were reported incorrectly. In addition, the State agency did not report Medicaid overpayments from State Medicaid audits at the correct Federal Medical Assistance Percentages (FMAP). Currently, the State agency reports Medicaid overpayments at the current quarter FMAP rate, rather than the FMAP rate at the time the claim was submitted on the CMS-64.

ODJFS Response:
ODJFS concurs with this issue.
Corrective Action Plan – Once ODJFS was made aware of this issue, the requested change was made immediately and was corrected on all future reports. ODJFS feels this issue has been corrected and resolved.

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