

Department of Health and Human Services

**OFFICE OF
INSPECTOR GENERAL**

**FLORIDA MEDICAID:
MILLIONS IN OVERPAYMENTS
NOT REFUNDED**

*Inquiries about this report may be addressed to the Office of Public Affairs at
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Deputy Inspector General

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A-04-11-08007

Office of Inspector General

<https://oig.hhs.gov>

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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. Although each State has considerable flexibility in designing and operating its Medicaid program, it must comply with applicable Federal requirements. One of these requirements is that when a State recognizes that it has made a Medicaid overpayment, it must report the overpayment to the Federal Government after 60 days and repay the Federal portion. Federal regulations also establish rules and procedures for disallowing Federal financial participation because of eligibility errors detected through the Medicaid Eligibility Quality Control (MEQC) program.

The Florida Agency for Health Care Administration (State agency) operates Florida's Medicaid program. The State agency is the sole recipient of Federal matching funds for Florida Medicaid, with authority to draw down Federal grant matching funds for allowable expenditures. The State agency entered into a cooperative agreement with the Florida Department of Children and Families (the Department) to conduct Medicaid eligibility determinations in accordance with the approved State plan. The cooperative agreement also required the Department to ensure beneficiary eligibility information is accurate and up to date, report expenditures to the State agency, and process all overpayment reports and benefit recoveries for beneficiaries.

OBJECTIVE

Our objective was to determine whether the State agency returned the Federal share of Medicaid overpayments identified by the Department.

SUMMARY OF FINDINGS

The State agency did not return the Federal share of Medicaid overpayments identified or collected by the Department. From July 1, 2007, through June 30, 2010, the Department identified \$22,283,131 (\$12,251,265 Federal share) in Medicaid overpayments. Of this amount, the Department collected \$2,499,370 (\$1,400,888 Federal share) but had not collected the remaining \$19,783,761 (\$10,850,377 Federal share). The State agency did not return the Federal share of either the collected or uncollected amounts to CMS. In addition, the Department collected \$1,532,633 (\$851,842 Federal share) of overpayments after our audit period, from July 1, 2010, through June 30, 2012.

The State agency did not return the Federal share of Medicaid overpayments because it did not adequately coordinate with the Department to ensure that the Department reported collections of Medicaid overpayments in accordance with Federal and State requirements.

RECOMMENDATIONS

We recommend that the State agency:

- repay the \$1,400,888 Federal share of Florida State Medicaid overpayment collections during our audit period (July 1, 2007, through June 30, 2010),
- repay the \$851,842 Federal share of Florida State Medicaid overpayment collections during the 2 State fiscal years (July 1, 2010, through June 30, 2012) after our audit period,
- improve coordination with the Department to report State-identified Medicaid overpayments and collections, and
- work with CMS to determine whether the State must repay the \$10,850,377 Federal share of the recipient overpayments identified but not collected.

STATE AGENCY COMMENTS

In its written comments on our draft report, the State agency agreed that it had identified \$22,283,131 in overpayments that had not been returned. While agreeing with the amount identified, the State agency pointed out that it had recovered only \$2,499,370 and stated that it was prepared to refund the Federal share of this amount. The State agency did not agree that it should be required to refund the Federal share of the identified but not collected overpayments.

The State agency concurred with our recommendation to improve coordination between State agencies and to report State-identified Medicaid overpayments made on behalf of ineligible recipients, and it described actions that it had undertaken to implement this recommendation.

OFFICE OF INSPECTOR GENERAL RESPONSE

After further review of applicable Federal requirements, we modified our recommendation that the State return the Federal share of all identified overpayments. Instead, we are recommending that the State repay the Federal share of the overpayments that it collected during our initial audit period. Furthermore, we added a recommendation that the State repay the Federal share of the overpayments that it collected in the 2 years after our audit period. Finally, we added a recommendation that the State work with CMS to determine whether the State must repay the Federal share of recipient overpayments identified outside a State's MEQC program.

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INTRODUCTION

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. Although each State has considerable flexibility in designing and operating its Medicaid program, it must comply with applicable Federal requirements. One of these requirements is that when a State recognizes that it has made a Medicaid overpayment, it must report the overpayment to the Federal Government after 60 days and repay the Federal portion.¹ Federal regulations also establish rules and procedures for disallowing Federal financial participation (FFP) because of eligibility errors detected through the Medicaid Eligibility Quality Control (MEQC) program.

Florida Agency for Health Care Administration

The Florida Agency for Health Care Administration (State agency) operates Florida's Medicaid program. The State agency is the sole recipient of Federal matching funds for Florida Medicaid, with authority to draw down Federal grant matching funds for allowable expenditures. The State agency entered into a cooperative agreement with the Florida Department of Children and Families (the Department) to conduct Medicaid eligibility determinations in accordance with the approved State plan. The cooperative agreement also required the Department to ensure beneficiary eligibility information is accurate and up to date, report expenditures to the State agency, and process all overpayment reports and benefit recoveries for beneficiaries.

The State agency reports its expenditures to CMS via the Quarterly Medicaid Statement of Expenditures for the Medical Assistance Program (CMS-64). The quarterly expenditure reports are based on expenditures made by the State agency and on expenditures reported by the Department to the State agency.

The Cooperative Agreement

Under the cooperative agreement, the State agency is responsible for, among other things, processing all overpayment reports and benefit recoveries for providers of Medicaid services and maintaining the Medicaid information system for beneficiary eligibility, provider enrollment, claim payment, and surveillance and utilization review. The cooperative agreement states that the Department will conduct Medicaid-related functions in accordance with the approved Medicaid State plan, Title XIX of the Act, and all other applicable Federal and State laws and regulations as approved and directed by the State agency.

The cooperative agreement further states that the Department will, among other things, process all overpayment reports and benefit recoveries for beneficiaries, maintain the system that

¹ The period for reporting is 1 year for overpayments identified after March 23, 2010.

determines eligibility and authorizes benefits, and ensure that the beneficiary eligibility information is accurate and up to date.

Florida Medicaid Overpayment Identification

The Department's Benefit Recovery (Recovery) unit identifies and documents the existence, circumstances, and amount of public assistance overpayments.² In addition, it pursues recovery of overpayments from the party receiving the overpayment or from the party responsible for causing the overpayment. The Recovery unit defines a reportable overpayment as existing when funds may have been expended on behalf of beneficiaries who were not eligible for Medicaid coverage or who were eligible only after meeting a share of costs. The Recovery unit is responsible for identifying all overpayment claims and recouping overpayments within the Department. During our audit period, the Recovery unit identified \$22,383,131 in Medicaid overpayments and reported recovery of \$2,499,370 in overpayments.³

OBJECTIVE, SCOPE, AND METHODOLOGY

Objective

Our objective was to determine whether the State agency returned the Federal share of Medicaid overpayments identified by the Department.

Scope

Our audit covered \$22,283,131 in State-identified Medicaid overpayments for ineligible individuals during the period July 1, 2007, through June 30, 2010. We did not review the overall internal control structure of the State agency, the Department, or the Medicaid program. We limited our review to internal controls directly related to our objective. We performed fieldwork at the State agency and the Department offices in Tallahassee, Florida, from June 2011 through February 2012.

Methodology

To accomplish our objective, we:

- reviewed applicable Federal and State laws and regulations;
- reviewed the cooperative agreement between the State agency and the Department;

² The Recovery unit operates pursuant to the Department's internal *Access Florida Program Policy Manual*, which provides guidance on overpayment identification and recovery of overpayments related to other Federal programs such as Temporary Assistance to Needy Families and refugee assistance, as well as Medicaid.

³ The Department collected an additional \$1,532,633 in overpayments from July 1, 2010, through June 30, 2012.

- interviewed State agency and Department officials to understand the State’s policies, procedures, guidance, and methodology for identifying and reporting Medicaid overpayments due to erroneous eligibility determinations;
- obtained a database containing all 15,079 Department-identified Medicaid overpayments, totaling \$22,283,131;
- validated the database by selecting 100 Department-identified Medicaid overpayments and determining whether:
 - the Medicaid overpayments were adequately supported,
 - the Medicaid overpayments received Federal financial participation, and
 - the Department communicated the Medicaid overpayments to the beneficiary; and
- determined whether the Department reported the Medicaid overpayments to the State agency and whether the State agency credited the Federal share of overpayments to CMS.

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.

FINDINGS AND RECOMMENDATIONS

The State agency did not return the Federal share of Medicaid overpayments identified or collected by the Department. From July 1, 2007, through June 30, 2010, the Department identified \$22,283,131 (\$12,251,265 Federal share) in Medicaid overpayments. Of this amount, the Department collected \$2,499,370 (\$1,400,888 Federal share) but had not collected the remaining \$19,783,761 (\$10,850,377 Federal share). The State agency did not return the Federal share of either the collected or uncollected amounts to CMS. In addition, the Department collected \$1,532,633 (\$851,842 Federal share) of overpayments subsequent to our audit period, from July 1, 2010, through June 30, 2012, that it did not report to CMS.

The State agency did not return the Federal share of Medicaid overpayments because it did not adequately coordinate with the Department to ensure that the Department reported Medicaid overpayments in accordance with Federal and State requirements.

FEDERAL REQUIREMENTS

Pursuant to section 1903(d)(2) and (3) of the Act, the Federal share of Medicaid expenditures must be appropriately adjusted to account for overpayments and underpayments. When a State discovers that it made a Medicaid overpayment, the State must report the amount of the overpayment to CMS on Form CMS-64 as an offset to expenditures. Offsetting expenditures on Form CMS-64 serves as a State’s refund of overpayments to CMS. A State has 60 days from the

date of discovery of an overpayment to seek recovery before repaying the Federal share. Generally, a State must refund the Federal share to CMS after 60 days, regardless of whether the State recovers the overpayment.

Federal regulations (42 CFR § 433.304) 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 ... and which is required to be refunded” Federal regulations (§ 433.304) define discovery as the identification by a State of an overpayment and the communication of that overpayment finding. Overpayment recovery rules apply to overpayments discovered by or made known to the State (§ 433.310(a)).

Section 1903(u) of the Act establishes FFP limits for erroneous excess payments for medical assistance. Section 1903(u)(1)(A) of the Act sets an allowable error rate for a State’s erroneous expenditures, which covers medical assistance expenditures made on behalf of ineligible beneficiaries. Federal regulations (§ 431.800) implementing section 1903(u) establish “... State plan requirements for a Medicaid Eligibility Quality Control (MEQC) program designed to reduce erroneous expenditures by monitoring eligibility determinations” Federal regulations (§ 431.865) also establish rules and procedures for disallowing FFP because of eligibility errors detected through the MEQC program.

CMS policy, as stated in section 2500.6A of its *State Medicaid Manual*, is to recoup “... recipient overpayment dollars exclusively on the basis of Medicaid Eligibility Quality Control (MEQC) penalties for periods during which MEQC systems are in effect. The Federal share of overpayment involving recipients must be refunded immediately following discovery, as required under §1903(d)(2)(A) of the Act, only if the overpayment occurred during a period for which MEQC systems were not in effect.” Recipient overpayments are erroneous payments for medical assistance made by a State on behalf of an ineligible beneficiary.

The State agency and, where applicable, local agencies administering the State Medicaid plan are required to maintain an accounting system and supporting fiscal records to ensure that claims for Federal funds comply with applicable Federal requirements (§ 433.32(a)).

STATE-IDENTIFIED MEDICAID OVERPAYMENTS

Through its process of eligibility determinations, the Department identified \$22,283,131 (\$12,251,265 Federal share) in Medicaid overpayments from July 1, 2007, through June 30, 2010. Of this amount, the Department recovered \$2,499,370 (\$1,400,888 Federal share) but had not collected the remaining \$19,783,761 (\$10,850,377 Federal share). The Department identifies Medicaid overpayments using the following eligibility determination process:

1. An eligibility specialist determines that an overpayment may exist.
2. A supervisor reviews the eligibility specialist’s conclusion to determine whether the identified ineligibility is valid prior to transmitting information related to the ineligibility to the Recovery unit.

3. The Recovery unit reviews Medicaid payment information and establishes the amount of the overpayment based on the best available information.
4. The Department sends a letter to the recipient requesting payment of the overpayment amount.

At no point in the process described above did the Department notify the State agency of the Medicaid overpayments or collections. Therefore, the State agency did not return to CMS the Federal share of overpayments that it identified or collected.

Since Federal fiscal year 1999, Florida has participated in a pilot MEQC program. The overpayments, however, were not identified as part of the program. As described above, the Department identified the overpayments as part of its processes for monitoring and recovering overpayments through its Recovery Unit.

Inadequate Coordination

The State agency did not return the Medicaid overpayments identified or collected because it did not adequately coordinate with the Department to ensure compliance with requirements to report and recover the Federal share of State-identified Medicaid overpayments. Specifically, the State agency did not receive reports from, or have access to, the Department's Recovery unit accounting system. Furthermore, instead of returning Medicaid overpayment recoveries to the State agency, the Department retained all recoveries from Medicaid overpayments that it identified to partially fund the operation of its Recovery unit. Thus, the State agency had no knowledge of Medicaid overpayments identified or collected by the Department and could not ensure that it appropriately adjusted its Federal funds to comply with applicable Federal requirements.

Medicaid Overpayments Not Returned

As a result of this inadequate coordination, the Department did not report to the State agency the \$22,283,131 (\$12,251,265 Federal share) in Medicaid overpayments that it identified or the \$2,499,370 (\$1,400,888 Federal share) in Medicaid overpayments that it collected, and the State agency did not return the Federal share to CMS.

In addition, the Department collected \$1,532,633 (\$851,842 Federal share) of overpayments after our audit period, from July 1, 2010, through June 30, 2012.

RECOMMENDATIONS

We recommend that the State agency:

- repay the \$1,400,888 Federal share of Florida State Medicaid overpayment collections during our audit period (July 1, 2007, through June 30, 2010),

- repay the \$851,842 Federal share of Florida State Medicaid overpayment collections during the 2 State fiscal years (July 1, 2010, through June 30, 2012) after our audit period,
- improve coordination with the Department to report State-identified Medicaid overpayments and collections, and
- work with CMS to determine whether the State must repay the \$10,850,377 Federal share of recipient overpayments identified but not collected.

STATE AGENCY COMMENTS

In its written comments on our draft report, the State agency agreed that it had identified \$22,283,131 in overpayments that had not been returned. While agreeing with the amount identified, the State agency pointed out that it had recovered only \$2,499,370 and stated that it was prepared to refund the Federal share of this amount. The State agency did not agree that it should be required to refund the Federal share of the identified but not collected overpayments.

The State agency concurred with our recommendation to improve coordination between State agencies and to report State-identified Medicaid overpayments made on behalf of ineligible recipients, and it described actions that it had undertaken to implement this recommendation.

See the Appendix for the full text of the State agency comments.

OFFICE OF INSPECTOR GENERAL RESPONSE

After further review of applicable Federal requirements, we modified our recommendation that the State return the Federal share of all identified overpayments. Instead, we are recommending that the State repay the Federal share of the overpayments that it collected during our initial audit period. Furthermore, we added a recommendation that the State repay the Federal share of the overpayments that it collected in the 2 years after our audit period. Finally, we added a recommendation that the State work with CMS to determine whether the State must repay the Federal share of recipient overpayments identified outside a State's MEQC program.

APPENDIX



RICK SCOTT
GOVERNOR

Better Health Care for all Floridians

ELIZABETH DUDEK
SECRETARY

August 10, 2012

Ms. Lori S. Pilcher, Regional Inspector General
U.S. Department of Health and Human Services
Office of Inspector General
OAS, Region IV
61 Forsyth Street, S.W., Suite 3T41
Atlanta, GA 30303

RE: Report Number A-04-11-08007

Dear Ms. Pilcher:

This letter is in response to the draft report issued by the U.S. Department of Health and Human Services, Office of Inspector General (OIG) entitled "*Florida Medicaid: Millions in Overpayments Not Refunded.*" The Florida Agency for Health Care Administration (AHCA), in conjunction with the Florida Department of Children and Families (DCF), developed the attached responses to the findings and recommendations in the referenced audit report since the findings and recommendations involved activities undertaken and managed by both Florida agencies. The responses are grouped together in the same order as presented in the audit report.

Where the State of Florida did not concur with the OIG's written conclusions, the responses set forth include the involved agencies' rationale. If further clarification or justification is needed, please do not hesitate to contact me.

In closing, I would like to acknowledge your staff for the professional and efficient manner in which they conducted this audit. The cooperation they extended in scheduling an exit conference to accommodate both Florida agencies and the extension of time to craft a joint response were both appreciated.

Sincerely,



Elizabeth Dudek
Secretary

ED/em
Attachment



**Responses to Report Number A-04-11-08007
Florida Medicaid: Millions in Overpayments Not Refunded**

Report Number A-04-11-08007	
Finding #1	The State agency did not return the Federal share of Medicaid overpayments identified by the Department [of Children & Families]. From July 1, 2007, through June 30, 2010, the Department identified \$22,283,131 (\$12,251,265 Federal share) in Medicaid overpayments; however, the State agency did not return the Federal share to CMS.
Recommendation	The State agency [AHCA] refund the \$12,251,265 Federal share of identified Medicaid overpayments.
Response	<p>The Agency for Health Care Administration concurs that the Federal share of Medicaid overpayments identified in Report Number a-04-11-08007 was not returned to the Centers for Medicare and Medicaid Services (CMS). While acknowledging this finding, the State of Florida believes additional clarifying elements should be included in the final audit report to accurately reflect the circumstances and conditions that existed related to the benefit recoveries undertaken by the Department of Children & Families, and to clarify the types of overpayments involved in the instant audit.</p> <p>The overpayments that were the subject of this audit encompassed the period extending from July 1, 2007, through June 30, 2010. These amounts were categorized as such (overpayments) through HHS/OIG's interpretation of language in 42 C.F.R. § 433.304 which defines 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 ... and which is required to be refunded...." The State of Florida does not dispute that the overpayments identified in the report were properly designated as such since the identification of the overpayments for this audit was accomplished by HHS/OIG reviewing a database provided by the Department of Children & Families containing 15,079 Department-identified overpayments totaling \$22,283,131.</p> <p>The State of Florida, through this response, intends to emphasize that the subject overpayments in this audit were not categorized as overpayments due to Medicaid providers' inappropriate billings. The overpayments were due to Medicaid recipients becoming ineligible for Medicaid services sometime after an eligibility determination had been made and patently legitimate services were rendered by enrolled Medicaid providers. In other words, the overpayments addressed in this audit were not caused by provider misconduct, fraud, or abuse; the overpayments were the result of recipient eligibility errors and enrolled recipients transitioning in and out of Medicaid eligibility.</p> <p>Recipient eligibility errors, under Florida Law, bar the recovery of related</p>

	<p>overpayments from providers. See s. 409.907, Florida Statutes, which reads in pertinent part: "The agency ... is prohibited from demanding repayment from the provider in any instance in which the Medicaid overpayment is attributable to error of the department in the determination of eligibility of a recipient." Additionally, the Federal regulation mandating the refunding of overpayments, 42 C.F.R. § 433.316(b), states that a Medicaid agency must take "...reasonable actions to attempt to recover the overpayment <u>in accordance with State law and procedures.</u>" Emphasis supplied. It is Florida's position that it has taken reasonable actions to recover the overpayments from the recipients and Florida law prohibits AHCA and DCF from attempting to recover the funds from the providers associated with the identified overpayments.</p> <p>While the amount actually recovered from the benefit recoveries undertaken by the Department of Children & Families during the audit period was not detailed in the audit report, and the title of the audit report, "<i>Millions in Overpayments Not Refunded,</i>" does not inform the reader of the amount in question – the actual recovered amount was only \$2,499,369.98. The State of Florida concedes that these funds were not refunded to CMS and is prepared to refund these funds upon demand.</p> <p>The State of Florida does not concur with the recommendation that it refund the \$12,251,265 identified (but not collected) Federal share of identified Medicaid overpayments referenced in this audit report. This would create a disincentive for the State to continue benefit recoveries from recipients later found to be ineligible for a variety of reasons and/or due to error, and would incentivize State policymakers and lawmakers to halt or limit related benefit recoveries from recipients and restrict Medicaid eligibility controls to the State's Medicaid Eligibility Quality Control processes in the State Plan. Thus, the State of Florida is strongly considering the future operation of the Medicaid benefit recovery program should this audit establish the precedent that States must return the full amount of identified overpayments, rather than the amount collected.</p>
Finding #2	<p>The State agency [AHCA] did not return the Federal share of Medicaid overpayments because it did not adequately coordinate with the Department to ensure that the Department [DCF] reported identified Medicaid overpayments in accordance with Federal and State requirements.</p>
Recommendation	<p>The State agency [AHCA] work with the Department to improve coordination and report State-identified Medicaid overpayments made on behalf of ineligible beneficiaries.</p>
Response	<p>The Agency for Health Care Administration and the Department of Children & Families concur with this finding and the associated recommendation. In October of 2011, the Agency for Health Care Administration began revising draft</p>

	<p>language for a <i>Memorandum of Agreement (MOA)</i> to supersede the legacy 1993 MOA referenced in the audit report. The State will continue this endeavor, with a target date for finalization being October 1, 2012.</p>
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