



DEPARTMENT OF HEALTH AND HUMAN SERVICES

OFFICE OF INSPECTOR GENERAL

WASHINGTON, DC 20201



June 22, 2012

TO: Marilyn Tavenner
Acting Administrator
Centers for Medicare & Medicaid Services

FROM: /Daniel R. Levinson/
Inspector General

SUBJECT: States Inappropriately Retained Federal Funds for Medicaid Collections for the First Recovery Act Quarter (A-06-11-00064)

The attached final report provides the results of our review of the States' calculation of the Federal share of Medicaid collections for the first quarter that the American Recovery and Reinvestment Act of 2009 was effective.

Section 8L of the Inspector General Act, 5 U.S.C. App., requires that the Office of Inspector General (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 your staff may contact Brian P. Ritchie, Assistant Inspector General for the Centers for Medicare & Medicaid Audits, at (410) 786-7104 or through email at Brian.Ritchie@oig.hhs.gov. We look forward to receiving your final management decision within 6 months. Please refer to report number A-06-11-00064 in all correspondence.

Attachment

Department of Health and Human Services

**OFFICE OF
INSPECTOR GENERAL**

**STATES INAPPROPRIATELY RETAINED
FEDERAL FUNDS FOR MEDICAID
COLLECTIONS FOR THE FIRST RECOVERY
ACT QUARTER**



Daniel R. Levinson
Inspector General

June 2012
A-06-11-00064

Office of Inspector General

<http://oig.hhs.gov>

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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.

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

The American Recovery and Reinvestment Act of 2009 (the Recovery Act) temporarily increased the percentage of State Medicaid expenditures paid by the Federal Government. Although the Recovery Act was passed February 17, 2009, it was retroactive to the quarter ended December 31, 2008 (first Recovery Act quarter). The Centers for Medicare & Medicaid Services (CMS) retroactively provided additional Federal funds for the first Recovery Act quarter by applying the increased percentage to expenditures each State had already submitted; however, CMS did not include collections, which reduce a State's expenditures, in that calculation. While reviewing one State's collections, we noticed that the increased percentage was not applied for that first Recovery Act quarter. As a result, the Federal Government paid more money to the State than it should have. Because of the Recovery Act's retroactive effective date, we decided to review the Federal percentages each State applied to its collections and the States' methodologies for calculating the Federal portion of those collections.

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 administer and fund the Medicaid program. At the Federal level, CMS administers the program. Each State administers its Medicaid program in accordance with a CMS-approved State plan.

Pursuant to sections 1903(a)(1) and 1905(b) of the Act, the Federal Government pays its share of a State's medical assistance costs under Medicaid based on the Federal medical assistance percentage (FMAP), which varies depending on the State's relative per capita income. Although FMAPs are adjusted annually for economic changes in the States, Congress may increase FMAPs at any time. The Recovery Act provided additional Federal funding based on temporary increases in States' FMAPs. Additionally, the Act establishes higher, fixed-reimbursement percentages for certain medical assistance services (e.g., family planning).

States report Medicaid expenditures and the associated Federal share on the Form CMS-64, Quarterly Medicaid Statement of Expenditures for the Medical Assistance Program (CMS-64 report). The CMS-64 report shows the disposition of Medicaid funds used to pay for medical and administrative expenditures for the quarter being reported and any prior-period adjustments.

To account for overpayments recovered, refunds, and similar receipts, States report collections on the CMS-64 report. States refund the Federal share of collections, which decreases the amount of Federal funding States receive for the quarter. If the Federal share of collections is underreported, the Federal payment for the quarter will be higher than it should be. Conversely, overreporting the Federal share of collections results in a lower Federal payment for the quarter.

OBJECTIVES

Our objectives were to determine whether States and the District of Columbia (States) (1) appropriately recalculated the Federal share of collections for the quarter ended December 31, 2008, using the Recovery Act FMAP and (2) identified the FMAPs used to calculate amounts that they originally had received for collections.

SUMMARY OF FINDINGS

Of the \$1,365,247,114 in total collections reported for the quarter ended December 31, 2008, the Federal shares of \$1,072,543,230 in collections either were recalculated using the Recovery Act FMAP or did not need to be recalculated because they were related to expenditures reimbursed at FMAPs for previous quarters. Thirty-five States did not appropriately recalculate the Federal share for the remaining \$292,703,884 in collections using the Recovery Act FMAP. As a result, they retained \$25,012,996 in increased Recovery Act funding. When CMS calculated the additional Federal funding for the first Recovery Act quarter, it did not include collections in that calculation. A CMS official stated that recalculating the Federal share of collections using the Recovery Act FMAP was the States' responsibility.

Forty-four States did not always identify the FMAPs used to calculate amounts that they originally had received for collections. Twenty-six States never identified the original FMAPs, and 18 States used a combination of the reporting quarter's FMAP and the original FMAPs. States cited minimal variation in FMAPs over time and difficulties identifying the original FMAPs as reasons. States that did not identify the FMAPs used to calculate amounts that they originally had received calculated the Federal share of collections using the FMAP in effect for the reporting quarter. States that used the reporting quarter's FMAP to calculate the Federal share of collections might not have returned the same amount of money as the Federal Government paid for the expenditures. This could be a particular problem for services that qualify for higher, fixed-reimbursement percentages.

RECOMMENDATIONS

We recommend that CMS:

- recoup the \$25,012,996 (Federal share) from the 35 States,
- review States' Federal share calculations for collections reported in subsequent Recovery Act quarters and recoup any overpayments related to the Recovery Act FMAPs, and
- emphasize that States should calculate the Federal share of collections for which they originally received amounts calculated at higher, fixed-reimbursement percentages using those same percentages.

CENTERS FOR MEDICARE & MEDICAID SERVICES COMMENTS

In written comments on our draft report, CMS concurred with our recommendations. CMS's comments appear in their entirety as Appendix D.

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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 administer and fund 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.

Pursuant to sections 1903(a)(1) and 1905(b) of the Act, the Federal Government pays its share of a State's medical assistance costs under Medicaid based on the Federal medical assistance percentage (FMAP), which varies depending on the State's relative per capita income. States with a lower per capita income relative to the national average are reimbursed a greater share of their costs. States with a higher per capita income are reimbursed a lesser share. By law, the FMAPs cannot be lower than 50 percent. For the quarter ended December 31, 2008, the FMAPs ranged from 50 to 75.84 percent. Although FMAPs are adjusted annually for economic changes in the States, Congress may increase FMAPs at any time.

Quarterly Medicaid Statement of Expenditures for the Medical Assistance Program

States report Medicaid expenditures and the associated Federal share on the Form CMS-64, Quarterly Medicaid Statement of Expenditures for the Medical Assistance Program (CMS-64 report). The CMS-64 report shows the disposition of Medicaid funds used to pay for medical and administrative expenditures for the quarter being reported and any prior-period adjustments. The amount claimed on the CMS-64 report is a summation of expenditures derived from source documents, such as claims, invoices, cost reports, and eligibility records.

To account for overpayments recovered, refunds, and similar receipts, States also report collections on the CMS-64 report. Collections include funds the State has recovered from other parties responsible for a beneficiary's health care costs, the estates of deceased Medicaid beneficiaries, and funds collected as a result of States' program integrity efforts. States refund the Federal share of collections, which decreases the amount of Federal funding States receive for the quarter. If the Federal share of collections is underreported, the Federal payment for the quarter will be higher than it should be. Conversely, overreporting the Federal share of collections results in a lower Federal payment for the quarter.

American Recovery and Reinvestment Act of 2009

The American Recovery and Reinvestment Act of 2009 (Recovery Act), P.L. No. 111-5, enacted February 17, 2009, but retroactive to the quarter ended December 31, 2008 (first Recovery Act quarter), provided fiscal relief to States to protect and maintain State Medicaid programs in a

period of economic downturn. For the recession adjustment period (October 1, 2008, through December 31, 2010), the Recovery Act provided additional Medicaid funding based on temporary increases in States' FMAPs.¹ According to section 5000 of the Recovery Act, Congress provided for these increases to help avert cuts in health care payment rates, benefits, or services and to prevent changes to income eligibility requirements that would reduce the number of individuals eligible for Medicaid. With the Recovery Act increases, the FMAPs for the first Recovery Act quarter ranged from 56.20 to 83.62 percent. (See Appendix A for States' regular FMAPs, Recovery Act FMAPs, and percentage increases to the regular FMAP for the first Recovery Act quarter.)

OBJECTIVES, SCOPE, AND METHODOLOGY

Objectives

Our objectives were to determine whether States and the District of Columbia (States) (1) appropriately recalculated the Federal share of collections for the quarter ended December 31, 2008, using the Recovery Act FMAP and (2) identified the FMAPs used to calculate amounts that they originally had received for collections.

Scope

Our review covered \$1,365,247,114 (\$828,317,439 Federal share) in collections reported on the CMS-64 report for the quarter ended December 31, 2008.

We limited our review to documentation supporting the FMAPs and methodologies the States used to calculate the Federal share of collections. We did not review the collections for completeness and accuracy. Our objectives did not require a review of States' overall internal control structures.

Methodology

To accomplish our objectives, we:

- reviewed applicable Federal laws, regulations, and policies;
- interviewed CMS officials to obtain an understanding of the requirements for reporting collections on the CMS-64 report;
- used an information request to the States to obtain supporting documentation for the CMS-64 report and answers to questions regarding the reporting of collections;
- reviewed the States' methodologies for identifying the FMAPs used to calculate the Federal share of collections;

¹ The Education, Jobs, and Medicaid Assistance Act (P.L. No. 111-226, section 201) extended the recession adjustment period for the increased FMAP through June 30, 2011.

- reviewed the supporting documentation to identify collections with Federal shares calculated using the reporting quarter’s regular FMAP and calculated the amount that should be refunded to CMS as the difference between the increased Recovery Act FMAP and the regular FMAP;² and
- discussed our results with CMS.

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.

FINDINGS AND RECOMMENDATIONS

Of the \$1,365,247,114 in total collections reported for the quarter ended December 31, 2008, the Federal shares of \$1,072,543,230 in collections either were recalculated using the Recovery Act FMAP or did not need to be recalculated because they were related to expenditures reimbursed at FMAPs for previous quarters. Thirty-five States did not appropriately recalculate the Federal share for the remaining \$292,703,884 in collections using the Recovery Act FMAP. As a result, they retained \$25,012,996 in increased Recovery Act funding.

Seven States identified the FMAPs used to calculate amounts that they originally had received for collections. Of the remaining 44 States, 18 States sometimes identified the original FMAPs, and 26 States never identified the original FMAPs. When the States did not identify the original FMAPs, they calculated the Federal share of collections using the FMAP for the reporting quarter.

FEDERAL REQUIREMENTS FOR REFUNDING THE FEDERAL SHARE OF COLLECTIONS

Pursuant to section 1903(a)(1) of the Act, CMS reimburses each State at the FMAP for the quarter in which the expenditure was made. When a State recovers a prior expenditure, it refunds the Federal share by reporting the recovery on the CMS-64 report at the FMAP used to calculate the amount it originally had received. The CMS *State Medicaid Manual* (the manual), section 2500.6(B), instructs States to:

... determine the date or period of the expenditure for which the refund is made to establish the FMAP at which the original expenditure was matched by the Federal government. Make refunds of the Federal share at the FMAP for which you were reimbursed. When recoveries cannot be related to a specific period, compute the Federal share at the FMAP rate in effect at the time the refund was received.

² States used the reporting quarter’s FMAP to calculate the Federal share of collections because they were reimbursed for the original expenditures in the reporting quarter or because they did not relate the collections to a specific quarter.

Make adjustments to prior periods in subsequent [CMS-64] forms to reflect the correct FMAP rate.

When a State cannot, for some reason, relate the recovery to a specific time period (e.g., because the State does not operate a recordkeeping system that documents the original FMAP), the State computes the Federal share at the FMAP in effect at the time the refund is collected and reported (the reporting quarter's FMAP).³

CMS published on its Web site a document titled *American Recovery and Reinvestment Act of 2009 Frequently Asked Questions from States* (the Recovery Act FAQ), which was dated almost 5 months after the Recovery Act was passed. The Recovery Act FAQ's question number 58 reinforced the guidance in the manual by instructing States to report collections at the FMAP that was in effect at the time the expenditure was made. The Recovery Act FAQ further stated that if a State claimed a Medicaid expenditure using the Recovery Act FMAP, any associated collections should be reported using the Recovery Act FMAP.

Under CMS's policies, States that reported collections on the CMS-64 report in the first Recovery Act quarter but could not document the original FMAP should calculate the refund at the increased Recovery Act FMAP in effect at the time the collection was reported. If a State could later document the original FMAP, it may report any difference through a prior-period adjustment on a subsequent CMS-64 report. A State that used the Recovery Act FMAP to calculate the Federal share of its expenditures would refund any collections related to those expenditures at the same Recovery Act FMAP. Additionally, the Act establishes higher, fixed-reimbursement percentages for certain medical assistance services (e.g., family planning).⁴ Because the fixed-reimbursement percentages do not relate to any specific period and are the same in every reporting quarter, States should refund the Federal share at the percentages set forth in the Act.

THIRTY-FIVE STATES DID NOT APPROPRIATELY RECALCULATE THE FEDERAL SHARE OF COLLECTIONS

Thirty-five States did not appropriately recalculate the Federal share for \$292,703,884 in collections using the Recovery Act FMAP. As a result, they retained \$25,012,996 in increased Recovery Act funding. (See Appendix B for the amount each State received.) Twenty-eight of the thirty-five States never attempted to use the Recovery Act FMAP. The remaining seven States attempted to use the Recovery Act FMAP but made errors in their recalculations.

CMS retroactively calculated the additional Federal funding for the first Recovery Act quarter by applying the increased FMAP to expenditures each State had already submitted on the CMS-64 report. However, CMS did not include collections in the calculation of additional Federal

³ The State must report the recovered amount on the CMS-64 report for the quarter in which the collection is made (section 2500.1 of the manual (instructions for the collection lines on the CMS-64 report)).

⁴ Section 1903(a) and 1905(b) of the Act set forth percentages the Federal Government pays for medical assistance and other costs incurred by State Medicaid programs. For example, section 1903(a)(5) provides that a State will receive 90 percent of the costs of family planning services and supplies. Section 1905(b) provides that States will be reimbursed for 100 percent of the costs of services furnished through an Indian Health Service facility.

funding for the first Recovery Act quarter. A CMS official stated that recalculating the Federal share of collections using the Recovery Act FMAP was the States' responsibility.

FORTY-FOUR STATES DID NOT ALWAYS IDENTIFY THE ORIGINAL FEDERAL MEDICAL ASSISTANCE PERCENTAGES

Only seven States identified the FMAPs used to calculate the amounts that they originally had received for collections. The remaining 44 States did not always identify the original FMAPs, citing in the responses to our information request reasons such as (1) a minimal variation in FMAPs over time, (2) the increased workload associated with identifying the original FMAPs, (3) incomplete information about the collections, and (4) limited computer system capabilities. When the States did not identify the FMAPs used to calculate the amounts that they originally had received, they calculated the Federal share of collections using the FMAP in effect for the reporting quarter.

The 44 States that did not always identify the original FMAPs calculated the Federal share of collections as follows:

- Twenty-six always used the FMAP in effect for the reporting quarter rather than identifying the original FMAPs.
- Eighteen used a combination of the FMAP in effect for the reporting quarter and the original FMAPs.

(See Appendix C for each State's methodology for calculating the Federal share of collections.)

States that used the reporting quarter's FMAP to calculate the Federal share of collections might not have returned the same amount of money as the Federal Government paid for the expenditures. This could be a particular problem for services that qualify for higher, fixed-reimbursement percentages. For example, if a State used the regular reporting quarter's FMAP to calculate the Federal share of family planning recoveries, then that State would not have returned the full 90 percent that the Federal Government paid.

RECOMMENDATIONS

We recommend that CMS:

- recoup the \$25,012,996 (Federal share) from the 35 States,
- review States' Federal share calculations for collections reported in subsequent Recovery Act quarters and recoup any overpayments related to the Recovery Act FMAPs, and
- emphasize that States should calculate the Federal share of collections for which they originally received amounts calculated at higher, fixed-reimbursement percentages using those same percentages.

CENTERS FOR MEDICARE & MEDICAID SERVICES COMMENTS

In written comments on our draft report, CMS concurred with our recommendations. Additionally, CMS indicated that the report does not address whether States made later adjustments to the reported collections to account for the application of the incorrect FMAP for the first Recovery Act quarter.

CMS's comments appear in their entirety as Appendix D.

OFFICE OF INSPECTOR GENERAL RESPONSE

Although we did not specifically note them in the report, we accounted for adjustments that States made through the quarter ended June 2010. Eight States adjusted the Federal share of collections reported for the first Recovery Act quarter, and the adjustments either partially or completely corrected the overpayments. We acknowledge that States may have made adjustments in quarters subsequent to June 2010 in response to our audit.

APPENDIXES

**APPENDIX A: STATE FEDERAL MEDICAL ASSISTANCE PERCENTAGES AND
RECOVERY ACT INCREASES**

State	Regular FMAP for the First Recovery Act Quarter	Increased Recovery Act FMAP	Increase
Alabama	67.98%	76.64%	8.66%
Alaska	50.53%	58.68%	8.15%
Arizona	65.77%	75.01%	9.24%
Arkansas	72.81%	79.14%	6.33%
California	50.00%	61.59%	11.59%
Colorado	50.00%	58.78%	8.78%
Connecticut	50.00%	60.19%	10.19%
Delaware	50.00%	60.19%	10.19%
District of Columbia	70.00%	77.68%	7.68%
Florida	55.40%	67.64%	12.24%
Georgia	64.49%	73.44%	8.95%
Hawaii	55.11%	66.13%	11.02%
Idaho	69.77%	78.37%	8.60%
Illinois	50.32%	60.48%	10.16%
Indiana	64.26%	73.23%	8.97%
Iowa	62.62%	68.82%	6.20%
Kansas	60.08%	66.28%	6.20%
Kentucky	70.13%	77.80%	7.67%
Louisiana	71.31%	80.01%	8.70%
Maine	64.41%	72.40%	7.99%
Maryland	50.00%	58.78%	8.78%
Massachusetts	50.00%	58.78%	8.78%
Michigan	60.27%	69.58%	9.31%
Minnesota	50.00%	60.19%	10.19%
Mississippi	75.84%	83.62%	7.78%
Missouri	63.19%	71.24%	8.05%
Montana	68.04%	76.29%	8.25%
Nebraska	59.54%	65.74%	6.20%
Nevada	50.00%	63.93%	13.93%
New Hampshire	50.00%	56.20%	6.20%
New Jersey	50.00%	58.78%	8.78%
New Mexico	70.88%	77.24%	6.36%
New York	50.00%	58.78%	8.78%
North Carolina	64.60%	73.55%	8.95%
North Dakota	63.15%	69.95%	6.80%
Ohio	62.14%	70.25%	8.11%

State	Regular FMAP for the First Recovery Act Quarter	Increased Recovery Act FMAP	Increase
Oklahoma	65.90%	74.94%	9.04%
Oregon	62.45%	71.58%	9.13%
Pennsylvania	54.52%	63.05%	8.53%
Rhode Island	52.59%	63.89%	11.30%
South Carolina	70.07%	78.55%	8.48%
South Dakota	62.55%	68.75%	6.20%
Tennessee	64.28%	73.25%	8.97%
Texas	59.44%	68.76%	9.32%
Utah	70.71%	77.83%	7.12%
Vermont	59.45%	67.71%	8.26%
Virginia	50.00%	58.78%	8.78%
Washington	50.94%	60.22%	9.28%
West Virginia	73.73%	80.45%	6.72%
Wisconsin	59.38%	65.58%	6.20%
Wyoming	50.00%	56.20%	6.20%

FMAP = Federal medical assistance percentage

**APPENDIX B: STATE COLLECTIONS NOT RECALCULATED USING THE
RECOVERY ACT FEDERAL MEDICAL ASSISTANCE PERCENTAGE**

State	Collections Not Recalculated Using the Recovery Act FMAP	Federal Share Overpayment
South Carolina	\$50,370,850	\$4,271,448
Louisiana	37,348,492	3,249,319
Oklahoma	31,055,762	2,807,441
Massachusetts	29,261,233	2,569,136
Pennsylvania	27,460,932	2,342,417
Maryland	19,698,862	1,729,560
Connecticut	12,533,971	1,277,212
Missouri	15,182,598	1,222,199
Oregon	11,060,099	1,009,787
Arkansas	14,293,640	897,085
Tennessee	6,473,707	580,691
Indiana	6,283,934	563,669
Colorado	4,650,729	408,334
Wisconsin	5,508,035	341,498
Mississippi	3,575,441	278,169
Maine	3,417,437	273,053
Kentucky	3,104,449	238,111
Georgia	2,571,806	230,177
Nevada	1,083,025	150,865
Wyoming	2,056,761	127,519
District of Columbia	1,546,592	118,778
New Jersey	1,287,903	113,078
New Mexico	1,596,339	100,862
Washington	389,386	36,135
Alaska	255,114	20,792
Vermont	228,772	18,897
New York	143,218	12,575
Alabama	143,154	10,991
Arizona	67,728	6,258
Hawaii	26,702	2,943
North Carolina	22,117	1,980

State	Collections Not Recalculated Using the Recovery Act FMAP	Federal Share Overpayment
Iowa ¹	0	1,513
Delaware	3,318	338
Texas	1,586	148
Michigan	192	18
Totals	\$292,703,884	\$25,012,996

¹ Iowa correctly identified the total collections that needed to be recalculated but, because of a formula error, applied a lower FMAP than the Recovery Act FMAP to one collection item, resulting in the \$1,513 overpayment.

**APPENDIX C: STATE METHODOLOGIES FOR CALCULATING
THE FEDERAL SHARE OF COLLECTIONS**

<p align="center">States That Used the Original FMAPs (7)</p>	<p align="center">States That Used the FMAP in Effect for the Reporting Quarter (26)</p>	<p align="center">States That Used a Combination of the FMAP in Effect for the Reporting Quarter and the Original FMAPs (18)</p>
<p align="center">Alabama Arizona Kentucky Nebraska South Dakota Virginia Wisconsin</p>	<p align="center">Alaska Arkansas California Delaware District of Columbia Florida Georgia Idaho Illinois Indiana Kansas Maine Massachusetts Minnesota Mississippi Nevada New Hampshire New Mexico Ohio Pennsylvania Rhode Island South Carolina Tennessee Utah Vermont West Virginia</p>	<p align="center">Colorado Connecticut Hawaii Iowa Louisiana Maryland Michigan Missouri Montana New Jersey New York North Carolina North Dakota Oklahoma Oregon Texas Washington Wyoming</p>

APPENDIX D: CENTERS FOR MEDICARE & MEDICAID SERVICES COMMENTS

DEPARTMENT OF HEALTH & HUMAN SERVICES

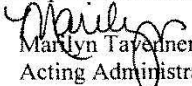
Centers for Medicare & Medicaid Services

Administrator

Washington, DC 20201

DATE: MAY 02 2012

TO: Daniel R. Levinson
Inspector General

FROM: 
Marilyn Tavel
Acting Administrator

SUBJECT: Office of Inspector General (OIG) Draft Report: "States Inappropriately Retained Federal Funds for Medicaid Collections for the First Recovery Act Quarter"
(A-06-11-00064)

Thank you for the opportunity to review and comment on the above-referenced report from OIG. The Centers for Medicare & Medicaid Services (CMS) appreciates the contributions and valuable input from OIG on the subject of this study. The report outlines concerns with the Federal Medical Assistance Percentage (FMAP) rates States applied to some of the collections reported in the first Recovery Act quarter (explained below). Specifically, the report identified \$292 million out of \$1.365 billion that were reported with an incorrect FMAP rate, resulting in the States under-refunding \$25 million in Federal funds. Although the American Recovery and Reinvestment Act (Recovery Act) of 2009 was enacted in February 2009, it was retroactive to the quarter ended December 31, 2008 (first Recovery Act quarter). CMS retroactively applied the Recovery Act FMAP rate to the current expenditures reported for the first Recovery Act quarter and asked the States to review their reports for application of the Recovery Act FMAP rate to other reported amounts (including collections) and recertify their reports. The OIG report does not address whether States made later adjustments to the reported collections to account for the application of the incorrect FMAP for the first Recovery Act quarter.

OIG Recommendation

Recoup the \$25,012,996 (Federal share) from the 35 States.

CMS Response

We concur. CMS will first determine if the States subsequently refunded the identified amounts and if not, will initiate recoupment.

OIG Recommendation

Review State's Federal share calculations for collections reported in subsequent Recovery Act quarters and recoup any overpayments related to the Recovery Act FMAPs.

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CMS Response

We concur. CMS will review State's reporting and initiate recoupment as warranted.

OIG Recommendation

CMS will emphasize that States should calculate the Federal share of collections for which they originally received amounts calculated at higher, fixed-reimbursement percentages using those same percentages.

CMS Response

We concur. During monthly regional office teleconference calls, CMS will urge regional staff to emphasize to States the importance of calculating the Federal share of collections for which they originally received amounts calculated at higher, fixed-reimbursement percentages using those same percentages.

Additional Technical Comments

It is possible that States may have made adjustments in later quarters to the amounts reported in the first Recovery Act quarter, due to the timing of the retroactive application of the Recovery Act FMAPs. In addition, States that had not previously implemented a provision to identify original FMAPs (due to minimal variation in FMAPs over time) may have implemented such a provision in response to the significant Recovery Act FMAP rates.

We appreciate the efforts that went into this report and look forward to working with OIG on this and other issues.