

Department of Health and Human Services

**OFFICE OF
INSPECTOR GENERAL**

**OKLAHOMA MADE INCORRECT
MEDICAID ELECTRONIC HEALTH
RECORD INCENTIVE PAYMENTS TO
HEALTH CARE PROFESSIONALS**

*Inquiries about this report may be addressed to the Office of Public Affairs at
Public.Affairs@oig.hhs.gov.*



**Patricia Wheeler
Regional Inspector General
for Audit Services**

**September 2015
A-06-14-00030**

Office of Inspector General

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EXECUTIVE SUMMARY

Oklahoma made incorrect Medicaid electronic health record incentive payments to health care professionals totaling \$888,250 and claimed \$127,500 more than it paid in incentive payments.

WHY WE DID THIS REVIEW

To improve the quality and value of American health care, the Federal Government promotes the use of certified electronic health record (EHR) technology by health care professionals (professionals) and hospitals (collectively, “providers”). As an incentive for using EHRs, the Federal Government is making payments to providers that attest to the “meaningful use” of EHRs. The Congressional Budget Office estimates that from 2011 through 2019, spending on the Medicare and Medicaid EHR incentive programs will total \$30 billion; the Medicaid EHR incentive program will account for more than a third of that amount, or about \$12.4 billion.

The Government Accountability Office has identified improper incentive payments as the primary risk to the EHR incentive programs. These programs may be at greater risk of improper payments than other programs because they are new and have complex requirements. U.S. Department of Health and Human Services, Office of Inspector General, reports describe the obstacles that the Centers for Medicare & Medicaid Services (CMS) and States face overseeing the Medicare and Medicaid EHR incentive programs. The obstacles leave the programs vulnerable to paying incentive payments to providers that do not fully meet requirements. The Oklahoma Health Care Authority (State agency) was one of the first State agencies to pay incentive payments, making approximately \$111.6 million in Medicaid EHR incentive program payments for program years 2011 and 2012. Of this amount, the State agency paid approximately \$38.4 million to professionals and \$73.2 million to hospitals. This review focuses on the Medicaid EHR incentive program for professionals and is one in a series of Medicaid EHR reports.

The objective of this review was to determine whether the State agency made Medicaid EHR incentive program payments to professionals in accordance with Federal and State requirements.

BACKGROUND

The Health Information Technology for Economic and Clinical Health Act (HITECH Act), enacted as part of the American Recovery and Reinvestment Act of 2009, P.L. No. 111-5, established Medicare and Medicaid EHR incentive programs to promote the adoption of EHRs. Under the HITECH Act, State Medicaid programs have the option of receiving from the Federal Government 100 percent of their expenditures for incentive payments to certain providers. The State agency administers the Medicaid program and monitors and pays EHR incentive payments.

To receive an incentive payment, professionals attest that they meet program requirements by self-reporting data using CMS’s National Level Repository (NLR). The NLR is a provider registration and verification system that contains information on providers participating in the Medicaid and Medicare EHR incentive programs and on EHR incentive payments reported by

State Medicaid agencies. Additionally, State agencies report EHR incentive payments quarterly on the standard Form CMS-64, Quarterly Medicaid Assistance Expenditures for the Medical Assistance Program (CMS-64 report).

To be eligible for the Medicaid EHR incentive program, professionals must not be hospital-based, among other requirements. A professional is considered hospital-based if 90 percent or more of his or her covered professional services are furnished in a hospital setting (inpatient or emergency room) in the year preceding the payment year. Professionals receive a fixed amount of \$21,250 in the first year and \$8,500 in subsequent years; the total may not exceed \$63,750 over a 6-year period. Some pediatricians may receive a lesser amount.

HOW WE CONDUCTED THIS REVIEW

For program years 2011 and 2012, the State agency paid \$38,364,751 to professionals for Medicaid EHR incentive payments. We (1) reconciled professional incentive payments reported on the State agency's CMS-64 report with supporting documentation and the NLR and (2) performed a complete eligibility review on 28 professionals. In addition, we analyzed claims data to determine whether professionals were hospital-based.

WHAT WE FOUND

The State agency did not always pay Medicaid EHR incentive payments to professionals in accordance with Federal and State requirements. Specifically, the State agency:

- paid \$888,250 to 47 hospital-based professionals because it misinterpreted the timeframe for determining their hospital-based status and
- claimed on its CMS-64 reports \$127,500 more than it paid because it mistakenly included 6 duplicate payments.

Additionally, the NLR data did not include a \$21,250 incentive payment because of data transmission problems and a lack of reconciliation procedures.

WHAT WE RECOMMEND

We recommend that the State agency:

- refund to the Federal Government \$888,250 in overpayments made to the 47 hospital-based professionals and ensure that the correct time period is used to determine the hospital-based status for professionals,
- refund to the Federal Government \$127,500 in overreported EHR incentive payments, and
- ensure that the \$21,250 incentive payment is successfully transmitted to the NLR and establish procedures to reconcile the CMS-64 report with the NLR each quarter.

STATE AGENCY COMMENTS AND OUR RESPONSE

In written comments on our draft report, the State agency concurred with our recommendations and commented that the number of hospital-based professionals in our first finding should have been 43 rather than the 53 we cited. Based on the State agency's comments, we modified our finding to 47 hospital-based professionals.

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INTRODUCTION

WHY WE DID THIS REVIEW

To improve the quality and value of American health care, the Federal Government promotes the use of certified electronic health record (EHR) technology by health care professionals (professionals) and hospitals (collectively, “providers”). As an incentive for using EHRs, the Federal Government is making payments to providers that attest to the “meaningful use” of EHRs.¹ The Congressional Budget Office estimates that from 2011 through 2019, spending on the Medicare and Medicaid EHR incentive programs will total \$30 billion; the Medicaid EHR incentive program will account for more than a third of that amount, or about \$12.4 billion.

The Government Accountability Office has identified improper incentive payments as the primary risk to the EHR incentive programs.² These programs may be at greater risk of improper payments than other programs because they are new and have complex requirements. U.S. Department of Health and Human Services, Office of Inspector General, reports describe the obstacles that the Centers for Medicare & Medicaid Services (CMS) and States face overseeing the Medicare and Medicaid EHR incentive programs.³ The obstacles leave the programs vulnerable to paying incentive payments to providers that do not fully meet requirements. The Oklahoma Health Care Authority (State agency) was one of the first State agencies to pay incentive payments, making approximately \$111.6 million in Medicaid EHR incentive program payments for program years 2011 and 2012. Of this amount, the State agency paid approximately \$38.4 million to professionals and \$73.2 million to hospitals. This review focuses on the Medicaid EHR incentive program for professionals and is one in a series of Medicaid EHR reports. Appendix A lists previous reviews of the Medicaid EHR incentive program.

OBJECTIVE

Our objective was to determine whether the State agency made Medicaid EHR incentive program payments to professionals in accordance with Federal and State requirements.

BACKGROUND

Health Information Technology for Economic and Clinical Health Act

On February 17, 2009, the President signed the American Recovery and Reinvestment Act of

¹ To meaningfully use certified EHRs, providers must use numerous functions defined in Federal regulations, including functions meant to improve health care quality and efficiency, such as computerized provider order entry, electronic prescribing, and the exchange of key clinical information.

² *First Year of CMS’s Incentive Programs Shows Opportunities to Improve Processes to Verify Providers Met Requirements* (GAO-12-481), published April 2012.

³ *Early Review of States’ Planned Medicaid Electronic Health Record Incentive Program Oversight* (OEI-05-10-00080), published July 2011, and *Early Assessment Finds That CMS Faces Obstacles in Overseeing the Medicare EHR Incentive Program* (OEI-05-11-00250), published November 2012.

2009 (Recovery Act), P.L. No. 111-5. Title XIII of Division A and Title IV of Division B of the Recovery Act are cited together as the Health Information Technology for Economic and Clinical Health Act (HITECH Act). The HITECH Act established EHR incentive programs for both Medicare and Medicaid to promote the adoption of EHRs.

Under the HITECH Act § 4201, State Medicaid programs have the option of receiving from the Federal Government Federal financial participation for expenditures for incentive payments to certain Medicare and Medicaid providers to adopt, implement, upgrade, and meaningfully use certified EHR technology. The Federal Government pays 100 percent of Medicaid incentive payments (42 CFR § 495.320).

Medicaid Program: Administration and Federal Reimbursement

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, 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. In Oklahoma, the State agency administers the program.

States use the standard Form CMS-64, Quarterly Medicaid Assistance Expenditures for the Medical Assistance Program (CMS-64 report), to report actual Medicaid expenditures for each quarter, and CMS uses it to reimburse States for the Federal share of Medicaid expenditures. The amounts reported on the CMS-64 report must represent actual expenditures and be supported by documentation. States claim EHR incentive payments on lines 24E and 24F of the CMS-64.10 Base section of the CMS-64 report.

National Level Repository

The National Level Repository (NLR) is a CMS Web-based provider registration and verification system that contains information on providers participating in the Medicare and Medicaid EHR incentive programs and on EHR incentive payments reported by State Medicaid agencies. The NLR is the designated system of records that checks for duplicate payments and maintains the incentive payment history files.

Incentive Payment Eligibility Requirements

To receive an incentive payment, professionals attest that they meet program requirements by self-reporting data using the NLR.⁴ To be eligible for the Medicaid EHR incentive program, professionals must not be hospital-based (42 CFR § 495.304(c)). A professional is considered hospital-based if 90 percent or more of his or her covered professional services are furnished in a

⁴ Eligible professionals may be physicians, dentists, certified nurse-midwives, nurse practitioners, or physician assistants practicing in a Federally Qualified Health Center or a Rural Health Clinic that is led by a physician assistant (42 CFR § 495.304(b)).

hospital setting (inpatient or emergency room) in the year preceding the payment year (42 CFR § 495.4).

Additionally, professionals must meet the following eligibility requirements:

- The professional is a permissible provider type that is licensed to practice in the State.
- The professional participates in the State Medicaid program.
- The professional is not excluded, sanctioned, or otherwise deemed ineligible to receive payments from the State or Federal Government.
- The professional has adopted, implemented, upgraded, or meaningfully used certified EHR technology.⁵
- The professional has a Medicaid patient volume of at least 30 percent within any continuous 90-day period in the year preceding the payment year; pediatricians must have a Medicaid patient volume of at least 20 percent.

Professional Payments

Professionals receive a fixed amount of \$21,250 in the first year and \$8,500 in subsequent years; the total may not exceed \$63,750 over a 6-year period.⁶ Incentive payments for pediatricians who meet the 20-percent Medicaid patient-volume threshold but fall short of the 30-percent Medicaid patient-volume threshold are reduced to two-thirds of the incentive payment.⁷ Thus, some pediatricians may receive only \$14,167 in the first year and \$5,667 in subsequent years, for a maximum of \$42,500 over a 6-year period.⁸

Professionals may not receive EHR incentive payments from both Medicare and Medicaid in the same year and may not receive a payment from more than one State. Prior to 2015, professionals were allowed to switch between the Medicare and Medicaid programs one time.

HOW WE CONDUCTED THIS REVIEW

For program years 2011 and 2012, the State agency paid \$38,364,751 to professionals for Medicaid EHR incentive payments. We (1) reconciled professional incentive payments reported on the State agency's CMS-64 report with supporting documentation and the NLR and (2)

⁵ Providers may adopt, implement, or upgrade only during the first year they are in the program (42 CFR § 495.314(a)(1)). In subsequent years, providers must demonstrate that during the EHR reporting period they were meaningful EHR users, as defined in 42 CFR § 495.4.

⁶ 42 CFR §§ 495.310(a)(1)(i), (a)(2)(i), and (a)(3).

⁷ 42 CFR §§ 495.310(a)(4)(i), (a)(4)(ii), and (b).

⁸ 42 CFR §§ 495.310(a)(4)(i), (a)(4)(ii), and (a)(4)(iii).

performed a complete eligibility review on 28 professionals. In addition, we analyzed claims data to determine whether professionals were hospital-based.

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 the details of our audit scope and methodology.

FINDINGS

The State agency did not always pay Medicaid EHR incentive payments to professionals in accordance with Federal and State requirements. Specifically, the State agency:

- paid \$888,250 to 47 hospital-based professionals because it misinterpreted the timeframe for determining their hospital-based status and
- claimed on its CMS-64 reports \$127,500 more than it paid because it mistakenly included 6 duplicate payments.

Additionally, the NLR data did not include a \$21,250 incentive payment because of data transmission problems and a lack of reconciliation procedures.

THE STATE AGENCY MADE INCENTIVE PAYMENTS TO PROFESSIONALS WHO WERE HOSPITAL-BASED

The State agency incorrectly made \$888,250 in EHR incentive payments to 47 professionals who were hospital-based. A professional is considered hospital-based if 90 percent or more of his or her covered professional services were furnished in a hospital setting (inpatient or emergency room) in the year preceding the payment year (42 CFR § 495.4). The State agency did not interpret the regulation correctly and used the 90-day period that applies to the patient volume calculation to determine whether professionals were hospital-based rather than the full-year time period that is required. Of the 1,693 professionals who received an EHR incentive payment, 47 were hospital-based when the correct time period was applied and thus should not have received incentive payments.

THE STATE AGENCY OVERREPORTED ELECTRONIC HEALTH RECORD EXPENDITURES ON THE CMS-64 REPORT

The State agency claimed \$127,500 more than it paid in EHR incentive payments. Amounts reported on CMS-64 reports must represent actual expenditures. The State agency paid six incentive payments twice and the duplicate payments were reported as expenditures. The State agency recouped the duplicate payments but failed to record the recoupments on the CMS-64 reports.

THE STATE AGENCY FAILED TO ENSURE THAT INCENTIVE PAYMENT DATA WAS TRANSMITTED TO THE NATIONAL LEVEL REPOSITORY

The NLR data did not include a \$21,250 incentive payment made to one professional. States participating in the Medicaid EHR incentive program are responsible for transmitting payment data to the NLR so that CMS can ensure that providers do not receive payments from more than one State. A State agency official attempted to transmit the payment data to the NLR; however, the official said that sometimes there are problems with the transmissions. The State agency did not identify that the payment was not successfully transmitted to the NLR because it did not reconcile the EHR incentive payments reported on the CMS-64 report with the payments reported to the NLR. As a result, the NLR information was not complete, and the professional could have been paid by another State.

RECOMMENDATIONS

We recommend that the State agency:

- refund to the Federal Government \$888,250 in overpayments made to the 47 hospital-based professionals and ensure that the correct time period is used to determine the hospital-based status for professionals,
- refund to the Federal Government \$127,500 in overreported EHR incentive payments, and
- ensure that the \$21,250 incentive payment is successfully transmitted to the NLR and establish procedures to reconcile the CMS-64 report with the NLR each quarter.

STATE AGENCY COMMENTS AND OFFICE OF INSPECTOR GENERAL RESPONSE

In written comments on our draft report, the State agency concurred with our recommendations and commented that the number of hospital-based professionals in our first finding should have been 43 rather than the 53 we cited. The State agency's comments are included in their entirety as Appendix C.

The 53 hospital-based professionals who received overpayments because the State agency applied the incorrect time period included 6 professionals whose payments the State agency recouped prior to the start of our audit and 4 professionals whose payments were recouped because of our audit. We recognized that the incentive payments for the six professionals were recouped before our audit started and removed the amounts from our total overpayment amount of \$888,250. We had included the six professionals in our count of hospital-based professionals who received overpayments because they were originally paid inappropriately. We agree with the State agency that these six professionals should be removed from our count of inappropriately paid hospital-based professionals in our final report and have done so. Thus, our modified finding is 47 hospital-based professionals.

**APPENDIX A: RELATED OFFICE OF INSPECTOR GENERAL REPORTS:
ELECTRONIC HEALTH RECORD INCENTIVE PAYMENTS**

Report Title	Report Number	Date Issued
<i>Texas Made Incorrect Medicaid Electronic Health Record Incentive Payments</i>	A-06-13-00047	8/31/2015
<i>Arkansas Made Incorrect Medicaid Electronic Health Record Incentive Payments to Hospitals</i>	A-06-14-00010	6/22/2015
<i>The District of Columbia Made Correct Medicaid Electronic Health Record Incentive Payments to Hospitals</i>	A-03-14-00401	1/15/2015
<i>Massachusetts Made Incorrect Medicaid Electronic Health Record Incentive Payments to Hospitals</i>	A-01-13-00008	11/17/2014
<i>Louisiana Made Incorrect Medicaid Electronic Health Record Incentive Payments</i>	A-06-12-00041	8/26/2014
<i>Florida Made Medicaid Electronic Health Record Payments to Hospitals in Accordance With Federal and State Requirements</i>	A-04-13-06164	8/08/2014

APPENDIX B: AUDIT SCOPE AND METHODOLOGY

SCOPE

For program years 2011 and 2012, the State agency paid \$38,364,751 to professionals for Medicaid EHR incentive payments. We (1) reconciled professional incentive payments reported on the State agency's CMS-64 report with supporting documentation and the NLR and (2) performed a complete eligibility review on 28 professionals. In addition, we analyzed claims data to determine whether professionals were hospital-based.

We did not review the overall internal control structure of the State agency or the Medicaid program. Rather, we reviewed only those internal controls related to our objective.

We performed our fieldwork at the State agency's office in Oklahoma City, Oklahoma, and at professional offices throughout Oklahoma.

METHODOLOGY

To accomplish our objective, we:

- reviewed applicable Federal and State laws, regulations, and guidance;
- held discussions with State agency officials to gain an understanding of State policies and controls as they relate to the Medicaid EHR incentive program;
- reviewed and reconciled the appropriate lines from the CMS-64 report with supporting documentation and the NLR;
- selected 28 professionals and reviewed supporting documentation from both the State agency and the selected professionals to verify whether they met eligibility requirements;
- determined whether professionals who received incentive payments during program years 2011 and 2012 were hospital-based; and
- discussed the results of our review with State agency officials.

We conducted this performance audit in accordance with generally accepted government auditing standards. Those standards require that we plan and perform the audit to obtain sufficient, appropriate evidence to provide a reasonable basis for our findings and conclusions based on our audit objectives. We believe that the evidence obtained provides a reasonable basis for our findings and conclusions based on our audit objectives.

APPENDIX C: STATE AGENCY COMMENTS

JOEL NICO GOMEZ
CHIEF EXECUTIVE OFFICER



MARY FALLIN
GOVERNOR

STATE OF OKLAHOMA
OKLAHOMA HEALTH CARE AUTHORITY

July 21, 2015

RE: Report Number: A-06-14-00030

Patricia Wheeler
Regional Inspector General for Audit Services
Office of Audit Services, Region VI
1100 Commerce Street, Room 632
Dallas, TX 75242

Dear Patricia Wheeler:

OHCA has reviewed the U.S. Department of Health and Human Services, Office of Inspector General (OIG), draft report entitled Oklahoma Made Incorrect Medicaid Electronic Health Record Incentive Payments to Health Care Professionals. Our stance in regards to each of the identified recommendations are stated below.

Recommendation 1:

- Refund to the Federal Government \$888,250 in overpayments made to the 53 hospital-based professionals and ensure that the correct time period is used to determine hospital-based status for professionals.

OHCA's Response:

- OHCA concurs with OIG's finding of the amount of overpayments of \$888,250; however, the number of hospital-based professionals should be listed as 43 instead of 53. Upon review of the identified hospital-based providers, the \$888,250 in overpayments represents 43 providers. OHCA has corrected the time period used to determine hospital-based status as of January 2014. OHCA has initiated the recoupment process from the providers and will return the FFP on the CMS-64 QE 9/30/2015.

Recommendation 2:

- Refund to the Federal Government \$127,500 in over-reported EHR incentive payments.

OHCA's Response:

- OHCA concurs with OIG's finding of the amount of over-reported EHR incentive payments. OHCA will review its processes to identify ways to reconcile EHR incentive payments against what is reported on the CMS-64. The Federal Share will be returned on the CMS-64 QE 6/30/2015.

Recommendation 3:

- Ensure that the \$21,250 incentive payment is successfully transmitted to the NLR and establish procedures to reconcile the CMS-64 report with the NLR each quarter.

OHCA's Response:

- OHCA concurs that the \$21,250 incentive payment needs to be resent to the NLR. OHCA has re-transmitted the payment transaction to the NLR and verified that it has been received by the NLR. OHCA will begin reviewing its processes and the NLR files to identify potential ways to reconcile the reporting of EHR incentive payments to the NLR.

Sincerely,



Garth Splinter, M.D., MBA

State Medicaid Director