

Department of Health and Human Services

**OFFICE OF
INSPECTOR GENERAL**

**MAINE DID NOT IMPLEMENT
BOTH RECOMMENDATIONS
FROM A PRIOR REVIEW OF
MEDICAID OVERPAYMENTS TO
NURSING FACILITIES**

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**David Lamir
Regional Inspector General
for Audit Services**

**August 2015
A-01-14-00007**

Office of Inspector General

<http://oig.hhs.gov>

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EXECUTIVE SUMMARY

Maine did not implement both of the recommendations from our prior review of Medicaid overpayments to nursing facilities.

WHY WE DID THIS REVIEW

A prior Office of Inspector General review identified Medicaid overpayments made to nursing facilities that the Maine Department of Health and Human Services (State agency) did not credit within 60 days on its Quarterly Medicaid Statement of Expenditures for the Medical Assistance Program (Form CMS-64). We, therefore, conducted this followup review on whether the State agency implemented the recommendations from our prior review.

The objective of this review was to determine whether the State agency implemented our prior recommendations to (1) refund the Centers for Medicare & Medicaid Services (CMS) \$1.09 million in Medicaid cost-of-care overpayments and (2) implement policies and procedures that ensure the return of identified overpayments in the required amount of time.

BACKGROUND

The State agency reimburses nursing facilities based on an established per diem rate for services provided to Medicaid beneficiaries. The State agency must use any additional resources that a beneficiary has, including Social Security payments, to reduce its Medicaid payments to nursing homes. When the State agency does not reduce the Medicaid per diem payment to the nursing facilities by the amount of the beneficiary's contribution, the nursing home could receive overpayments. The nursing facility must return the overpayments to the State agency, which in turn must refund the Federal share to CMS within 1 year of discovering the Medicaid overpayments. Prior to March 23, 2010, State agencies were required to refund the Federal share to CMS on the Form CMS-64 within 60 days of discovering the Medicaid overpayments.

We issued an audit report in 2011 to the State agency on the results of our followup of Medicaid cost-of-care overpayments to nursing facilities. The State agency generally implemented our recommendations from the reviews of Medicaid cost-of-care overpayments to nursing facilities. Specifically, the State agency refunded the Federal share of \$1.9 million from prior audits of 7 nursing facilities and identified \$9.06 million in additional overpayments made to 73 nursing facilities. However, we identified \$1.68 million (\$1.09 million Federal share) in uncollected overpayments from 45 nursing facilities. Specifically, the State agency did not refund these overpayments within 60 days on the Form CMS-64 because the State agency waited for the nursing facilities to return the overpayments. Accordingly, we recommended that the State agency:

- refund CMS \$1.09 million on its next Form CMS-64 for Medicaid cost-of-care overpayments that it made to nursing facilities and

- implement policies and procedures that ensure the return of identified overpayments in the required amount of time.

The State agency agreed with our findings and recommendations.

WHAT WE FOUND

The State agency did not implement both of the recommendations from our prior review of Medicaid cost-of-care overpayments to nursing facilities. The State agency refunded \$1.09 million in uncollected overpayments from 45 nursing facilities, but it did not implement policies and procedures that ensure the return of identified overpayments in the required amount of time. As a result, the State agency had \$4,368,348 in uncollected Medicaid overpayments from 92 nursing facilities that exceeded the 1-year refund period. The uncollected Medicaid overpayments may contain claims that were not reimbursed through the Form CMS-64 and, therefore, would not be subject to Federal refund.

In addition, the State agency occasionally used a blended Federal Medical Assistance Percentage (FMAP) rate when crediting the Form CMS-64 for Medicaid overpayments that it could not reconcile to a specific period. As a result, in a few instances the State agency misstated the Federal share reported on the Form CMS-64.

The State agency did not implement both of the recommendations from our prior review because it did not have sufficient procedures in place to track the date of overpayment discovery and provide this information to financial personnel and State agency officials were unaware of the Federal requirement to use the FMAP rate in effect at the time a refund was received.

RECOMMENDATIONS

We recommend that the State agency:

- work with CMS to identify and, if applicable, refund the Federal share of the \$4,368,348 in uncollected Medicaid overpayments and
- implement policies and procedures that ensure that overpayments are refunded on the Form CMS-64 within 1 year of discovery and compute the Federal share at the FMAP rate in effect at the time the refund was received for overpayments that cannot be related to a specific period.

STATE AGENCY COMMENTS AND OUR RESPONSE

In the written comments on our draft report, the State agency agreed with our first recommendation, but neither agreed nor disagreed with our second recommendation. The State agency said that in 2013 it began implementing a database solution to better streamline the claim-line identification and return of the Federal share of overpayments on the Form CMS-64.

We continue to recommend that the State agency implement policies and procedures that ensure that overpayments are refunded on the Form CMS-64 within 1 year of discovery and compute the Federal share at the FMAP rate in effect at the time the refund was received for overpayments that cannot be related to a specific period.

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INTRODUCTION

WHY WE DID THIS REVIEW

A prior Office of Inspector General review¹ identified Medicaid overpayments made to nursing facilities that the Maine Department of Health and Human Services (State agency) did not credit within 60 days on its Quarterly Medicaid Statement of Expenditures for the Medical Assistance Program (Form CMS-64). We, therefore, conducted this followup review on whether the State agency implemented the recommendations from our prior review.

OBJECTIVE

The objective of this review was to determine whether the State agency implemented our prior recommendations to (1) refund the Centers for Medicare & Medicaid Services (CMS) \$1.09 million in Medicaid cost-of-care overpayments and (2) implement policies and procedures that ensure the return of identified overpayments in the required amount of time.

BACKGROUND

Medicaid Program

The Medicaid program provides medical assistance to certain low-income individuals and individuals with disabilities (Title XIX of the Social Security Act (the Act)). The Federal and State Governments jointly fund and administer the Medicaid program. At the Federal level, 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 Maine, the State agency administers the Medicaid program.

Medicaid Cost-of-Care Payments

The State agency reimburses nursing facilities on the basis of an established per diem rate for services provided to Medicaid beneficiaries. The State agency must use any additional resources that a beneficiary has, including Social Security payments, to reduce its Medicaid payments to nursing homes. The State agency determines the amount of the beneficiary's contribution to the cost-of-care during the claim's eligibility process and enters this amount into its computer system. The beneficiary's cost-of-care contribution is remitted directly to the nursing facility each month.

When the State agency does not reduce the Medicaid per diem payment to the nursing facility by the amount of the beneficiary's contribution, the nursing facility could receive overpayments. The nursing facility must return the overpayments to the State agency, which in turn must refund the Federal share to CMS within 1 year of discovering the Medicaid overpayments. Prior to

¹ *Followup Review of Medicaid Cost-of-Care Overpayments Made to Nursing Facilities in the State of Maine* (A-01-10-00008, January 2011). Available online: <http://oig.hhs.gov/oas/reports/region1/11000008.asp>.

March 23, 2010, State agencies were required to refund the Federal share to CMS on the Form CMS-64 within 60 days of discovering the Medicaid overpayments.

Prior Office of Inspector General Audits

We issued audit reports in 2008 and 2009 to the State agency that identified \$3 million (\$1.9 million Federal share) in Medicaid cost-of-care overpayments to seven nursing facilities. These overpayments occurred because the State agency's computer system, which processes reimbursement claims submitted by health care providers, experienced serious malfunctions that resulted in incorrect payments to providers, including nursing facilities. Accordingly, we recommended that the State agency:

- refund \$1.9 million to the Federal Government and
- ensure that Medicaid overpayments to nursing facilities are identified and refunded.

The State agency agreed with our findings and recommendations.

We issued an audit report in 2011 to the State agency on the results of our followup review of Medicaid cost-of-care overpayments to nursing facilities. The State agency generally implemented our recommendations from 2008 and 2009. The State agency refunded the Federal share of \$1.9 million from prior audits of 7 nursing facilities and identified \$9.06 million in additional overpayments made to 73 nursing facilities.

However, we identified \$1.68 million (\$1.09 million Federal share) in uncollected overpayments from 45 nursing facilities. Specifically, the State agency did not refund these overpayments within 60 days on the Form CMS-64 because the State agency waited for the nursing facilities to return the overpayments. Accordingly, we recommended that the State agency:

- refund CMS \$1.09 million on its next Form CMS-64 for Medicaid cost-of-care overpayments that it made to nursing facilities and
- implement policies and procedures that ensure the return of identified overpayments in the required amount of time.

The State agency agreed with our findings and recommendations.

HOW WE CONDUCTED THIS REVIEW

We verified whether the State agency implemented both recommendations from the prior report by (1) confirming whether the State agency refunded CMS \$1.09 million in Medicaid cost-of-care overpayments that it made to nursing facilities on its next Form CMS-64 and (2) determining whether policies and procedures were implemented to ensure the return of identified overpayments in the required amount of time.

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.

Appendix A contains the details of our audit scope and methodology.

FINDINGS

The State agency did not implement both of the recommendations from our prior review of Medicaid cost-of-care overpayments to nursing facilities. The State agency refunded \$1.09 million in uncollected overpayments from 45 nursing facilities, but it did not implement policies and procedures that ensure the return of identified overpayments in the required amount of time. As a result, the State agency had \$4,368,348 in uncollected Medicaid overpayments from 92 nursing facilities that exceeded the 1-year refund period. The uncollected Medicaid overpayments may contain claims that were not reimbursed through the Form CMS-64 and, therefore, would not be subject to Federal refund.

In addition, the State agency occasionally used a blended Federal Medical Assistance Percentage (FMAP) rate when crediting the Form CMS-64 for Medicaid overpayments that it could not reconcile to a specific period. As a result, in a few instances the State agency misstated the Federal share reported on the Form CMS-64.

FEDERAL MEDICAID REQUIREMENTS

Federal regulations 42 CFR § 433.320(a) state, “(1) the agency must refund the Federal share of overpayments that are subject to recovery to CMS through a credit on its Quarterly Statement of Expenditures (Form CMS-64). (2) The agency must credit CMS with the Federal share of overpayments subject to recovery on the earlier of—(i) The Form CMS-64 submission due to CMS for the quarter in which the State recovers the overpayment from the provider; or (ii) The Form CMS-64 due to CMS for the quarter in which the 1-year period following discovery, established in accordance with § 433.316, ends.”

Federal regulations 42 CFR § 433.304 define discovery as “identification by any State Medicaid agency official or other State official, the Federal Government, or the provider of an overpayment, and the communication of that overpayment finding or the initiation of a formal recoupment action without notice as described in § 433.316.”

Additionally, 42 CFR § 433.316(c) states, “An overpayment resulting from a situation other than fraud or abuse is discovered on the earliest of—(1) The date 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) The date on which a provider initially acknowledges a specific overpaid amount in writing to the Medicaid agency; or (3) The date 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.”

The CMS *State Medicaid Manual* § 2500.6 (B) states, “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. Make adjustments to prior periods in subsequent Form CMS-64 to reflect the correct FMAP rate.”

IMPLEMENTATION OF PRIOR RECOMMENDATIONS

The State agency did not implement both of the recommendations from our prior review of Medicaid cost-of-care overpayments to nursing facilities. The State agency refunded \$1.09 million in uncollected overpayments from 45 nursing facilities, but it did not implement policies and procedures that ensure the return of identified overpayments in the required amount of time. As a result, the State agency had \$4,368,348 in uncollected Medicaid overpayments from 92 nursing facilities that exceeded the 1 year period. The uncollected Medicaid overpayments may contain claims that were not reimbursed through the Form CMS-64 and, therefore, would not be subject to Federal refund.

The State agency did not credit the Form CMS-64 for Medicaid overpayments made to nursing facilities within 1 year of the date of discovery because it did not have sufficient procedures in place to track the date of discovery and provide it to financial personnel.

MEDICAID OVERPAYMENTS INCORRECTLY REPORTED ON THE FORM CMS-64

The State agency occasionally used a blended FMAP rate when crediting the Form CMS-64 for Medicaid overpayments that it could not reconcile to a specific period. As a result, in a few instances the State agency misstated the Federal share reported on the Form CMS-64.

The State agency occasionally did not comply with the Federal requirement to use the FMAP rate in effect at the time the refund was received because State agency officials were unaware of the requirement.

RECOMMENDATIONS

We recommend that the State agency:

- work with CMS to identify and, if applicable, refund the Federal share of the \$4,368,348 in uncollected Medicaid overpayments and
- implement policies and procedures that ensure that overpayments are refunded on the Form CMS-64 within 1 year of discovery and compute the Federal share at the FMAP rate in effect at the time the refund was received for overpayments that cannot be related to a specific period.

STATE AGENCY COMMENTS

In the written comments on our draft report, the State agency agreed with our first recommendation, but neither agreed nor disagreed with our second recommendation. The State agency said that in 2013 it began implementing a database solution to better streamline the claim-line identification and return of the Federal share of overpayments on the Form CMS-64.

The State agency's comments are included in their entirety as Appendix B.

OFFICE OF INSPECTOR GENERAL RESPONSE

We continue to recommend that the State agency implement policies and procedures that ensure that overpayments are refunded on the Form CMS-64 within 1 year of discovery and compute the Federal share at the FMAP rate in effect at the time the refund was received for overpayments that cannot be related to a specific period.

APPENDIX A: AUDIT SCOPE AND METHODOLOGY

SCOPE

We reviewed Medicaid overpayments made to nursing facilities that exceeded the 1-year period following discovery, as of March 31, 2013. We limited our review of internal controls to obtaining an understanding of the State agency's procedures for reviewing accounts and reporting overpayments on the Form CMS-64.

We performed fieldwork from June 2014 through April 2015 at the State agency in Augusta, Maine.

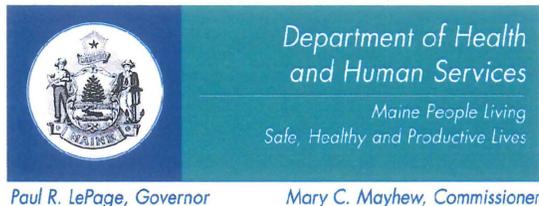
METHODOLOGY

To accomplish our objective, we:

- reviewed applicable Federal laws, regulations, and guidance;
- interviewed officials from the State agency;
- verified that the State agency refunded \$1.09 million to the Federal Government in cost-of-care overpayments identified in 45 nursing facilities;
- verified that the State agency did not implement policies and procedures that ensure the return of identified overpayments in the required amount of time;
- identified Medicaid overpayments totaling \$4,368,348 that were not credited to the CMS-64 within the 1-year period following discovery; and
- discussed the results of our review with State agency officials.

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.

APPENDIX B: STATE AGENCY COMMENTS



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July 27, 2015

Mr. David Lamir, Regional Inspector General for Audit Services
Office of Audit Services, Region I
John F. Kennedy Federal Building, Room 2425
15 New Sudbury Street
Boston, MA 02203

Re: *Maine Did Not Implement Both Recommendations From a Prior Review of Medicaid Overpayments to Nursing Facilities – Report Number A-01-14-00007.*

Dear Mr. Lamir:

The Department of Health and Human Services (DHHS) appreciates the opportunity to respond to the above mentioned draft audit report. We offer the following comments in relation to the recommendations on Page 4 of this report.

For your convenience, below we include the summary finding(s) and list each recommendation followed by our response. Each response includes the State's proposed corrective action plan, which we believe will bring the State into compliance with Federal requirements.

Finding (1):

The State agency had \$4,368,348 in uncollected Medicaid overpayments from 92 nursing facilities that exceeded the 1 year period. The uncollected Medicaid overpayments may contain claims that were not reimbursed through the form CMS-64 and, therefore, would not be subject to Federal refund.

OIG Recommendation:

Work with CMS to identify and, if applicable, refund the Federal share of the \$4,368,348 in uncollected Medicaid overpayments.

State Agency Response:

The Department will continue to work with CMS to identify and return the Federal share of the \$4,368,348 – where applicable.

Finding (2):

The State agency occasionally used a blended FMAP rate when crediting the Form CMS-64 for Medicaid overpayments that it could not reconcile to a specific period. As a result, in a few instances, the State agency misstated the Federal share reported on the Form CMS-64.

OIG Recommendation:

Implement policies and procedures that ensure that overpayments are refunded on the Form CMS-64 within 1 year of discovery and compute the Federal share at the FMAP rate in effect at the time the refund was received for overpayments that cannot be related to a specific period.

State Agency Response:

In 2013, the Department began implementing a database solution to better streamline the claim-line identification, and return of, the Federal share of overpayments on the Form CMS-64. The accelerated return rates in rounds three and four of this audit work demonstrated this significant improvement. The Department performs its due diligence and fully reconciles overpayments to claim level detail before returning the Federal share on the form CMS-64. Further enhancements to database solutions, as well as improved data transition(s) between State agencies as governed by Memoranda of Understanding, will continue to foster improvement in regard to the return of Medicaid overpayments.

Thank you for your consideration.

Sincerely,

A handwritten signature in black ink, appearing to read "Mary C. Mayhew", with a long horizontal flourish extending to the right.

Mary C. Mayhew
Commissioner

MCM/klv