

Department of Health and Human Services

**OFFICE OF
INSPECTOR GENERAL**

**MINNESOTA DISBURSED ONLY PART OF
ITS CIVIL MONEY PENALTY
COLLECTIONS, LIMITING RESOURCES TO
PROTECT AND IMPROVE CARE FOR
NURSING FACILITY RESIDENTS**

*Inquiries about this report may be addressed to the Office of Public Affairs at
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Gloria L. Jarmon
Deputy Inspector General
for Audit Services

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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.

The State agency disbursed only part of its civil money penalty collections, limiting the resources available to protect and improve the quality of care for nursing facility residents.

INTRODUCTION

WHY WE DID THIS REVIEW

During a prior review of Medicaid collections, we noted that the Minnesota Department of Human Services (State agency) was receiving civil money penalty (CMP) collections. We initiated this review to examine the reasonableness of CMP expenditures.

OBJECTIVE

Our objective was to determine whether the State agency appropriately used CMP collections in accordance with Federal requirements.

BACKGROUND

Medicaid Program

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

The CMS Survey and Certification group may assess penalties on nursing facilities based on the results of a facility inspection. A nursing facility may be Medicare-certified, Medicaid-certified, or both Medicare- and Medicaid-certified (dually certified). Medicare is 100 percent fully funded by the Federal Government, but Medicaid funding is split between the Federal and State Governments. For a dually certified facility, the CMP amount is divided between Medicare and Medicaid based on the number of beds certified under Medicare and the number of beds certified under Medicaid.

Civil Money Penalties

CMPs are a statutory enforcement remedy available to CMS and the States to address nursing facility noncompliance. Authorized by sections 1819(h) and 1919(h) of the Act, civil money penalties may be imposed for each day of facility noncompliance, as well as for past instances of noncompliance even if a facility is in compliance at the time of the current survey.

In Minnesota, CMS collects all CMPs from nursing facilities and returns the Medicaid share to the State agency. Those funds are provided to nursing facilities for proposals that receive approval from the State agency. CMP collections must be used entirely for activities that protect or improve the quality of care for nursing facility residents.¹ If CMS finds that a State has not spent CMP funds in accordance with regulations or fails to make use of funds, CMS may withhold future disbursements of CMP funds to the State.²

HOW WE CONDUCTED THIS REVIEW

We limited our review to \$591,596 in CMP collections reported on the CMS Certification and Survey Provider Enhanced Reports (CASPERs) during Federal fiscal years (FFYs) 2013 through 2015.

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 A contains the details of our audit scope and methodology.

FINDING

CMP collections received by the State agency during our audit period of FFYs 2013 through 2015 totaled \$591,596. However, the State agency reimbursed nursing facilities \$113,697, or only about 20 percent of the amount collected, for expenditures incurred during the same time period. Although expenditures incurred during the audit period were generally allowable, we identified claims of \$5,000 for nursing facility staff wages and supplies that were already supported by other Federal and State funding sources.

LIMITED DISBURSEMENTS OF CIVIL MONEY PENALTY COLLECTIONS

Although the State agency received over \$590,000 in CMP collections during our audit period, it reimbursed nursing facilities less than \$114,000 for activities that protected or improved the quality of care for nursing facility residents. The State agency did not fully use CMP collections to support nursing facility residents because there was limited guidance on using collections before our audit period. As a result, residents and facilities were potentially underserved because of the limited number of services that were approved and supported with CMP collections.

¹ 42 CFR § 488.433(a).

² 42 CFR § 488.433(f).

IMPROPER USE OF CIVIL MONEY PENALTY COLLECTIONS

Two nursing facilities received CMP funds totaling \$5,000 for nursing home staff and supply expenses that did not comply with Federal requirements. Federal regulations state that CMP funds are not intended to pay for functions for which the nursing facilities are already paid by State or Federal sources. Additionally, CMP funds should not be used to pay for nursing home services or supplies that are already the responsibility of the nursing home, such as staffing costs.³

RECOMMENDATION

We recommend that the State agency work with nursing facilities to fully utilize CMP collections to fund activities that protect or improve the quality of care for nursing facility residents.

STATE AGENCY COMMENTS

In written comments on our draft report, the State agency concurred with our recommendation and provided details about corrective actions. The State agency's comments are included in their entirety as Appendix B.

³ CMS Survey & Certification Memorandum 11-42-NH, section E, Sept. 30, 2011.

APPENDIX A: AUDIT SCOPE AND METHODOLOGY

SCOPE

Our review covered \$591,596 in CMP collections reported on CASPERs and \$113,697 in State reimbursements to nursing facilities during FFYs 2013 through 2015. We did not review the overall internal control structure of the State agency or the Medicaid program. Instead, we limited our internal control review to the State agency's procedures for collecting and using CMP collections.

We conducted our fieldwork at the State agency's office in Saint Paul, Minnesota, from January through October 2016.

Methodology

To accomplish our objective, we:

- reviewed applicable laws, regulations, and guidelines;
- interviewed State agency and CMS officials regarding collection of CMPs and related policies and procedures;
- reviewed the Quarterly Medicaid Statement of Expenditures for the Medical Assistance Program, Form CMS-64 (CMS-64 report), and CMS CASPER as it related to CMP collections;
- traced the CMP collections reported on the CMS-64 reports to the *Division of Premium Billing & Collections* statements, the State agency-prepared supporting summary worksheets, and CASPERs;
- reviewed detailed supporting information for all expenses paid with CMP collections; and
- discussed the results of our audit 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 B: STATE AGENCY COMMENTS



Minnesota Department of Human Services
Commissioner Emily Piper
Post Office Box 64998
St. Paul, Minnesota 55164-0998

April 7, 2017

Ms. Sheri L. Fulcher
Regional Inspector General for Audit Services
Office of Inspector General
Office of Audit Services, Region V
233 North Michigan, Suite #1360
Chicago, Illinois 60601

Re: Report Number A-05-16-00017

Dear Ms. Fulcher:

Thank you for giving us the opportunity to respond to your March 13, 2017, draft audit report, *“Minnesota Disbursed Only Part of Its Civil Money Penalty Collections, Limiting Resources To Protect and Improve Care for Nursing Facility Residents.”* I also wish to thank you and your staff for the time you spent here in Minnesota meeting with our staff as part of your audit. It is our understanding that our response will be published in the Office of Inspector General’s final audit report.

Minnesota concurs with the findings and recommendation in your report. Ensuring that CMP collections are fully used to improve the quality of care for nursing facility residents, will be an important focus for the Nursing Facility Rates and Policy Division (NFRP). The state has a CMP committee comprised of staff from the NFRP, Minnesota Department of Health, nursing facility trade associations’ staff, and consumer representatives. The CMP committee provides oversight of the CMP funds and considers project proposals for submission to the Centers for Medicare and Medicaid Services (CMS).

In late 2016, the CMP committee leadership was reconfigured with the intention of providing a fresh approach for development of projects that benefit nursing facility residents. The committee is meeting on a regular basis and is making significant progress toward our goal of protecting and improving the quality of care for Minnesota nursing home residents. Current proposals being worked on include:

- a project to improve the quality of life for residents with dementia through music and memory programming;
- a project to provide statewide training, which helps providers achieve resident-centered goals under the new 2016 CMS requirements; and
- a project to develop training for providers to address sexual abuse within nursing homes.

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The CMP committee estimates that approximately \$500,000 will be distributed in grant funds to support these three projects over the next two years. NFRP staff will be responsible for obtaining CMS approval for these projects, and for ensuring the grant funds are used in accordance with regulations noted in CMS Ref: S&C: 12-13-NH.

The CMP committee is also tasked with annually reviewing CMP collections received in the past year, and creating or updating an annual plan to use these funds in subsequent years. We are confident our new approach will help us reach our stated goals and prevent a reoccurrence of the issues identified in this report.

The Minnesota Department of Human Services will continue to evaluate the progress being made to resolve all audit findings until full resolution has occurred. If you have any further questions or need additional information, please contact Gary L. Johnson, Internal Auditor, at (651) 431-3623.

Sincerely,

/Emily Piper/

Emily Piper
Commissioner