



DEPARTMENT OF HEALTH & HUMAN SERVICES

Office of Inspector General

Office of Audit Services, Region V
233 North Michigan Avenue
Suite 1360
Chicago, IL 60601

May 18, 2010

Report Number: A-05-08-00067

Ms. Karen Timberlake
Secretary
Wisconsin Department of Health and Family Services
P.O. Box 7850
Madison, WI 53707-7850

Dear Ms. Timberlake:

Enclosed is the U.S. Department of Health & Human Services (HHS), Office of Inspector General (OIG), final report entitled *Review of the State of Wisconsin's Reporting Fund Recoveries for Federal and State Medicaid Programs on the Form CMS-64 for Fiscal Years 2006 and 2007*. 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 Lynn Barker, Audit Manager, at (317) 226-7833 ext. 21 or through email at Lynn.Barker@oig.hhs.gov. Please refer to report number A-05-08-00067 in all correspondence.

Sincerely,

/James C. Cox/
Regional Inspector General
for Audit Services

Enclosure

Direct Reply to HHS Action Official:

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 & Human Services

**OFFICE OF
INSPECTOR GENERAL**

**REVIEW OF THE STATE OF WISCONSIN'S
REPORTING FUND RECOVERIES FOR
FEDERAL AND STATE MEDICAID
PROGRAMS ON THE FORM CMS-64 FOR
FISCAL YEARS 2006 AND 2007**



Daniel R. Levinson
Inspector General

May 2010
A-05-08-00067

Office of Inspector General

<http://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 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 applicable Federal requirements.

In Wisconsin, the Department of Health Services, Division of Health Care Financing (State agency) administers the Medicaid program. The State agency uses a statewide surveillance and utilization control program to safeguard against unnecessary or inappropriate use of Medicaid services and excess payments. The State agency through the Bureau of Health Care Program Integrity (BPI) conducted audits of Medicaid providers. In addition, the State agency contracted with HWT, Inc. (HWT) to conduct State Medicaid audits of Medicaid providers. When they identified overpayments, BPI and HWT sent letters on behalf of the State agency to the providers that (1) identified the overpayment amounts and (2) directed the providers to send payments to Wisconsin Medicaid.

Section 1903(d)(2) of the Act, requires the State to refund the Federal share of a Medicaid overpayment. Implementing regulations (42 CFR § 433.312) require the State agency to refund the Federal share of an overpayment to a provider at the end of the 60-day period following the date of discovery, whether or not the State agency has recovered the overpayment. The date of discovery for situations other than fraud or abuse is the date that a provider is first notified in writing of an overpayment and the specified dollar amount subject to recovery (42 CFR § 433.316(c)). Federal regulations (42 CFR § 433.304) define an overpayment as "... the amount paid by a Medicaid agency to a provider in excess of the amount that is allowable for the services furnished under section 1902 of the Act and which is required to be refunded under section 1903 of the Act." Because the Quarterly Medicaid Statement of Expenditures for the Medical Assistance Program, Form CMS-64 (CMS-64), is due on a quarterly basis, the CMS *State Medicaid Manual* requires the Federal share of the overpayments be reported no later than the quarter in which the 60-day period ends.

OBJECTIVE

Our objective was to determine whether Medicaid overpayments were reported on the CMS-64 in accordance with Federal regulations.

SUMMARY OF FINDINGS

The State agency did not report all Medicaid overpayments in accordance with Federal requirements. For Federal fiscal years (FY) 2006 and 2007, we estimated that the State agency

did not report Medicaid overpayments totaling \$720,563 (\$427,445 Federal share) in accordance with Federal requirements.

Of the 131 overpayments we reviewed, 20 were partially reported or not reported on the CMS-64. The remaining 111 were reported correctly. The State agency also did not report all Medicaid provider overpayments within the 60-day time requirement.

The State agency did not properly report these overpayments because it had not developed and implemented internal controls to ensure that overpayments were reported on the CMS-64.

RECOMMENDATIONS

We recommend that the State agency:

- include unreported Medicaid overpayments of \$720,563 on the CMS-64 and refund \$427,445 to the Federal Government and
- develop and implement internal controls to correctly report and refund the Federal share of identified Medicaid overpayments on the CMS-64.

STATE AGENCY COMMENTS

In its comments on our draft report, the State agency did not specifically address our first recommendation. However, the State agency questioned our sampling methodology and the extrapolation of identified overpayments to determine the value of the overpayment amount. In addition, the State agency stated that most of the areas of noncompliance related to audits conducted through contingency fee-based audit contracts. The State agency also said several overpayments were not pursued based on the provider no longer being in business. The State agency said it will report any overpayments if adequate documentation cannot be provided. In addition, the State agency said it has recently deployed a new Medicaid Management Information System that should eliminate problems related to reporting and tracking overpayments. The State agency's comments are included in their entirety as Appendix C.

OFFICE OF INSPECTOR GENERAL RESPONSE

After reviewing the State agency comments, we maintain our findings and recommendations are valid. We continue to recommend that the State agency report the Medicaid overpayments on the CMS-64 and refund \$427,445 to the Federal Government.

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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 Federal requirements.

The Federal Government pays its share (Federal share) of State Medicaid expenditures according to a defined formula. To receive Federal reimbursement, State Medicaid agencies are required to report expenditures on the Quarterly Medicaid Statement of Expenditures for the Medical Assistance Program, Form CMS-64 (CMS-64).

In Wisconsin, the Department of Health Services (DHS), Division of Health Care Financing (State agency) administered the Medicaid program. The State agency implements a statewide surveillance and utilization control program to safeguard against unnecessary or inappropriate use of Medicaid services and excess payments. The State agency, through the Bureau of Health Care Program Integrity (BPI), conducted audits of Medicaid providers. In addition, the State agency contracted with HWT, Inc. (HWT) to conduct surveillance and utilization review audits of Medicaid providers. All together BPI and HWT issued 14,660 overpayment letters to Medicaid providers on behalf of the State agency. The overpayment letters (1) identified the amounts of the overpayments and (2) directed the providers to send payment to Wisconsin Medicaid. Electronic Data Systems (EDS) acted as the State agency's Medicaid fiscal agent and processed Medicaid claims.

Federal Requirements for Medicaid Overpayments

The Federal Government does not participate financially in Medicaid payments for excessive or erroneous expenditures. Section 1903(d)(2)(A) of the Act requires the Secretary to recover the amount of a Medicaid overpayment. Federal regulations (42 CFR § 433.304) define an overpayment as "...the amount paid by a Medicaid agency to a provider 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." A State has 60 days from the discovery of a Medicaid overpayment to recover or attempt to recover the overpayment before the Federal share of the overpayment must be refunded to CMS. Section 1903(d)(2)(C) of the Act, as amended by the Consolidated Omnibus Budget Reconciliation Act of 1985, and Federal regulations at 42 CFR part 433, subpart F, require a State to refund the Federal share of overpayments at the end of the 60-day period following discovery whether or not the State has recovered the

overpayment from the provider.¹ Pursuant to 42 CFR § 433.316(c), an overpayment that is not a result of fraud or abuse is discovered on the earliest date:

(1). . . on which any Medicaid agency official or other State official first notifies a provider in writing of an overpayment and specifies a dollar amount that is subject to recovery; (2). . . on which a provider initially acknowledges a specific overpaid amount in writing to the medicaid agency; or (3). . . on which any State official or fiscal agent of the State initiates a formal action to recoup a specific overpaid amount from a provider without having first notified the provider in writing.

In addition, Federal regulations (42 CFR § 433.320) require that the State refund the Federal share of an overpayment on its quarterly Form CMS-64. Provider overpayments must be credited on the CMS-64 submitted for the quarter in which the 60-day period following discovery ends.

OBJECTIVE, SCOPE, AND METHODOLOGY

Objective

Our objective was to determine whether Medicaid overpayments were reported on the CMS-64 in accordance with Federal regulations.

Scope

Our review covered Medicaid provider overpayments that were identified in overpayment letters issued to providers that should have been reported on the CMS-64 during Federal fiscal years (FY) 2006 and 2007. We reviewed 131 of the 1,386 overpayments totaling \$14,027,487. The identified overpayment letters represent overpayments of \$1,000 or more for Medicaid services that were subject to the 60-day rule.

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 policies and procedures for Medicaid overpayments.

We performed fieldwork at the State agency and EDS offices in Madison, Wisconsin.

Methodology

To accomplish our audit objective, we:

- reviewed Federal laws, regulations, and other requirements governing Medicaid overpayments;

¹ Section 1903(d)(2)(C) and (D) of the Act and Federal regulations (42 CFR § 433.312) do not require a State to refund the Federal share of uncollectible amounts paid to bankrupt or out-of-business providers.

- interviewed State agency and EDS officials regarding policies and procedures relating to Medicaid overpayments subject to the 60-day rule and reporting overpayments on the CMS-64;
- identified 1,386 overpayments of \$1,000 or more for Medicaid services subject to the 60-day rule, which totaled \$14,027,487;
- selected a stratified random sample of 131 overpayments: 100 from the 1,355 overpayments of \$1,000 to \$50,000 and all 31 overpayments of more than \$50,000 (Appendix A);
- established the dates of discovery using the dates that BPI and HWT notified Medicaid providers in writing, on behalf of the State agency, of the overpayments and the dollar amount subject to recovery;
- determined the quarter in which the 60-day period following discovery of the overpayment ended;
- reviewed the CMS-64 to determine whether the Medicaid overpayments were reported for the quarter in which the 60-day period following discovery ended;
- reviewed the CMS-64 to determine whether Medicaid overpayments were reported during any subsequent quarter through March 31, 2008;
- determined whether overpayments were processed directly through the Medicaid Management Information System and included on other lines of the CMS-64;²
- determined if providers selected as part of our sample were bankrupt or out of business;
- based on the results of our stratified sample, we estimated the value of overpayments in the sample frame that were not reported during the audit period of FYs 2006 and 2007 (Appendix B); and
- computed the potentially higher interest expense to the Federal Government resulting from overpayments and income not reported within the required timeframe using the number of days between required reporting dates and the Wisconsin FY ending June 30, 2009.³

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

² EDS researched some of the sample items to determine if they were posted correctly through the system.

³ We calculated the interest expense using the applicable daily interest rates pursuant to the Cash Management Improvement Act of 1990, P.L. No. 101-453.

based on our audit objective. We believe that the evidence obtained provides a reasonable basis for our findings and conclusions based on our audit objective.

FINDINGS AND RECOMMENDATIONS

The State agency did not report all Medicaid overpayments in accordance with Federal requirements. For Federal FYs 2006 and 2007, we estimated that the State agency did not report Medicaid overpayments totaling \$720,563 (\$427,445 Federal share) in accordance with Federal requirements.

Of the 131 Medicaid overpayments we reviewed, 20 were partially reported or not reported on the CMS-64. The remaining 111 were reported correctly. The State agency also did not report all Medicaid provider overpayments within the 60-day time requirement. Finally, because the State agency did not report all overpayments and was not always timely in reporting, the Federal Government incurred a potentially higher interest expense.

The State agency did not properly report these overpayments because it had not developed and implemented internal controls to ensure that overpayments were reported on the CMS-64. Because the overpayments were not reported on the CMS-64, the Federal Government may have incurred increased interest expense of \$83,894.

OVERPAYMENTS NOT REPORTED

Pursuant to 42 CFR § 433.312(a)(2), the State agency “. . . must refund the Federal share of overpayments at the end of the 60-day period following discovery . . . whether or not the State has recovered the overpayment from the provider.” The regulation provides an exception only when the State is unable to recover the overpayment amount because the provider is bankrupt or out of business (42 CFR § 433.318).

For Federal FYs 2006 and 2007, we estimate that the State agency did not report Medicaid overpayments totaling \$720,563 (\$427,445 Federal share) in accordance with Federal requirements. Of the 131 Medicaid overpayments reviewed, 20 overpayments were partially reported or not reported on the CMS-64. Specifically:

- Of the 100 randomly selected overpayments of \$1,000 to \$50,000, 16 were partially reported or not reported on the CMS-64 and totaled \$55,221 (\$32,789 Federal share). Based on the sample results, we estimate that \$325,870 (\$192,357 Federal share) of the Medicaid overpayments between \$1,000 and \$50,000 were not reported on the CMS-64.
- Of the 31 overpayments that exceeded \$50,000, four were not reported on the CMS-64 totaling \$394,693 (\$235,088 Federal share).

OVERPAYMENTS NOT REPORTED TIMELY

Pursuant to 42 CFR § 433.312(a)(2), the State agency “. . . must refund the Federal share of overpayments at the end of the 60-day period following discovery . . . whether or not the State

has recovered the overpayment from the provider.” For situations other than fraud and abuse, Federal regulation (42 CFR § 433.316(c)) defines the date of discovery as the date that a provider was first notified in writing of an overpayment and the specified dollar amount subject to recovery. These regulations do not allow for extending the date.

The State agency did not report all Medicaid provider overpayments in accordance with the 60-day time requirement. Of the 131 sampled overpayments, the State agency reported 111 overpayments on the CMS-64. For the 111 overpayments that were reported, 81 overpayments totaling \$5,462,626 (\$3,238,659 Federal share) were not reported on the CMS-64 at the end of the 60-day period. The untimely reporting resulted from using the date of the final decision or the date that the State agency collected the overpayment rather than the date of discovery.

POTENTIALLY HIGHER INTEREST EXPENSE

Because the State agency did not report some overpayments and was not timely in reporting others, the Federal Government did not have the use of these funds. As a result, the Federal Government potentially incurred an increased interest expense of \$83,894. However, we did not include this Federal interest expense in the amount of the overpayments we recommend that the State should refund.

INTERNAL CONTROLS NOT IMPLEMENTED

The State agency did not develop and implement internal controls to ensure that it correctly reported on the CMS-64 the Medicaid overpayments identified from State Medicaid audits.

RECOMMENDATIONS

We recommend that the State agency:

- include unreported Medicaid overpayments totaling \$720,563 on the CMS-64 and refund \$427,445 to the Federal Government,
- develop and implement internal controls to correctly report and refund the Federal share of identified Medicaid overpayments on the CMS-64.

OTHER MATTERS

The State agency did not report Medicaid overpayments from State audits on the correct line of the CMS-64. Of the 111 sampled overpayments that were reported on the CMS-64, 75 overpayments were reported incorrectly.

STATE AGENCY COMMENTS

In its comments on our draft report, the State agency did not specifically address our first recommendation. However, the State agency questioned our sampling methodology and the extrapolation of identified overpayments to determine the value of the overpayment amount. In

addition, the State agency stated that most of the areas of noncompliance related to audits conducted through contingency fee-based audit contracts. The State agency also said several overpayments were not pursued based on the provider no longer being in business. The State agency said it will report any overpayments if adequate documentation cannot be provided. In addition, the State agency said it has recently deployed a new Medicaid Management Information System that should eliminate problems related to reporting and tracking overpayments. The State agency's comments are included in their entirety as Appendix C.

OFFICE OF INSPECTOR GENERAL RESPONSE

After reviewing the State agency comments, we maintain our findings and recommendations are valid. We continue to recommend that the State agency report the Medicaid overpayments on the CMS-64 and refund \$427,445 to the Federal Government.

APPENDIXES

APPENDIX A: SAMPLING METHODOLOGY

POPULATION

The population consisted of Medicaid overpayments that should have been reported on the Quarterly Medicaid Statement of Expenditures for the Medical Assistance Program, Form CMS-64 (CMS-64) during fiscal years (FY) 2006 and 2007 (October 1, 2005, through September 30, 2007).

SAMPLING FRAME

The Department of Health Services, Division of Healthcare Financing, Bureau of Program Integrity (State agency) provided lists of Medicaid provider overpayments identified by all its contractors for FYs 2006 and 2007. The sampling frame was limited to overpayments exceeding \$1,000.

The sampling frame was an Excel file containing 1,386 Medicaid provider overpayments with a total projected recovery of \$14,027,487. The sampling frame was separated into two strata. Stratum 1 consisted of 1,355 Medicaid provider overpayments of \$1,000 to \$50,000 with a total projected recovery of \$8,456,562. Stratum 2 consisted of 31 Medicaid provider overpayments of more than \$50,000, with a total projected recovery of \$5,570,925.

SAMPLE UNIT

The sample unit was a Medicaid provider overpayment.

SAMPLE DESIGN

We used a stratified sample, defined as follows:

Stratum 1: 1,355 Medicaid provider overpayments of \$1,000 to \$50,000.

Stratum 2: 31 Medicaid provider overpayments of more than \$50,000.

SAMPLE SIZE

We selected a random sample of 100 items from the 1,355 Medicaid provider overpayments in stratum 1 and reviewed all 31 sample items in stratum 2.

SOURCE OF RANDOM NUMBERS

Random numbers were generated by the Department of Health & Human Services, Office of Inspector General (OIG), Office of Audit Service's (OAS) RAT-STATS statistical software package.

ESTIMATION METHODOLOGY

We used the OIG/OAS statistical software to estimate the amount of Medicaid provider overpayments not properly reported.

APPENDIX B: SAMPLING RESULTS AND ESTIMATION

Sample Results:

| Stratum | Frame Size | Value of Frame | Sample Size | Value of Sample | Number of Overpayments Not Reported Properly in Sample | Value of Overpayments Not Reported Properly in Sample |
|----------------|-------------------|-----------------------|--------------------|------------------------|---|--|
| 1 | 1,355 | \$8,456,562 | 100 | \$577,183 | 16 | \$55,221 |
| 2 | 31 | \$5,570,925 | 31 | \$5,570,925 | 4 | \$394,693 |
| Totals | 1,386 | \$14,027,487 | 131 | \$6,148,108 | 20 | \$449,914 |

Estimated Medicaid Overpayments Not Reported Properly on the CMS-64

(Limits Calculated for a 90-Percent Confidence Interval)

| Stratum 1 | Total Unallowable | Federal Share |
|------------------|--------------------------|----------------------|
| Point Estimate | \$748,231 | \$444,293 |
| Lower Limit | \$325,870 | \$192,357 |
| Upper Limit | \$1,170,592 | \$696,228 |

APPENDIX C: STATE AGENCY COMMENTS



DIVISION OF HEALTH CARE ACCESS AND ACCOUNTABILITY

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Secretary

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February 3, 2010

Lynn Barker
DHHS/OIG/OAS
101 West Ohio Street
Suite 750
Indianapolis, IN 46204

Dear Ms. Barker:

Thank you for providing us with a draft copy of the results of the Office of the Inspector General's review of Wisconsin's Reporting Fund Recoveries for Federal and State Medicaid Programs on the CMS Form 64 for Fiscal Years 2006 and 2007. The report identifies instances where the State of Wisconsin either did not report or only partially reported overpayments resulting from audits of Medicaid providers and identified instances where such overpayments had not been reported in a timely manner.

As we reviewed the draft, questions arose that we shared with your auditors. The primary questions related to the use of two different methods of sampling; (1) random sampling and (2) judgmental sampling in the report and with the use of extrapolation in determining an estimate of the amount of the overpayments. In reviewing multiple audits of this same issue conducted by the Office of Audit Services, we could not locate any other audit where anything other than the actual amounts identified were used to determine the value of the overpayment amount.

With these concerns having been expressed we reviewed the information contained within it. We found the report to be a useful tool in assessing our reporting system and identifying areas that need to be addressed. It appears as though most of the areas when non compliance occurred were related to audits conducted through a contingency fee based audit contract. For several years we have issued contracts to several agencies to supplement State audit resources. In this particular instance, at the direction of our Legislature we procured the services of a private firm and they conducted a number of audits primarily related to physician, hospital and laboratory services. It appears that the results of some of those audits were not properly reported on the CMS 64. For that and other reasons the contract resulting in these problems was allowed to lapse. Since that time, we have established tighter controls including a case tracking system that will allow our staff to better monitor the issuance of findings and to follow up and ensure proper reporting of those findings and the recoveries related to them.

Ms. Lynn Barker
February 3, 2010
Page 2

In completing our review it also appears that several of the unreported overpayments were not pursued based on the provider no longer being in business. We are assessing the documentation related to those decisions, and will report any overpayments for which adequate documentation regarding our attempts to collect overpayments cannot be provided.

Another issue related to possible non-compliance was the fact that during the time period covered in the audit, the State was deploying a new Medicaid Management Information System (MMIS) and during the deployment there were certain areas that may not have been as stable as we believed them to be. We are now confident that we have addressed those issues and are now preparing for CMS to come on site and certify our new system. We believe that the system is now stable and that the problems related to reporting and tracking overpayments have been eliminated.

Other than that we have no further comments related to the content of the report. It is our intention to continue to work with our fiscal agent to ensure the accuracy of our federal reporting process and will meet with our local CMS audit staff to ensure that any and all overpayments are properly reported.

Once again, we would like to thank you for the opportunity to review this report. We appreciate the time and effort put forth by the OIG audit team to complete this review.

Sincerely,

A handwritten signature in black ink, appearing to read 'AS White', with a long horizontal flourish extending to the right.

Alan S. White, Director
Bureau of Program Integrity
CC: Patrick Cooper
Cheryl Johnson
James Jones
James Olson
Catherine Lorence