



Office of Audit Services  
1100 Commerce, Room 632  
Dallas, Texas 75242

April 25, 2006

Report Number: A-06-05-00041

Mr. David Balland  
Associate Commissioner, Medicaid/CHIP  
Texas Health and Human Services Commission  
4900 N. Lamar Blvd.  
Mail Code H-100  
Austin, Texas 78751

Dear Mr. Balland:

Enclosed are two copies of the U.S. Department of Health and Human Services (HHS), Office of Inspector General (OIG), final report entitled "Review of Texas's Accounts Receivable System for Medicaid Provider Overpayments." A copy of this report will be forwarded to the action official noted on the next 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 the HHS action 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.

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Please refer to report number A-06-05-00041 in all correspondence relating to this report.

Sincerely yours,

A handwritten signature in black ink that reads "Gordon L. Sato".

Gordon L. Sato  
Regional Inspector General  
for Audit Services

Enclosures

Page 2 – Mr. David Balland

cc:

David Griffith, Internal Audit Director

Mail Code: BH 1600

Texas Health and Human Services Commission

4900 North Lamar Blvd.

Austin, Texas 78751

**Direct Reply to HHS Action Official:**

James R. Farris, M.D.

Regional Administrator

Centers for Medicare & Medicaid Services

1301 Young Street, Suite 714

Dallas, Texas 75202

Department of Health and Human Services

**OFFICE OF  
INSPECTOR GENERAL**

**REVIEW OF TEXAS'S ACCOUNTS  
RECEIVABLE SYSTEM FOR  
MEDICAID PROVIDER  
OVERPAYMENTS**



Daniel R. Levinson  
Inspector General

April 2006  
A-06-05-00041

# ***Office of Inspector General***

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## **OAS FINDINGS AND OPINIONS**

The designation of financial or management practices as questionable or a recommendation for the disallowance of costs incurred or claimed, as well as other conclusions and recommendations in this report, represent the findings and opinions of the HHS/OIG/OAS. Authorized officials of the HHS divisions will make final determination on these matters.



## **EXECUTIVE SUMMARY**

### **BACKGROUND**

The Centers for Medicare & Medicaid Services (CMS) requested that we review Texas's (the State) accounts receivable system for Medicaid provider overpayments. An overpayment is a payment to a provider in excess of the allowable amount.

Section 1903(d)(2) of the Social Security Act (the Act), as amended by section 9512 of the Consolidated Omnibus Budget Reconciliation Act of 1985, is the principal authority that CMS cites in requiring States to refund the Federal share of overpayments made to providers.

The Act allows a State 60 days from the date of discovery of an overpayment to recover or attempt to recover the overpayment from a provider before the State must refund the Federal share of the overpayment, whether or not it recovers the overpayment from the provider. The implementing Federal regulations require States to refund the Federal share of overpayments on the Quarterly Medicaid Statement of Expenditures for the Medical Assistance Program, Form CMS-64 report (CMS-64) as an offset to expenditures for the quarter in which the 60-day period ends. We defined this offset as an overpayment adjustment.

The Act also states that the Federal share of a Medicaid overpayment does not have to be repaid to the Federal Government if the State is unable to recover the overpayment because the debt has been discharged in bankruptcy or is otherwise uncollectible. Federal regulations provide that if the State has reported an overpayment and subsequently determines that the provider is bankrupt or out of business, the State may reclaim the overpayment on the CMS-64. We defined these types of transactions as reclaiming adjustments.

The Health and Human Services Commission (the State agency) administers the Medicaid program in Texas. The Texas Medicaid and Healthcare Partnership (TMHP) is the fiscal agent for the State Medicaid program.

For the audit period January 1 through December 31, 2004, the State reported approximately \$17.1 million (\$10.4 million Federal share) in overpayment adjustments.

### **OBJECTIVE**

Our objective was to determine whether the State reported Medicaid provider overpayment adjustments and reclaiming adjustments in accordance with Federal requirements.

### **SUMMARY OF FINDINGS**

The State did not report 48 overpayment adjustments totaling approximately \$1.91 million (approximately \$1.21 million Federal share) on its CMS-64s for the quarters in which the 60-

day discovery periods ended in accordance with Federal requirements. This resulted in potentially higher interest expense to the Federal Government of approximately \$19,964.<sup>1</sup>

The untimely overpayment adjustments occurred because the State did not have reconciliation procedures in place to verify that all reportable Medicaid provider overpayments were included on its CMS-64s within the required timeframe. However, the State and TMHP instituted weekly reconciliations in April 2005 to ensure that TMHP includes all reportable provider overpayment adjustments in its weekly reports, and subsequently that the State includes all its overpayment adjustments on its CMS-64s.

The State also did not have written policies and procedures in place to ensure compliance with Federal requirements related to submitting reclaiming adjustments. Even though the State had not submitted any material reclaiming adjustments, the lack of written procedures could result in the State seeking reclaiming adjustments to which it is not entitled under Federal requirements.

## **RECOMMENDATIONS**

We recommend that the State:

- continue its reconciliation procedures to ensure that future overpayments are reported timely on the CMS-64s in accordance with Federal criteria, thereby mitigating the potentially higher interest expense to the Federal Government; and
- verify that the written policies and procedures that it is currently developing ensure that future reclaiming adjustments are reported in accordance with Federal requirements.

## **STATE COMMENTS**

In its comments on our draft report, the State agreed with the findings and recommendations. The State's comments are included in their entirety as an appendix.

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<sup>1</sup>We calculated the interest expense using the applicable daily interest rate per the Cash Management Improvement Act of 1990.

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STATE’S COMMENTS

# INTRODUCTION

## BACKGROUND

The Centers for Medicare & Medicaid Services (CMS) requested that we review Texas's (the State) accounts receivable system for Medicaid provider overpayments. An overpayment is a payment to a provider in excess of the allowable amount.

### Medicaid Program

Enacted in 1965, Medicaid is a combined Federal and State entitlement program that provides health care and long-term care for certain individuals and families with low incomes and limited resources. Within a broad legal framework, each State designs and administers its Medicaid program in accordance with a State plan approved by CMS, which is responsible for the program at the Federal level. The Federal Government has established a financing formula to calculate the Federal share of the medical assistance expenditures paid under each State's Medicaid program. In Texas, the Health and Human Services Commission (the State agency) administers the Medicaid program. The Texas Medicaid and Healthcare Partnership (TMHP) is the fiscal agent for the State Medicaid program.

### Medicaid Overpayments

Section 1903(d)(2) of the Social Security Act (the Act), as amended by section 9512 of the Consolidated Omnibus Budget Reconciliation Act of 1985, is the principal authority that CMS cites in requiring States to refund the Federal share of overpayments to providers. Section 1903(d)(2)(A) states:

The Secretary shall then pay to the State, in such installments as he may determine, the amount so estimated, reduced or increased to the extent of any overpayment or underpayment which the Secretary determines was made under this section to such State for any prior quarter and with respect to which adjustment has not already been made under this subsection.

The Act allows a State 60 days from the date of discovery of an overpayment to recover or attempt to recover the overpayment from a provider before the State must refund the Federal share of the overpayment, whether or not it recovers the overpayment from the provider. The implementing Federal regulations require States to refund the Federal share of overpayments on the Quarterly Medicaid Statement of Expenditures for the Medical Assistance Program, Form CMS-64 report (CMS-64) as an offset to expenditures for the quarter in which the 60-day period ends. We defined this offset as an overpayment adjustment.

For overpayments resulting from situations other than fraud and abuse, and other than those that are identified through Federal reviews, Federal regulations (42 CFR § 433.316) define the discovery date as the earliest of the following dates: (1) the date 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) the date a provider initially acknowledges a specific overpayment amount in writing to the Medicaid agency; or (3) the date any State official initiates a formal action to recoup a specific overpaid amount from a provider without having first notified the provider in writing. An overpayment that results from fraud or abuse is discovered on the date of the final written notice of the State's overpayment determination that a Medicaid agency official or other State official sends to the provider. Finally, for overpayments identified through Federal reviews, CMS considers the overpayment as discovered on the date that the Federal official first notifies the State in writing of the overpayment and specifies a dollar amount subject to recovery.

Under certain circumstances, States are not required to refund the Federal share of overpayments made to providers. Regulations regarding these exceptions are found in 42 CFR §§ 433.318 and 433.320 and in section 1903(d)(2)(D) of the Act, which states:

In any case where the State is unable to recover a debt which represents an overpayment (or any portion thereof) made to a person or other entity on account of such debt having been discharged in bankruptcy or otherwise being uncollectible, no adjustment shall be made in the Federal payment to such State on account of such overpayment (or portion thereof).

Furthermore, the State may reclaim the Federal share of unrecovered overpayment amounts previously refunded to CMS if the State submits documentation showing that it has made reasonable efforts to recover the overpayments. For the purpose of this review, we are calling these types of transactions reclaiming adjustments.

## **OBJECTIVE, SCOPE, AND METHODOLOGY**

### **Objective**

Our objective was to determine whether the State reported Medicaid provider overpayment adjustments and reclaiming adjustments in accordance with Federal requirements.

### **Scope**

We examined overpayment adjustments that were subject to the requirements of 42 CFR part 433 subpart F reported on the quarterly CMS-64s for the period January 1 through December 31, 2004. We did not review overpayments related to third-party payments, probate collections, unallowable costs recovered through per diem rate adjustments, or administrative costs because these overpayments are not subject to 42 CFR part 433 subpart F.

Specifically, we selected 100 provider overpayments, the 25 largest overpayment amounts from each quarter, for testing to determine whether the State reported overpayment adjustments on the CMS-64s on time. In addition, State officials disclosed during our audit that they had previously identified 48 overpayments that were not reported timely. We reviewed these overpayments as well, 7 of which were included in our selection of 100 overpayments.

Based on our limited testing of State accounting records and statements by agency officials, the State did not report any material reclaiming adjustments for overpayments reportable during our audit period. Therefore, we limited our review of reclaiming adjustments to gaining an understanding of the State’s policies and procedures for handling such adjustments.

We did not review the overall internal control structure of the State agency’s operations or its financial management. However, we gained an understanding of its controls with respect to processing overpayment and reclaiming adjustments, and for recording and reporting accounts receivable.

We performed our fieldwork at the State agency in Austin, TX.

## **Methodology**

To accomplish our audit objective, we:

- reviewed applicable Federal criteria, including section 1903 of the Act, 42 CFR part 433, and applicable sections of the “State Medicaid Manual”;
- interviewed State, State agency, and TMHP officials and staff;
- gained an understanding of the State’s procedures for processing overpayment and reclaiming adjustments, and for recording and reporting accounts receivable;
- obtained listings from the State that included 165,944 overpayments, totaling \$441 million, prior to recoupments, that we could determine had dates of discovery that would require reporting the overpayments during our audit period;
- analyzed CMS-64s along with supporting documentation pertaining to reporting Medicaid provider overpayment adjustments;
- selected 100 overpayments from the above listing – the 25 largest overpayment amounts reportable from each quarter;
- reviewed State accounts receivable records to identify the dates the State reported the 100 overpayments and those overpayments previously identified by the State, compared the dates to the dates the providers were notified, and determined whether the overpayments were reported timely;
- calculated, using the number of days between the actual and required reporting dates, the potentially higher interest expense to the Federal Government for those overpayments that were not reported within the required period;<sup>1</sup> and

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<sup>1</sup>We calculated the interest expense using the applicable daily interest rate per the Cash Management Improvement Act of 1990.

- performed limited testing of State accounting records related to reclaiming adjustments.

We conducted this review in accordance with generally accepted government auditing standards.

## **FINDINGS AND RECOMMENDATIONS**

The State did not report 48 overpayment adjustments totaling approximately \$1.91 million (approximately \$1.21 million Federal share) on its CMS-64s for the quarters in which the 60-day discovery periods ended in accordance with Federal requirements. This resulted in potentially higher interest expense to the Federal Government of approximately \$19,964. The untimely overpayment adjustments occurred because the State did not have reconciliation procedures in place to verify that it included all reportable Medicaid provider overpayments on its CMS-64s within the required timeframe.

However, the State and TMHP instituted weekly reconciliations in April 2005 to ensure that TMHP includes all reportable provider overpayment adjustments in its weekly reports, and subsequently that the State includes all its overpayment adjustments on its CMS-64s.

The State also did not have written policies and procedures in place to ensure compliance with Federal requirements related to submitting reclaiming adjustments. Even though the State had not submitted any material reclaiming adjustments, the lack of written procedures could result in the State seeking reclaiming adjustments to which it is not entitled under Federal requirements. According to a State official, the contractor that preceded TMHP processed the Medicaid claims for the State under an arrangement in which the contractor bore the risk of loss if it overpaid providers. Therefore, according to this official, under that arrangement the State did not need to have policies and procedures in place regarding provider overpayments. The State is currently developing policies and procedures to ensure that it submits reclaiming adjustments for out-of-business and bankrupt providers in accordance with Federal requirements.

### **OVERPAYMENTS NOT REPORTED TIMELY**

#### **Federal Requirements**

Pursuant to 42 CFR §§ 433.312, 433.316, and 433.320, a State has 60 calendar days from the date a provider overpayment is discovered to recover or seek to recover the overpayment before refunding the Federal share to CMS.

The State must refund the Federal share of overpayments, whether or not the State has recovered the overpayment from the provider. The State must credit the Federal share of overpayments subject to recovery on the CMS-64 submitted for the quarter in which the 60-day period following discovery ends.

## **Overpayments Reported After 60 Days**

The State did not report 48 overpayment adjustments on the CMS-64s for the quarters in which the 60-day discovery periods ended in accordance with Federal requirements. The time that the State posted these 48 overpayments beyond the quarter in which the 60-day period following discovery ended ranged from 180 to 360 days.

The State reported these overpayments late because:

- A computer coding error caused TMHP to omit 35 reportable provider overpayment adjustments from the weekly reports it submitted to the State for preparation of the State's CMS-64s for the quarters ended June 30 and September 30, 2004.
- A clerical error caused the State agency to omit 13 overpayment adjustments from the agency's CMS-64 for the quarter ended March 31, 2004.

According to a State official, TMHP corrected the computer coding error in September 2004. In addition, TMHP and the State agency performed a reconciliation of calendar year 2004 data during December 2004, at which time they discovered that they had understated provider overpayment adjustments for the respective quarters noted above. This was the first reconciliation of provider overpayments since TMHP became the fiscal agent. By the time TMHP identified the specific provider overpayment adjustments omitted by both parties, the State had already submitted its CMS-64 for the quarter ended December 31, 2004. Therefore, the State reported these overpayment adjustments on its CMS-64 for the quarter ended March 31, 2005.

## **Potentially Higher Interest Expense**

The State did not report 48 overpayment adjustments totaling approximately \$1.91 million (approximately \$1.21 million Federal share) on its CMS-64s for the quarters in which the 60-day discovery periods ended in accordance with Federal requirements. This resulted in potentially higher interest expense to the Federal Government of approximately \$19,964.

## **Reconciliation Procedures Not In Place**

The untimely overpayment adjustments occurred because the State did not have reconciliation procedures in place to verify that it included all reportable Medicaid provider overpayment adjustments on its CMS-64s within the required timeframe. However, the State and TMHP instituted weekly reconciliations in April 2005 to ensure that TMHP includes all reportable provider overpayment adjustments in its weekly reports, and subsequently that the State includes all its overpayment adjustments on its CMS-64s.

## **WRITTEN POLICIES AND PROCEDURES NOT IN PLACE FOR RECLAIMING ADJUSTMENTS**

### **Federal Requirements**

Under certain circumstances, States are not required to refund the Federal share of overpayments made to providers. Regulations regarding these exceptions are found in 42 CFR §§ 433.318 and 433.320 and in section 1903(d)(2)(D) of the Act, which states:

In any case where the State is unable to recover a debt which represents an overpayment (or any portion thereof) made to a person or other entity on account of such debt having been discharged in bankruptcy or otherwise being uncollectible, no adjustment shall be made in the Federal payment to such State on account of such overpayment (or portion thereof).

Supplementary Information from 42 CFR part 433, for purposes of the regulations noted above, defines otherwise uncollectible debts as debts of providers that are “out of business.” Although a State may reclaim the Federal share of unrecovered overpayment amounts previously refunded to CMS, it may do so only if the State submits documentation showing it has made reasonable efforts to recover such overpayments (42 CFR § 433.320 (g)).

### **Written Policies and Procedures Not In Place**

Even though the State had not submitted any material reclaiming adjustments, it did not have written policies and procedures in place to ensure compliance with Federal requirements related to submitting reclaiming adjustments.

### **Prior Contractor Bore Risk Associated With Overpayments**

According to a State official, the contractor that preceded TMHP processed the Medicaid claims for the State under an arrangement in which the contractor bore the risk of loss if it overpaid providers. Therefore, according to this official, under that arrangement the State did not need to have policies and procedures in place regarding provider overpayments.

When TMHP became the State’s fiscal agent, as of January 1, 2004, the State then had a vested interest<sup>2</sup> regarding providers that were overpaid, including those that declared bankruptcy or went out of business.

The State is currently developing policies and procedures to ensure that it submits reclaiming adjustments for out-of-business and bankrupt providers in accordance with Federal requirements.

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<sup>2</sup> Under a fiscal agent arrangement, the contractor is responsible for paying claims and the State is responsible for covering the costs of the claims.

## **State Could Seek Reclaiming Adjustments to Which it Is Not Entitled**

The lack of written policies and procedures for reclaiming adjustments could result in the State seeking reclaiming adjustments to which it is not entitled under Federal requirements.

### **RECOMMENDATIONS**

We recommend that the State:

- continue its reconciliation procedures to ensure that future overpayments are reported timely on the CMS-64s in accordance with Federal criteria, thereby mitigating the potentially higher interest expense to the Federal Government; and
- verify that the written policies and procedures that it is currently developing ensure that future reclaiming adjustments are reported in accordance with Federal requirements.

### **STATE COMMENTS**

The State agreed with our findings and recommendations. The State responded that it plans to continue reconciliation procedures to ensure that all overpayments are reported timely on the CMS-64 in accordance with Federal requirements. Additionally, the State plans to review and revise policies and procedures relating to Medicaid overpayment reclaiming adjustments to ensure that reclaiming adjustments are reported in accordance with Federal requirements. The State's comments are included in their entirety as an appendix.

## **APPENDIX**



## TEXAS HEALTH AND HUMAN SERVICES COMMISSION

ALBERT HAWKINS  
EXECUTIVE COMMISSIONER

April 21, 2006

Mr. Gordon L. Sato  
Regional Inspector General for Audit Services  
Office of Inspector General, Office of Audit Services  
1100 Commerce, Room 632  
Dallas, Texas 75242

Reference Report Number A-06-05-00041

Dear Mr. Sato:

The Texas Health and Human Services Commission (HHSC) received a draft audit report entitled, "Review of Texas' Accounts Receivable System for Medicaid Provider Overpayments for the Audit Period January 1, 2004 through December 31, 2004" from the Department of Health and Human Services Office of Inspector General. The cover letter, dated March 22, 2006, requested that HHSC provide written comments, including the status of actions taken or contemplated in response to the report recommendations.

The report identified two recommendations for the Health and Human Services Commission (HHSC) to consider regarding the accounting for overpayments due from Medicaid providers. This management response includes comments related to these recommendations and details related actions HHSC has taken or planned.

**DHHS/OIG Recommendation:** *We recommend that the State continue its reconciliation procedures to ensure that future overpayments are reported timely on the CMS-64s in accordance with Federal criteria, thereby mitigating the potentially higher interest expense to the Federal Government.*

**Actions Planned:** HHSC and the Texas Medicaid Claims Administrator will continue reconciliation procedures to ensure that all overpayments are reported timely on the CMS-64 in accordance with federal requirements.

Mr. Gordon L. Sato  
April 21, 2006  
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**HHSC Management Response**

HHSC is continuing to work with the Texas Medicaid Claims Administrator to improve business practices that support federal reporting requirements for reclaiming adjustments.

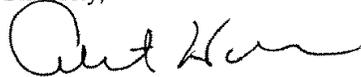
**Actions Planned:** Review and revise policies and procedures relating to Medicaid overpayment reclaiming adjustments to ensure that reclaiming adjustments are reported in accordance with Federal requirements.

**Estimated Completion Date:** January 1, 2007

**Title of Responsible Person:** Clarice Cefai, MCD-TMHP Operations Oversight

If you have any questions or require additional information, please contact David M. Griffith, CPA, CIA, Internal Audit Director. Mr. Griffith may be reached by telephone at (512) 424-6998 or by email at [David.Griffith@hhsc.state.tx.us](mailto:David.Griffith@hhsc.state.tx.us).

Sincerely,



Albert Hawkins

bcc: Charles E. Bell  
Thomas M. Suehs  
Chris Traylor  
Dave Balland  
David Griffith