

Department of Health and Human Services

**OFFICE OF  
INSPECTOR GENERAL**

**MICHIGAN DID NOT REPORT  
CALENDAR YEAR 2019 MEDICAID  
THIRD-PARTY LIABILITY COST  
AVOIDANCE DATA TO THE CENTERS  
FOR MEDICARE & MEDICAID SERVICES**

*Inquiries about this report may be addressed to the Office of Public Affairs at  
[Public.Affairs@oig.hhs.gov](mailto:Public.Affairs@oig.hhs.gov).*



**Amy J. Frontz  
Deputy Inspector General  
for Audit Services**

October 2021  
A-05-20-00058

# *Office of Inspector General*

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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: October 2021  
Report No. A-05-20-00058

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



### Why OIG Did This Audit

If Medicaid beneficiaries have another source of health care coverage, that source should pay, to the extent of its liability, before Medicaid pays. Federal regulations refer to this requirement as third-party liability (TPL). Prior Office of Inspector General and other reports indicated longstanding challenges States had in their TPL efforts. This audit of Michigan is similar to those previous audits.

Our objective was to determine whether Michigan reported Medicaid TPL in accordance with Federal requirements.

### How OIG Did This Audit

Our audit covered Medicaid TPL Medicare collections and cost avoidance as reported by Michigan on the States' Quarterly Medicaid Statement of Expenditures for the Medical Assistance Program (CMS-64) during the quarters July 1, 2018, through June 30, 2020.

We reviewed Michigan's method for calculating TPL Medicare collections and cost avoidance and determined whether these methods were appropriately applied during selected quarters in Federal fiscal years (FFYs) 2019 and 2020.

## Michigan Did Not Report Calendar Year 2019 Medicaid Third-Party Liability Cost Avoidance Data to the Centers for Medicare & Medicaid Services

### What OIG Found

CMS requires States to identify Medicaid beneficiaries' third-party health coverage and determine the TPL for the services. Michigan did not report Medicaid TPL Medicare cost avoidance for all four quarters in calendar year 2019, totaling \$3.4 billion. Inaccurate amounts reported on the CMS-64 could impact CMS' monitoring and evaluation of the effectiveness of the State's TPL activity.

Michigan said the TPL Medicare cost avoidance was omitted in error because there was no process in place to ensure that the amounts were reported on the CMS-64. This error was corrected, and the full amount was reported on the CMS-64 for the third quarter of FFY 2020. Michigan said it added steps for entering TPL cost avoidance as part of its quarterly preparation checklist that must be completed and reviewed prior to certifying the CMS-64 quarterly reports.

### What OIG Recommends and Michigan Comments

This report contains no recommendations. Michigan provided comments on the draft report.

## TABLE OF CONTENTS

INTRODUCTION.....	1
Why We Did This Audit.....	1
Objective .....	1
Background .....	1
The Medicaid Program .....	1
Medicaid Third-Party Liability .....	1
Michigan Medicaid Third-Party Liability .....	2
How We Conducted This Audit.....	2
CONCLUSION.....	3
MICHIGAN COMMENTS .....	3
APPENDIXES	
A: Audit Scope and Methodology.....	4
B: Auditee Comments.....	6

## INTRODUCTION

### WHY WE DID THIS AUDIT

Generally, Medicaid is intended to be the payor of last resort. If Medicaid beneficiaries have another source of health care coverage, that source should pay, to the extent of its liability, before Medicaid pays. Federal regulations refer to this requirement as third-party liability (TPL).<sup>1</sup> Prior Office of Inspector General and other reports<sup>2</sup> indicated substantial improvements in States' TPL identification and recovery efforts. However, the reports also indicated longstanding challenges States had in their TPL efforts. This audit of the Michigan Department of Health and Human Services (State agency) is similar to those previous audits.

### OBJECTIVE

Our objective was to determine whether the State agency reported Medicaid TPL in accordance with Federal requirements.

### BACKGROUND

#### The Medicaid Program

Pursuit 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 each State has considerable flexibility in designing and operating its Medicaid program, it must comply with applicable Federal requirements.

States report Medicaid expenditures on the States' Quarterly Medicaid Statement of Expenditures for the Medical Assistance Program (CMS-64). The Federal Government pays its share of a State's medical assistance expenditures (Federal share) under Medicaid based on the Federal medical assistance percentage (FMAP), which varies depending on the State's relative per capita income as calculated by a defined formula (42 CFR § 433.10).

#### Medicaid Third-Party Liability

CMS requires States to (1) identify Medicaid members' third-party health coverage, (2) determine the TPL for the services, (3) avoid payment for services in most circumstances in

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<sup>1</sup> See 42 CFR 433.135 through 433.139.

<sup>2</sup> For example, *Medicaid Third-Party Liability Savings Increased, But Challenges Remain*, report number OEI-05-11-000130, issued January 2013.

which the State believes that a third party is liable, and (4) recover reimbursement from liable third parties after Medicaid payment if the State can reasonably expect to recover more than it paid to seek reimbursement (42 CFR §§ 433.137 through 433.139). A Medicaid payment is termed “avoided” under two scenarios. The first scenario occurs when a provider submits a claim to the State agency first, then the State agency returns the claim as denied to the provider, which must submit this claim to the liable third party. The second scenario occurs when a provider bills the liable third party first.<sup>3</sup> Third-party coverage includes health insurance; self-insured plans; group health plans; Government-sponsored health insurance, such as Medicare and TRICARE; service benefit plans; managed care organizations; pharmacy benefit managers; and other parties that are, by statute, contract, or agreement, legally responsible for payment of a claim for a health care item or service.<sup>4</sup>

### **Michigan Medicaid Third-Party Liability**

In Michigan, the State agency is responsible for all aspects of the Medicaid program, including the development of all eligibility, provider, and payment policies; the administration of the Medicaid Management Information System; contract management; sub-recipient monitoring; and oversight over the administrative hearings process.

The Michigan TPL Division ensures compliance with Federal laws and regulations to ensure all other available third-party resources pay for all or part of Medicaid beneficiaries’ medical care before turning to Medicaid. The TPL Division ensures that the coverage for all Medicaid beneficiaries is on file and accurate to avoid costs up front for a beneficiary who has other third-party resources. The Michigan TPL Division also identifies claims that have been paid when a third-party resource is available and will work with third-party resources to recover costs.

### **HOW WE CONDUCTED THIS AUDIT**

Our audit covered Medicaid TPL Medicare collections and cost avoidance as reported by the State agency on the CMS-64 during the quarters July 1, 2018, through June 30, 2020.

We reviewed the State agency’s method for calculating TPL Medicare collections and cost avoidance and determined whether these methods were appropriately applied during selected quarters in Federal fiscal years (FFYs) 2019 and 2020.

We selected six TPL Medicare collection claims to confirm the accuracy and completeness of steps taken by the State agency to calculate the amounts reported on the CMS-64 for quarter 2 FFY 2019 and quarter 2 FFY 2020. We also reviewed the cost avoidance calculations to confirm the accuracy of the amount recorded on the CMS-64 for quarter 3 FFY 2020.

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<sup>3</sup> CMS *State Medicaid Manual*, Pub. No. 45, chapter 3, § 3901.

<sup>4</sup> The Act § 1902(a)(25) and 42 U.S.C. § 1396a(a)(25).

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.

## **CONCLUSION**

CMS requires States to identify Medicaid beneficiaries' third-party health coverage and determine the TPL for the services. The State agency did not report Medicaid TPL Medicare cost avoidance for all four quarters in calendar year 2019, totaling \$3.4 billion. Inaccurate amounts reported on the CMS-64 could impact CMS' monitoring and evaluation of the effectiveness of the State's TPL activity.

The State agency said the TPL Medicare cost avoidance was omitted in error because there was no process in place to ensure that the amounts were reported on the CMS-64. This error was corrected, and the full amount was reported on the CMS-64 for the third quarter of FFY 2020. The State agency said it added steps for entering TPL cost avoidance as part of its quarterly preparation checklist that must be completed and reviewed prior to certifying the CMS-64 quarterly reports. Accordingly, this report contains no recommendations.

## **MICHIGAN COMMENTS**

The Michigan Department of Health and Human Services provided comments on the draft report, which are included in their entirety as Appendix B.



## **APPENDIX A: AUDIT SCOPE AND METHODOLOGY**

### **SCOPE**

Our audit covered Medicaid TPL Medicare collections and cost avoidance as reported by the State agency on the CMS-64 during the quarters July 1, 2018, through June 30, 2020.

We reviewed the State agency's method for calculating TPL Medicare collections and cost avoidance and determined whether these methods were appropriately applied during selected quarters in FFYs 2019 and 2020.

We determined that a review of the State agency's internal controls was significant to accomplishing our audit objective. We assessed the design, implementation, and operating effectiveness of the State agency's internal controls related to control activities and monitoring of TPL Medicare collections and cost avoidance. As part of our internal control review, we performed an expanded assessment of the State's policies and procedures to identify and appropriately report TPL Medicare collections and cost avoidance amounts on the CMS-64.

We conducted fieldwork from September 2020 through August 2021.

### **METHODOLOGY**

To accomplish our objective, we:

- reviewed applicable Federal laws, regulations, and guidance;
- discussed with State agency officials the process for identifying, calculating, and reporting Medicaid TPL collections and cost avoidance;
- obtained Michigan claim data for TPL Medicare cost collections and avoidance;
- judgmentally selected six TPL Medicare collection claims for review to confirm the accuracy and completeness of steps taken by the State agency to calculate amounts reported on the CMS-64 for quarter 2 FFY 2019 and quarter 2 FFY 2020; and
- reviewed the cost avoidance calculations to confirm the accuracy of the amount recorded on the CMS-64 for quarter 3 FFY 2020.

We provided the State agency with a draft audit report for review. The State agency provided comments that we included in their entirety as Appendix B.

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: AUDITEE COMMENTS



GRETCHEN WHITMER  
GOVERNOR

STATE OF MICHIGAN  
DEPARTMENT OF HEALTH AND HUMAN SERVICES  
LANSING

ELIZABETH HERTEL  
DIRECTOR

September 27, 2021

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-05-20-00058

Dear Ms. Fulcher:

Enclosed is the Michigan Department of Health and Human Services response to the draft report entitled "*Michigan Did Not Report Calendar Year 2019 Medicaid Third-Party Liability Cost Avoidance Data to the Centers for Medicare & Medicaid Services.*"

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) 373-1508.

Sincerely,

*Elizabeth Hertel*

Elizabeth Hertel

EH:wb

Enclosure

cc: Farah Hanley  
Kate Massey  
Pam Myers  
Brian Keisling

Michigan Department of Health and Human Services (MDHHS)  
Report A-05-20-00058  
*Michigan Did Not Report Calendar Year 2019 Medicaid Third-Party Liability Cost  
Avoidance Data to the Centers for Medicare & Medicaid Services*

**HHS OIG Recommendation**

This report contains no recommendations.

**MDHHS Response**

MDHHS agrees with the recommendation since all issues have already been resolved.

The original error was already corrected, and the full amount was reported on the CMS-64 for the third quarter of FFY 2020.

In addition, business process steps were already added to validate and ensure the accuracy of the TPL cost avoidance reporting for any future CMS-64 quarterly reporting.