DEPARTMENT OF HEALTH & HUMAN SERVICES

Office of Inspector General

Office of Audit Services, Region V
233 North Michigan Avenue
Suite 1360
Chicago, IL 60601

SEP 17 2010

Report Number: A-05-10-00061

Ms. Janet Olszewski
Director
Michigan Department of Community Health
201 Townsend Street
Lansing, MI 48913

Dear Ms. Olszewski:

Enclosed is the U.S. Department of Health & Human Services (HHS), Office of Inspector General (OIG), final report entitled *Review of Michigan's Reporting Fund Recoveries for State Medicaid Programs on the Form CMS-64 for First Quarter 2010*. We will forward a copy of this report to the HHS action official noted on the following page for review and any action deemed necessary.

The HHS action official will make final determination as to actions taken on all matters reported. We request that you respond to this official within 30 days from the date of this letter. Your response should present any comments or additional information that you believe may have a bearing on the final determination.

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. 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 contact Lynn Barker, Audit Manager, at (317) 226-7833, extension 21, or through email at Lynn.Barker@oig.hhs.gov. Please refer to report number A-05-10-00061 in all correspondence.

Sincerely,

James C. Cox

James C. Cox
Regional Inspector General
for Audit Services

Enclosure

cc:
Ms. Pam Myers
Audit Liaison
Michigan Department of Community Health

Direct Reply to HHS Action Official:

Ms. Jackie Garner
Consortium Administrator
Consortium for Medicaid and Children's Health Operations
Centers for Medicare & Medicaid Services
233 North Michigan Avenue, Suite 600
Chicago, IL 60601

Department of Health & Human Services

OFFICE OF INSPECTOR GENERAL

REVIEW OF MICHIGAN'S REPORTING FUND RECOVERIES FOR STATE MEDICAID PROGRAMS ON THE FORM CMS-64 FOR THE FIRST QUARTER 2010

Daniel R. Levinson
Inspector General

September 2010
A-05-10-00061

Office of Inspector General

http://oig.hhs.gov

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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

Pursuant to Title XIX of the Social Security Act (the Act), the Medicaid program provides medical assistance to certain low-income individuals and individuals with disabilities. The Federal and State Governments jointly fund and administer the Medicaid program. At the Federal level, the Centers for Medicare & Medicaid Services (CMS) administers the program. Each State administers its Medicaid program in accordance with a CMS-approved State plan. Although the State has considerable flexibility in designing and operating its Medicaid program, it must comply with applicable Federal requirements.

The State Medicaid agency uses a statewide surveillance and utilization control program to safeguard against unnecessary or inappropriate use of Medicaid services and excess payments. In Michigan, the Department of Community Health (State agency) administers the Medicaid program. The State agency, through the Medicaid Integrity Program section, Hospital Health Plan Reimbursement division, and Long Term Care division, conducted audits of Medicaid providers. In addition, the State agency contracted with Michigan Peer Review Organization and ACS Heritage to conduct audits of Medicaid providers. The Michigan Office of the Auditor General (OAG) and the Medicaid Fraud Control Unit (MFCU) conducted audits and investigations, respectively, of Medicaid providers. When any of these organizations identified overpayments, the State agency sent letters to the providers that (1) identified the overpayment amounts and (2) directed the providers to send payments to the State agency or notified the providers of future payment offsets. The OAG sent notice to the State agency of overpayments identified through its federally required audits. Providers were notified of fraud and abuse-related overpayment amounts determined through settlements resulting from MFCU investigations.

Section 1903(d)(2) of the Act requires the State to refund the Federal share of a Medicaid overpayment. Implementing regulations (42 CFR § 433.312) require the State Medicaid agency to refund the Federal share of an overpayment to a provider at the end of the 60-day period following the date of discovery, whether or not the State Medicaid agency has recovered the overpayment. The date of discovery for situations other than fraud or abuse is the date that a provider was first notified in writing of an overpayment and the specified dollar amount subject to recovery (42 CFR § 433.316(c)). For provider overpayments resulting from fraud or abuse, discovery occurs on the date of the State's final written notice of the overpayment determination (42 CFR § 433.316(d)). Federal regulations (42 CFR § 433.304) define an overpayment as "... the amount paid by a Medicaid agency to a provider in excess of the amount that is allowable for the services furnished under section 1902 of the Act and which is required to be refunded under section 1903 of the Act." Because the Quarterly Medicaid Statement of Expenditures for the Medical Assistance Program, Form CMS-64 (CMS-64), is due on a quarterly basis, the CMS *State Medicaid Manual* requires the Federal share of the overpayments be reported no later than the quarter in which the 60-day period ends.

OBJECTIVE

Our objective was to determine whether Medicaid overpayments were reported on the CMS-64 in accordance with Federal requirements.

SUMMARY OF FINDINGS

The State agency did not report all Medicaid overpayments on the CMS-64 in accordance with Federal requirements. For the quarter ending December 31, 2009, the State agency did not report $3,000,000 ($2,198,100 Federal share) in overpayments on the CMS-64 in accordance with Federal requirements because of a clerical error.

The State agency did not properly report these overpayments because it had not developed and implemented internal controls to ensure that overpayments were reported on the CMS-64.

RECOMMENDATIONS

We recommend that the State agency:

- include unreported Medicaid overpayments of $3,000,000 on the CMS-64 and refund $2,198,100 to the Federal Government and

- develop and implement internal controls to correctly report and refund the Federal share of identified Medicaid overpayments on the CMS-64.

STATE AGENCY COMMENTS

In written comments on our draft report, the State agency concurred with our recommendations and said it had included the $3,000,000 on a subsequent CMS-64. The State agency's comments are included in their entirety as the Appendix.

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STATE AGENCY COMMENTS

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 fund and administer the Medicaid program. At the Federal level, the Centers for Medicare & Medicaid Services (CMS) administers the program. Each State administers its Medicaid program in accordance with a CMS-approved State plan. Although the State has considerable flexibility in designing and operating its Medicaid program, it must comply with Federal requirements.

The Federal Government pays its share (Federal share) of State Medicaid expenditures according to a defined formula. To receive Federal reimbursement, State Medicaid agencies are required to report expenditures on the Quarterly Medicaid Statement of Expenditures for the Medical Assistance Program, Form CMS-64 (CMS-64).

The State Medicaid agency implements a statewide surveillance and utilization control program to safeguard against unnecessary or inappropriate use of Medicaid services and excess payments. In Michigan, the Department of Community Health (State agency) administers the Medicaid program. The State agency, through the Medicaid Integrity Program section, Hospital Health Plan Reimbursement division, and Long Term Care division, conducted audits of Medicaid providers. In addition, the State agency contracted with Michigan Peer Review Organization (MPRO) and ACS Heritage to conduct surveillance and utilization review audits of Medicaid providers. The Michigan Office of the Auditor General (OAG) conducted federally required audits and provided overpayment findings to the State agency. The State Medicaid Fraud Control Unit (MFCU) obtained settlements from Medicaid providers in situations related to fraud or abuse investigations. When any of these organizations identified overpayments, the State agency sent letters to the providers that (1) identified the overpayment amounts and (2) directed the providers to send payments to the State agency or notified the providers of future payment offsets. The OAG sent notice to the State agency of overpayments identified through its federally required audits. Providers were notified of fraud and abuse-related overpayment amounts determined through settlements resulting from MFCU investigations.

Federal Requirements for Medicaid Overpayments

The Federal Government does not participate financially in Medicaid payments for excessive or erroneous expenditures. Section 1903(d)(2)(A) of the Act requires the Secretary of Health & Human Services to recover the amount of a Medicaid overpayment. Federal regulations (42 CFR § 433.304) define an overpayment as "… the amount paid by a Medicaid agency to a provider in excess of the amount that is allowable for services furnished under section 1902 of the Act and which is required to be refunded under section 1903 of the Act." A State has 60 days from the discovery of a Medicaid overpayment to a provider to recover or attempt to recover the overpayment before the Federal share of the overpayment must be refunded to

CMS.[1] Section 1903(d)(2)(C) of the Act and Federal regulations at 42 CFR part 433, subpart F, require a State to refund the Federal share of overpayments at the end of the 60-day period following discovery whether or not the State has recovered the overpayment from the provider.[2] Pursuant to 42 CFR § 433.316(c), an overpayment that is not a result of fraud or abuse is discovered on the earliest date:

> (1) ... on which any Medicaid agency official or other State official first notifies a provider in writing of an overpayment and specifies a dollar amount that is subject to recovery; (2) ... on which a provider initially acknowledges a specific overpaid amount in writing to the medicaid agency; or (3) ... on which any State official or fiscal agent of the State initiates a formal action to recoup a specific overpaid amount from a provider without having first notified the provider in writing.

Pursuant to 42 CFR § 433.316(d), an overpayment resulting from fraud or abuse is discovered on the date of the final written notice of the State's overpayment determination that a Medicaid agency official or other State official sends to the provider. For overpayments identified through Federal reviews, 42 CFR § 433.316(e) provides that an overpayment is discovered when the Federal official first notifies the State in writing of the overpayment and the dollar amount subject to recovery.

In addition, Federal regulations (42 CFR § 433.320) require that the State refund the Federal share of an overpayment on its quarterly Form CMS-64. Provider overpayments must be credited on the CMS-64 submitted for the quarter in which the 60-day period following discovery ends.

OBJECTIVE, SCOPE, AND METHODOLOGY

Objective

Our objective was to determine whether Medicaid overpayments were reported on the CMS-64 in accordance with Federal requirements.

Scope

Our review covered Medicaid provider overpayments that were identified in audit reports, settlement agreements, and overpayment letters issued to providers that should have been reported on the CMS-64 for the quarter ending December 31, 2009. We reviewed the supporting documentation for line 10C for the CMS-64 totaling $14,437,853.

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[1] Effective March 23, 2010, section 6506 of the Patient Protection and Affordable Care Act, P.L. No. 111-148, provides an extension period for the collection of overpayments. Except in the case of overpayments due to fraud, States have up to 1 year from the date of discovery of a Medicaid overpayment to recover, or to attempt to recover, such overpayment before making an adjustment to refund the Federal share of the overpayment. For overpayments identified before the effective date, the previous rules on discovery of overpayment will be in effect.

[2] Section 1903(d)(2)(C) and (D) of the Act and Federal regulations (42 CFR § 433.312) do not require the State to refund the Federal share of uncollectable amounts paid to bankrupt or out-of-business providers.

We did not review the overall internal control structure of the State agency. We limited our internal control review to obtaining an understanding of the identification, collection, and reporting policies and procedures for Medicaid overpayments.

We performed fieldwork at the State agency offices in Lansing, Michigan, from August 2009 through March 2010.

Methodology

To accomplish our audit objective, we:

- reviewed Federal laws, regulations, and other requirements governing Medicaid overpayments;
- interviewed State agency officials regarding policies and procedures relating to Medicaid audits and reporting overpayments on the CMS-64; and
- reviewed the CMS-64 and supporting documentation to determine whether the Medicaid overpayments for the quarter ending December 31, 2009, were reported in accordance with Federal 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 objective. We believe that the evidence obtained provides a reasonable basis for our findings and conclusions based on our audit objective.

FINDINGS AND RECOMMENDATIONS

The State agency did not report all Medicaid overpayments on the CMS-64 in accordance with Federal requirements. For the quarter ending December 31, 2009, the State agency did not report $3,000,000 ($2,198,100 Federal share) in overpayments on the CMS-64 in accordance with Federal requirements because of a clerical error.

The State agency did not properly report these overpayments because it had not developed and implemented internal controls to ensure that overpayments were reported on the CMS-64.

OVERPAYMENTS NOT REPORTED

Pursuant to 42 CFR § 433.312(a)(2), the State agency "... must refund the Federal share of overpayments at the end of the 60-day period following discovery ... whether or not the State has recovered the overpayment from the provider." The regulation provides an exception only when the State is unable to recover the overpayment amount because the provider is bankrupt or out of business (42 CFR § 433.318).

For the quarter ending December 31, 2009, the State agency did not report Medicaid overpayments totaling $3,000,000 ($2,198,100 Federal share) in accordance with Federal requirements, because of a clerical error. The State agency's supporting documentation indicated that total Medicaid overpayments were $14,437,853 on line 10C; however the State agency reported $11,437,853.

INTERNAL CONTROLS NOT IMPLEMENTED

The State agency did not develop and implement internal controls to ensure that it correctly reported on the CMS-64 the Medicaid overpayments identified from State Medicaid audits and settlements.

RECOMMENDATIONS

We recommend that the State agency:

- include unreported Medicaid overpayments totaling $3,000,000 on the CMS-64 and refund $2,198,100 to the Federal Government and

- develop and implement internal controls to correctly report and refund the Federal share of identified Medicaid overpayments on the CMS-64.

STATE AGENCY COMMENTS

In written comments on our draft report, the State agency concurred with our recommendations and said it had included the $3,000,000 on a subsequent CMS-64. The State agency's comments are included in their entirety as the Appendix.

APPENDIX

APPENDIX: STATE AGENCY COMMENTS

STATE OF MICHIGAN
DEPARTMENT OF COMMUNITY HEALTH
LANSING

JENNIFER M. GRANHOLM
GOVERNOR

JANET OLSZEWSKI
DIRECTOR

July 28, 2010

Mr. James C. Cox
Regional Inspector General for Audit Services
Office of Inspector General
Office of Audit Services, Region V
233 North Michigan Avenue
Suite 1360
Chicago, IL 60601

Re: Report Number (A-05-10-00061)

Dear Mr. Cox:

Enclosed is the Michigan Department of Community Health's response to the draft report entitled "Review of Michigan's Reporting Fund Recoveries for State Medicaid Programs on the Form CMS-64 for the First Quarter of 2010".

We appreciate the opportunity to review and comment on the report before it is released. If you have any questions regarding this response, please refer them to Pam Myers at (517) 373-1508.

Sincerely,

Janet Olszewski
Director

JO:kk

Enclosure

cc: Steve Fitton
Mary Jane Russell
Pam Myers
Tim Becker

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Review of Michigan's Reporting Fund Recoveries for
State Medicaid Programs on the Form CMS-64
for First Quarter 2010
(A-05-10-00061)

Finding

The State agency did not report all Medicaid overpayments in accordance with Federal requirements. For the quarter ending December 31, 2009, the State agency did not report $3,000,000 ($2,198,100 Federal share) in overpayments on the CMS-64 in accordance with Federal requirements because of a clerical error.

The State agency did not properly report these overpayments because it had not developed and implemented internal controls to ensure that overpayments were reported on the CMS-64.

Recommendations

We recommend that the State agency:

- include unreported Medicaid overpayments of $3,000,000 on the CMS-64 and refund $2,198,100 to the Federal Government and

- develop and implement internal controls to correctly report and refund the Federal share of identified Medicaid overpayments on the CMS-64.

DCH Response

The Department:

- has corrected the clerical error, and included the additional $3,000,000 on the CMS-64 for the quarter ended March 31, 2010.
- concurs with the recommendation and will develop procedures to correctly report and refund the federal share of identified Medicaid overpayments on the CMS-64.