

Department of Health and Human Services

**OFFICE OF
INSPECTOR GENERAL**

**TEXAS DID NOT ALWAYS COMPLY
WITH FEDERAL AND STATE
REQUIREMENTS
FOR CLAIMS SUBMITTED FOR THE
NONEMERGENCY MEDICAL
TRANSPORTATION PROGRAM**

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Office of Inspector General

<http://oig.hhs.gov>

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EXECUTIVE SUMMARY

During fiscal year 2011, Texas claimed at least \$30.3 million for unallowable Federal Medicaid payments for nonemergency medical transportation services.

WHY WE DID THIS REVIEW

Federal regulations require each State to ensure that Medicaid beneficiaries have necessary transportation to and from medical providers. During Federal fiscal year (FY) 2011, the Texas Health and Human Services Commission (State agency) claimed \$135.6 million for payments to nonemergency medical transportation (NEMT) providers. Prior Office of Inspector General reviews have found that States' claims for NEMT services were not always in accordance with Federal and State requirements.

The objective of this review was to determine whether the State agency claimed Federal Medicaid reimbursement for NEMT services claims submitted by transportation providers in Texas in accordance with certain Federal and State requirements during FY 2011.

BACKGROUND

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 Medicaid 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.

Federal regulations require each State to ensure that Medicaid beneficiaries have transportation to and from medical providers and to describe in its State plan the methods that the State will use to meet this requirement. The regulations define transportation expenses as costs for transportation that the State deems necessary to secure medical examinations and treatment for beneficiaries.

HOW WE CONDUCTED THIS REVIEW

From the \$82.6 million that the State agency claimed for Federal reimbursement in FY 2011 for claims submitted by 3 providers, we reviewed a stratified random sample of 90 claims. We limited our review to claims for demand-response services, which are transportation services that use contractor-dispatched vehicles.

WHAT WE FOUND

During FY 2011, the State agency claimed Federal Medicaid reimbursement for some NEMT services claims submitted by transportation providers that did not comply with certain Federal and State requirements. Of the 90 NEMT claims in our sample, the State agency properly claimed Medicaid reimbursement for 20 claims. However, the remaining 70 claims contained

services that did not comply with certain Federal and State regulations. Of the 70 claims, 23 contained more than 1 deficiency:

- For 51 claims, the providers could not verify that the vehicle used for transportation on the date of service had current State registrations and inspections or could not identify the vehicle used for the transportation services.
- For 19 claims, providers transported children without a parent or legal guardian present.
- For 18 claims, transportation providers could not verify that they had completed Internet computerized criminal history file background checks, drug testing, and driver history checks on the drivers.
- For three claims, the beneficiary did not receive a Medicaid-covered health care service on the transportation date.
- For one claim, the beneficiary canceled the transportation request before receiving the service.
- For one claim, the provider could not provide documentation to support the NEMT services.

The claims for unallowable services were made because the State agency's policies and procedures for overseeing the Medicaid program did not ensure that providers complied with Federal and State requirements for documenting and claiming NEMT services.

On the basis of our sample results, we estimated that the State agency improperly claimed at least \$30,385,925 in Federal Medicaid reimbursement for 980,561 NEMT claims during FY 2011.

WHAT WE RECOMMEND

We recommend that the State agency (1) refund \$30,385,925 to the Federal Government and (2) strengthen its policies and procedures to ensure that providers:

- use vehicles that have current State registrations and inspections and be able to identify the vehicles used for the transportation services;
- do not transport children under the age of 15 without a parent or legal guardian present;
- complete driver requirements, including Internet computerized criminal history file background checks, drug testing, and driver history checks;
- provide transportation services only to beneficiaries receiving Medicaid-covered services;
- do not submit claims for canceled trips; and

- keep records that are necessary to document the services provided.

STATE AGENCY COMMENTS AND OUR RESPONSE

In written comments on our draft report, the State agency described actions that it has taken or will take to address our recommendations. For claims that we considered deficient, the State agency said it plans to continue working with the transportation providers to obtain additional support, which it will provide to CMS during the audit resolution process. In addition, the State agency did not agree with our finding that 19 claims were ineligible for transportation services because a minor was not accompanied by a parent, legal guardian, or authorized adult, but the State agency did not produce any documentation to support its statement. As a result, we maintain that the 19 claims were not eligible for reimbursement.

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INTRODUCTION

WHY WE DID THIS REVIEW

Federal regulations require each State to ensure that Medicaid beneficiaries have necessary transportation to and from medical providers (42 CFR § 431.53). During Federal fiscal year (FY) 2011, the Texas Health and Human Services Commission (State agency) claimed \$135.6 million for payments to nonemergency medical transportation (NEMT) providers. Prior Office of Inspector General reviews have found that States' claims for NEMT services were not always in accordance with Federal and State requirements. Appendix A lists Office of Inspector General reports related to NEMT.

OBJECTIVE

Our objective was to determine whether the State agency claimed Federal Medicaid reimbursement for NEMT services claims submitted by transportation providers in Texas in accordance with certain Federal and State requirements during FY 2011.

BACKGROUND

Medicaid Program

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 Medicaid 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.

Federal regulations require each State to ensure that Medicaid beneficiaries have transportation to and from medical providers and to describe in its State plan the methods that the State will use to meet this requirement (42 CFR § 431.53). Federal regulations define transportation expenses as costs for transportation that the State deems necessary to secure medical examinations and treatment for beneficiaries (42 CFR § 440.170(a)(1)).

Texas' Nonemergency Medical Transportation Program

In Texas, the State agency administers the NEMT program. This program provides transportation to eligible Medicaid beneficiaries and other eligible recipients. Participants are eligible to receive transportation when no other means of transportation is available and a medical necessity exists.

The State agency contracts with NEMT service providers for each of the 24 transportation service areas, which cover all of the State's 254 counties. The State agency receives requests for transportation and documents them in a travel manifest. Data elements recorded on the manifest include: the beneficiary's name, the pickup and destination addresses, and whether an attendant is authorized for the trip. Each day, providers download the approved travel manifests from the

State agency's automated system. The State agency's contracts with providers establish payments for each leg of a trip associated with the medical transportation service and include additional reimbursement for authorized attendants.¹

State Requirements

The NEMT program includes "reasonable transportation of a prior authorized [Medical Transportation Program] recipient to and/or from a prior authorized health care facility where health care needs will be met" (TAC § 380.203(1)). The NEMT program does not cover "transportation of individuals to services which are not covered by the applicable state or federal medical assistance program under which the recipient qualifies" (TAC § 380.209(3)).

The State plan requires that transportation providers that bill NEMT services as administrative services, which include each of the three providers in our review, comply with applicable Federal and State rules and regulations and fulfill all the terms of the transportation contract.² Transportation brokers that bill services as an optional medical service must also fulfill the terms of the transportation contract.³

The transportation contracts between the State agency and the providers require the providers to conduct criminal background checks on drivers before they begin providing transportation services and annually thereafter. Specifically, each contract requires an Internet computerized criminal history file background check. The checks are for felony and misdemeanor convictions for the 7 years before the hire date. The contracts also require providers to obtain and document annually each driver's history of moving violations and citations.

In addition, the contracts require providers to develop, implement, and maintain an annual inspection process to verify that all vehicles meet applicable Federal, State, and local ordinances. The providers must have procedures that at a minimum document and track annual vehicle registration and inspection. Subcontractors must meet the same requirements as the providers. Under the terms of the contract, providers assume responsibility for the performance of all subcontractors and are held solely responsible and accountable for the completion of all subcontracted work.

¹ An attendant is an adult or service animal that accompanies a priorly authorized beneficiary to provide necessary mobility, personal, or language assistance to the recipient while the transportation and health care services are provided (Texas Administrative Code (TAC), § 380.101(5)). Transportation for an attendant may be authorized if the health care provider documents the need, the recipient is a minor, or a language or other barrier to communication or mobility exists that necessitates such assistance (TAC § 380.203(3)).

² State Medicaid plan, Attachment 3.1-D, page 2.

³ State Medicaid plan, Attachment 3.1-B, page 62.

HOW WE CONDUCTED THIS REVIEW

We selected for review three providers with a high volume of claims for demand-response services.⁴ In total, the three providers submitted 1,332,474 claims totaling \$82.6 million in FY 2011. We reviewed a random sample of 90 claims. The 3 providers we reviewed serviced 10 of the 24 transportation service areas in the State. The \$82.6 million claimed by the three providers was 61 percent of the \$135.6 million claimed for demand-response services in FY 2011. For each claim, we obtained the travel manifest information from the State agency. We obtained and reviewed documentation from each transportation provider to determine whether the claim met certain Federal and State requirements.

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 contains details of our audit scope and methodology, Appendix C contains details on our statistical sampling methodology, Appendix D contains our sample results and estimates, Appendix E contains details on the Federal and State requirements related to NEMT, and Appendix F contains details on a summary of deficiencies for each sampled claim.

FINDINGS

During FY 2011, the State agency claimed Federal Medicaid reimbursement for some NEMT services claims submitted by transportation providers that did not comply with certain Federal and State requirements. Of the 90 NEMT claims in our random sample, the State agency properly claimed Medicaid reimbursement for 20 claims. However, the remaining 70 contained services that did not comply with Federal and State regulations. Of the 70 claims, 23 contained more than 1 deficiency:

- For 51 claims, the providers could not verify that the vehicle used for transportation on the date of service had a current State registration and inspection or could not identify the vehicle used for the transportation services.
- For 19 claims, providers transported children without a parent or legal guardian present.
- For 18 claims, transportation providers could not verify that they had completed Internet computerized criminal history file background checks, drug testing, and driver history checks on the drivers.
- For three claims, the beneficiary did not receive a Medicaid-covered health care service on the transportation date.

⁴ Demand-response claims are for transportation services that use contractor-dispatched vehicles in response to requests for individual or shared one-way trips (TAC § 380.101(12)).

- For one claim, the beneficiary canceled the transportation request before receiving the service.
- For one claim, the provider could not provide documentation to support the NEMT services.

The claims for unallowable services were made because the State agency’s policies and procedures for overseeing the Medicaid program did not ensure that providers complied with Federal and State requirements for documenting and claiming NEMT services. On the basis of our sample results, we estimated that the State agency improperly claimed at least \$30,385,925 in Federal Medicaid reimbursement for 980,561 NEMT claims during FY 2011.

THE STATE AGENCY CLAIMED FEDERAL REIMBURSEMENT FOR UNALLOWABLE CLAIMS

Vehicles Did Not Meet State Requirements for Registration and Inspection, or Vehicle Used Could Not Be Identified

Transportation providers that bill NEMT services as administrative services must comply with applicable Federal and State rules and regulations and fulfill all the terms of the transportation contract.⁵ The State agency’s contracts require each provider to ensure that vehicles used for transporting recipients comply with all applicable State and Federal laws.⁶ The contracts also require the providers to track and document annual vehicle inspections and registrations.⁷ Owners of vehicles must apply for registration within 30 days of moving to the State or purchasing a vehicle and must reapply each year that the vehicle is used on a public highway.⁸ In addition, motor vehicles that are more than 2 years old must be inspected annually.⁹

For 51 claims, the providers could not verify that the vehicle used for transportation on the date of service had a current State registration and inspection or could not identify the vehicle used for the transportation services:

- For 21 of the 51 claims,¹⁰ providers could not verify that vehicles used for transportation services met State requirements. For 12 of these claims, the providers did not have

⁵ State Medicaid plan, Attachment 3.1-B, page 62, and Attachment 3.1-D, page 2.

⁶ Transportation services contracts, section 10.5.1.

⁷ Transportation services contracts, section 10.5.5.

⁸ Texas Transportation Code, § 502.002.

⁹ Texas Transportation Code, § 548.101.

¹⁰ We considered a claim unallowable if any part of the trip was unallowable. However, when we estimated the unallowable amount in our statistical sample, we included fractional amounts for trips where applicable. For example, if half of a claim was unallowable, we included only that amount. See Appendix F for claim details.

documentation of State vehicle registrations, and for 20 of these claims, the providers did not have State inspection certificates.¹¹

- For 30 of the 51 claims, a provider could not identify the vehicle used for the transportation services. The provider subcontracted its services and did not require the subcontractors to document the vehicles that the subcontractors used for each claim. The provider said that it had attempted to contact the subcontractors to obtain additional information but that they were either out of business or refused to provide the information. As a result, we were unable to determine whether vehicles met registration and inspection requirements.

Transportation Services Provided to Children Without a Parent or Legal Guardian Present

State regulations do not allow a beneficiary to receive NEMT services if the beneficiary is under age 18 unless he or she is accompanied by a parent or legal guardian. Exceptions are made for minors who are 15 to 17 years old and who present a signed parental or legal guardian's consent (TAC § 380.207(4)).

The State agency claimed reimbursement for 19 claims for ineligible transportation services. For each of the 19 claims, the recipient was a minor under age 15 and was not accompanied by a parent or legal guardian. The provider did not have documentation of parent or legal guardian authorization to allow another adult to accompany the minors. For 12 of the 19 claims, the providers also claimed reimbursement for an attendant who was not a parent or legal guardian.

Providers Did Not Ensure That Driver Requirements Were Met

The transportation contracts between the State agency and the providers require that criminal background checks be performed on drivers before they begin providing transportation services and annually thereafter. Specifically, each contract requires an Internet computerized criminal history file background check, which checks for felony and misdemeanor convictions during the 7 years before the hire date. The State agency's contracts with the providers require the providers to implement and maintain a drug and alcohol testing program in accordance with 49 CFR parts 40 and 655.¹² Federal regulations require providers to have their employees tested for drugs before allowing them to perform safety-sensitive duties (49 CFR § 40.25). Also, the transportation contracts require providers to obtain and document annually each driver's history of moving violations and citations. A driver with more than two moving violations in 1 year, on or off the job, is not allowed to provide transportation services.

The State agency claimed reimbursement for 18 claims for transportation services that did not meet 1 or more contract requirements:

¹¹ For 11 claims, the provider did not have documentation of both the State vehicle registration and the State inspection certificates.

¹² Transportation services contracts, section 10.4.2.

- For 15 claims, providers did not have documentation to verify that they had completed reviews of drivers’ driving records before the date of the transportation service.
- For 11 claims, providers did not have documentation to verify that they had completed required background checks of the drivers before the date of the transportation service. For 2 of these claims, the provider had handwritten results of criminal background checks but did not have evidence that it had performed an Internet computerized criminal history file background check.
- For 10 claims, providers did not have documentation to verify that drug testing had been completed on the drivers.
- For one claim, the driving record showed a driver had three moving violations in 1 year.

Beneficiaries Did Not Receive a Medicaid-Covered Service on the Date of Transportation

According to State regulations, an NEMT service is eligible for Medicaid payment when the transportation service is essential for the beneficiary to obtain necessary medical care and when that medical care is covered under the Medicaid program (TAC § 380.203).

The State agency claimed reimbursement for three transportation claims with dates of service for beneficiaries who did not receive a Medicaid-covered health care service. For the three claims, the State Medicaid Management Information System (MMIS) did not have claims data to verify that a health care service was provided on the transportation date. For two of the claims, the medical provider at the destination address confirmed that the beneficiary did not receive a Medicaid-covered medical service on the date of transportation. For one of the claims, the medical provider did not respond to our request for information.

A Beneficiary Did Not Receive a Transportation Service

The State Medicaid plan limits transportation to Medicaid beneficiaries being taken to and from Medicaid-covered services.¹³

For one claim, the provider requested payment and the State agency paid for a transportation service the provider did not provide. The driver noted the cancellation in the driver’s log; however, the provider did not reconcile the driver’s log with the approved client list before submitting the claim.

A Provider Did Not Document a Transportation Service

State plans are required to “provide for agreements with every person or institution providing services under which such person or institution agrees (A) to keep such records as are necessary to fully disclose the extent of the services provided to individuals receiving assistance under the State plan and (B) to furnish the State agency or the Secretary [of the U.S. Department of Health

¹³ State Medicaid plan, Attachment 3.1-D, page 4.

and Human Services] with such information ... as the State agency or the Secretary may from time to time request.”¹⁴

For one claim, the provider did not provide any documentation related to the NEMT service.

RECOMMENDATIONS

We recommend that the State agency (1) refund \$30,385,925 to the Federal Government and (2) strengthen its policies and procedures to ensure that providers:

- use vehicles that have current State registrations and inspections and be able to identify the vehicles used for the transportation services;
- do not transport children under the age of 15 without a parent or legal guardian present;
- complete driver requirements, including Internet computerized criminal history file background checks, drug testing, and driver history checks;
- provide transportation services only to beneficiaries receiving Medicaid-covered services;
- do not submit claims for canceled trips; and
- keep records that are necessary to document the services provided.

STATE AGENCY COMMENTS

In written comments on our draft report, the State agency described actions that it has taken or will take to address our recommendations. For claims that we considered deficient, the State agency said that it has support or will continue its efforts to obtain additional support, which it will provide to CMS during the audit resolution process. In addition, the State agency did not agree with our finding that 19 claims were ineligible for transportation services because a minor was not accompanied by a parent, legal guardian, or authorized adult. The State agency said that we should reconsider this determination because the Texas law in effect during the audit period allowed an authorized adult to accompany the child and because the State agency had a process in place to verify the identity of the parent or legal guardian who authorized another adult to accompany the child.

The State agency’s comments are included in their entirety as Appendix G.

OFFICE OF INSPECTOR GENERAL RESPONSE

Regarding the 19 claims that were ineligible for transportation services because a minor was not accompanied by a parent or legal guardian, we requested documentation demonstrating that the parent or legal guardian had authorized another adult to accompany the minor during

¹⁴ The Social Security Act, § 1902(a)(27).

transportation. The State agency was not able to produce any documentation of the authorization. As a result, we maintain that the 19 claims were not eligible for reimbursement.

APPENDIX A: RELATED OFFICE OF INSPECTOR GENERAL REPORTS

Report Title	Report Number	Date Issued
<i>California Claimed Medicaid Reimbursement for Some Nonemergency Medical Transportation Services in Los Angeles County That Did Not Comply With Federal and State Requirements</i>	<u>A-09-12-02083</u>	6/24/2014
<i>Hawaii Claimed Unallowable Medicaid Reimbursement for Nonemergency Medical Transportation Services Furnished by Taxi Providers</i>	<u>A-09-11-02047</u>	5/22/2012
<i>Review of Medicaid Payments for Nonemergency Medical Transportation Services Claims Submitted by Providers in New York State</i>	<u>A-02-09-01024</u>	2/13/2012
<i>Review of Medicaid Payments for Nonemergency Medical Transportation Services Claims Submitted by Providers in New York City</i>	<u>A-02-08-01017</u>	11/30/2011
<i>Review of Costs Claimed by the State of Nebraska for Non-Emergency Medical Transportation Services Provided by Shared Mobility Coach</i>	<u>A-07-10-04172</u>	7/22/2011
<i>Review of Nonemergency Medical Transportation Costs in the State of Texas (Transportation Provided by the League of United Latin American Citizens—Project Amistad)</i>	<u>A-06-09-00090</u>	10/22/2010
<i>Review of Nonemergency Medical Transportation Costs in the State of Texas (Transportation Provided by Capital Area Rural Transit System)</i>	<u>A-06-08-00096</u>	6/15/2010

APPENDIX B: AUDIT SCOPE AND METHODOLOGY

SCOPE

From the 1,332,474 claims for demand-response services for 3 high-volume providers totaling \$82.6 million that the State agency claimed for Federal reimbursement during FY 2011, we reviewed a random sample of 90 claims. The 3 providers we reviewed serviced 10 of the 24 transportation service areas in the State. The \$82.6 million claimed by the three providers was 61 percent of the \$135.6 million claimed for demand-response services in FY 2011.

We did not assess the overall internal control structure of the State agency or the Medicaid program. Rather, we limited our review of internal controls to those applicable to the objective of our audit. In addition, the scope of our audit did not require us to review the medical necessity of the transportation services.

We conducted fieldwork from October 2012 through October 2013 at the State agency's offices in Austin, Texas, and at the business offices of three transportation providers in the Texas cities of Edinburg, Houston, and Jasper.

METHODOLOGY

To accomplish our objective, we:

- reviewed Federal and State laws and regulations related to Medicaid transportation services;
- reviewed contracts between the State agency and selected providers;
- interviewed State agency officials regarding beneficiaries' eligibility for transportation services, prior authorization and scheduling of services, and the claims verification and monitoring process;
- reconciled the State agency's claim for transportation services on the Quarterly Medicaid Statement of Expenditures for the Medical Assistance Program (CMS-64 report) with supporting documentation for the quarter ending September 30, 2011;
- interviewed providers regarding policies and procedures used to record, modify, cancel, audit, and claim transportation services;
- selected a random sample of 90 claims (Appendix C) for transportation services submitted by 3 providers for which we:
 - obtained the travel manifest information from the State agency;
 - reviewed the providers' documentation on the beneficiary, origination and destination addresses, prior authorizations, and the driver and vehicle used;

- reviewed the payments to providers to determine whether the rates paid were in accordance with the contract for the type of service, the number of passengers, and the number of 1-way trips provided;
 - reviewed the providers' documentation for the drivers' criminal background checks to determine whether the drivers had a criminal history, as defined under the contract with the State agency;
 - reviewed the providers' documentation for the drivers' drug tests;
 - reviewed the providers' documentation of drivers' moving violation records;
 - reviewed the providers' documentation of State vehicle registrations and annual State inspections to determine whether each vehicle had a current registration and inspection at the time of the transportation service;
 - reviewed the State agency's and the providers' documentation to determine whether underage riders were accompanied to their medical services by a parent or legal guardian;
 - analyzed claims data from the State MMIS to help determine whether each beneficiary obtained a Medicaid-covered health care service on the date of the transportation service; and
 - requested that Medical providers confirm that they provided a Medicaid-covered service to those beneficiaries who did not have a Medicaid claim documented in the MMIS on the date of the transportation service;
- used the results of the sample to estimate the unallowable Federal Medicaid reimbursement (Appendix D); and
 - discussed our results with the State agency on May 29, 2014.

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 C: STATISTICAL SAMPLING METHODOLOGY

POPULATION

The population consisted of 2,185,639 Medicaid claims for contractor demand-response services totaling \$135.6 million claimed for Federal reimbursement during FY 2011.

SAMPLING FRAME

The sampling frame consisted of 1,332,474 claims paid to 3 providers totaling \$82,579,602.

SAMPLE UNIT

The sample unit was an individual Medicaid claim for transportation services paid by the State NEMT program.

SAMPLE DESIGN

We used a stratified random sample. We divided the sampling frame into three strata, one for each provider.

SAMPLE SIZE

We selected a sample size of 90 paid Medicaid claims, 30 per stratum.

SOURCE OF RANDOM NUMBERS

We used the Office of Inspector General, Office of Audit Services, statistical software to generate the random numbers.

METHOD OF SELECTING SAMPLE ITEMS

We consecutively numbered the sample units in each stratum. After generating 30 random numbers for each stratum, we selected the corresponding frame items.

ESTIMATION METHODOLOGY

We used the Office of Inspector General, Office of Audit Services, statistical software to appraise the sample results. We estimated the total number of unallowable claims and the value of overpayments at the lower limit of the 90-percent confidence interval.

APPENDIX D: SAMPLE RESULTS AND ESTIMATES

Table 1: Sample Results

Stratum	Sampling Frame Size	Value of Frame¹⁵	Sample Size	Value of Sample (Federal Share)	Number of Unallowable Sampled Claims	Value of Unallowable Sampled Claims (Federal Share)
1	513,223	\$31,771,745	30	\$1,110	30	\$1,110
2	152,885	12,727,973	30	1,294	19	624
3	666,366	38,079,884	30	934	21	601
Total	1,332,474	\$82,579,602	90	\$3,338	70	\$2,335

Table 2: Estimates of Unallowable Claims (Federal Share)
(Limits Calculated for a 90-Percent Confidence Interval)

	Number of Unallowable Claims	Value of Overpayments
Point estimate	1,076,506	\$35,521,321
Lower limit	980,561	30,385,925
Upper limit	1,172,452	40,656,716

¹⁵ We did not determine the Federal share for the value of the sample frame.

APPENDIX E: FEDERAL AND STATE REGULATIONS FOR NONEMERGENCY MEDICAL TRANSPORTATION

FEDERAL REGULATIONS

According to section 1902(a)(27) of the Social Security Act, a State plan must require that providers of services maintain records to fully disclose the extent of services provided to Medicaid beneficiaries.

Each State is required to ensure necessary transportation for Medicaid beneficiaries to and from providers and to describe in its State plan the methods that the State will use to meet this requirement (42 CFR § 431.53).

Transportation includes expenses for transportation and related expenses determined to be necessary by the State Medicaid agency to secure medical examinations and treatment for a beneficiary (42 CFR § 440.170).

STATE REGULATIONS

The State Medicaid plan states that providers that provide medical transportation services as administrative services must comply with applicable Federal and State rules and regulations and fulfill all the terms of the transportation contract (State Medicaid plan, Attachment 3.1-D).

Texas Administrative Code

Beneficiaries under the age of 18 are not eligible for NEMT services unless they are accompanied by a parent or legal guardian. Exceptions are made for minors who are 15 to 17 years old and who present a signed parental or legal guardian's consent (TAC § 380.207(4)).

An NEMT service is eligible for Medicaid payment when the transportation service is essential for the beneficiary to obtain necessary medical care and the service may be paid for under the Medicaid program (TAC § 380.201).

The transportation program includes "reasonable transportation of a prior authorized [NEMT] recipient to and/or from a prior authorized health care facility where health care needs will be met" (TAC § 380.203).

The transportation program does not cover "transportation of individuals to services which are not covered by the applicable state or federal medical assistance program under which the recipient qualifies" (TAC § 380.209).

APPENDIX F: SUMMARY OF DEFICIENCIES FOR EACH SAMPLED CLAIM

**Table 3: Office of Inspector General Review Determinations for Sampled Claims
Description of Deficiencies**

1	Provider lacked current vehicle registration or inspection, or both, or could not identify vehicle
2	Transportation service was ineligible
3	Driver eligibility requirements not met
4	Medicaid-eligible medical service was not provided
5	Beneficiary did not receive transportation service
6	Provider did not document transportation service

Sample Claim	Deficiency 1	Deficiency 2	Deficiency 3	Deficiency 4	Deficiency 5	Deficiency 6	No. of Deficiencies
1	X						1
2	X						1
3	X		X				2
4	X			X			2
5	X		X				2
6	X		X				2
7	X						1
8	X					X	2
9	X						1
10	X		X				2
11	X						1
12	X		X				2
13	X		X				2
14	X		X				2
15	X						1
16	X		X				2
17	X		X				2
18	X						1
19	X		X				2
20	X		X				2
21	X						1
22	X						1
23	X		X				2
24	X						1
25	X						1
26	X			X			2
27	X						1
28	X		X				2
29	X						1
30	X						1
31	X						1
32	X						1
33							0
34	X						1
35	X						1
36							0
37	X		X				2
38			X				1
39							0
40	X						1

Sample Claim	Deficiency 1	Deficiency 2	Deficiency 3	Deficiency 4	Deficiency 5	Deficiency 6	No. of Deficiencies
41	X		X				2
42	X						1
43							0
44							0
45							0
46							0
47	X						1
48	X						1
49					X		1
50	X		X				2
51			X				1
52	X						1
53	X						1
54				X			1
55							0
56	X						1
57	X						1
58							0
59							0
60							0
61		X					1
62	X	X					2
63		X					1
64							0
65	X	X					2
66		X					1
67	X						1
68		X					1
69		X					1
70		X					1
71		X					1
72							0
73		X					1
74		X					1
75		X					1
76							0
77							0
78		X					1
79							0
80		X					1
81	X	X					2
82		X					1
83							0
84							0
85	X						1
86							0
87		X					1
88		X					1
89	X	X					2
90							0
Category Totals	51	19	18	3	1	1	93
70 Claims With Deficiencies							

APPENDIX G: STATE AGENCY COMMENTS



TEXAS HEALTH AND HUMAN SERVICES COMMISSION

KYLE L. JANEK, M.D.
EXECUTIVE COMMISSIONER

August 1, 2014

Ms. Patricia Wheeler
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-06-12-00053

Dear Ms. Wheeler:

The Texas Health and Human Services Commission (HHSC) received a draft audit report entitled "Texas Did Not Always Comply With Federal and State Requirements for Claims Submitted for the Nonemergency Medical Transportation Program" from the Department of Health and Human Services Office of Inspector General. The cover letter, dated June 16, 2014, requested that HHSC provide written comments, including the status of actions taken or planned in response to report recommendations.

I appreciate the opportunity to respond. Please find the attached HHSC management response which (a) includes comments related to the content of the findings and recommendations and (b) details actions HHSC has completed or planned.

If you have any questions or require additional information, please contact David Griffith, Director of HHS Risk and Compliance Management. Mr. Griffith may be reached by telephone at (512) 424-6998 or by e-mail at David.Griffith@hhsc.state.tx.us.

Sincerely,

A handwritten signature in blue ink that reads "Kyle L. Janek".

Kyle L. Janek, M.D.

P. O. Box 13247 • Austin, Texas 78711 • 4900 North Lamar, Austin, Texas 78751 • (512) 424-6500

Texas Health and Human Services Commission
Management Response to the
U.S. Department of Health and Human Services Office of Inspector General Report:

Texas Did Not Always Comply With Federal and State Requirements for Claims Submitted for the Nonemergency Medical Transportation Program

DHHS - OIG Recommendation: *We recommend that the State agency refund \$30,385,925 to the Federal Government.*

HHSC Management Response:

Actions Planned:

HHSC will continue its efforts to obtain additional supporting documentation from Nonemergency Medical Transportation (NEMT) program providers (Providers) and alternative sources and will provide supporting documentation to the Centers for Medicare and Medicaid Services (CMS) to clear as many remaining exceptions as possible through the audit resolution process. Once these efforts are completed, HHSC will coordinate with CMS to update the statistical extrapolation based on remaining exceptions to calculate a revised overpayment amount and will refund the revised amount to CMS.

Estimated Completion Date: One year from the date of the final audit report

Title of Responsible Person: Medical Transportation Program Director

DHHS - OIG Recommendation: *We recommend that the State agency take steps to ensure that providers use vehicles that have current State registrations and inspections and be able to identify the vehicle used for the transportation service.*

HHSC Management Response:

Actions Planned:

HHSC will continue to work with Providers to identify the vehicles associated with tested claims and verify whether valid registrations and inspections were obtained for the audit period. As part of this effort, HHSC is coordinating with the Texas Department of Motor Vehicles to validate vehicle registrations and with the Texas Department of Public Safety to validate vehicle inspections. HHSC will provide relevant supporting documentation to CMS as part of the audit resolution process.

HHSC will instruct Providers to comply with contract requirements for retaining documentation of vehicle registrations and inspections, including documentation of

vehicle registrations and inspections for vehicles used by Provider subcontractors and enforce compliance with these requirements through on-site monitoring visits conducted by the Medical Transportation Program.

Estimated Completion Date: One year from the date of the final audit report

Title of Responsible Person: Medical Transportation Program Director

DHHS - OIG Recommendation: *We recommend that the State agency take steps to ensure that providers do not transport children under the age of 15 without a parent or legal guardian present.*

HHSC Management Response:

During the period of time that was audited, Texas had conflicting guidance in effect on who could accompany a child to a medical Provider visit.

An HHSC administrative rule for the Medical Transportation Program, 1 Texas Administrative Code § 380.207 (2010), indicated that medical transportation clients under age 18 who were not accompanied by a parent or legal guardian were not eligible for medical transportation services, unless one of two exceptions applied. First, a client aged 15 through 17 years of age could present the parent's or legal guardian's signed written consent for the transportation services to the regional Medical Transportation Program office or the transportation contractor. Second, the minor client could be transported to a treatment without a parent or legal guardian when the law extended confidentiality to that treatment. The rule did not contain an exception to allow an adult who was not the client's parent or legal guardian to accompany the client and did not include any exception for a client who was not at least 15 years old.

A more permissive accompaniment requirement, contained in Texas Human Resources Code § 32.024(s)(2), was also in effect during the audit period and included an exception that allowed an adult who was not the parent or legal guardian to accompany the client. Specifically, Texas Human Resources Code § 32.024(s)(2) stated that a child younger than 15 years of age must be accompanied at a Medicaid visit or screening by (1) a parent or guardian or (2) "another adult, including an adult related to the child, authorized by the child's parent or guardian to accompany the child." As confirmed by a Texas court in 2012, this statute takes precedence over 1 Texas Administrative Code § 380.207 (2010).¹

¹ In a lawsuit brought by therapy providers and clients, Texas courts found that HHSC's administrative rule (1 Texas Administrative Code § 380.207, as effective from September 13, 2004, to December 31, 2012) conflicted with the more permissive accompaniment requirement in Texas Human Resources Code § 32.024(s)(2).

Medical Transportation Program processes in place during the audit period required that a parent or legal guardian of a client under the age of 18 designate an attendant for that client. Medical Transportation Program call center staff were required to (1) ask a caller to identify their relationship to the client and (2) further establish a caller's identity by obtaining certain information such as the client's name, social security number, and address. The information was then verified against the information contained in the client's eligibility record. Once the caller's identity and relationship as the client's parent or legal guardian was established, call center staff considered a statement by the caller authorizing another adult to accompany the child as valid authorization by the parent or guardian for another adult to accompany the child. Information provided by the parent or legal guardian, including the authorized adult's name, was documented in the Medical Transportation Program authorization system, meeting the conditions of the exception contained in Texas Human Resources Code § 32.024(s)(2).

The auditors classified 19 claims as "ineligible transportation services" because the minor was not accompanied by a parent or legal guardian. HHSC requests that the Office of Inspector General reconsider this determination, based on (1) the state law in effect during the audit period that allowed an adult authorized by the child's parent or guardian to accompany the child and (2) the Medical Transportation Program processes that were in place to verify the identity of the parent or legal guardian who authorized another adult to accompany the child.

On January 1, 2013, subsequent to the end of the period audited, HHSC's administrative rule changed and now permits, under certain circumstances, a child to be transported without a parent or legal guardian present. Under 1 Texas Administrative Code § 380.207 and 1 Texas Administrative Code § 354.1133, a child's parent or legal guardian may authorize another adult, not affiliated with a Provider, to accompany the child. This change brought HHSC's administrative rule into alignment with the Texas Human Resource Code cited above.

HHSC enforces this updated requirement with a new protocol. This protocol requires a parent or legal guardian, who calls to schedule transportation services for their child under 15 years of age, to advise call center staff who will be accompanying the child on the trip. If someone other than the parent or legal guardian is accompanying the child, the parent or legal guardian must identify the authorized adult, and call center staff must document the authorized adult in the appropriate record. The Texas Medical Transportation System automatically generates a parent authorization form and forwards that form to the parent or legal guardian for signature. The

As a result of the suit, from May 3, 2012 through October 24, 2013, the courts enjoined HHSC from enforcing 1 Texas Administrative Code § 380.207. Specifically, the court enjoined HHSC from denying eligibility of a Medicaid client under the age of 18 for medical transportation services when a parent or guardian did not accompany the Medicaid client during the provision of such transportation services, but the Medicaid client's parent or guardian authorized another adult to accompany the child.

parent or legal guardian may mail or fax the form to the Medicaid Claims Administrator or may present the form to the transportation provider at pick up. At the time of the transportation service, the authorized adult is required to present proper identification to the driver, and the name must match information identified on the Provider's trip manifest. Medical Transportation Program monitoring reviews are conducted on transportation services for children under the age of 15 to ensure appropriate documentation is on file to support the delivery of transportation services.

Estimated Completion Date: Fully Implemented

Title of Responsible Person: Medical Transportation Program Director

DHHS - OIG Recommendation: *We recommend that the State agency take steps to ensure that providers complete driver requirements, including Internet computerized criminal history file background checks, drug testing, and driver history checks.*

HHSC Management Response:

Actions Planned:

HHSC will continue to work with Providers to determine whether additional documentation exists to demonstrate that driving records were reviewed, background checks were performed, and drug testing was performed before the dates of transportation services reviewed as part of the audit. HHSC will provide any additional documentation it obtains to CMS as part of the audit resolution process.

HHSC will instruct Providers to comply with contract requirements for performing and documenting driving records reviews, background checks, and drug testing and will enforce compliance with these requirements through on-site monitoring visits conducted by the Medical Transportation Program.

Estimated Completion Date: One year from the date of the final audit report

Title of Responsible Person: Medical Transportation Program Director

HHSC Management Response - Nonemergency Medical Transportation
August 1, 2014
Page 5

DHHS - OIG Recommendation: *We recommend that the State agency take steps to ensure that providers provide transportation services only to beneficiaries receiving Medicaid-covered services.*

HHSC Management Response:

The report notes that HHSC claimed reimbursement for three transportation claims with dates of service for beneficiaries who did not receive a Medicaid-covered health care service because there was no Medicaid claim on the same day of service as the transportation claim.

In 2013, subsequent to the end of the period audited, the Medical Transportation Program worked collaboratively with the Medicaid Claims Administrator to establish a protocol for matching transportation claims with a Medicaid-covered healthcare service. CMS accepted the results of this protocol to remove a \$17 million deferral against HHSC. HHSC now routinely uses the protocol, and CMS relies upon the protocol to validate that transportation services claims are associated with a Medicaid-covered service.

Applying the current protocol to the three disallowed claims, the Medicaid Claims Administrator was able to locate a corresponding Medicaid-covered healthcare service for each transportation claim.

For two of the claims, the transportation claim matched a corresponding medical claim with a date of service different than the date of transportation. This situation occurs when, for example, a client is required to travel out of town to obtain a medical service not available in his or her area. When the healthcare service is billed, the date of service on the claim would be the date the client was seen by the medical provider, which is not always—as in these two instances—the date transportation was provided.

For the other claim, the transportation service was provided on one day of a multi-day medical claim. An example of this type of claim is when a medical transportation service was provided on a Wednesday, and the corresponding medical claim reflected services rendered by a provider beginning on Monday and extending through Friday of the same week.

HHSC will provide specific details of the circumstances related to each of the three transportation claims and the associated medical claims to CMS during the audit resolution process.

Estimated Completion Date: One year from the date of the final audit report

Title of Responsible Person: Medical Transportation Program Director

HHSC Management Response - Nonemergency Medical Transportation
August 1, 2014
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DHHS - OIG Recommendation: *We recommend that the State agency take steps to ensure that providers do not submit claims for canceled trips.*

HHSC Management Response:

HHSC has reminded Providers to comply with contract requirements that do not permit payments to Providers for canceled trips. Processes, including periodic matching of transportation claims to medical claims and on-site monitoring reviews conducted by the Medical Transportation Program, help enforce this requirement by detecting improper claims.

Estimated Completion Date: Fully Implemented

Title of Responsible Person: Medical Transportation Program Director

DHHS - OIG Recommendation: *We recommend that the State agency take steps to ensure that providers keep records that are necessary to document the services provided.*

HHSC Management Response:

HHSC has reminded Providers to comply with contract requirements (based on Texas's records retention requirements) that require Providers to maintain documentation supporting transportation services. On-site monitoring visits conducted by the Medical Transportation Program include steps to verify Providers comply with documentation requirements.

Estimated Completion Date: Fully Implemented

Title of Responsible Person: Medical Transportation Program Director