



DEPARTMENT OF HEALTH AND HUMAN SERVICES

OFFICE OF INSPECTOR GENERAL

WASHINGTON, DC 20201



June 12, 2012

TO: Marilyn Tavenner
Acting Administrator
Centers for Medicare & Medicaid Services

FROM: /Gloria L. Jarmon/
Deputy Inspector General for Audit Services

SUBJECT: Pennsylvania Did Not Refund the Full Federal Share of Recouped Excess
Capitation Payments From the Medicaid Behavioral HealthChoices Program
(A-03-10-00204)

Attached, for your information, is an advance copy of our final report on Pennsylvania's recouped excess capitation payments from the Medicaid Behavioral HealthChoices Program. We will issue this report to Pennsylvania's Department of Public Welfare within 5 business days.

If you have any questions or comments about this report, please do not hesitate to call me, or your staff may contact Brian P. Ritchie, Assistant Inspector General for the Centers for Medicare & Medicaid Audits, at (410) 786-7104 or through email at Brian.Ritchie@oig.hhs.gov or Stephen Virbitsky, Regional Inspector General for Audit Services, Region III, at (215) 861-4470 or through email at Stephen.Virbitsky@oig.hhs.gov. Please refer to report number A-03-10-00204.

Attachment



DEPARTMENT OF HEALTH AND HUMAN SERVICES

OFFICE OF INSPECTOR GENERAL



OFFICE OF AUDIT SERVICES, REGION III
PUBLIC LEDGER BUILDING, SUITE 316
150 S. INDEPENDENCE MALL WEST
PHILADELPHIA, PA 19106

June 18, 2012

Report Number: A-03-10-00204

Mr. Gary D. Alexander
Secretary
Pennsylvania Department of Public Welfare
P.O. Box 2675
Harrisburg, PA 17105

Dear Mr. Alexander:

Enclosed is the U.S. Department of Health & Human Services (HHS), Office of Inspector General (OIG), final report entitled *Pennsylvania Did Not Refund the Full Federal Share of Recouped Excess Capitation Payments From the Medicaid Behavioral HealthChoices Program*. We will forward a copy of this report to the HHS action official noted on the following page for review and any action deemed necessary.

The HHS action official will make final determination as to actions taken on all matters reported. We request that you respond to this official within 30 days from the date of this letter. Your response should present any comments or additional information that you believe may have a bearing on the final determination.

Section 8L of the Inspector General Act, 5 U.S.C. App., requires that OIG post its publicly available reports on the OIG Web site. Accordingly, this report will be posted at <http://oig.hhs.gov>.

If you have any questions or comments about this report, please do not hesitate to call me, or contact Michael Walsh, Audit Manager, at (215) 861-4480 or through email at Michael.Walsh@oig.hhs.gov. Please refer to report number A-03-10-00204 in all correspondence.

Sincerely,

/Stephen Virbitsky/
Regional Inspector General
for Audit Services

Enclosure

Direct Reply to HHS Action Official:

Ms. Jackie Garner
Consortium Administrator
Consortium for Medicaid and Children's Health Operations
Centers for Medicare & Medicaid Services
233 North Michigan Avenue, Suite 600
Chicago, IL 60601

Department of Health and Human Services

**OFFICE OF
INSPECTOR GENERAL**

**PENNSYLVANIA DID NOT
REFUND THE FULL FEDERAL
SHARE OF RECOUPED EXCESS
CAPITATION PAYMENTS FROM
THE MEDICAID BEHAVIORAL
HEALTHCHOICES PROGRAM**



Daniel R. Levinson
Inspector General

June 2012
A-03-10-00204

Office of Inspector General

<http://oig.hhs.gov>

The mission of the Office of Inspector General (OIG), as mandated by Public Law 95-452, as amended, is to protect the integrity of the Department of Health and Human Services (HHS) programs, as well as the health and welfare of beneficiaries served by those programs. This statutory mission is carried out through a nationwide network of audits, investigations, and inspections conducted by the following operating components:

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The Office of Evaluation and Inspections (OEI) conducts national evaluations to provide HHS, Congress, and the public with timely, useful, and reliable information on significant issues. These evaluations focus on preventing fraud, waste, or abuse and promoting economy, efficiency, and effectiveness of departmental programs. To promote impact, OEI reports also present practical recommendations for improving program operations.

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OFFICE OF AUDIT SERVICES FINDINGS AND OPINIONS

The designation of financial or management practices as questionable, a recommendation for the disallowance of costs incurred or claimed, and any other conclusions and recommendations in this report represent the findings and opinions of OAS. Authorized officials of the HHS operating divisions will make final determination on these matters.

EXECUTIVE SUMMARY

BACKGROUND

Pursuant to Title XIX of the Social Security Act (the Act), the Medicaid program provides medical assistance to low-income individuals and individuals with disabilities. The Federal and State Governments jointly fund and administer the Medicaid program. At the Federal level, the Centers for Medicare & Medicaid Services (CMS) administers the program. Each State administers its Medicaid program in accordance with a CMS-approved State plan. In Pennsylvania, the Department of Public Welfare (State agency) administers the State's Medicaid program.

Section 1915(b) of the Act allows States to seek waivers to implement managed care delivery systems or otherwise limit an individual's choice of provider under the Medicaid program. Managed care entities agree to provide specific services to enrolled Medicaid beneficiaries, usually in return for a predetermined periodic payment, known as a capitation payment, for each beneficiary. The Federal Government pays a share of a State's expenditures for the Medicaid program. Section 1903(d)(3)(A) of the Act states that the Federal Government is entitled to the Federal share of the net amount recovered by a State with respect to its Medicaid program.

Under Pennsylvania's PA-25 section 1915(b) waiver, the Behavioral HealthChoices program provides mental health services to beneficiaries in 25 of Pennsylvania's counties. A second waiver, PA-42, provides similar services to the remaining 42 counties (we did not review the PA-42 waiver for this report). Under the PA-25 waiver, the State agency contracts with 24 counties for the Behavioral HealthChoices program and pays the counties a monthly capitation payment for behavioral health services for each enrolled beneficiary. Counties subcontract with managed care organizations that coordinate service delivery through providers. For one county, the State agency contracts directly with the managed care organization.

The State agency uses risk-based contracts under which the counties incur a risk if the cost of providing the program exceeds the capitation payments. When capitation payments exceed the cost of the program, counties are permitted to set aside in restricted Reinvestment accounts capitation revenues and investment income that were not expended during the contract year for use in approved plans in subsequent years. Counties may also seek approval from the State agency to designate funds as Risk and Contingency to fund in-plan services when costs exceed capitation payments, to pay managed care entities when capitation payments from the State agency are delayed, and to meet the requirements of insolvency agreements, if necessary. A past audit identified some Pennsylvania counties with excess capitation payments that appeared to be unreasonable, including one county that received excess capitation payments of 38 percent. Subsequent to that audit, the State agency established procedures to recoup unreasonable excess capitation payments.

OBJECTIVE

Our objective was to determine whether the State agency refunded the Federal share of excess capitation payments recouped from the Risk and Contingency and Reinvestment funds in accordance with Federal requirements.

SUMMARY OF FINDING

The State agency recouped \$39,602,257 in excess capitation payments from 12 of the 24 counties' Risk and Contingency and Reinvestment funds but did not refund the full Federal share in accordance with Federal requirements. (At the time of our audit, the State agency had not identified excess capitation payments to be recouped for the 12 remaining counties.) The State agency identified \$24,602,257 of recouped excess capitation payments as Medicaid program funds for Behavioral HealthChoices under the PA-25 waiver in 11 of the 12 counties we reviewed and properly refunded the Federal share of \$13,058,015. However, the State agency did not refund the Federal share of the excess capitation payments recouped from one county (Philadelphia County). Rather, the State agency designated as State-only funds \$15,000,000 recouped from Philadelphia County's Reinvestment Fund and, therefore, did not refund the Federal share.

To return funds to the State, Philadelphia County reduced funding for two reinvestment plans approved by the State. However, Philadelphia County had no funds attributable to State-only excess capitation payments in the year it funded one of the plans and had only a portion of the plan amount in State-only funds in the year it funded the second plan. Because Philadelphia's Reinvestment account commingled excess capitation payments for both Federal Medicaid and State General Assistance enrollees, the State agency was unable to identify the amount of State-only funds recouped from Philadelphia County. Accordingly, the State agency must refund the \$7,950,454 Federal share of the returned excess capitation payments.

The State agency did not develop and implement effective internal controls to identify and return to the Federal Government the Federal share of excess capitation payments recouped from the counties' Risk and Contingency and Reinvestment funds.

RECOMMENDATIONS

We recommend that the State agency:

- refund \$7,950,454 (Federal share) of excess capitation payments returned by Philadelphia County and
- develop procedures to ensure that the State agency properly refunds the Federal share of excess capitation payments recouped from the Risk and Contingency and Reinvestment funds.

STATE AGENCY COMMENTS

In its comments on our draft report, the State agency agreed that Philadelphia County had voluntarily returned \$15,000,000 in unused reinvestment funds derived from excess Medicaid capitation payments but stated that it did not believe that repayment of the Federal share of the recovery was warranted. However, the State agency estimated that \$563,933 of this amount represented State-only payments and agreed that the remaining recouped payments, \$14,436,067, included Federal participation. Accordingly, the State agency recalculated a Federal share of \$7,950,454. The State agency's comments are included in their entirety as the Appendix.

OFFICE OF INSPECTOR GENERAL RESPONSE

After reviewing the State agency's comments and related information, we revised the finding and recommended disallowance to be consistent with the State agency's calculation of the overpayment. Regarding the State agency's assertion that a repayment was not warranted, section 1903(d)(3)(A) of the Act states that the Federal Government is entitled to the Federal share of the net amount recovered by the State. Therefore, we maintain that our finding and recommendations are valid.

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INTRODUCTION

BACKGROUND

Medicaid Program

Pursuant to Title XIX of the Social Security Act (the Act), the Medicaid program provides medical assistance to low-income individuals and individuals with disabilities. The Federal and State Governments jointly fund and administer the Medicaid program. At the Federal level, the Centers for Medicare & Medicaid Services (CMS) administers the program. Each State administers its Medicaid program in accordance with a CMS-approved State plan. Although the State has considerable flexibility in designing and operating its Medicaid program, it must comply with applicable Federal requirements. In Pennsylvania, the Department of Public Welfare (State agency) administers the State's Medicaid program.

Pursuant to section 1903(a) of the Act, the Federal Government pays a share of a State's expenditures for medical assistance under the Medicaid State plan. The method of calculating the Federal share, called the Federal Medical Assistance Percentage (FMAP), is set forth in sections 1905(b) and 1101(a) of the Act. Section 1903(d)(3)(A) of the Act states that the Federal Government is entitled to the Federal share of the net amount recovered by a State with respect to medical assistance furnished under the State plan.

States report Medicaid expenditures to CMS, and credit CMS with any refunds due, on Form CMS-64, Quarterly Medicaid Statement of Expenditures for the Medical Assistance Program (Form CMS-64).

Pennsylvania's PA-25 Waiver Program

Section 1915(b) of the Act allows States to seek waivers to implement managed care delivery systems or otherwise limit an individual's choice of provider under Medicaid. Managed care entities provide specific services to enrolled Medicaid beneficiaries, usually in return for a predetermined periodic payment, known as a capitation payment, for each beneficiary. Federal regulations (42 CFR § 438.6(c)) require States that provide managed care using risk-based contracts to develop actuarially sound capitation rates based on the cost and utilization of Medicaid State plan services.

Pennsylvania's PA-25 waiver allows the State agency to provide integrated and coordinated health care services to Medicaid beneficiaries in 25 Pennsylvania counties through a capitated, mandatory managed care program.¹ Counties covered under this waiver are divided into three contracting zones:

- The Southeast zone, consisting of Bucks, Chester, Delaware, Montgomery, and Philadelphia Counties, operates on a calendar-year (CY) basis.

¹ A second waiver, PA-42, was authorized by CMS to provide medical and behavioral services to Medicaid beneficiaries in the remaining 42 counties. We did not review the PA-42 waiver.

- The Southwest zone, consisting of Allegheny, Armstrong, Beaver, Butler, Fayette, Greene, Indiana, Lawrence, Washington, and Westmoreland Counties, operates on a CY basis.
- The Lehigh/Capital zone, consisting of Adams, Berks, Cumberland, Dauphin, Lancaster, Lebanon, Lehigh, Northampton, Perry, and York Counties, operates on a State fiscal year (July 1 through June 30) basis.

The State agency contracts for these services under the Physical HealthChoices and Behavioral HealthChoices programs.

Behavioral HealthChoices Program

Under the PA-25 waiver, the Behavioral HealthChoices program provides mental health services, including inpatient and outpatient psychiatric services; residential treatment and behavioral health rehabilitation services for children; crisis intervention, family-based, and resource coordination services; and drug and alcohol services.

The State agency requires both Federal Medicaid beneficiaries (eligible for medical assistance under section 1902(a)(10)(A) of the Act) and State General Assistance beneficiaries to obtain behavioral health services through the Behavioral HealthChoices managed care program. For State General Assistance beneficiaries, the State agency pays the full amount of the capitation payments and receives no Federal share. For Federal Medicaid beneficiaries, the State agency receives a Federal share, calculated at the FMAP rate, for capitation payments made to the county.

In CY 2009, Pennsylvania claimed \$1.9 billion (\$1.2 billion Federal share) for services furnished to Federal Medicaid beneficiaries in the 25 counties under the PA-25 waiver Behavioral HealthChoices program.

Behavioral HealthChoices Contracts

The PA-25 waiver allows the 25 counties the first opportunity to enter into a full-risk, capitated contract with the State agency to provide services under the Behavioral HealthChoices program. Accordingly, the State agency contracts with 24 counties.² Federal regulations (42 CFR § 438.6) require that CMS review and approve the State’s Medicaid managed care contracts. The approved PA-25 waiver contract incorporates by reference the State agency’s *Program Standards and Requirements—Primary Contractor* (the Standards).

The State agency pays the counties a monthly capitation payment for behavioral health services for each beneficiary. Counties subcontract with managed care entities to furnish behavioral health services. However, the Standards, page 9, specify that “[s]uch contracts do not relieve the county of ultimate responsibility for compliance with program and fiscal requirements, including program solvency.” Counties incur a financial risk if the cost of providing the program exceeds the capitation payments. When capitation payments exceed the cost of the program, the counties

² For one county, the State agency contracts directly with the managed care entities.

may request the State agency's approval to retain a portion of the excess payments in Risk and Contingency or Reinvestment accounts.

Counties are permitted to set aside in restricted Reinvestment accounts capitation revenues and investment income that were not expended during the contract year for use in subsequent years. The Standards, page xiv, define the uses that counties may make of Reinvestment funds for health-related and nonmedical services, contingent upon prior State agency approval of a reinvestment plan as described in Appendix N of the Standards. The counties may also use excess capitation payments for Risk and Contingency accounts.

The Standards, section II-7.G, allow the counties to seek approval to designate funds as Risk and Contingency to (1) fund in-plan services when costs exceed capitation payments, (2) pay managed care organizations when capitation payments from the State agency are delayed, and (3) meet the requirements of insolvency agreements, if necessary. Although the State agency permits enrollment of individuals receiving both Federal medical assistance and State-only aid under its contracts, neither the contracts nor the Standards require that counties separately maintain funds attributable to the Federal and State-only capitation payments.

Under the contract and the Standards, counties must return to the State agency any funds from the Reinvestment accounts (Amendment 3 of the Contract) or Risk and Contingency accounts (the Standards, pages 71-72) that exceed certain specified levels.

Prior Audit

Our audit *Review of the Commonwealth of Pennsylvania's Medicaid Behavioral HealthChoices Program for State Fiscal Years Ending June 30, 2001, and June 30, 2002 (A-03-03-00200)* identified some counties with excess capitation payments that appeared to be unreasonable, including one county that received excess capitation payments of 38 percent. Subsequent to that audit, the State agency established procedures to recoup unreasonable excess capitation payments.

OBJECTIVE, SCOPE, AND METHODOLOGY

Objective

Our objective was to determine whether the State agency refunded the Federal share of excess capitation payments recouped from the Risk and Contingency and Reinvestment funds in accordance with Federal requirements.

Scope

Our audit covered the period January 1 through December 31, 2009. As of December 31, 2009, 24 of the 25 counties held cumulative excess capitation payments attributable to Behavioral HealthChoices contracts consisting of Risk and Contingency funds valued at \$181.4 million, Reinvestment funds valued at \$107.6 million, and other equity accounts valued at

\$111.3 million. We identified \$39.6 million in excess payments that Pennsylvania recouped from these funds in 12 of the 24 counties in CY 2009.³

We did not review the counties' use of the Risk and Contingency and Reinvestment funds. We did not review the overall internal control structure of the State agency or its Medicaid program. Rather, we limited our internal control review to the controls related to the objective of our audit. We conducted fieldwork from June to November 2010 at the State agency's office in Harrisburg, Pennsylvania.

Methodology

To accomplish our objective, we:

- reviewed applicable Federal and State laws, regulations, and guidance;
- reviewed the PA-25 waiver and CMS's waiver approval;
- reviewed the State agency's Behavioral HealthChoices contracts and program standards;
- reviewed the independent attestation reports and Comprehensive Annual Financial Statements for 24 counties;
- held discussions with State agency officials to gain an understanding of the Behavioral HealthChoices program;
- interviewed State agency officials to determine the methodology used to calculate excess capitation payments;
- determined whether funds returned to the State agency were properly credited on Form CMS-64; and
- calculated the Federal share to be returned from Philadelphia County funds.

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 finding and conclusions based on our audit objective.

³ At the time of our audit, the State agency had not identified excess capitation payments to be recouped for the 12 remaining counties.

FINDING AND RECOMMENDATIONS

The State agency recouped \$39,602,257 in excess capitation payments from 12 of the 24 counties' Risk and Contingency and Reinvestment funds but did not refund the full Federal share in accordance with Federal requirements. The State agency identified \$24,602,257 of recouped excess capitation payments as Medicaid program funds for Behavioral HealthChoices under the PA-25 waiver in 11 of the 12 counties we reviewed and properly refunded the Federal share of \$13,058,015. However, the State agency did not refund the Federal share of the excess capitation payments recouped from one county (Philadelphia County). Rather, the State agency designated as State-only funds \$15,000,000 recouped from Philadelphia County's Reinvestment Fund and, therefore, did not refund the Federal share.

To return funds to the State, Philadelphia County reduced funding for two reinvestment plans approved by the State. However, Philadelphia County had no funds attributable to State-only excess capitation payments in the year it funded one of the plans and had only a portion of the plan amount in State-only funds in the year it funded the second plan. Because Philadelphia's Reinvestment account commingled excess capitation payments for both Federal Medicaid and State General Assistance enrollees, the State agency was unable to identify the amount of State-only funds recouped from Philadelphia County. Accordingly, the State agency must refund the \$7,950,454 Federal share of the returned excess capitation payments.

The State agency did not develop and implement effective internal controls to identify and return to the Federal Government the Federal share of excess capitation payments recouped from the counties' Risk and Contingency and Reinvestment funds.

FEDERAL AND STATE AGENCY REQUIREMENTS

Pursuant to section 1903(d)(3)(A) of the Act, the Federal Government is entitled to the pro rata share, determined by the Secretary, of the net amount recovered by the State with respect to medical assistance furnished under the State plan.

CMS's Conditions of Approval for the PA-25 waiver, dated December 23, 2008, required that the State agency ensure that counties maintain separate accountability for Medicaid funding under the waiver apart from mental health and substance abuse programs funded by the State, County, and/or other Federal program monies.

In accordance with the Standards, Appendix N, the counties request approval from the State agency to use Reinvestment funds for certain purposes. Counties itemized projects in the reinvestment plans, which were submitted to the State agency. The State agency's Financial Reporting Requirements require counties to submit to the State agency a monthly Reinvestment Report that shows the funds spent and the funds remaining in the Reinvestment account.⁴

⁴ Financial Reporting Requirements — HealthChoices Behavioral Health Program, Compliance Requirement Report #12—Reinvestment Report.

RETURNED EXCESS CAPITATION PAYMENTS

Excess Capitation Payments Transferred to Comptroller's Office

On December 31, 2009, Philadelphia County transferred \$15,000,000 of excess capitation payments from its Risk and Contingency fund to the State. Pennsylvania's comptroller's office posted the amount to a State-only account to cover general disbursements. The State agency did not refund the Federal share of \$7,950,454, as described below, or provide evidence that the funds related specifically to excess capitation payments for State-only categories of aid.

On November 6, 2009, before the funds were transferred, the director of Philadelphia County's Department of Behavioral Health and Mental Retardation Services issued a letter to the State agency stating that the funds represented the return of Reinvestment funds and would require changes in the county's approved reinvestment plans. In the letter, the director described Philadelphia County's intention to transfer funds from the Reinvestment account to the Risk and Contingency account for transfer to the State agency "in order to allow for the return of funds out of the appropriate calendar years and category of aid" The director's letter identified two reinvestment plans, the Behavioral Health Special Initiative plan and the Strategic Investments/Administrative Priorities plan, for which the Department had reduced or eliminated funding and stated that Philadelphia County was returning surpluses generated from State-only aid in CYs 2003 and 2004.

Insufficient State-Only Funds in the Reinvestment Accounts for the Periods Identified

Philadelphia County did not have \$15,000,000 in State-only funds in its Reinvestment account for CYs 2003 and 2004. Our review of Philadelphia County's Reinvestment Reports showed that, as of December 31, 2009, Philadelphia County had no CY 2003 Reinvestment funds remaining and an ending balance of only \$4,940,055 in CY 2004 approved Reinvestment funds.

The director's letter said that funding for the Strategic Investments/Administrative Priorities plan would be reduced by \$12,005,807; however, our review of Philadelphia County's financial reporting showed only Reinvestment funds from CY 2007 used for this plan. In CY 2007, Philadelphia County had no State-only surplus. Its surplus of \$68,121,693 was attributable entirely to excess Federal Medicaid capitation payments. Therefore, the \$12,005,807 that Philadelphia County returned to the Comptroller could not have been State-only excess capitation payments and the State agency must refund the Federal share of \$6,589,387.

The director's letter also called for a \$2,994,193 reduction in funding of the Behavioral Health Special Initiative plan. This plan was originally funded with a total of \$35,122,599 generated from excess capitation payments in 2004. However, our review of Philadelphia County's financial reporting showed that, for CY 2004, Philadelphia County had only \$11,132,929 in State-only excess capitation payments and \$47,977,154 in excess capitation payments attributable to the Federal Medicaid program. Accordingly, Philadelphia County could not have fully funded the plan with State-only funds and must refund the Federal share of \$1,361,067.

INADEQUATE INTERNAL CONTROLS

Counties report to the State agency capitation payments received and expenses incurred, identified by Medicaid and State-only program, to provide the PA-25 waiver benefits in the current contract year. Based on the counties' reports, the State agency calculates the excess or deficit capitation amounts and determines the allowable excess capitation payments, if any, that the counties may retain for that contract year in Risk and Contingency, Reinvestment, or other equity accounts. Subsequently, the counties maintain the retained funds in commingled accounts and report only the total amounts, including total accumulated funds in Risk and Contingency and Reinvestment accounts, on the counties' Statements of Net Assets. The counties withdraw funds from their commingled accounts for State-approved purposes, and to return funds to the State agency when funding for Reinvestment plans is reduced. However, the State agency did not have adequate controls to identify and return to the Federal Government the Federal share of excess capitation payments recouped from the counties' Risk and Contingency and Reinvestment funds.

RECOMMENDATIONS

We recommend that the State agency:

- refund \$7,950,454 (Federal share) of excess capitation payments returned by Philadelphia County and
- develop procedures to ensure that the State agency properly refunds the Federal share of excess capitation payments recouped from the Risk and Contingency and Reinvestment funds.

STATE AGENCY COMMENTS

In its comments on our draft report, the State agency agreed that Philadelphia County had voluntarily returned \$15,000,000 in unused reinvestment funds derived from excess Medicaid capitation payments but stated that it did not believe that repayment of the Federal share of the recovery was warranted. However, the State agency estimated that \$563,933 of this amount represented State-only payments and agreed that the remaining recouped payments, \$14,436,067, included Federal participation. Accordingly, the State agency recalculated a Federal share of \$7,950,454. The State agency's comments are included in their entirety as the Appendix.

OFFICE OF INSPECTOR GENERAL RESPONSE

After reviewing the State agency's comments and related information, we revised the finding and recommended disallowance to be consistent with the State agency's calculation of the overpayment. Regarding the State agency's assertion that a repayment was not warranted, section 1903(d)(3)(A) of the Act states that the Federal Government is entitled to the Federal share of the net amount recovered by the State. Therefore, we maintain that our finding and recommendations are valid.

APPENDIX

APPENDIX: STATE AGENCY COMMENTS

COMMONWEALTH OF PENNSYLVANIA
DEPARTMENT OF PUBLIC WELFARE

April 11, 2012

Mr. Stephen Virbitsky, Regional Inspector
General for Audit Services
Office of Audit Services
Office of Inspector General
Department of Health & Human Services
Suite 316
150 South Independence Mall West
Philadelphia, Pennsylvania 19106-3499

Dear Mr. Virbitsky:

Thank you for the February 24, 2012, letter in which you transmitted the draft report entitled, "Pennsylvania Did Not Refund the Full Federal Share of Recouped Excess Capitation Payments From the Medicaid Behavioral HealthChoices Program." Report Number: A-03-10-00204. We appreciate the opportunity to review the draft report.

SUMMARY OF FINDING

The Department of Public Welfare (DPW) recouped \$39,602,257 of capitation funds that exceeded 3% of retained revenue for the CY2009 program year, in accordance with the DPW HealthChoices Behavioral Health Program Agreements. DPW properly refunded the Federal share of \$24,602,257 but did not refund the Federal share of the remaining \$15,000,000. DPW should refund the \$8,219,634 Federal share.

DPW did not develop and implement effective internal controls to identify the Federal or State-only source of recouped funds.

DPW response: During the calendar year 2009 audit period, there were three cost containment initiatives in effect. Under these initiatives, providers need to refund monies to DPW when:

1. Uncommitted excess funds are held over one year;
2. An Approved Reinvestment is either unspent within the approved time period or there is no activity within two years; and
3. Risk and Contingency funds are over the allowable maximum amount per the contract due to a contract amendment that reduced the allowable Risk and Contingency Fund amounts.

OFFICE OF THE SECRETARY

Mr. Stephen Virbitsky

- 2 -

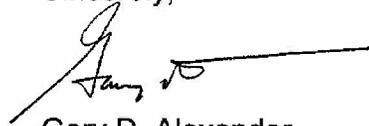
One HealthChoices Behavioral Health contractor – Philadelphia – did not meet any of these criteria, and was under no obligation to return funds to DPW, but voluntarily returned \$15,000,000 in unused reinvestment funds.

Although DPW does not believe a repayment is warranted, we would like to point out that the auditors' calculation of an overpayment is not entirely correct. We have attached our calculation of what the overpayment would be.

DPW would also like to point out that this was not an issue of inadequate internal controls. DPW has effective internal controls to identify Federal or State-only recouped funds.

Thank you again for the opportunity to respond to the draft report. If you need any further information, please contact Linda Swick, Bureau of Financial Operations, Audit Resolution Section, at (717) 783-7218, or via e-mail at lswick@pa.gov.

Sincerely,

A handwritten signature in black ink, appearing to read "Gary D. Alexander", with a long horizontal line extending to the right from the end of the signature.

Gary D. Alexander
Secretary

Enclosure

- c: Mr. John Kaschak, Director, Bureau of Audit, Office of Comptroller Operations,
Governor's Office of the Budget
Ms. Kenya Mann Faulkner, Inspector General, Office of Inspector General
Ms. Karen K. Deklinski, Deputy Secretary for Administration, Department of
Public Welfare
Ms. Linda Swick, Audit Resolution Section, Bureau of Financial Operations,
Office of Administration, Department of Public Welfare

Pennsylvania \$15M Federal-State calculation revision.xlsx

Philadelphia \$15M Cost Containment Recoupment

CY 2004				2,994,193
State Only		18.83% *		563,933
Federal/State		81.17% *		2,430,260
FFY 2003/04	Jan-June	57.71%	1,215,129.90	701,251
FFY 2003/04	Jul-Sept	54.76%	607,564.95	332,703
FFY 2004/05	Oct-Dec	53.84%	607,564.95	327,113
Federal Share				1,361,067

CY 2007				12,005,807
State Only		0.00% *		-
Federal/State		100.00% *		12,005,807
FFY 2006/07	Jan-Sept	55.05%	9,004,355.25	4,956,898
FFY 2007/08	Oct-Dec	54.39%	3,001,451.75	1,632,490
Federal Share				6,589,387

TOTAL Federal Refund				7,950,454
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* State Only and Federal/State Allocation is based on the remaining balance on the HCBH Financial Reports as reported by the County for CY 2004 & CY 2007