

Department of Health and Human Services

**OFFICE OF
INSPECTOR GENERAL**

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

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

February 2019
A-05-17-00019

Office of Inspector General

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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.

Report in Brief

Date: February 2019

Report No. A-05-17-00019

U.S. DEPARTMENT OF HEALTH & HUMAN SERVICES
OFFICE OF INSPECTOR GENERAL



Why OIG Did This Review

During a multi-State review, we determined that Michigan received civil money penalty (CMP) collections. We initiated this review to examine the types of activities funded by CMP collections and to determine whether the expenditures were for allowable CMP activities.

Our objectives were to determine whether Michigan appropriately used CMP collections for activities that protect or improve the quality of care for residents and whether it expended CMP funds in accordance with Federal requirements

How OIG Did This Review

We limited our review to \$3.6 million in CMP collections reported on the CMS Certification and Survey Provider Enhanced Reports during Federal fiscal years (FYs) 2014 through 2016.

Michigan Disbursed Only Part of Its Civil Money Penalty Collections, Limiting Resources To Protect or Improve Care for Nursing Facility Residents

What OIG Found

Michigan expended almost two-thirds of the \$3.6 million in CMP collections during our audit period, reimbursing organizations \$2.3 million for activities that protected or improved the quality of care for nursing facility residents. However, it did not fully use available CMP collections to support nursing facility residents.

Michigan distributed the CMP funds for a variety of allowable activities, including support for long-term-care ombudsman services, services to skilled nursing facility residents, and development and creation of quality assurance performance improvement training materials.

However, Michigan did not receive a sufficient number of applications to support the expenditure of funds on hand, and many of the applications addressed activities already covered under the Medicaid program. Additionally, Michigan was unable to increase awareness of funds availability and attract new applications. As a result, residents and facilities were potentially underserved because of the limited number of services that were approved and supported with CMP collections. Michigan is currently doing a quality improvement review of its system to improve its outreach and marketing of the CMP funds.

What OIG Recommends and Michigan Comments

We recommend that Michigan work with organizations to fully utilize CMP collections to fund activities that protect or improve the quality of care for nursing facility residents and continue to review its processes to make them more efficient and effective.

In written comments on our draft report, Michigan agreed with our finding and recommendations and provided details about actions it has taken to identify more projects that enhance and improve the quality of care for nursing home residents.

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INTRODUCTION

WHY WE DID THIS REVIEW

During a multi-State review, we determined that the Michigan Department of Health and Human Services (State agency) received civil money penalty (CMP) collections. We initiated this review to examine the types of activities funded by CMP collections and to determine whether the expenditures were for allowable CMP activities.

OBJECTIVES

Our objectives were to determine whether the State agency appropriately used CMP collections for activities that protect or improve the quality of care for residents and whether it expended CMP funds 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 Michigan.

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). The Federal Government fully funds Medicare, 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 each program.

Civil Money Penalties

CMPs are a statutory enforcement remedy available to CMS and the States to address nursing facility noncompliance with Federal requirements. Authorized by sections 1819(h) and 1919(h) of the Act, CMPs 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 inspection.

In Michigan, CMS collects all CMPs from nursing facilities and returns the Medicaid share to the State agency. Those funds are provided to organizations 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 These activities must be approved by CMS and may include, but are not limited to:

- support and protection of residents of a facility that closes (voluntarily or involuntarily);
- time-limited expenses incurred in the process of relocating residents to home and community-based settings or another facility when a facility is closed (voluntarily or involuntarily) or downsized pursuant to an agreement with the State Medicaid agency;
- projects that support resident and family councils and other consumer involvement in assuring quality care in facilities;
- facility improvement initiatives approved by CMS, such as joint training of facility staff and surveyors or technical assistance for facilities implementing quality assurance and performance improvement programs, when such facilities have been cited by CMS for deficiencies in the applicable requirements; and
- development and maintenance of temporary management or receivership capability such as, but not limited to, recruitment, training, retention, or other system infrastructure expenses.

The State must maintain an acceptable plan, approved by CMS, for the effective use of civil money funds, including a description of methods by which the State will ensure that a reasonable amount of funds will be awarded or contracted each year.² 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.³

HOW WE CONDUCTED THIS REVIEW

We limited our review to \$3,631,347 in CMP collections reported on the CMS Certification and Survey Provider Enhanced Reports (CASPERs) during Federal fiscal years (FYs) 2014 through 2016.

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.

¹ 42 CFR § 488.433(a).

² 42 CFR § 488.433(e).

³ 42 CFR § 488.433(f).

Appendix A contains the details of our audit scope and methodology.

FINDING

The State agency expended almost two-thirds of the CMP collections during our audit period for activities that protect or improve the quality of care for residents. The State agency received \$3,631,347 in CMP collections during FYs 2014 through 2016 and it reimbursed organizations \$2,327,806 for activities that protected or improved the quality of care for nursing facility residents. However, the State agency did not fully use available CMP collections to support nursing facility residents.

Table: Civil Money Penalty Funds Received and Expended (FYs 2014 through 2016)

Fiscal Year	CMP Funds Received	CMP Funds Expended
2014	\$1,651,408	\$735,988
2015	759,626	1,002,478
2016	1,220,313	589,340
Total	\$3,631,347	\$2,327,806

The State agency distributed the CMP funds for a variety of allowable activities, including:

- support to local Area Agencies on Aging long-term-care ombudsman services;
- creation of a comprehensive, sustainable model to address the advance care planning needs of skilled nursing facility residents, to enable residents’ choices to be honored, and to improve satisfaction of residents and their families with the care provided;
- behavioral consultations and services to aging persons with cognitive impairment at skilled nursing facilities throughout the State; and
- to develop and create quality assurance performance improvement training materials.

However, the State agency did not receive a sufficient number of applications to support the expenditure of funds on hand, and many of the applications addressed activities already covered under the Medicaid program. Additionally, the State agency was unable to increase awareness of funds availability and attract new applications. As a result, residents and facilities were potentially underserved because of the limited number of services that were approved and supported with CMP collections. The State agency is currently doing a quality improvement review of its system to improve its outreach and marketing of the CMP funds.

RECOMMENDATIONS

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

continue to review its processes to make them more efficient and effective.

STATE AGENCY COMMENTS

In written comments on our draft report, the State agency agreed with our finding and recommendations and provided details about actions it has taken to identify more projects that enhance and improve the quality of care for nursing home residents. The State agency's comments are included in their entirety as Appendix B.

APPENDIX A: AUDIT SCOPE AND METHODOLOGY

SCOPE

Our review covered \$3,631,347 in CMP collections reported on CASPERs and \$2,327,806 in State reimbursements to organizations during FYs 2014 through 2016. 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 Lansing, Michigan, from January through October 2017 and at various organizations during June 2018.

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 CASPERs as they related to CMP collections;
- traced the CMP collections reported on the CMS-64 reports to 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



STATE OF MICHIGAN

DEPARTMENT OF HEALTH AND HUMAN SERVICES

GRETCHEN WHITMER

LANSING

ROBERT GORDON

GOVERNOR

DIRECTOR

January 30, 2019

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

Re: Report Number A-05-17-00019

Dear Ms. Fulcher:

Enclosed is the Michigan Department of Health and Human Services response to the draft report entitled "Michigan Disbursed Only Part of Its Civil Money Penalty Collections, Limiting Resources to Protect or Improve Care for Nursing Facility Residents."

We appreciate the opportunity to review and comment on the report before it is released. If you have any questions regarding this response, please refer them to Pam Myers at Myersp3@michigan.gov or (517) 241-4237.

Sincerely,

ROBERT GORDON

Robert Gordon
RG:kk

Enclosure

c:

Nancy Vreibel
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Michigan Department of Health and Human Services
(MDHHS) Report A-05-17-00019
Michigan Disbursed Only Part of its Civil Money Penalty Collections, Limiting
Resources to Protect or Improve Care for Nursing Facility Residents

HHS OIG Recommendation

We recommend that the State agency work with organizations to fully utilize CMP collections to fund activities that protect or improve the quality of care for nursing facility residents and continue to review its processes to make them more efficient and effective.

MDHHS Response

MDHHS agrees with the finding and the recommendation.

Corrective Action

MDHHS recognizes the need to improve the entirety of its CMP reinvestment process and initiated a Lean Quality Improvement Design Team focused on that objective. Mapping of the existing process has been completed which help to identify any causes for delays, potential inefficiencies in the process, and areas for potential improvement. The team has begun designing improvements that should ultimately make the entire process more responsive and allow MDHHS to best utilize its CMP resources.

MDHHS will also pilot a new application and processing protocol which utilizes the functionality available in the Electronic Grants Administration and Management System (EGrAMS). This new process will help MDHHS with outreach and marketing of available CMP funding. MDHHS expects these enhancements to aid in the identification of more projects that enhance protection and improvement in the quality of care for nursing home residents.

Anticipated Completion Date: October 1, 2019