Department of Health and Human Services

OFFICE OF INSPECTOR GENERAL

TEXAS DID NOT REFUND EXCESS CONTRACTOR PROFITS IN ACCORDANCE WITH FEDERAL REGULATIONS

Inquiries about this report may be addressed to the Office of Public Affairs at Public.Affairs@oig.hhs.gov.

Gloria L. Jarmon
Deputy Inspector General

August 2012
A-06-10-00062

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

A Medicaid Management Information System (MMIS) is a system of software and hardware used to process Medicaid claims and manage information about Medicaid beneficiaries, services, and providers. An MMIS may be operated by a State agency and/or a fiscal agent, which is a private contractor hired by the State.

Section 1903(a)(3)(A)(i) of the Social Security Act (the Act) authorizes Federal reimbursement at an enhanced rate of 90 percent (90-percent rate) for the design, development, or installation of an MMIS. Section 1903(a)(3)(B) of the Act authorizes Federal reimbursement at an enhanced rate of 75 percent (75-percent rate) for the operation of an MMIS. Section 1903(a)(7) of the Act authorizes Federal reimbursement at a standard rate of 50 percent (50-percent rate) for Medicaid administrative expenditures. The Centers for Medicare & Medicaid Services (CMS) *State Medicaid Manual* (the Manual), part 11, identifies the specific types of MMIS expenditures that are allowable for Federal reimbursement and the reimbursement rates that apply. In addition, Federal regulations (45 CFR § 95.611) require States to seek prior approval from CMS to claim Federal reimbursement for MMIS project costs that they estimate will exceed certain thresholds.

States claim MMIS expenditures on the Quarterly Medicaid Statement of Expenditures for the Medical Assistance Program, Form CMS-64 (CMS-64).

In Texas, the Texas Health and Human Services Commission (State agency) administers the Medicaid program. The State agency contracts with a fiscal agent, Affiliated Computer Services/Texas Medicaid Health Partnership (ACS/TMHP), to process claims through the MMIS.

The contract between the State agency and ACS/TMHP requires a prospective price redetermination (PPR) audit to establish whether ACS/TMHP earned profit in excess of the 11 percent allowed by the contract.

During the period October 1, 2008, through September 30, 2009, the State agency claimed MMIS costs totaling $222,809,817 ($145,708,422 Federal share).

OBJECTIVES

Our objectives were to determine whether (1) the State agency refunded excess profits identified through the PPR audit on the CMS-64 in accordance with Federal regulations, (2) the MMIS expenditures that the State agency claimed during Federal fiscal year (FY) 2009 were allowable and claimed at the appropriate reimbursement rate, and (3) the State agency obtained prior approval for projects in accordance with Federal regulations.

SUMMARY OF FINDINGS

The State agency did not refund $2,634,568 (Federal share) of the $26,689,571 in excess profits identified through the PPR audit in accordance with Federal requirements. During FY 2009, the State agency claimed expenditures for 20 MMIS projects with total costs of $71,315,167. All of these expenditures were allowable and claimed at the appropriate reimbursement rate; however, the State agency did not obtain prior approval for 2 of the 20 projects. Also, the State agency did not obtain prior approval for 16 additional projects. The total budgets for the 18 projects for which the State agency did not obtain prior approval totaled $59,037,385 ($32,884,701 Federal share).

RECOMMENDATIONS

We recommend that the State agency:

- refund to the Federal Government $2,634,568 for excess profits related to the PPR audit,
- ensure that prior approval is obtained on future projects as required by Federal regulations, and
- obtain retroactive approval for the 18 projects that did not have the required prior approval from CMS.

STATE AGENCY COMMENTS AND OFFICE OF INSPECTOR GENERAL RESPONSE

In written comments on our draft report, the State agency agreed with our first and third recommendations and described corrective actions it had taken or planned to take. Regarding our second recommendation, the State agency said that it has a process, approved by CMS, by which it seeks CMS approval for (1) MMIS projects totaling $1 million or more for MMIS-related information technology (IT) and non-IT costs claimed at the 75-percent reimbursement rate and (2) all projects claimed at the 90-percent reimbursement rate. The State agency's comments are included in their entirety as the Appendix.

Federal regulations require that for costs claimed at the 50-percent rate, a State must obtain prior approval for any contract amendment with cost increases exceeding $1,000,000. For costs claimed at the 75-percent or 90-percent rate, a State must obtain prior approval for any contract amendment with increases exceeding $100,000. CMS approved the thresholds the State agency mentions for the period March 2010 through September 2011, and we have not been provided any documentation showing that CMS agreed to extend them. Thus, we continue to recommend that the State agency obtain prior approval on future projects in accordance with Federal regulations.

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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.

Medicaid Management Information System

Section 1903(r)(1) of the Act states that, to receive Federal funding for the use of automated data systems in administration of the Medicaid program, the State must have a mechanized claims processing and information retrieval system that meets the requirements of the Act. The CMS *State Medicaid Manual* (the Manual), part 11, section 11100(O), states that, for Medicaid purposes, the mechanized system is the Medicaid Management Information System (MMIS). An MMIS is a system of software and hardware used to process Medicaid claims and manage information about Medicaid beneficiaries, services, and providers.

Section 1903(a)(3)(A)(i) of the Act authorizes Federal reimbursement at an enhanced rate of 90 percent (90-percent rate) for the design, development, or installation of an MMIS. Section 1903(a)(3)(B) of the Act authorizes Federal reimbursement at an enhanced rate of 75 percent (75-percent rate) for the operation of an MMIS. Section 1903(a)(7) of the Act authorizes Federal reimbursement at a standard rate of 50 percent (50-percent rate) for Medicaid administrative expenditures. Part 11 of the Manual identifies the specific types of MMIS expenditures that are allowable for Federal reimbursement and the reimbursement rates that apply.

Federal regulations require States to seek prior approval from CMS to claim Federal reimbursement for MMIS project costs that they estimate will exceed certain thresholds. Under 45 CFR § 95.611(b), for costs claimed at the 50-percent rate, a State must obtain prior approval for any contract amendment with cost increases exceeding $1,000,000. For costs claimed at the 75-percent or 90-percent rate, a State must obtain prior approval for any contract amendment with increases exceeding $100,000. MMIS projects include designing, developing, and operating the MMIS system.

States claim MMIS expenditures on the Quarterly Medicaid Statement of Expenditures for the Medical Assistance Program, Form CMS-64 (CMS-64).

Texas Medicaid Management Information System

In Texas, the Texas Health and Human Services Commission (State agency) administers the Medicaid program. The State agency contracts with a fiscal agent, Affiliated Computer Services/Texas Medicaid Health Partnership (ACS/TMHP), to process claims through the MMIS. ACS/TMHP contracts with Accenture to perform the technical tasks (e.g., software building, testing, and support) included in the MMIS contract and assorted projects.

The contract between the State agency and ACS/TMHP requires a prospective price redetermination (PPR) audit to establish whether ACS/TMHP earned profit in excess of the 11 percent allowed by the contract. Clifton Gunderson, LLP, conducted the PPR audits covered in our review.

The 4-year base contract between the State agency and ACS/TMHP, which covered the period January 1, 2004, through August 31, 2007, required that the PPR audit be performed (1) following the first full year after the operational start date (covering the contract's first year, calendar year 2004) and (2) during the first extension of the original contract (covering the last year of the contract's base period, State fiscal year (FY) ended August 31, 2007). According to the contract, if ACS/TMHP earned profits of 20 percent or more during the first year of the contract, the State agency would reduce ACS/TMHP's administrative fees during the remaining 3 years of the contract. If ACS/TMHP earned profits of 20 percent or more during the last year of the base period, the State agency would reduce ACS/TMHP's administrative fees in each additional extension year (September 1, 2007, through August 31, 2009) by an amount sufficient to reduce profit to 11 percent.

OBJECTIVES, SCOPE, AND METHODOLOGY

Objectives

Our objectives were to determine whether (1) the State agency refunded excess profits identified through the PPR audit on the CMS-64 in accordance with Federal regulations, (2) the MMIS expenditures that the State agency claimed during Federal FY 2009 were allowable and claimed at the appropriate reimbursement rate, and (3) the State agency obtained prior approval for projects in accordance with Federal regulations.

Scope

For the period October 1, 2007, through September 30, 2009 (the dates corresponding to the PPR audit adjustment period), ACS/TMHP identified $336,510,702 in MMIS expenditures, including $26,689,571 in excess profits identified through the Clifton Gunderson PPR audit, which we reviewed.

For the period October 1, 2008, through September 30, 2009, the State agency claimed MMIS expenditures totaling $222,809,817 ($145,708,422 Federal share), which included expenditures for 42 projects. We reviewed a judgmental sample of 20 projects, which had total costs of $71,315,167, to determine whether those costs were allowable and claimed at the appropriate reimbursement rate and whether the State agency received prior approval for the projects. In addition to the 20 sampled projects, we reviewed 16 projects with total costs of $50,423,047 ($27,272,716 Federal share) to determine whether the State agency had received prior approval. For these 16 projects, we did not review the allowability of the expenditures or whether the State agency claimed them at the appropriate reimbursement rate.[1]

We did not perform a detailed review of the State agency's internal controls. We limited our review to obtaining an understanding of the procedures used to (1) receive, review, and process claims for reimbursement; (2) calculate and claim the Federal share of MMIS expenditures; and (3) obtain prior approval for MMIS projects.

We performed our fieldwork from June 2010 through June 2011 at the State agency and ACS/TMHP, both in Austin, Texas.

Methodology

To accomplish our objectives, we:

- reviewed applicable Federal and State requirements;
- reviewed the State agency's policies, procedures, and cost reimbursement guidance for ensuring that MMIS expenditures were allowable, equitably allocated, and claimed at the correct Federal reimbursement rate;
- interviewed ACS/TMHP officials to gain an understanding of their process for submitting MMIS expenditures to the State agency for reimbursement;
- interviewed State agency officials to gain an understanding of the State agency's policies, procedures, and controls related to calculating and claiming MMIS expenditures for Federal reimbursement;
- reviewed the State agency's contract with ACS/TMHP;
- identified State agency funding requests that CMS had approved and for which funds had been expended during our audit period;
- determined whether the State agency had received prior approval from CMS for all projects that exceeded cost thresholds;
- reconciled to supporting schedules the MMIS expenditures that the State agency claimed on the CMS-64s;
- reviewed a judgmental sample of the MMIS expenditures that the State agency claimed on the CMS-64s and traced the expenditures to invoices, payroll records, and other supporting documentation;

[1] The State agency claimed expenditures for the remaining 6 of the 42 projects at the 50-percent rate, and total costs did not exceed $1 million; therefore, the six projects did not require prior approval.

- consulted with CMS officials on the allowability of the expenditures reviewed;

- reviewed the Clifton Gunderson PPR audit to determine whether the State agency had refunded excess profits due CMS; and

- reviewed the MMIS expenditures claimed on the CMS-64 reports during the PPR audit period, October 1, 2007, through September 30, 2009, to determine the percentage of costs claimed at each reimbursement rate.

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 objectives.

FINDINGS AND RECOMMENDATIONS

The State agency did not refund $2,634,568 (Federal share) of the $26,689,571 in excess profits identified through the PPR audit in accordance with Federal requirements. During FY 2009, the State agency claimed expenditures for 20 MMIS projects with total costs of $71,315,167. All of these expenditures were allowable and claimed at the appropriate reimbursement rate; however, the State agency did not obtain prior approval for 2 of the 20 projects. Also, the State agency did not obtain prior approval for 16 additional projects. The budgets for the 18 projects for which the State agency did not obtain prior approval totaled $59,037,385 ($32,884,701 Federal share).

EXCESS PROFITS NOT REFUNDED

Regulations (42 CFR part 433, subpart F) set forth requirements for refunding the Federal share of Medicaid overpayments. Under the basic rule at § 433.312(a), a Medicaid agency has 60 days from the date of discovery of an overpayment to a provider (not resulting from fraud) to recover or attempt to recover the overpayment before the Federal share must be returned to CMS.

The State agency did not refund $2,634,568 of the $26,689,571 in excess profits that it recovered from ACS/TMHP. On August 31, 2009, ACS/TMHP refunded $18,114,549 to the State agency. ACS/TMHP refunded the remaining $8,575,022 of the total excess profits by reducing the administrative fees it billed the State agency for State FY 2010.

The State agency did not refund to CMS $2,634,568 (Federal share) of excess profits because it made errors in calculating the Federal share of those profits. To calculate the Federal share of the total excess profits, the State agency (1) determined what portion of the total MMIS expenditures claimed on the quarterly CMS-64s for the period October 1, 2007, through September 30, 2009 (the dates corresponding to the PPR audit adjustment period), was claimed at each reimbursement rate; (2) broke down the $26,689,571 in excess profits into the same proportional amounts as the total MMIS expenditures;[2] and (3) multiplied those amounts by the appropriate reimbursement rate (see table below).

Reimbursement Rates Applied to Affiliated Computer Services/Texas Medicaid Health Partnership (ACS/TMHP) Expenditures and Excessive Profits for 2008 and 2009

	Rate Applied			Total
	50 Percent	**75 Percent**	**90 Percent**	
MMIS expenditures	$149,186,638	$171,932,813	$15,391,251	$336,510,702
Percentage of total	44.33%	51.09%	4.57%	99.99%[3]
Total excess profit				$26,689,571
Less Accenture salaries		$4,625,490		$22,064,081
Excess profit by reimbursement rate	$9,781,757	$11,273,162	$1,009,162	$22,064,081
Federal share of excess profit	$4,890,879	$11,923,989	$908,246	$17,723,114
Excess profit amount refunded to CMS	$9,742,791	$5,345,754		$15,088,545
Excess profit amount still owed				$2,634,568

The State agency refunded to CMS a total of $15,088,545 ($9,742,791 based on the 50-percent rate and $5,345,754 based on the 75-percent rate). However, the State agency (1) did not include excess profits related to the 90-percent rate in its calculations and (2) did not apply the 50-percent and 75-percent rates to the individual MMIS expenditures that were reported on the CMS-64s. As a result, the State agency still owes CMS $2,634,568 (Federal share) of excess profits.

PROJECTS WITHOUT PRIOR APPROVAL

The State agency claimed expenditures for 18 projects with budgets that totaled $59,037,385. Because the State agency did not obtain CMS's prior approval for contract amendments with cost increases that exceeded threshold amounts, the State agency should not have claimed these costs.

Project Costs Exceeding Regular Reimbursement Rate Threshold

Regulations (45 CFR § 95.611(b)(1)(iv)) state that prior approval is required for contract amendments that involve acquiring equipment or services with proposed Federal funding at the 50-percent rate when the State anticipates that the amendment will increase the Federal and State

[2] Because the $4,625,490 in Accenture salaries could be tied to the 75-percent rate, the State agency subtracted the salaries from the $26,689,571 in total excess profits before the rate was applied. The $4,625,490 was then included in the amount reimbursed at 75 percent.

[3] The percentages do not equal 100 percent because of rounding.

share of contract costs by $1 million or more. We identified six projects for which the State agency budgeted more than $1 million for contract amendments but did not request approval before the projects began. These six projects had a combined total budget of $38,428,582.

Project Costs Exceeding Enhanced Reimbursement Rate Threshold

Regulations (45 CFR § 95.611(b)(2)(iv)) state that prior approval is required for contract amendments that involve acquiring equipment or services with proposed Federal funding at the 75-percent or 90-percent rate when the State anticipates that the amendment will increase the Federal and State share of contract costs by $100,000 or more. We identified 12 projects for which the State agency budgeted more than $100,000 but did not request approval before the projects began. These 12 projects had a combined total budget of $20,608,803.

Reason for Not Obtaining Prior Approval

According to State agency officials, the State agency did not obtain prior approval from CMS for these project costs because the State agency misinterpreted the prior-approval requirements. Specifically, State officials believed that prior approval was needed only if the technology costs of the projects exceeded $1 million.

RECOMMENDATIONS

We recommend that the State agency:

- refund to the Federal Government $2,634,568 for excess profits related to the PPR audit,
- ensure that prior approval is obtained on future projects as required by Federal regulations, and
- obtain retroactive approval for the 18 projects that did not have the required prior approval from CMS.

STATE AGENCY COMMENTS AND OFFICE OF INSPECTOR GENERAL RESPONSE

In written comments on our draft report, the State agency agreed with our first and third recommendations and described corrective actions it had taken or planned to take. Regarding our second recommendation, the State agency said that it has a process, approved by CMS, by which it seeks CMS approval for (1) MMIS projects totaling $1 million or more for MMIS-related information technology (IT) and non-IT costs claimed at the 75-percent reimbursement rate and (2) all projects claimed at the 90-percent reimbursement rate. The State agency's comments are included in their entirety as the Appendix.

Federal regulations require that for costs claimed at the 50-percent rate, a State must obtain prior approval for any contract amendment with cost increases exceeding $1,000,000. For costs claimed at the 75-percent or 90-percent rate, a State must obtain prior approval for any contract amendment with increases exceeding $100,000. CMS approved the thresholds the State agency mentions for the period March 2010 through September 2011, and we have not been provided any documentation showing that CMS agreed to extend them. Thus, we continue to recommend that the State agency obtain prior approval on future projects in accordance with Federal regulations.

APPENDIX

APPENDIX: STATE AGENCY COMMENTS

TEXAS HEALTH AND HUMAN SERVICES COMMISSION

THOMAS M. SUEHS
EXECUTIVE COMMISSIONER

May 18, 2012

Ms. Patricia Wheeler
Regional Inspector General for Audit Services
Office of Inspector General, Office of Audit Services
1100 Commerce, Room 632
Dallas, Texas 75242

Reference Report Number A-06-10-00062

Dear Ms. Wheeler:

The Texas Health and Human Services Commission (HHSC) received a draft audit report entitled "Texas Did Not Report Excess Contractor Profits in Accordance With Federal Regulations" from the Department of Health and Human Services Office of Inspector General (DHHS-OIG). The cover letter, dated April 18, 2012, requested HHSC provide written comments, including the status of actions taken or planned in response to the report recommendations.

The report identified recommendations for HHSC to consider regarding refunding the federal share of excess profits earned by the Medicaid claims administrator and strengthening the Center for Medicare and Medicaid Services approval process for Medicaid Management Information Systems expenditures.

This management response includes comments related to the recommendations and details related to actions HHSC has completed or planned. Responses to the audit recommendations follow.

DHHS-OIG Recommendation:

We recommend that the State agency refund to the Federal Government $2,634,568 for excess profits related to the PPR audit.

Actions Planned:

HHSC will make an adjustment in the third quarter CMS-64 to refund $2,634,568.

Estimated Completion Date:

June 2012

Title of Responsible Person:

Jennifer Stansbury, Director - Medicaid/CHIP Contract Management and Operations

DHHS-OIG Recommendation:

We recommend that the State agency ensure that prior approval is obtained on future projects as required by Federal regulations.

HHSC Management Response

HHSC has had a process in place since March 2010 to ensure that it seeks CMS approval for all MMIS projects exceeding certain thresholds. Following this process, which was approved by CMS, HHSC seeks CMS approval for (a) MMIS projects totaling $1 million or more for MMIS-related IT and non-IT costs claimed at a 75 percent reimbursement rate and (b) all projects claimed at a 90 percent reimbursement rate. The $1 million threshold is applied individually to the cost of the original contract and to any contract amendment that exceeds $1 million (not the original contract cost for the project plus the contract amendment).

DHHS-OIG Recommendation:

We recommend that the State agency obtain retroactive approval for the 18 projects that did not have the required prior approval from CMS.

HHSC Management Response

Actions Planned:

CMS has approved 5 of the 18 projects noted in this finding that were not submitted for CMS approval prior to March 2010. HHSC will seek resolution with CMS for the remaining 13 projects, and request retroactive approval from CMS for any MMIS projects that meet the threshold.

Estimated Completion Date:

March 2013

Title of Responsible Person:

Jim Macek, Director – Enterprise Applications

If you have any questions or require additional information, please contact David M. Griffith, HHSC Internal Audit Director. Mr. Griffith may be reached by telephone at (512) 424-6998 or by e-mail at David.Griffith@hhsc.state.tx.us.

Sincerely,

Kathleen Olse for Tom Suehs

Thomas M. Suehs