

Department of Health and Human Services

**OFFICE OF
INSPECTOR GENERAL**

**NEW YORK MISALLOCATED
COSTS TO ESTABLISHMENT
GRANTS FOR A HEALTH
INSURANCE MARKETPLACE**

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EXECUTIVE SUMMARY

New York may not have allocated \$93.4 million in costs to its establishment grants in accordance with Federal requirements, did not allocate \$55.3 million in costs to its establishment grants in accordance with Federal requirements, and claimed unallowable costs of \$1 million on an establishment grant after the funding period for that grant had ended.

WHY WE DID THIS REVIEW

The Patient Protection and Affordable Care Act (ACA) established health insurance exchanges (commonly referred to as “marketplaces”) to allow individuals and small businesses to shop for health insurance in all 50 States and the District of Columbia. The ACA provided grants to States for planning, establishing, and early operation of marketplaces.

The New York State Department of Health (the State agency) operates the New York State of Health (New York marketplace) and is responsible for complying with applicable establishment grant requirements.

This review is part of an ongoing series of reviews of establishment grants for State marketplaces across the Nation. We selected the individual State marketplaces to cover States in different parts of the country. Our nationwide audit of State marketplace establishment grants is part of a larger body of ACA work, which also includes audits of State marketplaces’ internal controls over determining individuals’ eligibility for enrollment in health insurance plans offered through the marketplaces.

Our objectives were to determine whether the State agency followed Federal requirements in (1) allocating costs to its establishment grants for establishing a health insurance marketplace and (2) claiming establishment grant costs during the funding period.

BACKGROUND

Within the Department of Health and Human Services’ Centers for Medicare & Medicaid Services (CMS), the Center for Consumer Information and Insurance Oversight (CCIIO) is responsible for implementing many of the requirements of the ACA, including overseeing the implementation of provisions related to the marketplaces and the private health insurance plans offered through the marketplaces, known as qualified health plans (QHPs). Marketplaces perform many functions, including helping States to coordinate eligibility for enrollment in other State-based public health care programs, such as Medicaid and the Children’s Health Insurance Program (CHIP).

CCIIO’s Establishment Grant Funding Opportunity Announcements and the State agency’s Notice of Grant Awards terms and conditions require the State agency to allocate shared costs among Medicaid, CHIP, and the marketplace consistent with cost allocation principles at 2 CFR part 225.

New York chose to establish and operate its own State-based marketplace. Because the New York marketplace provides eligibility determination and enrollment services for both QHPs and its State-based public health care programs, such as Medicaid, the New York marketplace sought funding from various Federal sources that provided benefits for these programs. Additionally, because the New York marketplace is a single entity supporting the shared needs of multiple programs, it developed methodologies for allocating costs related to customer support services and information technology costs.

As of December 31, 2014, CCIIO had awarded New York one planning grant, one early innovator grant, and six establishment grants totaling \$571 million. Of this amount, the State agency expended \$312 million in grant funds from September 30, 2010, through December 31, 2014.

We reviewed \$222.1 million that the State agency allocated to the establishment grants from August 15, 2011, through December 31, 2014 (our audit period). We also reviewed \$6.3 million in costs that the State agency claimed on an establishment grant whose funding period had ended to determine if the costs were incurred during the grant's funding period. We limited our review of internal controls to the systems and procedures for allocating and claiming costs to establishment grants and to Medicaid.

WHAT WE FOUND

The State agency did not always follow Federal requirements in allocating costs to its establishment grants for implementing a health insurance marketplace. Specifically, the State agency:

- allocated \$93.4 million from August 2011 through March 2014 using a cost allocation methodology that included an overstated estimate of the population that would use the marketplace to enroll in a health insurance plan,
- allocated \$49.5 million to the establishment grants from April 2014 through December 2014 that should have been allocated to Medicaid, and
- allocated \$5.8 million of in-person enrollment assistance costs to the establishment grants that should have been allocated to Medicaid.

The State agency misallocated these costs because it did not have adequate internal controls to ensure that it properly allocated costs. Specifically, the State agency did not have written policies that explained how to develop a Cost Allocation Plan (CAP) based on relative benefits received; explained the necessity to use updated, better data when available; or explained how to perform the allocations.

In addition, the State agency claimed unallowable expenses totaling \$1 million related to obligations made on an establishment grant whose funding period had ended. The State agency claimed unallowable expenses because it misinterpreted guidance it received from CCIIO

regarding the charging of these costs, and it did not adhere to its procedures to confirm that the charges were incurred during the grant's funding period.

WHAT WE RECOMMEND

We recommend that the State agency:

- amend its CAP for the period August 2011 through March 2014 and either refund \$93,393,879 to CMS that was allocated to the establishment grants using a methodology that included a material defect or work with CMS to determine the appropriate allocation to the establishment grants;
- refund to CMS \$55,261,734, consisting of \$49,493,613 that was misallocated to the establishment grants by not using updated, better data and \$5,768,121 that was misallocated to the establishment grants for in-person enrollment assistance costs that also benefited Medicaid, or work with CMS to resolve the amounts misallocated to the establishment grants;
- refund to CMS \$998,899 for costs that were incurred after the funding period had ended on an establishment grant;
- work with CMS to ensure that costs claimed after our audit period are allocated correctly using an updated cost allocation methodology;
- amend the CAP and the Advance Planning Documents for the period April 1 through December 31, 2014, to reflect the updated cost allocation methodology;
- develop a written policy that explains how to perform cost allocations and emphasizes the necessity to use updated, better data when available;
- ensure (1) application of updated, better data to properly allocate costs and (2) proper allocation of costs for all allocable project components; and
- follow established procedures to ensure that only costs resulting from obligations of the funding period are claimed for Federal reimbursement.

STATE AGENCY COMMENTS AND OUR RESPONSE

In written comments on our draft report, the State agency disagreed with our recommendations. Specifically, the State agency maintained that the allocation formula it used for the period August 2011 through March 2014 reasonably reflected the distribution of the State population that would benefit from the New York marketplace. The State agency further stated that it complied with Federal guidance related to the required updating of data used to allocate costs, and that the allocation of in-person enrollment assistance program costs was consistent with the allocation of other grant-funded activities during the same period.

The State agency indicated that it received CMS approval to continue to claim costs on an establishment grant whose funding period had ended. It also disagreed with our finding that it did not have written policies explaining its cost allocation formulas and contended that it submitted its allocation policy in October 2014, when it applied for an establishment grant.

After reviewing the State agency's comments, we maintain that our findings and recommendations are valid. The State agency's allocation formula for the period August 2011 through March 2014 included certain population groups (such as those enrolled in Medicare) that should *not* have been expected to use the New York marketplace to enroll in a health insurance plan. Further, CMS guidance recommends that "States continue to reassess their cost allocation on an annual basis and/or if there is a substantive change in program participation...." In New York, the State agency did not revise its cost allocation to reflect the substantive change in program participation for the costs in question. Also, the State agency used a cost allocation methodology that was not approved by CMS for costs of the in-person enrollment assistance program.

The State agency stated that it received CMS approval to continue to claim costs on an establishment grant whose funding period had ended. However, the State agency did not request that CMS extend the grant budget period via a no-cost extension, and CMS stated that a no-cost extension to continue to incur costs on the award was not granted. Therefore, costs obligated to the grant after the funding period ended are unallowable for Federal reimbursement, with the possible exception of limited close-out costs. Finally, during our fieldwork, State agency officials indicated that they did not have written policies explaining how to perform cost allocations or how to update the State agency's cost allocation methodology. The allocation plan submitted with New York's grant application does not constitute a written policy because it does not contain policies that explain how to perform cost allocations, nor does it emphasize the necessity to use updated, better data when available; therefore, the State agency still needs to develop written policies and procedures that address these areas.

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INTRODUCTION

WHY WE DID THIS REVIEW

The Patient Protection and Affordable Care Act (ACA)¹ established health insurance exchanges (commonly referred to as “marketplaces”) to allow individuals and small businesses to shop for health insurance in all 50 States and the District of Columbia. The ACA provided grants² to States for planning, establishing, and early operation of marketplaces.

The New York State Department of Health (the State agency) operates the New York State of Health (New York marketplace) and is responsible for complying with applicable establishment grant requirements.

This review is part of an ongoing series of reviews of establishment grants for State marketplaces across the Nation. We selected the individual State marketplaces to cover States in different parts of the country. Our nationwide audit of State marketplace establishment grants is part of a larger body of ACA work, which also includes audits of State marketplaces’ internal controls over determining individuals’ eligibility for enrollment in health insurance plans offered through the marketplaces. We also plan on conducting additional audit work at the New York marketplace. See “Affordable Care Act Reviews” on the OIG Web site for a list of related OIG reports on marketplace operations.³

OBJECTIVES

Our objectives were to determine whether the State agency followed Federal requirements in (1) allocating costs to its establishment grants⁴ for establishing a health insurance marketplace and (2) claiming establishment grant costs during the funding period.

¹ P.L. No. 111-148 (Mar. 23, 2010), as amended by the Health Care and Education Reconciliation Act of 2010, P.L. No. 111-152 (Mar. 30, 2010), collectively referred to as “ACA.”

² Under section 1311(a) of the ACA, the Centers for Medicare & Medicaid Services (CMS) provided several different funding opportunities available to States, including Early Innovator Cooperative Agreements, Planning and Establishment Grants, and Establishment Cooperative Agreements. See Appendix A for more detailed information about the types of grants and cooperative agreements available to States related to the establishment of a marketplace.

³ Available online at: <http://oig.hhs.gov/reports-and-publications/aca/>.

⁴ For purposes of this report, we reviewed Level One and Level Two grants. See Appendix A for more detailed information about Level One and Level Two grants.

BACKGROUND

Patient Protection and Affordable Care Act

Within the Department of Health and Human Services' (HHS) CMS, the Center for Consumer Information and Insurance Oversight (CCIIO)⁵ is responsible for implementing many of the requirements of the ACA, including overseeing the implementation of provisions related to the marketplaces and the private health insurance plans offered through the marketplaces. These plans are known as qualified health plans (QHPs).

A marketplace performs many functions, such as certifying QHPs; determining eligibility for premium tax credits and cost-sharing reductions; responding to consumer requests for assistance; and providing a Web site and written materials that individuals can use to assess their eligibility, evaluate health insurance coverage options, and enroll in selected QHPs (ACA § 1311(d)(4)). Additionally, a marketplace helps a State to coordinate eligibility for and enrollment in other State-based public health care programs, such as Medicaid and the Children's Health Insurance Program (CHIP).

Federal Requirements Related to Cost Allocation and Enhanced Funding for Marketplaces

CCIIO's Establishment Grant Funding Opportunity Announcements and the State agency's Notice of Grant Awards terms and conditions require the State agency to allocate shared costs among Medicaid, CHIP, and the New York marketplace consistent with cost allocation principles.⁶ CMS provides additional guidance to States that is specific to cost allocation for the marketplaces in *Guidance for Exchange and Medicaid Information Technology (IT) Systems* (version 2.0, May 2011) and *Supplemental Guidance on Cost Allocation for Exchange and Medicaid Information Technology (IT) Systems* (issued Oct. 2012). Primarily, CMS guidance says: "States are expected to update their cost allocation methodology and plan based on updated or better data..."⁷

⁵ To implement and oversee the ACA's marketplace and private health insurance requirements, HHS established the Office of Consumer Information and Insurance Oversight (OCIIO) in April 2010 as part of the HHS Office of the Secretary. In January 2011, OCIIO was transferred to CMS to a new center named CCIIO (76 Fed. Reg. 4703 (Jan. 26, 2011)). In this report, we use "CCIIO" to refer to both OCIIO and CCIIO.

⁶ Office of Management and Budget (OMB) Circular No. A-87, *Cost Principles for State, Local, and Indian Tribal Governments*, was relocated to 2 CFR part 225 and made applicable by 45 CFR § 92.22(b). After our audit period, OMB consolidated and streamlined its guidance, which is now located at 2 CFR part 200. HHS has codified the guidance in regulations found at 45 CFR part 75.

⁷ Toward the end of our audit period, CMS issued further guidance, which states: "CMS strongly recommends that states continue to reassess their cost allocation on an annual basis and/or if there is a substantive change in program participation ..." or whenever a State seeks additional funding (*FAQs on the Use of 1311 Funds, Project Periods, and updating the cost allocation methodology* (issued Sept. 2014)).

State Medicaid agencies must submit Advance Planning Documents (APDs) to obtain enhanced Federal funding⁸ for Medicaid information technology (IT) system projects related to Medicaid eligibility and enrollment, including eligibility and enrollment through a marketplace system (42 CFR § 433.112).

States must also establish Cost Allocation Plans (CAPs) that identify, measure, and allocate costs to each State-operated program (45 CFR part 95, subpart E). After CMS's approval of the APD, the Division of Cost Allocation (DCA)⁹ provides final approval of the allocation methodology percentages for Medicaid and the establishment grants in the CAP. A State must promptly amend its CAP if there are significant changes in program levels or a material defect is discovered in its CAP (45 CFR §§ 95.509(a)(1) and (2)).

Health Insurance Marketplace Programs

The ACA provides for funding assistance¹⁰ to a State for the planning and establishment of a marketplace that incorporates eligibility determination and enrollment functions for all consumers of participating programs, such as Medicaid and private health insurance offered through a marketplace (ACA § 1311).

See Appendix A for details on the Federal assistance available to States to establish marketplaces.

The New York Marketplace

New York chose to establish and operate its own State-based marketplace. Because the New York marketplace provides eligibility determination and enrollment services for both QHPs and its State-based public health care programs, such as Medicaid, the New York marketplace sought funding from various Federal sources that provided benefits for these programs. Additionally, because the New York marketplace is a single entity supporting the shared needs of multiple programs, it developed methodologies for allocating costs related to customer support services and IT costs.

In 2012, the State agency used 2011 United States Census population estimates for New York and Medicaid enrollment data to develop its methodology for allocating costs related to customer support services and IT costs to the establishment grants and Medicaid. The basis of the State

⁸ Enhanced funding refers to 90-percent and 75-percent Federal financial participation (FFP), which is greater than the 50-percent FFP available for most Medicaid administrative expenses.

⁹ The State is required to submit a CAP to the Director of DCA in the appropriate HHS Regional Office (45 CFR § 95.507(a)). HHS is designated by OMB as the cognizant Federal agency for reviewing and negotiating public assistance CAPs. DCA is currently known as Cost Allocation Services and resides within the HHS Program Support Center.

¹⁰ Projects and programs are carried out under a variety of types of grants, including the use of a specific type of grant known as a cooperative agreement. When a Federal agency expects to be substantially involved in carrying out the project or program, it awards a cooperative agreement (*HHS Grants Policy Statement*, p. ii).

agency's allocation methodology was the ratio of the number of individuals enrolled in Medicaid and estimated additional Medicaid enrollments to the State's population. The portion allocated to Medicaid was calculated as 30 percent, and the portion allocated to the establishment grants was the remaining 70 percent.

The State agency submitted several APDs to claim enhanced Medicaid funding for costs related to customer support services and IT. Similarly, the State agency amended its CAP to establish a general cost allocation methodology to allow the State agency to claim Medicaid funding for costs incurred by the New York marketplace. On the basis of the State agency's allocation calculation, the CAP established that 30 percent of the costs would be allocated to Medicaid, and that the remaining 70 percent would be allocated to the establishment grants. HHS's Division of Cost Allocation approved the amendment to the State agency's CAP effective February 16, 2011.

The State agency updated its allocation methodology for the in-person enrollment assistance program, effective April 1, 2014. The State agency planned to transition current Medicaid enrollees into the New York marketplace upon renewal of their Medicaid coverage starting in April 2014. To reflect the change in the population using the services, the State agency based its allocation methodology on the ratio of anticipated QHP customers to the total customers to be served by the in-person enrollment assistance program.¹¹ The State anticipated that 78 percent of the customers would be Medicaid enrollees and that 22 percent of the customers would be QHP enrollees. The allocation methodology was approved by CMS; however, the State agency did not amend its CAP to include this allocation methodology.

As of December 31, 2014, CCIIO had awarded New York one planning grant, one early innovator grant, and six establishment grants totaling \$571 million.¹² Of this amount, the State agency expended \$312 million in grant funds for the period September 30, 2010, through December 31, 2014. The Medicaid program also provided New York with FFP to support marketplace eligibility determination and enrollment services for Medicaid beneficiaries.

See Appendix B for details about grants awarded for establishing and early operation of the New York marketplace as of December 31, 2014.

HOW WE CONDUCTED THIS REVIEW

We reviewed \$222.1 million that the State agency allocated to the establishment grants for the period August 15, 2011, through December 31, 2014 (our audit period). We also reviewed \$6.3 million in costs that the State agency claimed on an establishment grant whose funding

¹¹ The in-person enrollment assistance program, a customer support service, is responsible for providing in-person multilingual application assistance and disability-accessible services to children and adults applying to enroll with the New York marketplace. The program is designed to meet the needs of consumers by providing assistance in convenient community-based locations.

¹² This amount consisted of a planning grant totaling \$884,219, an early innovator grant totaling \$27,431,432, as well as five Level One and one Level Two marketplace establishment and cooperative agreement grants, with total award amounts of \$315,348,349 and \$226,871,215, respectively. See Appendix B for detailed information about the State agency's Level One and Level Two grants.

period had ended to determine if the costs were incurred during the grant's funding period. We limited our review of internal controls to the systems and procedures for allocating and claiming costs to establishment grants and to Medicaid. We obtained an understanding of how the State agency's cost allocation methodologies were developed. We used updated, better data to calculate the amounts that should have been allocated to the establishment grants and assessed the impact of allocating costs using estimated versus updated, better data.

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 C contains the details of our audit scope and methodology.

FINDINGS

The State agency did not always follow Federal requirements in allocating costs to its establishment grants for implementing a health insurance marketplace. Specifically, the State agency:

- allocated \$93.4 million from August 2011 through March 2014 using a cost allocation methodology that included an overstated estimate of the population that would use the marketplace to enroll in a health insurance plan,
- allocated \$49.5 million to the establishment grants from April 2014 through December 2014 that should have been allocated to Medicaid, and
- allocated \$5.8 million of in-person enrollment assistance costs to the establishment grants that should have been allocated to Medicaid.

The State agency misallocated these costs because it did not have adequate internal controls to ensure that it properly allocated costs. Specifically, the State agency did not have written policies that explained how to develop a CAP based on relative benefits received; explained the necessity to use updated, better data when available; or explained how to perform the allocations.

In addition, the State agency claimed unallowable expenses totaling \$1 million related to obligations made on an establishment grant whose funding period had ended. The State agency claimed unallowable expenses because it misinterpreted guidance it received from CCIIO regarding the charging of these costs, and it did not adhere to its procedures to confirm that the charges were incurred during the grant's funding period.

THE STATE AGENCY USED A COST ALLOCATION METHODOLOGY THAT INCLUDED A MATERIAL DEFECT

Federal Requirements

For a cost to be allowable, it must be allocable to a Federal award (2 CFR part 225, Appendix A, § C.1). A cost is allocable to a particular cost objective if the goods or services involved are chargeable or assignable to that cost objective in accordance with the relative benefits received (2 CFR part 225, Appendix A, § C.3).

CMS guidance requires prospective adjustments based on updated or better data; however, it is silent on adjusting allocated costs retrospectively when an error was used as the basis for the determination of program cost allocation (CMS's *Guidance for Exchange and Medicaid Information Technology (IT) Systems* (version 2.0)).

A State agency must amend its CAP if it discovers a material defect in the CAP (45 CFR § 95.509(a)(2)). The effective date of the required modification is retroactive to the date of the original approval (45 CFR § 95.515). If a State agency fails to submit an amended CAP when a material defect is discovered, the costs improperly claimed will be disallowed (45 CFR § 95.519).

The State Agency Used a Cost Allocation Methodology That Included a Material Defect

The State agency allocated costs of \$133 million to the establishment grants and Medicaid for the August 2011 through March 2014 period using a cost allocation methodology that included an overstated estimate of the population that would use the marketplace to enroll in a health insurance plan. Specifically, the State agency used a population-based methodology that assumed the entire population of New York would use the marketplace to enroll in a health insurance plan. However, the marketplace only made eligibility determinations and enrolled individuals for Medicaid, CHIP, the Small Business Health Options Program, and QHPs. Certain population groups should not have been expected to use and, thus, would not have benefitted from the New York marketplace.¹³

The State agency allocated costs to the establishment grants and to Medicaid for the August 2011 through March 2014 period on the basis of the 2011 United States Census population estimates for New York and the number of individuals enrolled in Medicaid and estimated additional Medicaid enrollments. The State agency estimated that 30 percent of the State population would use the New York marketplace to enroll in Medicaid and that the remaining 70 percent of the State population would use the marketplace to enroll in QHPs. These allocation percentages

¹³ Individuals who are eligible for other minimum essential coverage—such as Medicare or larger group coverage with an employer—cannot receive premium tax credits and cost-sharing reductions and would not likely use the marketplace to purchase health insurance (45 CFR § 155.305(f)). Other individuals, such as those who are incarcerated, would not be eligible to enroll in a QHP through the marketplace and would not have benefitted from the marketplace (45 CFR § 155.305(a)).

were identified in the APDs approved by CMS and subsequently approved by DCA, effective February 2011.

As a result of the material defect in the cost allocation methodology, the State agency may not have allocated costs totaling \$93,393,879¹⁴ to the establishment grants in accordance with the relative benefits received by the program because it used the entire State's population in determining the cost allocation percentages. The State agency may seek CMS approval to claim a portion of the \$93.4 million through Medicaid at FFP rates ranging from 50 percent to 90 percent.

The State agency may have misallocated these costs because it did not have written policies that explained how to develop a CAP based on relative benefits received. The State agency based its allocation methodology on the rationale that the marketplace would potentially provide benefits to all New Yorkers seeking health coverage.

THE STATE AGENCY ALLOCATED COSTS TO ITS ESTABLISHMENT GRANTS THAT SHOULD HAVE BEEN ALLOCATED TO MEDICAID

Federal Requirements

A cost is allocable to a particular cost objective if the goods or services involved are chargeable or assignable to that cost objective in accordance with the relative benefits received (2 CFR part 225, App. A, § C.3).

CMS guidance published in May 2011 requires that costs be allocated among Medicaid, CHIP, and the marketplace for services or functions that include the Health Care Coverage Portal, Business Rules Management and Operations System (including eligibility determination), interfaces for the Federal Data Services Hub, and customer service support (CMS's *Guidance for Exchange and Medicaid Information Technology (IT) Systems* (version 2.0), p. 6).

In addition, "if development is in progress, states must recalculate and adjust cost allocation on a prospective basis. [CMS] will work with states to ensure proper adjustments on an expedited basis and encourage states to consult with [CMS] early as [the States] identify such circumstances" (CMS's *Guidance for Exchange and Medicaid Information Technology (IT) Systems* (version 2.0), p. 7).

Furthermore, "States are expected to update their cost allocation methodology and plan based on updated or better data ..." and "on changing realities" (CMS's *Supplemental Guidance on Cost Allocation for Exchange and Medicaid Information Technology (IT) Systems*, "Questions and Answers," Oct. 5, 2012, pp. 3, 4).

¹⁴ This amount includes costs totaling \$268,551 that were allocated to the establishments grants using cost allocation percentages that deviated from the CAP percentages. Specifically, for costs totaling \$3,144,623, the State agency allocated 78.54 percent of the costs (\$2,469,787) to the establishment grants, rather than 70 percent of the costs (\$2,201,236).

States must also establish CAPs that identify, measure, and allocate costs to each State-operated program (45 CFR part 95, subpart E). A State agency must promptly amend its CAP if the procedures shown in the existing CAP “become outdated because of ... significant changes in program levels, affecting the validity of the approved costs allocation procedures” (45 CFR § 95.509(a)(1)). If costs under a Public Assistance program are not claimed in accordance with the approved CAP or if the State agency fails to submit an amended CAP, the costs improperly claimed will be disallowed (45 CFR § 95.519).

The State Agency Did Not Recalculate and Adjust Its Cost Allocation Prospectively

The State agency allocated costs of \$170.7 million to the establishment grants and Medicaid for the April through December 2014 period on the basis of estimates that it made in 2012. The State agency estimated that 30 percent of the State population would be enrolled in Medicaid or CHIP and that the remaining 70 percent of the State population would use the marketplace to enroll in a QHP. In addition to being based on a methodology that included a material defect, the marketplace’s enrollment estimates differed significantly from the updated, actual enrollment data available to the State agency as of April 1, 2014. The updated, actual enrollment data showed that 59 percent of the total enrollment population selected Medicaid or CHIP and that the remaining 41 percent selected a QHP.¹⁵

Despite the availability of updated, better data, the State agency did not recalculate and adjust its cost allocation prospectively by using actual enrollment data. Consequently, costs allocated to the establishment grants and to Medicaid did not correspond to the relative benefits received, as required by 2 CFR part 225. Further, the State agency did not amend its CAP (as required by 45 CFR § 95.509) even though significant changes in program levels occurred. The State agency misallocated \$49.5 million¹⁶ to the establishment grants, as shown in Table 1. This occurred because the State agency did not have adequate internal controls to ensure the proper allocation of costs. Specifically, the State agency did not have a written policy that explained the necessity to use updated, better data when available.

¹⁵ As of April 1, 2014, the New York marketplace reported an actual program enrollment split of 522,580 in Medicaid and CHIP, and 356,877 in QHPs. While the New York marketplace’s cost allocation methodology included the entire population of New York, we used a methodology that allocated costs relative to the benefits received. Specifically, to determine if costs were allocated relative to the benefits received and consistent with CMS’s guidance, we used actual enrollment data for populations that obtained coverage with Medicaid, CHIP, or QHPs by using the New York marketplace.

¹⁶ This amount does not include in-person enrollment assistance costs, for which the State agency had a separate, updated cost allocation methodology. The in-person enrollment assistance costs are discussed on the next page.

Table 1: Allocation of New York Marketplace Costs Not Recalculated and Adjusted Prospectively (April Through December 2014)

| Total Costs | Establishment Grants Allocation Percentage | State Agency's Allocation to Establishment Grants | Establishment Grants Updated Allocation Percentage | Allocation to Establishment Grants Using Updated Allocation Percentage | State Agency's Misallocated Costs |
|--------------------|---|--|---|---|--|
| \$170,667,628 | 70% | \$119,467,340 | 41% | \$69,973,727 | \$49,493,613 |

The State agency may seek CMS approval to claim a portion of the \$49,493,613 through Medicaid at FFP rates ranging from 50 percent to 90 percent. Our calculation of misallocated costs does not include the impact of the outdated cost allocation methodology on costs claimed after our audit period ended (December 31, 2014).

The State Agency Did Not Properly Allocate In-Person Enrollment Assistance Costs

From April through December 2014, the State agency did not properly allocate \$11.5 million for its in-person enrollment assistance program. Specifically, the State agency allocated three different percentages (78.54, 78, and 70 percent) of these costs to the establishment grants, without CMS approval, when it should have allocated 22 percent of these costs to the grants, per its approved cost allocation methodology.¹⁷

In total, the State agency misallocated \$5.8 million for its in-person enrollment assistance program to the establishment grants, as shown in Table 2. This occurred because the State agency did not have adequate internal controls to ensure the proper allocation of costs. Specifically, the State agency did not have a written policy that explained how to perform the allocations.

¹⁷ The State agency did not amend its CAP to include this allocation methodology.

Table 2: State Agency’s Cost Allocations for In-Person Enrollment Assistance Versus Its CMS-Approved Cost Allocation Percentages (April Through December 2014)¹⁸

| Total Costs | State Agency’s Claimed Allocation Percentages and Associated Claimed Costs | | State Agency’s Approved Allocation Percentages and Associated Costs | | Unallowable Costs (Difference in Claimed Costs) |
|---------------------|--|--------------------|---|--------------------|---|
| | Percentage | Amount | Percentage | Amount | |
| \$2,686,845 | 78.54% | \$2,110,248 | | | |
| 513,803 | 78% | 400,766 | 22% | \$2,519,715 | \$5,768,121 |
| 8,252,602 | 70% | 5,776,821 | | | |
| \$11,453,250 | | \$8,287,835 | | \$2,519,715 | \$5,768,121 |

The State agency may seek CMS approval to claim a portion of the \$5.8 million through Medicaid at FFP rates ranging from 50 percent to 90 percent. We note that, as of July 2015, the State agency was adjusting its claims from April through August 2014, which will result in an allocation of 70 percent of these costs to the establishment grants—not the 22-percent rate included in its approved cost allocation methodology. The State agency had not submitted a request to CMS to use this new cost allocation methodology. Our calculation does not include the impact of these adjustments, which could result in an additional \$888,681 misallocation to the establishment grants. Further, our calculation does not include the impact of the State agency’s incorrect cost allocation methodology applied to costs claimed after our audit period ended (December 31, 2014).

THE STATE AGENCY CLAIMED UNALLOWABLE COSTS FOR FEDERAL REIMBURSEMENT

Federal Requirements

A grantee may charge to the award only costs resulting from obligations of the funding period (45 CFR § 92.23). If a grantee needs additional time to complete the grant project or program-related activities and no additional funds are needed, the grantee may request from CMS authority to extend the budget period. This is called a “no-cost extension” (*HHS Grants Policy Statement*, p. II-55).

¹⁸ The percentages presented in the table are the percentages that are allocable to the Establishment grants.

The State Agency Received Federal Reimbursement for Costs Incurred on an Establishment Grant After the Funding Period for That Grant Had Ended

The State agency claimed costs totaling \$6,346,090 on an establishment grant whose funding period had ended on August 14, 2012. We determined that, of that amount, costs totaling \$5,347,191 resulted from obligations made during the grant funding period. However, the remaining costs, totaling \$998,899, resulted from obligations made after the funding period had ended through January 31, 2013. Specifically:

- The State agency claimed unallowable salaries and related fringe benefits and indirect costs, totaling \$738,476. This occurred because the State agency misinterpreted guidance it received from CCIIO and charged all personnel costs to the grant rather than just those involved in grant closeout activities.¹⁹ CCIIO provided the State agency guidance, stating that the billing of staff-related costs should cease at the end of a 45-day extension that CCIIO had approved for filing the final Federal Financial Report (FFR) for the grant. CCIIO officials stated that the marketplace staff they were referring to in their guidance were staff performing grant closeout activities—not all marketplace staff.
- The State agency claimed unallowable consultant, employee travel, and equipment rental costs, totaling \$260,423.²⁰ This occurred because the State agency did not adhere to its procedures to confirm that the charges were incurred during the grant's funding period.

Further, the State agency did not request that CMS extend the budget period via a no-cost extension. Therefore, the costs totaling \$998,899 were unallowable for Federal reimbursement.

RECOMMENDATIONS

We recommend that the State agency:

- amend its CAP for the period August 2011 through March 2014 and either refund \$93,393,879 to CMS that was allocated to the establishment grants using a methodology that included a material defect or work with CMS to determine the appropriate allocation to the establishment grants;
- refund to CMS \$55,261,734, consisting of \$49,493,613 that was misallocated to the establishment grants by not using updated, better data and \$5,768,121 that was misallocated to the establishment grants for in-person enrollment assistance costs that also benefited Medicaid, or work with CMS to resolve the amounts misallocated to the establishment grants;

¹⁹ Typically, costs associated with grant closeout activities are included as indirect costs or, with appropriate approval, may be included as direct costs.

²⁰ Of this amount, \$233,000 related to costs for which the New York marketplace did not provide documentation indicating when the services were provided. Therefore, we relied on the date the costs were obligated in the State agency's accounting system. These dates were after the funding period had ended.

- refund to CMS \$998,899 for costs that were incurred after the funding period had ended on an establishment grant;
- work with CMS to ensure that costs claimed after our audit period are allocated correctly using an updated cost allocation methodology;
- amend the CAP and the APD for the period April 1 through December 31, 2014, to reflect the updated cost allocation methodology;
- develop a written policy that explains how to perform cost allocations and emphasizes the necessity to use updated, better data when available;
- ensure (1) application of updated, better data to properly allocate costs and (2) proper allocation of costs for all allocable project components; and
- follow established procedures to ensure that only costs resulting from obligations of the funding period are claimed for Federal reimbursement.

STATE AGENCY COMMENTS AND OFFICE OF INSPECTOR GENERAL RESPONSE

In written comments on our draft report, the State agency disagreed with our recommendations. Specifically, the State agency stated that the allocation formula it used for the period August 2011 through March 2014 reasonably reflected the distribution of the State population that would benefit from the New York marketplace. In addition, the State agency maintained that it complied with Federal guidance related to the required updating of data used to allocate costs, and that the allocation of in-person enrollment assistance program costs was consistent with the allocation of other grant-funded activities during the same period.

The State agency indicated that it received CMS approval to continue to claim costs on an establishment grant whose funding period had ended. It also disagreed with our finding that it did not have written policies explaining its cost allocation formulas and stated that it submitted its allocation policy in October 2014, when it applied for an establishment grant.

After reviewing the State agency's comments, we maintain that our findings and recommendations are valid. The State agency's allocation formula for the period August 2011 through March 2014 included certain population groups (such as those enrolled in Medicare) that should *not* have been expected to use the New York marketplace to enroll in a health insurance plan. Further, CMS guidance recommends that "States continue to reassess their cost allocation on an annual basis and/or if there is a substantive change in program participation...." In New York, the State agency did not revise its cost allocation to reflect the substantive change in program participation for the costs in question. Also, the State agency used a cost allocation methodology that was not approved by CMS for costs of the in-person enrollment assistance program.

The State agency stated that it received CMS approval to continue to claim costs on an establishment grant whose funding period had ended. However, the State agency did not request that CMS extend the grant budget period via a no-cost extension, and CMS stated that a no-cost extension to continue to incur costs on the award was not granted. Therefore, costs obligated to the grant after the funding period ended are unallowable for Federal reimbursement, with the possible exception of limited close-out costs. Finally, during our fieldwork, State agency officials contended that they did not have written policies explaining how to perform cost allocations or how to update the State agency's cost allocation methodology. The allocation plan submitted with New York's grant application does not constitute a written policy because it does not contain policies that explain how to perform cost allocations, nor does it emphasize the necessity to use updated, better data when available; therefore, the State agency still needs to develop written policies and procedures that address these areas.

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

APPENDIX A: FEDERAL GRANTS TO STATES FOR PLANNING, ESTABLISHING, AND EARLY OPERATION OF MARKETPLACES

CCIIO used a phased approach to provide States with resources for planning and implementing marketplaces. CCIIO awarded States and one consortium of States planning and establishment grants, including early innovator cooperative agreements and two types of marketplace establishment cooperative agreements.

PLANNING AND ESTABLISHMENT GRANTS

CCIIO awarded planning and establishment grants²¹ to assist States with initial planning activities related to the potential implementation of the marketplaces. States could use these funds in a variety of ways, including to assess current IT systems; determine the statutory and administrative changes needed to build marketplaces; and coordinate streamlined eligibility and enrollment systems across State health programs, including Medicaid and CHIP. In September 2010, CCIIO awarded grants in amounts up to a maximum of \$1 million per State to 49 States and the District of Columbia. (Alaska did not apply for a planning and establishment grant.)

EARLY INNOVATOR COOPERATIVE AGREEMENTS

CCIIO awarded early innovator cooperative agreements²² to States to provide them with incentives to design and implement the IT infrastructure needed to operate marketplaces. These cooperative agreements rewarded States that demonstrated leadership in developing cutting-edge and cost-effective consumer-based technologies and models for insurance eligibility and enrollment for marketplaces. The “early innovator” States received funding to develop IT models, “... building universally essential components that can be adopted and tailored by other States.” In February 2011, CCIIO awarded 2-year early innovator cooperative agreements to six States and one consortium of States. Awards ranged from \$6.2 million (Maryland) to \$59.9 million (Oregon).

MARKETPLACE ESTABLISHMENT COOPERATIVE AGREEMENTS

CCIIO designed establishment cooperative agreements²³ to support States’ progress toward establishing marketplaces. Establishment cooperative agreements awarded through December 31, 2014, were available for States seeking (1) to establish a State-based marketplace, (2) to build functions that a State elects to operate under a State partnership marketplace, and

²¹ CCIIO, *State Planning and Establishment Grants for the Affordable Care Act’s Exchanges*, Funding Opportunity Number: IE-HBE-10-001, July 29, 2010.

²² CCIIO, *Cooperative Agreements to Support Innovative Exchange Information Technology Systems*, Funding Opportunity Number: IE-HBE-11-001, October 29, 2010. In February 2011, CMS announced that it had awarded seven early innovator cooperative agreements. The cooperative agreements totaled \$249 million.

²³ CCIIO, *Cooperative Agreement to Support Establishment of State-Operated Health Insurance Exchanges*, Funding Opportunity Number: IE-HBE-11-004, November 29, 2011, and *Cooperative Agreement to Support Establishment of the Affordable Care Act’s Health Insurance Exchanges*, Funding Opportunity Number: IE-HBE-12-001, December 6, 2013.

(3) to support State activities to build interfaces with the Federally Facilitated Marketplace. Cooperative agreement funds were available for approved and permissible establishment activities and could include startup year expenses to allow outreach, testing, and necessary improvements during the startup year. In addition, a State that did not have a fully approved State-based marketplace on January 1, 2013, could have continued to qualify for and receive establishment cooperative agreement awards in connection with its activities related to establishment of the Federally Facilitated Marketplace or State partnership marketplace, subject to certain eligibility criteria. States were eligible for multiple establishment cooperative agreements.

There were two categories of establishment cooperative agreements: Level One and Level Two. Level One establishment cooperative agreements were open to all States, whether they were (1) participating in the Federally Facilitated Marketplace (including States collaborating with the Federally Facilitated Marketplace through the State partnership model) or (2) developing a State-based marketplace. All States could have applied for Level One establishment cooperative agreements, including those that previously received exchange planning and establishment grants. Level One award funds were available for up to 1 year after the date of the award.

Level Two establishment cooperative agreements were available to States, including those that previously received exchange planning and establishment grants. Level Two establishment cooperative agreement awards provided funding for up to 3 years after the date of the award. These awards were available to States that could demonstrate that they had (1) the necessary legal authority to establish and operate a marketplace that complies with Federal requirements available at the time of the application, (2) established a governance structure for the marketplace, and (3) submitted an initial plan discussing long-term operational costs of the marketplace.

States could have initially applied for either a Level One or a Level Two establishment cooperative agreement. Those that had received Level One establishment cooperative agreements could have applied for another Level One establishment cooperative agreement by a subsequent application deadline. Level One establishment grantees also could have applied for a Level Two establishment cooperative agreement provided the State had made sufficient progress in the initial Level One establishment project period and was able to satisfy the eligibility criteria for a Level Two establishment cooperative agreement.

In determining award amounts, CCIIO looked for efficiencies and considered whether the proposed budget would be sufficient, reasonable, and cost effective to support the activities proposed in the State's application. According to the Funding Opportunity Announcement, the cooperative agreements funded only costs for establishment activities that were integral to marketplace operations and meeting marketplace requirements, including those defined in existing and future guidance and regulations issued by HHS. A marketplace must use ACA, section 1311(a), funds consistent with ACA requirements and related guidance from CCIIO.

States must ensure that their marketplaces were self-sustaining beginning on January 1, 2015 (ACA § 1311(d)(5)(A)).

**APPENDIX B: FEDERAL GRANTS AWARDED FOR ESTABLISHING AND EARLY
OPERATION OF THE NEW YORK MARKETPLACE
AS OF DECEMBER 31, 2014**

The following table summarizes the grants awarded by CCIIO to support the planning, establishing, and early operation of the New York marketplace and expenditures allocated to these grants.

| Grant Number | Award Period²⁴ | Award Type | Award Total | State Agency Expenditures |
|---------------------|--|--------------------|----------------------|----------------------------------|
| HBEIE100033 | September 30, 2010 – June 1, 2012 | Planning | \$884,219 | \$884,219 |
| HBEIE110053 | February 16, 2011 – December 31, 2015 | Early Innovator | 27,431,432 | 20,159,290 |
| HBEIE110071 | August 15, 2011– August 14, 2012 | Level One | 6,346,090 | 6,346,090 |
| HBEIE120106 | February 22, 2012– December 31, 2015 | Level One | 48,474,819 | 46,398,477 |
| HBEIE120124 | August 23, 2012– December 31, 2015 | Level One | 114,513,043 | 98,236,546 |
| HBEIE130146 | January 16, 2013– December 31, 2015 | Level Two | 226,871,215 | 140,034,719 |
| HBEIE140200 | May 2, 2014– December 31, 2015 | Level One | 82,188,253 | 0 |
| HBEIE150208 | December 17, 2014– December 16, 2015 | Level One | 63,826,144 | 0 |
| Total | | | \$570,535,215 | \$312,059,341 |

²⁴ The award period for each grant number, with the exception of grant numbers HBEIE110071 and HBEIE150208, includes no-cost extensions.

APPENDIX C: AUDIT SCOPE AND METHODOLOGY

SCOPE

We reviewed \$222.1 million that the State agency allocated to the establishment grants from August 15, 2011, through December 31, 2014, as well as \$6.3 million that the State agency claimed on an establishment grant after the funding period for that grant had ended. We limited our review of internal controls to the systems and procedures for allocating and claiming costs to establishment grants and to Medicaid.

We conducted our fieldwork at the State agency's offices in Albany, New York, from July 2014 through August 2015.

METHODOLOGY

To accomplish our objectives, we:

- reviewed applicable Federal laws, regulations, and guidance;
- reviewed the State agency's establishment grant application packages;
- reviewed CCIIO's Funding Opportunity Announcements and Notice of Grant Awards terms and conditions;
- interviewed CCIIO officials to gain an understanding of guidance they provided to the State agency;
- reviewed the State agency's policies and procedures for financial management;
- interviewed State agency officials to gain an understanding of their accounting system and internal controls;
- interviewed State agency officials to understand how they developed projections of enrollment in various health care coverage programs mandated by the ACA;
- interviewed State agency officials to gain an understanding of enrollment statistics available to the State agency for individuals determined eligible for and enrolled in QHPs, Medicaid, or CHIP;
- obtained actual enrollment figures from October 1, 2013, through April 1, 2014, for QHP, Medicaid, and CHIP enrollments through the New York marketplace;
- obtained expenditure general ledger reports for August 2011 through December 2014;
- reconciled the general ledger reports to the Federal financial reports to determine whether the detailed general ledger reports were accurate and complete;

- analyzed the general ledger reports to obtain an understanding of the information that the State agency used to claim expenditures for Federal reimbursement;
- recalculated the amounts that should have been allocated to the establishment grants using updated, better data;
- determined the amount that was misallocated to the establishment grants as a result of the State agency not adjusting its allocation methodology and prospectively recalculating its allocation percentages using updated, better data;
- reviewed costs that were claimed after the expiration of a grant to determine if the services were rendered during the project period of the grant; 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 D: STATE AGENCY COMMENTS



ANDREW M. CUOMO
Governor

Department
of Health

HOWARD A. ZUCKER, M.D., J.D.
Commissioner

SALLY DRESLIN, M.S., R.N.
Executive Deputy Commissioner

September 1, 2016

Mr. James P. Edert
Regional Inspector General for Audit Services
Department of Health and Human Services - Region II
Jacob Javitz Federal Building
26 Federal Plaza
New York, New York 10278

Ref. No: A-02-14-02017

Dear Mr. Edert:

Enclosed are the New York State Department of Health's comments on the United States Department of Health and Human Services, Office of Inspector General's Draft Audit Report A-02-14-02017 entitled, "New York Misallocated Costs to Establishment Grants for a Health Insurance Marketplace."

Thank you for the opportunity to comment.

Sincerely,

Sally Dreslin

Sally Dreslin, M.S., R.N.
Executive Deputy Commissioner

Enclosure

cc: Michael J. Nazarko
Donna Frescatore
Sue Bannen
Danielle Holahan
Marybeth Hefner
Jeffrey Hammond
Jill Montag
Diane Christensen
Lori Conway

**New York State Department of Health
Comments on the
Department of Health and Human Services
Office of Inspector General
Draft Audit Report A-02-14-02017 entitled
“New York Misallocated Costs to Establishment Grants for a Health
Insurance Marketplace”**

The following are the New York State Department of Health's (Department) comments in response to the Department of Health and Human Services, Office of Inspector General (OIG) Draft Audit Report A-02-14-02017 entitled, "New York Misallocated Costs to Establishment Grants for a Health Insurance Marketplace."

Background

NY State of Health is an organized marketplace designed to help people shop for and enroll in health insurance coverage. Individuals, families and small businesses can use the Marketplace to help them compare insurance options, calculate costs and select coverage. The Marketplace uses a single application that helps people to check their eligibility for health care programs including Qualified Health Plans, Medicaid and Child Health Plus and enroll in the program they are eligible for. For those eligible for a Qualified Health Plan, the Marketplace also calculates the amount of Advanced Premium Tax Credit (APTC) available to reduce the cost of coverage. New Yorkers can complete the Marketplace application online, in-person, over the phone or by mail.

NY successfully operates the most integrated health insurance Marketplace in the nation providing one-stop shopping and plan enrollment for consumers regardless of which program the individual qualifies for (Qualified Health Plans, Medicaid and Child Health). In addition to providing convenience and ease for consumers, the Marketplace also realizes economies of scale by sharing development across multiple lines of business. Cost allocation formulas for shared development costs are submitted to and approved by the Centers for Medicare and Medicaid (CMS) as part of the Exchange grant application and reporting process and through Advanced Planning Documents (APDs) for the Medicaid and Child Health Plus programs. Generally, the cost of developing functionality or program features that are shared across programs are allocated on the basis of the number of persons projected to enroll in each program through the Marketplace. Costs allocated to the Exchange or QHP line of business are funded entirely by federal exchange grants. Costs allocated to the Medicaid program are eligible for federal Medicaid financial match. Eligibility system development costs, the largest component of costs, are eligible for a federal Medicaid match of 90 percent.

General Comments

The OIG has stated that the Department did not always follow Federal requirements in allocating costs to its establishment grants for implementing a health insurance marketplace. We disagree.

New York has followed CMS guidance and federal rules and applied cost allocation methods that were approved by CMS in apportioning costs to the various programs administered through the Marketplace. In no case did the audit find that NY used federal grant funds for costs that are not related or necessary to the development of the Marketplace. Instead, the audit takes issue with the allocation formulas used to distribute costs, or with the timing of updates to enrollment metrics used in the allocations despite the fact that these methods were approved by CMS or in accordance with CMS guidance and instructions. Moreover, the audit's specific recommendations, which we respond to below, significantly overstate the fiscal impact of the audit's findings by ignoring the fact that

federal funding is available to support Marketplace development costs regardless of the program to which the costs are allocated.

Recommendation #1

Amend its Cost Allocation Plan (CAP) for the period August 2011 through March 2014 and either refund \$93,393,879 to CMS that was allocated to the establishment grants using a methodology that included a material defect or work with CMS to determine the appropriate allocation to the establishment grants.

Response #1

We disagree that the allocation methodology included a material defect. The allocation formula, which was established in advance of the implementation of the Marketplace, reasonably reflected the distribution of the state population that would benefit from the Marketplace. The method and supporting data was submitted to CMS and approved. As such, we maintain that the methodology was sound and approved for use and, therefore, no retroactive amendment of the CAP or refund of grants is required.

Recommendation #2:

Refund to CMS \$55,261,734, consisting of \$49,493,613 that was misallocated to the establishment grants by not using updated, better data and \$5,768,121 that was misallocated to the establishment grants for in-person enrollment assistance costs that also benefited Medicaid, or work with CMS to resolve the amounts misallocated to the establishment grants.

Response #2

We disagree. The method used to allocate \$49,493,613 to exchange grants was consistent with the approved methodology and federal guidance in effect related to the timing of updates to the enrollment projections that are used in the allocation formulas. In September 2014, CMS issued guidance to state-based Marketplaces that requires them to update cost allocation methodologies when seeking additional federal funds using actual enrollment numbers when available (<https://www.cms.gov/CCIIO/Resources/Fact-Sheets-and-FAQs/index.html#Exchange>).

NY complied with this guidance when requesting additional grant funding in October 2014 (HBEIE150208). In addition, on October 22, 2014 coincident with requests to extend the project period for existing grants HBEIE120106, HBEIE120124, and HBEIE130146, NY requested guidance from CMS about cost allocation methodologies:

“Specifically, we need to confirm that grant funding that has been awarded will continue under the previously approved cost allocation methodology, even through no cost extension periods.”

In response, on November 4, 2014 CMS confirmed the continued use of the original cost allocation methodology during an extension period:

“Cost allocation is not retrospective; it is prospective with new funding requests. A *no cost* extension is not new funding. It is using existing approved funds to continue to finish up activities that took longer than expected.”

Based on this direction, we continued to use the cost allocation formulas as approved by CMS.

(Documentation of our October 22, 2014 request and CMS' November 4, 2014 response was provided to the auditors during the audit.)

During the audit period, New York was awarded six establishment grants. In each instance, the cost allocation methodology was included as part of the application submission and was approved by CMS.

We disagree with the report's recommendation because it is based on the incorrect conclusion that adjustments to actual enrollment data should have been made earlier.

We also disagree with the recommendation related to the allocation of \$5,768,121 in exchange grants for costs related to the in-person assistors. A delay in the transition of eligibility determinations for the existing Modified Adjusted Gross Income (MAGI) Medicaid eligible populations, from local governments to the Marketplace, resulted in in-person assistors serving a Marketplace population that was more heavily weighted to persons enrolling in Qualified Health Plans. The allocation applied to these activities was consistent with the allocation used for other grant-funded activities during the same period.

Recommendation #3:

Refund to CMS \$998,899 for costs that were incurred after the funding period had ended on an establishment grant.

Response #3

We disagree that a refund is due to CMS. CMS had approved the continued use of these grant funds for activities related to this grant, including staff, for a period of 4.5 months. This reflects the standard 90-day grant close out period plus an additional 45 day extension. These were appropriate and necessary costs, and had NY been instructed to charge these costs to subsequent establishment grants, we would have done so.

Recommendation #4:

Work with CMS to ensure that costs claimed after our audit period are allocated correctly using an updated cost allocation methodology.

Response #4

We maintain that costs during the audit period were correctly allocated and in accordance with federal rule and CMS guidance. We will continue to work with CMS to ensure that costs claimed in further periods are also correctly allocated.

Recommendation #5

Amend the CAP and the Advance Planning Documents for the period April 1 through December 31, 2014, to reflect the updated cost allocation methodology.

Response #5

For reasons explained above, we do not agree that amendments to the CAP or APD for the period April 1 through December 31, 2014 are required.

Recommendation #6

Develop a written policy that explains how to perform cost allocations and emphasizes the necessity to use updated, better data when available.

Response #6

We agree in principle with the need for written policies that explain the cost allocation formulas; however, we disagree that the report's conclusion that written policies did not exist during the audit period. New York's allocation policy was submitted with its Establishment Grant Application request in October 2014 and has since been updated with more current data. (The allocation plan has been provided to the auditors.)

Recommendation #7

Ensure (1) application of updated, better data to properly allocate costs and (2) proper allocation of costs for all allocable project components.

Response #7

Allocations made during the audit period were consistent with federal guidance related to the required updating of data used to allocate costs. We will continue to comply with federal guidance as it impacts future periods.

Recommendation #8

Follow established procedures to ensure that only costs resulting from obligations of the funding period are claimed for Federal reimbursement.

Response #8

We disagree that costs were incorrectly claimed after the end of the grant period. We will continue to follow federal guidance for grant close-out procedures.