

Department of Health and Human Services

**OFFICE OF
INSPECTOR GENERAL**

**MARYLAND UNDERREPORTED
THE FEDERAL SHARE OF
MEDICAID OVERPAYMENT
COLLECTIONS**

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Office of Inspector General

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EXECUTIVE SUMMARY

Maryland underreported the Federal share of Medicaid overpayment collections by \$42 million.

WHY WE DID THIS REVIEW

With limited exceptions, Medicaid is intended to be the payer of last resort. Therefore, States must make reasonable efforts to collect payments from parties, such as health insurers or managed care plans, that are responsible for services provided to Medicaid beneficiaries and must refund the Federal share they received for the services. Previous Office of Inspector General reviews have shown that States did not always report collections properly or refund the Federal share at the appropriate Federal medical assistance percentage (FMAP).

Our objective was to determine whether Maryland's Department of Health and Mental Hygiene (State agency) complied with Federal requirements for reporting Medicaid overpayment collections.

BACKGROUND

States receive a Federal share for medical assistance based on the FMAP, which varies depending on the State's relative per capita income. The American Recovery and Reinvestment Act of 2009 authorized the States to temporarily receive a higher FMAP (enhanced rate) during a specified recession adjustment period. States report Medicaid expenditures and claim the associated Federal share on the Quarterly Medicaid Statement of Expenditures for the Medical Assistance Program (Form CMS-64). To account for recovered overpayments, refunds, and similar receipts, States also report overpayment collections on lines 9.A through 9.E of Form CMS-64. The State agency records transactions, including collections, in its Medicaid Management Information System (MMIS), which processes the transactions and records the information electronically on Form CMS-64.

Overpayment collections include funds the State has recovered from other parties responsible for a beneficiary's health care costs, the estates of deceased Medicaid beneficiaries, and funds collected as a result of States' program integrity efforts. States report the Federal share of overpayment collections and receive a correspondingly reduced amount of Federal funding for the quarter. If the Federal share of overpayment collections is underreported, the Federal payment for the quarter will be higher than it should be. Conversely, overreporting the Federal share of overpayment collections results in a lower Federal payment for the quarter.

WHAT WE FOUND

The State agency did not comply with Federal requirements for reporting Medicaid overpayment collections. In calculating the amount of overpayments to report, the State agency applied an incorrect FMAP. As a result, during our audit period the State agency underreported the Federal share by \$30,278,369: \$23,647,484 for collections we identified that were reported on line 9 of

Form CMS-64 and \$6,630,885 for waiver adjustments the State agency identified that were reported on other lines of Form CMS-64.

When we informed State agency officials that the overpayment collections in our review should have been reported at the enhanced rate, they reviewed all other adjustments, including overpayment collections, reported during the period for which the enhanced rate was in effect. The State agency determined that it had also underreported the Federal share by \$12,071,143 for adjustments outside our audit period.

In addition to underreporting the Federal share for its overpayment collections and adjustments, the State agency incorrectly recorded in the MMIS amounts for line 9 of Form CMS-64 that were not Medicaid overpayment collections and incorrectly reported some Medicaid overpayment collections on other lines of Form CMS-64.

The State agency did not properly report its collections and reimbursements related to Medicaid overpayments because it did not develop and implement effective internal controls to ensure accurate reporting in its MMIS and on Form CMS-64.

WHAT WE RECOMMEND

We recommend that the State agency:

- refund to the Federal Government \$30,278,369 in underreported Federal share for collections and adjustments reported during our audit period,
- refund to the Federal Government \$12,071,143 in underreported Federal share for adjustments reported outside of our audit period,
- apply the correct FMAP when reporting Medicaid overpayment collections and adjustments on Form CMS-64, and
- develop and implement internal controls that will enable the State agency to correctly report Medicaid overpayment collections and refund the proper Federal share on Form CMS-64.

STATE AGENCY COMMENTS AND OUR RESPONSE

In written comments on our draft report, the State agency did not concur with our first two recommendations. The State agency said that it had taken action to address them during our audit and provided documentation to verify that the adjustments were processed on its Form CMS-64 dated March 31, 2011. The State agency concurred with the remaining two recommendations and said that it was working with a contractor to update its MMIS, which would include the process to report transactions on the correct lines of Form CMS-64. However, the State agency said that “netting” claims that properly should have gone on other lines did not affect the bottom-line quarterly claim.

We agree that the prior period adjustments described by the State agency address our first two recommendations.

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INTRODUCTION

WHY WE DID THIS REVIEW

With limited exceptions, Medicaid is intended to be the payer of last resort. Therefore, States must make reasonable efforts to collect payments from parties, such as health insurers or managed care plans, that are responsible for services provided to Medicaid beneficiaries and must refund the Federal share they received for the services. Previous Office of Inspector General reviews have shown that States did not always report collections properly or refund the Federal share at the appropriate Federal medical assistance percentage (FMAP). (See Appendix A for a list of reports related to Medicaid overpayment collections.)

OBJECTIVE

Our objective was to determine whether Maryland's Department of Health and Mental Hygiene (State agency) complied with Federal requirements for reporting Medicaid overpayment collections.

BACKGROUND

The Medicaid Program

The Medicaid program provides medical assistance to certain 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 Federal requirements. In Maryland, the State agency administers the Medicaid program.

States receive a Federal share for medical assistance based on the FMAP, which varies depending on the State's relative per capita income. The American Recovery and Reinvestment Act of 2009 (Recovery Act)¹ authorized the States to temporarily receive a higher FMAP (enhanced rate) during a specified recession adjustment period. Because Medicaid is the payer of last resort, each State plan provides that the State or local agency administering the State plan will make a reasonable effort to collect payments from third parties responsible for care and services provided to Medicaid beneficiaries.

Quarterly Medicaid Statement of Expenditures

States report Medicaid expenditures and claim the associated Federal share on the Quarterly Medicaid Statement of Expenditures for the Medical Assistance Program (Form CMS-64). State agencies use the Form CMS-64 to report their use of Medicaid funds to pay for medical and administrative costs for the quarter, as well as any prior-period adjustments. The amount claimed on Form CMS-64 is a summary of expenditures derived from source documents, such as

¹ Recovery Act, P.L. No. 111-5 (Feb. 17, 2009).

claims, invoices, cost reports, and eligibility records. The State agency records the transactions from these sources in its Medicaid Management Information System (MMIS). The MMIS identifies and processes the transactions and records the information electronically on Form CMS-64.

To account for recovered overpayments, refunds, and similar receipts, the State Medicaid Manual (the Manual), section 2500.1, instructs States to report overpayment collections on lines 9.A through 9.E of Form CMS-64 as follows:

- 9A Collections: Third-Party Liability – funds collected from other parties responsible for a beneficiary’s health care costs after Medicaid has already paid a claim.
- 9B Collections: Probate – funds collected from the estates of deceased Medicaid beneficiaries.
- 9C Collections: Identified Through Fraud and Abuse Efforts – funds collected as a result of program integrity efforts.
- 9D Collections: Other – funds collected because of such things as refunds or cancellations.
- 9E: Reserved – Form CMS-64 identifies this as “Miscellaneous.”

States report the Federal share of overpayment collections and receive a reduced amount of Federal funding for the quarter. If the Federal share of overpayment collections is underreported, the Federal payment for the quarter will be higher than it should be. Conversely, overreporting the Federal share of overpayment collections results in a lower Federal payment for the quarter.

HOW WE CONDUCTED THIS REVIEW

Our review covered collections of Medicaid overpayments that the State agency reported on line 9 of Form CMS-64 during the period January 1, 2009, through December 31, 2010 (audit period).

We conducted this performance audit in accordance with generally accepted government auditing standards. Those standards require that we plan and perform the audit to obtain sufficient, appropriate evidence to provide a reasonable basis for our findings and conclusions based on our audit objectives. We believe that the evidence obtained provides a reasonable basis for our findings and conclusions based on our audit objectives.

See Appendix B for the details of our scope and methodology.

FINDINGS

The State agency did not comply with Federal requirements for reporting Medicaid overpayment collections. In calculating the amount of overpayments to report, the State agency applied an

incorrect FMAP. As a result, during our audit period the State agency underreported the Federal share by \$30,278,369: \$23,647,484 for collections we identified that were reported on line 9 of Form CMS-64 and \$6,630,885 for waiver adjustments the State agency identified that were reported on other lines of Form CMS-64.

When we informed State agency officials that the overpayment collections in our review should have been reported at the enhanced rate, they reviewed all other adjustments, including overpayment collections, reported during the period for which the enhanced rate was in effect. The State agency determined that it had also underreported the Federal share by \$12,071,143 for adjustments outside our audit period.

In addition to underreporting the Federal share for its overpayment collections and adjustments, the State agency incorrectly recorded in the MMIS amounts for line 9 of Form CMS-64 that were not Medicaid overpayment collections and incorrectly reported some Medicaid overpayment collections on other lines of Form CMS-64.

The State agency did not properly report its collections and reimbursements related to Medicaid overpayments because it had not developed and implemented effective internal controls to ensure accurate reporting in its MMIS and on Form CMS-64.

FEDERAL REQUIREMENTS AND GUIDANCE

Section 1903(d)(2) of the Social Security Act (the Act) requires the Secretary of Health and Human Services to recover Medicaid overpayments, including Medicaid payments for which the State has been reimbursed directly by a third party, payments to providers who received third party payments for the same services, and estate recoveries. States must refund the Federal share of any recovered Medicaid overpayments.

States are required to claim medical assistance and administrative costs, and credit CMS any refunds due, on Form CMS-64. The Manual, section 2500.1, instructs States to use lines 9.A through 9.E when reporting overpayment collections. Only collections of overpayments should be reported on these lines. Section 2500.6 further states, “When recoveries cannot be related to a specific period, compute the Federal share at the FMAP rate in effect at the time the refund was received.”

For details on Federal requirements related to the collection of overpayments, see Appendix C.

INCORRECT FEDERAL MEDICAL ASSISTANCE PERCENTAGE USED

During our audit period, the State agency underreported the Federal share of Medicaid overpayments by \$30,278,369: \$23,647,484 for collections we identified that were reported on line 9 of Form CMS-64 and \$6,630,885 for waiver adjustments the State agency identified that were reported on other lines of Form CMS-64. The State agency also determined that it had underreported the Federal share by \$12,071,143 for adjustments that it had reported outside of our audit period.

Incorrect Federal Share for Collections Reported on Line 9 of Form CMS-64

During our audit period, the State agency underreported the Federal share by \$23,647,484 for collections reported on line 9 of Form CMS-64. We identified \$228,941,717 of collections that the State agency reported on line 9 of Form CMS-64, for which it returned a Federal share of \$116,177,795. For the quarter ending March 31, 2009, the State agency may have overreported the Federal share by \$1,215.² The State Agency could not identify the original dates the overpayments were made or the FMAP relating to the payments and therefore was required to use the FMAP in effect when the collections were reported. Accordingly, we calculated that the returned Federal share should have been \$139,825,279.

The Table shows the difference between the Federal share that the State agency reported for the audit period and the Federal share we calculated on the basis of the FMAP in effect at the time the collections were made.

Table: Underreported Federal Share

Period	Applicable FMAP	Collections Reported	Federal Share Reported	Federal Share Owed	Federal Share Not Reported
1/1/2009 to 3/31/2009	58.78%	\$12,197,502	\$7,170,907	\$7,169,692	(\$1,215)
4/1/2009 to 6/30/2009	60.19%	59,798,221	30,233,601	35,992,549	5,758,948
7/1/2009 to 12/31/2010	61.59%	156,945,994	78,773,287	96,663,038	17,889,751
Totals		\$228,941,717	\$116,177,795	\$139,825,279	\$23,647,484

Incorrect Federal Share for Waiver Adjustments Reported on Line 10.B of Form CMS-64

The State agency determined that it had also underreported the Federal share by an additional \$6,630,885 for Medicaid waiver adjustments reported during our audit period. Waiver adjustments are adjustments related to expenditures made to providers under a CMS-approved waiver program. Because the State agency could not identify the original dates the waiver payments were made or the FMAP relating to the payments, it was required to use the FMAP in effect when the adjustments were reported. We did not verify the accuracy of the \$6,630,885 because adjustments reported on line 10.B of Form CMS-64 were outside the scope of our review.

² Because of internal control issues relating to the recording of collections in the MMIS, we are unable to determine with certainty that the overreported amount related specifically to the collections reported.

Incorrect Federal Share for Adjustments Reported Outside of Our Audit Period

When we informed State agency officials that the overpayment collections in our review should have been reported at the enhanced rate, they reviewed all adjustments, including overpayment collections, reported during the period for which the enhanced rate was in effect. The State agency determined that it had underreported the Federal share by \$12,071,143 for Medicaid adjustments reported outside of our audit period. The State agency could not identify the original dates the adjustments were made or the FMAP relating to the payments and therefore was required to use the enhanced rates in effect when the adjustments were reported. We did not verify the accuracy of the \$12,071,143 because it was outside of our audit period.

TRANSACTIONS THAT WERE NOT OVERPAYMENT COLLECTIONS INCORRECTLY CODED FOR LINE 9 OF FORM CMS-64

The State agency did not ensure the correct reporting of Medicaid overpayment collections on line 9 of Form CMS-64. The State agency's process of coding expenditures for line 9 and its manual review of adjustments could potentially cause errors in reporting overpayments and the associated Federal share.

Expenditures and Adjustments Coded for Line 9 of Form CMS-64

The State agency records transactions in the MMIS using reason codes that identify the category for reporting on Form CMS-64. We received from the State agency an MMIS detail report of all transactions for the audit period, totaling \$4,286,709,154, that were recorded with a reason code associated with line 9, the line designated for collections. However, the report contained not only overpayment collections but also expenditures and adjustment transactions.

We determined that the State agency used over 130 reason codes to record transactions for line 9. Most of the reason codes did not relate to any of the five categories of collections reportable on line 9. For example, reason code 14, which mapped to line 9.A, "third-party liability," identified \$31.4 million of expenditures for supplemental payments made to managed care organizations. Reason code SC, which mapped to line 9.E, "reserved," identified \$16 million of payments made to nursing facilities as a result of litigation.

For the \$4,286,709,154 in transactions entered into the MMIS with reason codes associated with line 9 of Form CMS-64, we identified expenditures totaling \$1,821,543,112 and adjustments totaling \$2,465,166,042. The \$1,821,543,112 in expenditures incorrectly coded for line 9 cancelled out \$1,821,543,112 in adjustments. These adjustments had not been reviewed by the State agency to determine whether they included collections.

Manual Corrections of Errors on Line 9 of Form CMS-64

The State agency manually reviewed the remaining \$643,622,930 in adjustment transactions and moved \$414,681,213 to other lines of Form CMS-64 because the transactions were unrelated to overpayment collections.³ The State agency reported the remaining \$228,941,717 in adjustment

³ We did not verify the amounts that were moved to other lines because they were outside the scope of our review.

transactions as collections on line 9. We were able to verify this amount as collections and used it to determine whether the State agency had calculated the correct Federal share for the collections described earlier in this report. However, the State agency's manual review of these adjustments bypassed internal controls in the MMIS system and introduced the possibility of error.

STATE AGENCY LACKED ADEQUATE INTERNAL CONTROLS

According to State agency officials, the State agency did not properly report the Federal share of its collections for Medicaid overpayments because it had not updated its MMIS to reflect the enhanced rates for collections. The MMIS based the calculation of the Federal share on the lower FMAP in effect before the Recovery Act increased the Federal share, and the State agency did not have review procedures in place to correct the error. Also, State agency personnel improperly coded transactions, such as expenditures and adjustments, as collections in the MMIS and then manually moved the entries for Form CMS-64, which may have resulted in additional errors.

ACTION TAKEN

During our review, the State agency processed adjustments to return the \$42,349,512 of underreported Federal share of Medicaid overpayment collections. This amount included \$30,278,369 for our audit period and an additional \$12,071,143 in underreported Federal share that the State agency identified for adjustments that were reported outside the timeframe of our review.

RECOMMENDATIONS

We recommend that the State agency:

- refund to the Federal Government \$30,278,369 in underreported Federal share for collections and adjustments reported for our audit period,
- refund to the Federal Government \$12,071,143 in underreported Federal share for adjustments reported outside of our audit period,
- apply the correct FMAP when reporting Medicaid overpayment collections and adjustments on Form CMS-64, and
- develop and implement internal controls that will enable the State agency to correctly report Medicaid overpayment collections and refund the proper Federal share on Form CMS-64.

**STATE AGENCY COMMENTS AND
OFFICE OF INSPECTOR GENERAL RESPONSE**

In written comments on our draft report, the State agency did not concur with our first two recommendations. The State agency said that it had taken action to address them during our audit and provided documentation to verify that the adjustments were processed on its Form CMS-64 dated March 31, 2011. The State agency concurred with the remaining two recommendations and stated it was working with a contractor to update its MMIS, which would include the process to report transactions on the correct lines of Form CMS-64. However, the State agency said that “netting” claims that properly should have gone on other lines did not affect the bottom-line quarterly claim. The State agency’s comments are included in their entirety as Appendix D.

We agree that the prior period adjustments described by the State agency address our first two recommendations.

APPENDIX A: RELATED OFFICE OF INSPECTOR GENERAL REPORTS

REVIEWS OF MEDICAID OVERPAYMENT COLLECTIONS

Report Title	Report Number	Date Issued
<i>Review of Oklahoma Collections for the Medical Assistance Program for Calendar Years 2004 Through 2009</i>	A-06-10-00057	12/29/2011
<i>States Inappropriately Retained Federal Funds for Medicaid Collections for the First Recovery Act Quarter</i>	A-06-11-00064	6/22/2012
<i>Delaware Did Not Comply With Federal Requirements To Report All Medicaid Overpayment Collections</i>	A-03-11-00203	6/28/2012

APPENDIX B: AUDIT SCOPE AND METHODOLOGY

SCOPE

Our review covered collections of Medicaid overpayments that the State agency reported on Form CMS-64 during the period January 1, 2009, through December 31, 2010.

We did not review the overall internal control structure of the State agency. We limited our internal control review to obtaining an understanding of the identification, collection, and reporting of program income from Medicaid overpayments.

We performed fieldwork at the State agency offices in Baltimore, Maryland, from August through October 2010 and from August 2011 through August 2012.

METHODOLOGY

To accomplish our audit objectives, we:

- reviewed Federal laws, regulations, and guidance governing the collection of Medicaid overpayments;
- obtained Form CMS-64s submitted by the State agency during the audit period;
- interviewed CMS officials to obtain an understanding of the requirements for reporting collections on Form CMS-64;
- interviewed CMS personnel responsible for reviewing Form CMS-64;
- interviewed State agency officials regarding policies and procedures for processing claims, identifying and collecting Medicaid overpayments, and reporting collections of Medicaid overpayments on Form CMS-64;
- reviewed the State agency's methodology for identifying the FMAPs used to calculate the Federal share of collections;
- obtained summary and claims information for all program income from Medicaid collections for the audit period;
- traced the collection totals claimed on Form CMS-64 for each quarter to the State agency's supporting worksheets;
- reviewed collections of Medicaid overpayments to determine whether they were processed directly through the State agency's MMIS and included on the correct lines of Form CMS-64;

- determine which transactions originally coded in the MMIS as collections were processed through the MMIS and reported on line 9 of Form CMS-64 and which transactions were manually moved to another line on Form CMS-64;
- reviewed the supporting documentation to identify when Medicaid payments and their associated collections were made to determine the FMAP at which the payment was made and the FMAP applied when the collection was reported and then calculated any difference; and
- discussed our results 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 C: FEDERAL REQUIREMENTS FOR COLLECTION OF MEDICAID OVERPAYMENTS

FEDERAL MEDICAL ASSISTANCE PERCENTAGE

The Federal Government pays its share of a State's medical assistance costs under Medicaid based on the FMAP, which varies depending on the State's relative per capita income (the Act, § 1905(b)). States with a lower per capita income relative to the national average are reimbursed a greater share of their costs. States with a higher per capita income are reimbursed a lesser share. By law, the FMAP cannot be lower than 50 percent. Although FMAPs are adjusted annually for economic changes in the States, Congress may increase FMAPs at any time. In fiscal year 2009, the FMAPs initially ranged from a low of 50 percent to a high of 75.84 percent, and in fiscal year 2010 FMAPs ranged from a low of 61.59 percent to 81.18 percent, depending on the State.⁴ In Maryland, the FMAP was 50 percent.

The Recovery Act, enacted February 17, 2009, authorized the States to temporarily receive an enhanced rate during a specified recession adjustment period. The enhanced rates ranged from 56.20 percent to 84.86 percent. During our audit period, Maryland's FMAP ranged from 58.78 percent to 61.59 percent.

PAYER-OF-LAST-RESORT REQUIREMENT

With limited exceptions, Medicaid is intended to be the payer of last resort. A State plan for medical assistance must provide that the State or local agency administering the plan take all reasonable measures to ascertain the legal liability of third parties to pay for care and services available under the plan (the Act, § 1902(a)(25)(A)). Third parties include health insurers, self-insured plans, group health plans, service benefit plans, managed care organizations, pharmacy benefit managers, and other parties that are responsible for payment of a claim for a health care item or service.

FEDERAL REQUIREMENTS AND GUIDANCE REGARDING OVERPAYMENTS

The Act requires the Secretary of Health and Human Services to recover Medicaid overpayments (the Act, § 1903(d)(2)(A)). Federal regulations define an overpayment as "...the amount paid by a Medicaid agency to a provider which is in excess of the amount that is allowable for services furnished under section 1902 of the Act and which is required to be refunded under section 1903 of the Act" (42 CFR § 433.304). Third party liability is the legal obligation of third parties, i.e., certain individuals, entities, or programs, to pay all or part of the expenditures for medical assistance furnished under a State plan (the Act, § 1902(a)(25)(A)).

Payments for which the State has been reimbursed directly by a third party are treated as overpayments (the Act, § 1903(d)(2)(B)). States have 1 year from the time an overpayment is discovered to report the collection of the overpayment amount (the Act, § 1903(d)(2)(C)). The

⁴ Additionally, the Act establishes higher, fixed-reimbursement percentages for certain medical assistance services. For example, States receive 90 percent of the costs of family planning services and supplies (the Act, § 1903(a)(5)) and 100 percent of the costs of services furnished through an Indian Health Service facility (the Act, § 1905(b)).

Federal share of these overpayment collections must be refunded to the Federal government (the Act, § 1903(d)(3)(A)).

Documentation supporting the amounts reported on Form CMS-64 must be in readily reviewable form and immediately available at the time the claim is filed (the Manual, § 2500(A)(1)).

FEDERAL GUIDANCE FOR REIMBURSEMENT OF FEDERAL SHARE OF COLLECTED OVERPAYMENTS

Overpayments for which the State must be reimbursed by a third party include overpayments to providers who received third-party payments for the same services. Estate recoveries are also treated as overpayment collections. Collections for these overpayments must be reported on line 9 of Form CMS-64 (the Manual, § 2500.1).

States that receive third-party reimbursement must pay the Federal Government its portion of the reimbursement in accordance with the FMAP for that State (42 CFR § 433.140(c)). Medicaid payments to providers who have been reimbursed by a liable third party for the same services are also unallowable overpayments. States must refund the Federal share of those provider overpayments at the appropriate FMAP (42 CFR §433.312).⁵

CMS reimburses each State at the FMAP for the quarter in which the expenditure was made (the Act, § 1903(a)(1)). When a State recovers a prior expenditure, it refunds the Federal share by reporting the recovery on lines 9.A through 9.E of Form CMS-64 (the Manual, § 2500.1). States must submit Form CMS-64 to CMS no later than 30 days after the end of each quarter (42 CFR § 430.30(c)). States report collections at the FMAP used to calculate the amount originally received (the Manual, § 2500.6(B)):

Upon receipt of such funds, determine the date or period of the expenditure for which the refund is made to establish the FMAP at which the original expenditure was matched by the Federal government. Make refunds of the Federal share at the FMAP for which you were reimbursed. When recoveries cannot be related to a specific period, compute the Federal share at the FMAP rate in effect at the time the refund was received. Make adjustments to prior periods in subsequent [CMS-64] forms to reflect the correct FMAP rate.

If a State cannot, for some reason, relate the recovery to a specific time period (e.g., because the State does not operate a recordkeeping system that documents the original FMAP), the State computes the Federal share at the FMAP in effect at the time the refund is collected and reported (the reporting quarter's FMAP) (the Manual, § 2500.1).

CMS reinforced the guidance in the Manual by instructing States to report collections at the FMAP that was in effect at the time the expenditure was made (Recovery Act FAQs question

⁵ States are not required to refund the Federal share of uncollectable amounts paid to bankrupt or out-of-business providers (the Act, § 1903(d)(2)(C) and (D), and 42 CFR § 433.312(b)).

number 58).⁶ If a State claimed a Medicaid expenditure using the Recovery Act FMAP, any associated collections should be reported using the Recovery Act FMAP

⁶ *American Recovery and Reinvestment Act of 2009 Frequently Asked Questions from States* (July 7, 2009) (Recovery Act FAQ). Accessed at http://www.cms.gov/Regulations-and-Guidance/Legislation/Recovery/downloads/ARRA_FAQs.pdf on June 20, 2013.

.APPENDIX D: STATE AGENCY COMMENTS



STATE OF MARYLAND

DHMH

Maryland Department of Health and Mental Hygiene
201 W. Preston Street • Baltimore, Maryland 21201

Martin O'Malley, Governor – Anthony G. Brown, Lt. Governor – Joshua M. Sharfstein, M.D., Secretary

December 18, 2013

Mr. Stephen Virbitsky
Regional Inspector General for Audit Services
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

Re: Audit Report Number: A-03-11-00208
Maryland Underreported the Federal Share of Medicaid Overpayment Collections

Dear Mr. Virbitsky:

Thank you for the opportunity to respond to the referenced audit report. As noted in the report, this was a review of Medicaid overpayments that the State agency reported on line 9 of Form CMS 64 during the period January 1, 2009 through December 31, 2010.

By way of background, the Department of Health and Mental Hygiene (the Department) developed a special report from its MMIS to associate ARRA-related recoveries in a given quarter with original ARRA-related claims, so that appropriate FMAP percentages could be matched to recoveries. A special report was required for the ARRA Federal share on recoveries because, unlike the relatively unchanging rules for applying other enhanced percentages (which are coded in our MMIS for appropriate claims and for subsequent matching to recoveries), the ARRA enhanced percentages were subject to quarterly changes. From the outset, the Department recognized that it would not be able to keep pace with timely quarterly updates to MMIS coding for ARRA, so all potential ARRA claims were left coded in MMIS at the regular FMAP (50%), and manual adjustments for the appropriate ARRA percentages were necessary for both quarterly claims and subsequent recoveries against those claims.

The special ARRA-related recoveries report went through several stages of refinement to capture the ARRA-related enhanced FMAP on all modes of recovery, i.e. both cash receipts and recoveries by way of offsets to provider payments. An initial version of the report, capturing cash recoveries only, allowed the Department to perform a “first step” on ARRA-related FMAP adjustments to recoveries by adjusting for appropriate amounts above the standard 50% Federal share picked up in MMIS. These initial adjustments were submitted in the CMS 64s filed between March 31, 2009 and December 31, 2010.

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A subsequent, more comprehensive report, capturing appropriate FMAP on all modes of recoveries (cash and offsets) from the start of ARRA funding (QE December 31, 2008) and forward, was available later. A comprehensive prior period adjustment for ARRA, net of those that had been previously submitted, was made on the CMS 64 filed at QE March 31, 2011 on all remaining recoveries affected by the enhanced ARRA FMAP percentages. These adjustments are discussed below in our responses to the recommendations.

Recommendation:

Refund to the Federal Government \$30,278,369 in underreported Federal share for collections and adjustments reported for our audit period.

Department's Response:

The Department does not concur, as all previously underreported Federal share for collections and adjustments has been returned, as described below.

On the CMS 64 report filed for the quarter ended March 31, 2011, the Department returned a net \$44,079,073 by way of a prior period ARRA adjustment. (This is the net of amounts posted to lines 7, 8 and 10B, ARRA column, on the CMS 64 Summary for that quarter.) Of the total \$44,079,073, \$37,376,570 pertained to the additional, ARRA FMAP associated with recoveries that had been originally reported at the regular (50%) FMAP rate on the CMS 64s for the 8 quarters of the audit period, January 1, 2009 through December 31, 2010. It should be noted that the \$37,376,570 returned at QE March 31, 2011 was in addition to ARRA funds that the Department had previously returned. On CMS 64s filed from QE March 31, 2009 through December 31, 2010, the Department returned \$4,855,829 in ARRA related FMAP for recoveries going back to the start of ARRA claiming. All but \$72 of this amount pertained to the audit period. In August 2012 during the on-site audit, the Department shared with the OIG auditors the worksheets and CMS 64 documentation demonstrating the return of the aforementioned funds.

Recommendation:

Refund to the Federal Government \$12,071,143 in underreported Federal share for adjustments reported outside of our audit period.

Department's Response:

The Department does not concur as the appropriate Federal share for all adjustments outside of the audit period has been returned, as described below.

The single ARRA-related quarter preceding the audit period was QE December 31, 2008. Included in the \$44,079,073, ARRA-related prior period adjustment filed at QE March 31, 2011 (as cited above) was \$1,729,560 ARRA Federal share owed on recoveries for QE December 31,

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2008. Also included in the \$44,079,073 was \$4,972,943 for ARRA-related recoveries received in QE March 31, 2011, which were matched to enhanced FMAP on original ARRA claims filed in previous quarters. In addition, \$2,224,475 Federal share of ARRA funds was returned that quarter on Line 9 of the CMS 64 as recoveries related to the then current quarter ARRA expenditures. Going forward from QE March 31, 2011, the Department has matched appropriate FMAP to ARRA-related recoveries and has consistently reported these on the quarterly CMS 64. For QE June 30, 2011, the final quarter for application of ARRA percentages to payments, a net \$8,148,241 ARRA Federal share was returned on the CMS 64 adjustment lines. Subsequently, over a two year "run out" period through QE June 30, 2013, an additional \$6,458,586 in Federal share of ARRA-related recoveries, was tracked and returned on the quarterly CMS 64 reports. The sum of all of the aforementioned equals a total of \$23,533,805 in Federal share of ARRA-related recoveries returned on recoveries outside of the audit period.

The Department has available copies of quarterly CMS-64 submissions in support of the above.

Recommendation:

Apply the correct FMAP when reporting Medicaid overpayment collections and adjustments on Form CMS-64.

Department's Response:

The Department concurs, and is doing so.

Recommendation:

Develop and implement internal controls that will enable the State agency to correctly report Medicaid overpayment collections and refund proper Federal share on Form CMS-64.

Department's Response:

The Department is confident that the issue of returning appropriate Federal share on recoveries has been resolved, as described above.

The report also mentions certain transactions (i.e. not overpayment collections) as improperly reported on line 9, and certain overpayment collections improperly reported on other lines.

On the first, transactions improperly reported on line 9, the Department recognizes that the current MMIS is coded to identify to line 9 certain "gross adjustments" to claims (both positive and negative) that are not overpayment collections. This is a remnant of coding structures approved for the MMIS as it was originally configured in late 1995, perhaps then under somewhat different CMS guidelines. The Department is working with a contractor on a complete update of the MMIS, and will include in that process the placement of transactions to lines that

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are currently appropriate. It should be noted, however, that netting certain transactions into line 9, which should have gone on to other lines, did not affect the bottom-line quarterly claim.

On the second concern, that certain overpayment collections were improperly reported on other lines, please note that by CMS-64 design, recoveries related to a waiver cannot be reported on line 9. All waiver-related transactions, including recoveries, must be reported on separate waiver forms that do not have a "line 9". Waiver related recoveries, by CMS direction, are reported on a waiver line 10B.

Thank you once again for this opportunity to respond. If you have any questions, please contact me or Thomas V. Russell, Inspector General, at 410-767-5784.

Sincerely,

/Joshua M. Sharfstein, M.D./

Secretary

cc: Charles J. Milligan, Jr., Deputy Secretary, Health Care Financing, DHMH
Audrey Parham-Stewart, Director, Office of Finance, DHMH
Hank Fitzer, Deputy Director, Office of Finance, DHMH
Thomas V. Russell, Inspector General, DHMH
Ellwood L. Hall, Jr., Assistant Inspector General, DHMH
Leonard Piccari, Audit Manager, DHHS, OIG