DEPARTMENT OF HEALTH & HUMAN SERVICES **OFFICE OF INSPECTOR GENERAL**

Office of Audit Services
Region I
John F. Kennedy Federal Building
Room 2425
Boston, MA 02203
(617) 565-2684

January 24, 2011

Report Number: A-01-10-00008

Mr. Russell J. Begin
Acting Commissioner
Maine Department of Health and Human Services
221 State Street
Station Number 11
Augusta, ME 04333

Dear Mr. Begin:

Enclosed is the U.S. Department of Health & Human Services (HHS), Office of Inspector General (OIG), final report entitled *Followup Review of Medicaid Cost-of-Care Overpayments Made to Nursing Facilities in the State of Maine.* 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 George Nedder, Audit Manager, at (617) 565-3463 or through email at George.Nedder@oig.hhs.gov. Please refer to report number A-01-10-00008 in all correspondence.

Sincerely,

/Michael J. Armstrong/
Regional Inspector General
for Audit Services

Enclosure

Direct Reply to HHS Action Official:

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

Department of Health & Human Services

OFFICE OF INSPECTOR GENERAL

FOLLOWUP REVIEW OF MEDICAID COST-OF-CARE OVERPAYMENTS MADE TO NURSING FACILITIES IN THE STATE OF MAINE

Daniel R. Levinson
Inspector General

January 2011
A-01-10-00008

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

The Maine Department of Health and Human Services (the State agency) is responsible for administering MaineCare, the Maine Medicaid program, in compliance with Federal and State statutes and administrative policies. The State agency reimburses nursing facilities based on an established per diem rate for services provided to Medicaid beneficiaries. Pursuant to Medicaid requirements, the State agency must use any additional resources that a beneficiary has, including Social Security payments, to reduce its Medicaid payments to nursing homes. The State agency determines the amount of the beneficiary's contribution during the claims eligibility process and enters this amount into its computer system. The beneficiary's contribution is remitted directly to the nursing home each month.

When the State agency does not reduce the Medicaid per diem payment to the nursing facilities by the amount of the beneficiary's contribution, the nursing home could receive overpayments. Pursuant to Medicaid requirements, the nursing facility must return any overpayments to the State Medicaid program. The State agency is required to refund the Federal share to the Centers for Medicare & Medicaid Services (CMS) on its next Quarterly Statement of Expenditures for the Medical Assistance Program (CMS-64) within a 60-day period following discovery.

From 2008 to 2009, we issued audit reports on seven nursing facilities to the State agency that identified $3 million in Medicaid cost-of-care overpayments to nursing facilities (the Federal share of these overpayments is $1.9 million). These overpayments occurred because the State agency's computer system, which processes reimbursement claims submitted by health care providers, experienced serious malfunctions that resulted in incorrect payments to providers, including nursing facilities. Accordingly, we recommended that the State agency:

- refund the Federal share of the overpayments to CMS on its next quarterly CMS-64 and

- ensure that Medicaid overpayments to nursing facilities are indentified and refunded.

The State agency agreed with our findings and recommendations and took steps to identify these overpayments until a new computer system was implemented. Specifically, the state agency performed audits of costs-of-care payments to nursing facilities. In September 2010, the State agency began implementation of a new computer system to correct cost-of-care overpayments from being made.

This current review of the State agency Medicaid cost-of-care overpayments to nursing facilities was conducted to determine what actions had been taken to implement our recommendations from prior reviews.

OBJECTIVE

The objective of our review was to determine whether the State agency implemented our prior recommendations to refund the Federal share of $1.9 million in Medicaid cost-of-care overpayments to seven nursing facilities and to ensure that Medicaid cost-of-care overpayments are identified at other nursing facilities and the Federal share is refunded.

SUMMARY OF FINDING

The State agency generally implemented our recommendations from the reviews of Medicaid cost-of-care overpayments to nursing facilities. Specifically, the State agency:

- refunded the Federal share of $1.9 million from prior audits of seven nursing facilities and

- identified $9.06 million in additional overpayments made to 73 nursing facilities.

However, the State agency has $1.68 million in uncollected overpayments from 45 nursing facilities (the Federal share is $1.09 million). The overpayments were not credited within 60 days on CMS-64. As a result, the State agency's Federal claim was overstated by $1.09 million because the overpayments were not credited on the appropriate CMS-64. These deficiencies occurred because the State agency waited for the nursing facilities to return overpayments before crediting the Federal claim.

RECOMMENDATIONS

We recommend that the State agency:

- refund CMS $1.09 million in Medicaid cost-of-care overpayments that it made to nursing facilities on its next quarterly CMS-64 and

- implement policies and procedures to ensure that overpayments identified are returned in the required amount of time.

STATE AGENCY COMMENTS

In comments on our draft report, the State agency concurred with our findings and recommendations and said that it had refunded part of the overpayments and would refund additional overpayments at a later time. The State Agency's comments are included in their entirety as Appendix B.

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INTRODUCTION

BACKGROUND

Medicaid Cost-of-Care Payments

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. The Maine Department of Health and Human Services (the State agency) is responsible for administering MaineCare, the Maine Medicaid program, in compliance with Federal and State statutes and administrative policies.

The State agency reimburses nursing facilities based on an established per diem rate for services provided to Medicaid beneficiaries. Pursuant to Medicaid requirements, the State agency must use any additional resources that a beneficiary has, including Social Security payments, to reduce its Medicaid payments to nursing homes. The State agency determines the amount of the beneficiary's contribution to the cost-of-care during the claims eligibility process and enters this amount into its computer system. The beneficiary's cost-of-care contribution is remitted directly to the nursing facility each month.

When the State agency does not reduce the Medicaid per diem payment to the nursing facility by the amount of the beneficiary's contribution, the nursing facility could receive overpayments. Pursuant to Medicaid requirements, the nursing facility must return the overpayments to the State Medicaid program, which in turn is required to refund the Federal share within a 60-day period following discovery to CMS on its next Quarterly Statement of Expenditures for the Medical Assistance Program (CMS-64).

Prior Office of Inspector General Audits

From 2008 to 2009, we issued audit reports on seven nursing facilities to the State agency that identified $3 million in Medicaid cost-of-care overpayments paid to nursing facilities (the Federal share of these overpayments is $1.9 million). These overpayments occurred because the State agency's computer system, which processes reimbursement claims submitted by health care providers, experienced serious malfunctions that resulted in incorrect payments to providers, including nursing facilities. Accordingly, we recommended that the State agency:

- refund the Federal share of the overpayments to CMS on its next quarterly CMS-64 and
- ensure that Medicaid overpayments to nursing facilities are indentified and refunded.

The State agency agreed with our findings and recommendations and took steps to identify these overpayments until a new computer system was implemented. Specifically, the State agency performed audits of costs-of-care payments to nursing facilities. In September 2010, the State

agency began implementation of a new computer system to correct cost-of-care overpayments from being made.

OBJECTIVE, SCOPE, AND METHODOLOGY

Objective

The objective of our review was to determine whether the State agency implemented our prior recommendations to refund the Federal share of $1.9 million in Medicaid cost-of-care overpayments to seven nursing facilities and to ensure that Medicaid cost-of-care overpayments are identified at other nursing facilities and the Federal share is refunded.

Scope

We reviewed Medicaid cost-of-care overpayments to nursing facilities identified by the State agency and reported on the CMS-64s for the quarters ending December 31, 2007, through June 30, 2010. We limited our review of internal controls to obtain an understanding of the State agency's procedures for reviewing accounts and reporting overpayments to the Medicaid program.

We performed fieldwork from January 2010 to October 2010 at the State agency in Augusta, Maine.

Methodology

To accomplish our objective, we:

- reviewed State and Federal regulations pertaining to Medicaid costs of care overpayments;
- verified that the State agency refunded $1.9 million to the Federal Government in cost-of-care overpayments identified in seven prior Office of Inspector General audits;
- analyzed lists of Medicaid cost-of-care overpayments identified by the State agency for 73 nursing facilities;
- reconciled Medicaid cost-of-care overpayment identified by the State agency to the CMS-64s submitted for quarters ending December 31, 2007 through June 30, 2010;
- identified those Medicaid cost-of-care overpayments not credited to the CMS-64 within the 60-day period following discovery;
- reviewed detailed Medicaid cost-of-care overpayment schedules to calculate Federal share owed; and
- discussed our results with State officials and Regional CMS 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 objective.

FINDINGS AND RECOMMENDATIONS

The State agency generally implemented our recommendation from the reviews of Medicaid cost-of-care overpayments to nursing facilities. Specifically, the State agency:

- refunded the Federal share of $1.9 million from prior audits of seven nursing facilities and

- identified $9.06 million in additional overpayments made to 73 nursing facilities.

However, the State agency has $1.68 million in uncollected overpayments from 45 nursing facilities (the Federal share is $1.09 million). The overpayments were not credited within 60 days on CMS-64. As a result, the State agency's Federal claim was overstated by $1.09 million because the overpayments were not credited on the appropriate CMS-64. These deficiencies occurred because the State agency waited for the nursing facilities to return overpayments before crediting the Federal claim.

FEDERAL MEDICAID REQUIREMENTS

Federal regulations 42 CFR § 433.320(a) state, "(1) The agency must refund the Federal share of overpayments that are subject to recovery to CMS through a credit on its Quarterly Statement of Expenditures (Form CMS-64). (2) The Federal share of overpayments subject to recovery must be credited on the Form CMS-64 report submitted for the quarter in which the 60-day period following discovery, established in accordance with § 433.316, ends."[1]

Federal regulations 42 CFR § 433.304 define discovery as "identification by any State Medicaid agency official or other State official, the Federal Government, or the provider of an overpayment, and the communication of that overpayment finding or the initiation of a formal recoupment action without notice as described in § 433.316."

Additionally, 42 CFR § 433.316(c) states, "An overpayment resulting from a situations other than fraud or abuse is discovered on the earliest of– (1) The date on which any Medicaid agency official or other State official first notifies a provider in writing of an overpayment and specifies

[1] On July 13, 2010, CMS issued SMDL# 10-014, providing initial guidance on Section 6506 of the Affordable Care Act, which is entitled, "Overpayments." Under this section, States now have up to one year from the date of discovery of an overpayment for Medicaid services to recover, or to attempt to recover, such overpayment before making an adjustment to refund the Federal share of the overpayment. This section was effective March 23, 2010, the date of enactment, and for overpayments identified prior to the effective date, the previous rules on discovery of the overpayment will be in effect.

a dollar amount that is subject to recovery; (2) The date on which a provider initially acknowledges a specific overpaid amount in writing to the Medicaid agency; or (3) The date 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."

MEDICAID COST-OF-CARE OVERPAYMENTS

The State agency identified $9.06 million in Medicaid cost-of-care overpayments made to 73 nursing facilities. However, the State agency has $1.68 million in uncollected overpayments (the Federal share is $1.09 million) from 45 nursing facilities that has not been credited within the 60 days of the overpayment being identified. (See Appendix A.)

The nursing facilities were notified of the amount of overpayments through letters sent by the State agency. The State agency notified the nursing facilities of the overpayments between June 3, 2009, and March 12, 2010. As of June 30, 2010, the number of days the overpayments has been outstanding ranges between 110 and 392 days.

As a result, the State agency's Federal claim was overstated by a total of $1.09 million because the overpayments were not credited on CMS-64. These deficiencies occurred because the State agency waited for the nursing facilities to return overpayments before crediting the Federal claim.

RECOMMENDATIONS

We recommend that the State agency:

- refund $1.09 million in Medicaid cost-of-care overpayments to nursing facilities on its next quarterly CMS-64 and

- implement policies and procedures to ensure that overpayments identified are returned in the required amount of time.

STATE AGENCY COMMENTS

In comments on our draft report, the State agency concurred with our findings and recommendations and said that it had refunded part of the overpayments and would refund additional overpayments at a later time. The State Agency's comments are included in their entirety as Appendix B.

APPENDIXES

MEDICAID COST-OF-CARE OVERPAYMENTS TO NURSING FACILITIES

Provider	Notification Date	Cutoff Date	Number of Days	Total Amount Outstanding	Federal Share
1	10/02/09	06/30/10	271	$47,814.39	$30,228.88
2	11/16/09	06/30/10	226	7,365.37	4,640.58
3	11/16/09	06/30/10	226	13,891.97	9,925.97
4	10/30/09	06/30/10	243	2,550.95	1,683.31
5	11/25/09	06/30/10	217	3,036.77	2,208.06
6	11/24/09	06/30/10	218	382.74	263.09
7	10/09/09	06/30/10	264	147,072.52	93,429.25
8	10/30/09	06/30/10	243	52,331.46	33,752.82
9	09/25/09	06/30/10	278	239,223.32	151,993.71
10	09/28/09	06/30/10	275	190,543.82	120,239.72
11	11/11/09	06/30/10	231	39,024.99	27,302.14
12	12/03/09	06/30/10	209	16,548.08	11,577.03
13	11/24/09	06/30/10	218	7,232.75	4,865.11
14	11/23/09	06/30/10	219	11,790.17	8,385.75
15	11/20/09	06/30/10	222	8,718.68	6,073.94
16	11/25/09	06/30/10	217	1,772.29	1,224.54
17	12/15/09	06/30/10	197	5,513.92	3,772.26
18	12/14/09	06/30/10	198	13,440.05	9,634.21
19	10/20/09	06/30/10	253	45,419.62	28,856.36
20	11/30/09	06/30/10	212	2,824.16	2,015.23
21	12/2309	06/30/10	189	4,875.75	3,625.12
22	11/10/09	06/30/10	232	221.00	139.01
23	11/19/09	06/30/10	223	9,853.73	6,928.90
24	10/07/09	06/30/10	266	75,025.52	47,541.17
25	10/07/09	06/30/10	266	1,881.44	1,211.84
26	10/30/09	06/30/10	243	25,536.56	16,152.17
27	12/15/09	06/30/10	197	6,017.21	3,816.30
28	12/23/09	06/30/10	189	2,499.45	1,761.75
29	12/23/09	06/30/10	189	14,570.22	10,563.92
30	01/21/10	06/30/10	160	25,718.67	17,060.05
31	12/23/09	06/30/10	189	5,391.33	4,017.97
32	01/19/10	06/30/10	162	18,428.49	12,846.02
33	01/1410	06/30/10	167	7,542.64	5,336.30
34	12/04/09	06/30/10	208	495.68	368.54
35	09/30/09	06/30/10	273	71,342.24	45,238.08
36	10/30/09	06/30/10	243	220,983.88	140,950.25
37	01/14/10	06/30/10	167	3,517.04	2,546.43
38	03/12/10	06/30/10	110	57,033.27	41,399.13

MEDICAID COST-OF-CARE OVERPAYMENTS TO NURSING FACILITIES

Provider	Notification Date	Cutoff Date	Number of Days	Total Amount Outstanding	Federal Share
39	12/23/09	06/30/10	189	7,688.86	5,090.18
40	12/15/09	06/30/10	197	10,218.34	7,301.82
41	11/13/09	06/30/10	229	151,545.07	96,392.27
42	06/03/09	06/30/10	392	17,513.00	11,166.46
43	06/03/09	06/30/10	392	1,074.69	687.65
44	06/03/09	06/30/10	392	17,743.03	11,226.80
45	06/03/09	06/30/10	392	65,980.30	40,687.04
TOTAL				**$1,679,195**	**$1,086,127**[1]

[1]Amount rounded to the nearest dollar

APPENDIX B - STATE AGENCY COMMENTS

Department of Health and Human Services
Maine People Living Safe, Healthy and Productive Lives

Department of Health and Human Services
Commissioner's Office
221 State Street
11 State House Station
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Fax (207) 287-3005; TTY: 1-800-606-0215

January 6, 2011

Mr. Michael J. Armstrong
Regional Inspector General for Audit Services
Office of Audit Services, Region I
John F. Kennedy Federal Building, Room 2425
Boston, MA 02203

Re: *Follow-Up Review of Medicaid Cost-of-Care Overpayments Made to Nursing Facilities in the State of Maine* – Report Number A-01-10-00008

Dear Mr. Armstrong:

The Department of Health and Human Services (DHHS) appreciates the opportunity to respond to the above mentioned draft audit report. We offer the following comments in relation to the recommendations on Page 4 of this report.

For your convenience, below we include the summary finding and list each recommendation followed by our response. Each response includes the State's proposed corrective action plan which we believe will bring the State into compliance with Federal requirements.

Finding:
The State agency identified $9.06 million in Medicaid cost-of-care over payments made to 73 nursing facilities. However, the State agency has $1.68 million ($1.09 million Federal share) in uncollected overpayments from 45 nursing facilities that has not been credited within the 60 days of the overpayment being identified.

The nursing facilities were notified of the amount of overpayments through letters sent by the State agency. The State agency notified the nursing facilities of the overpayments between June 3, 2009 and March 12, 2010. As of June 30, 2010, the number of days the overpayments has been outstanding ranges between 110 and 392 days.

As a result, the State agency's Federal claim was overstated by a total of $1.09 million because the overpayments were not credited on the appropriate CMS-64. These deficiencies occurred because the State agency did not credit the Federal claim until the nursing facility returned overpayments.

Recommendation:
Refund $1.09 million in Medicaid cost-of-care overpayments to nursing facilities on its next quarterly CMS-64.

Response:
DHHS agrees with this recommendation. However, DHHS has refunded $459,241 of the $1.09 million cost-of-care overpayments to nursing facilities in its CMS-64 for the first quarter of State Fiscal Year 2011. DHHS will refund the remainder of the Medicaid cost-of-care overpayments to nursing facilities in the first quarter after receipt of the final report. Additionally, it was identified by the Office of Inspector General Audit Team that DHHS had refunded the $7 million cost-of-care overpayments at a Federal Medical Assistance Percentage rate higher than required. DHHS will be requesting credit for the excess overpayments.

Recommendation:
Implement policies and procedures to ensure that overpayments identified are returned in the required amount of time.

Response:
DHHS agrees with this recommendation. DHHS has implemented policies and procedures to ensure that overpayments are returned in the required amount of time. In addition, DHHS has contracted with HMS to perform audit reviews of targeted Maine nursing homes, private non-medical institutions and intermediary care facilities. The review will determine if the cost of care has been deducted correctly by MaineCare on claims.

We appreciate the time spent in Maine by OIG staff reviewing Maine's Medicaid cost-of-care overpayments made to nursing facilities. We believe this effort will enable us to perform this function more accurately in the future.

Sincerely,

Russell J. Begin
Acting Commissioner

RJB/nmt