Department of Health and Human Services

OFFICE OF INSPECTOR GENERAL

TEXAS' EXPERIENCE REBATE PROVISION IN MANAGED CARE CONTRACTS WERE ADMINISTERED IN ACCORDANCE WITH FEDERAL, STATE, AND CONTRACTUAL REQUIREMENTS

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

Patricia Wheeler
Regional Inspector General

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Office of Inspector General

https://oig.hhs.gov

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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.

DEPARTMENT OF HEALTH AND HUMAN SERVICES

OFFICE OF INSPECTOR GENERAL

OFFICE OF AUDIT SERVICES, REGION VI
1100 COMMERCE STREET, ROOM 632
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December 17, 2013

Report Number: A-06-13-00002

Mr. Kyle Janek
Executive Director
Texas Health and Human Services Commission
P.O. Box 13247
Austin, TX 78711

Dear Mr. Janek:

Enclosed is the U.S. Department of Health and Human Services (HHS), Office of Inspector General (OIG), final report entitled *Texas' Experience Rebate Provision in Managed Care Contracts Were Administered in Accordance With Federal, State, and Contractual Requirements*. We will forward a copy of this report to the HHS action official noted below.

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 https://oig.hhs.gov.

If you have any questions or comments about this report, please direct them to the HHS action official. Please refer to report number A-06-13-00002 in all correspondence.

Sincerely,

/Patricia Wheeler/
Regional Inspector General
for Audit Services

Enclosure

HHS Action Official:

Jackie Garner
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INTRODUCTION

Texas calculated managed care organization profit-sharing rebates and refunded the Federal portion of those rebates in accordance with applicable Federal, State, and contractual requirements.

WHY WE DID THIS REVIEW

Prior Office of Inspector General reviews[1] found that some States did not comply with managed care contract settlement requirements, which resulted in refunds owed to the Federal Government. The Texas Health and Human Services Commission (State agency) contracts with managed care organizations (MCOs) to provide medical services to beneficiaries enrolled in the Medicaid program and the Children's Health Insurance Program (CHIP) for a fixed monthly capitation payment. In Texas, the State agency's contracts with MCOs include a contract settlement requirement in the form of a profit-sharing arrangement, known as an experience rebate. The MCOs refund to the State agency experience rebates owed to it, and the State agency returns to the Federal Government the Federal share of those rebates.

OBJECTIVE

Our objective was to determine whether the State agency calculated MCO experience rebates and refunded the Federal portion of those rebates to the Centers for Medicare & Medicaid Services (CMS) in accordance with applicable Federal, State, and contractual requirements.

BACKGROUND

Medicaid Program and Children's Health Insurance Program

Under Title XIX of the Social Security Act (the Act), the Medicaid program provides medical assistance to low-income individuals and individuals with disabilities. The Balanced Budget Act of 1997 expanded the Act and created Title XXI, CHIP, to provide free or affordable health care coverage to targeted low-income children. The Act defines targeted low-income children as those not found to be eligible for Medicaid or covered under a group plan or other health insurance coverage (§ 2110(b)(1)(C)).

The Federal and State Governments jointly fund and administer both Medicaid and CHIP. At the Federal level, CMS administers both programs. Although the State has considerable flexibility in designing and operating both programs, it must comply with applicable Federal requirements. In Texas, the State agency administers both Medicaid and CHIP.

[1] *Review of Florida's Children's Health Insurance Program Experience Adjustment and Refund Submission Reports,* A-04-10-06123, issued June 29, 2011 and *Pennsylvania Did Not Refund the Full Federal Share of Recouped Excess Capitation Payments From the Medicaid Behavioral HealthChoices Program,* A-03-10-00204, issued June 18, 2012.

The Federal Government pays a share of a State's expenditures for medical assistance under the Medicaid State plan (the Act § 1903(a)). Federal medical assistance percentages (FMAPs) are used to determine the amount of Federal financial participation (FFP), or matching funds, for State expenditures on Medicaid and other social services. For Medicaid, section 1905(b) of the Act specifies the formula for calculating the FMAPs. The Federal Government uses an enhanced, or higher, FMAP to determine the amount of FFP for State CHIP expenditures. The formula for calculating the CHIP FMAP is found under section 2105(b) of the Act. The State uses the applicable FMAP to determine the Federal share of the net amount of any recoveries (e.g., experience rebates) it makes (the Act § 1903(d)(3)(A)). State agencies report their expenditures to CMS for Federal reimbursement and credit CMS with any refunds due on the Quarterly Medicaid Statement of Expenditures for the Medical Assistance Program (CMS-64 Report), for Medicaid, and the Quarterly CHIP Expenditures Report (CMS-21 Report), for CHIP.

Texas' Medicaid Managed Care Program

Section 1932(a) of the Act allows States to implement managed care delivery systems. Managed care is a system for delivering health care that is intended to improve the quality of care and to control costs. To these ends, the State agency pays MCOs a fixed monthly capitation payment for each enrollee to provide covered services. This approach is different from a fee-for-service system, in which the State agency pays providers for each service they furnish.

Experience Rebate Provision of Contracts With Managed Care Organizations

To ensure that the capitation rates paid are not excessive compared with MCO costs, the State agency includes a settlement requirement in its managed care contracts. The settlement requirement is in the form of a profit-sharing arrangement known as an experience rebate. MCO's pay this rebate to the State agency when their pretax income exceeds 3 percent of revenue for the contract period.

The pretax income used to determine if an experience rebate is owed may be increased by an administrative expense amount.[2] Additionally, the State agency allows an MCO to carry forward prior-year losses to reduce the pretax income used to determine if an experience rebate is owed. After the contract period, the State agency calculates the experience rebates MCOs owe based on Financial Statistical Reports (FSRs) MCOs submit to the State agency annually.[3]

MCOs submit a check directly to the State agency for the experience rebate due for the contract period. The State agency returns to the Federal Government the Federal share of the amount it has recovered through a credit on the required CMS form, either the CMS-64 Report, the CMS-21 Report, or both.

[2] If an MCO's administrative expense amount is more than the State agency's established maximum administrative expense amount, the pretax income will be increased by the difference between those amounts.

[3] FSRs include information on membership, revenues, medical and administrative expenses, and pretax income by service area and program. The State agency contracts with audit contractors to conduct Performance and Compliance Audits of the MCOs to ensure the accuracy of the annual FSRs that MCOs submit to the State agency.

HOW WE CONDUCTED THIS REVIEW

Our audit covered the State fiscal year 2010 and 2011 contract periods (September 1, 2009, through August 31, 2011). During that period, 16 MCOs submitted a total of $227,223,979 in experience rebates to the State agency. We selected one MCO to review that had a median experience rebate owed to the State agency for both contract periods to verify that the State agency adequately administered and monitored the experience rebate provision of its managed care contracts.

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.

See Appendix A for the details of our audit scope and methodology.

RESULTS OF AUDIT

The State agency calculated the experience rebates paid by the selected MCO and refunded the Federal portion of those rebates to CMS in accordance with applicable Federal, State, and contractual requirements.

APPENDIX A: AUDIT SCOPE AND METHODOLOGY

SCOPE

Our audit covered the State fiscal year 2010 and 2011 contract periods (September 1, 2009, through August 31, 2011). During that period, 16 MCOs submitted a total of $227,223,979 in experience rebates to the State agency. We selected one MCO to review that had a median experience rebate owed to the State agency for both contract periods to verify that the State agency adequately administered and monitored the experience rebate provision of its managed care contracts.

Our objective did not require an understanding or assessment of the complete internal control structures of the State agency. Rather, we limited our review to those controls over monitoring the implementation of the experience rebate provision of the contracts.

We performed our audit work from January through August 2013.

METHODLOGY

To accomplish our objective, we:

- reviewed applicable Federal and State laws, regulations, and guidance;
- interviewed State agency officials to obtain an understanding of the experience rebate provision included in its managed care contracts;
- reviewed the experience rebate provision of the State agency's managed care contracts to determine the MCO reporting requirements and the methodology for calculating experience rebates owed to the State agency;
- reviewed MCO experience rebate amounts owed to the State agency and selected one MCO to review that had a median experience rebate owed for both contract periods to determine whether the State agency adequately administered and monitored the experience rebate provision of its managed care contracts;
- reviewed the annual FSRs the MCO submitted to the State agency[4] and the State agency's experience rebate calculation for both contract periods;
- recalculated and validated the experience rebate owed to the State agency for both contract periods;
- determined whether funds returned to the State agency were properly credited on the required CMS form; and

[4] We did not determine whether the information the MCO reported on the FSR was accurate and complete. Subsequently, we relied on the information obtained from the State agency to conduct our audit.

- discussed the results of this audit with the State agency.

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.