DEPARTMENT OF HEALTH AND HUMAN SERVICES

OFFICE OF INSPECTOR GENERAL

WASHINGTON, DC 20201

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/S/

FROM: Suzanne Murrin
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SUBJECT: Recommendation Followup Memorandum Report: *States' Collection of Rebates for Drugs Paid Through Medicaid Managed Care Organizations Has Improved*, OEI-05-14-00431

This memorandum report provides information about States' collection of rebates for drugs paid through Medicaid managed care organizations (MCOs). A 2012 Office of Inspector General (OIG) report found that 10 States were not collecting rebates for drugs paid through MCOs (hereinafter referred to as MCO rebates), despite new requirements in the Affordable Care Act (ACA) to do so. If States do not collect all eligible MCO rebates, then States and the Federal Government both fail to realize all of the savings they are owed under the Medicaid Drug Rebate Program. This memorandum report provides an update on the status of States' collection of MCO rebates.

SUMMARY

OIG found that nearly all (35 of 37) States that pay for drugs through MCOs collected rebates for these drugs between July 1, 2013, and June 30, 2014, as required by ACA.[1] These 35 States collected $7.5 billion in MCO rebates during that time.

This represents a significant improvement compared to OIG's previous finding that only 12 of 22 States paying for drugs through MCOs were collecting rebates for those drugs in 2011.[2] Although the 10 States that were not collecting rebates in 2011 are now doing so, we found additional States that are not collecting the rebates. Moreover, we found that nine States collected some eligible MCO rebates, but not all of them. States that are not collecting all eligible MCO rebates fail to realize all of the savings they are owed under

[1] ACA, P.L. No. 111-148 § 2501(c); 42 U.S.C. § 1396b(m)(2) and 42 U.S.C. § 1396r-8(b)(1).
[2] OIG, *States' Collection of Rebates for Drugs Paid Through Medicaid Managed Care Organizations*, OEI-03-11-00480, September 2012.

the Medicaid Drug Rebate Program. This also affects the Federal Government because it does not receive its share of these eligible, but uncollected, MCO rebates.

One specific challenge that States reported as hampering their ability to collect all eligible MCO rebates was difficulty in collecting rebates for drugs administered by physicians (hereinafter referred to as physician-administered drugs). A drug's National Drug Code (NDC) is a necessary component for invoicing a drug rebate, and States reported that they could not reliably obtain the NDCs from claims for physician-administered drugs.[3]

BACKGROUND

Medicaid Prescription Drug Coverage

All 50 States and the District of Columbia (hereinafter referred to as States) offer outpatient prescription drug coverage as part of their Medicaid benefit packages. In 2013, Medicaid reimbursement for covered outpatient drugs totaled approximately $35 billion.[4, 5] Covered outpatient drugs include drugs dispensed directly to patients at pharmacies (hereinafter referred to as pharmacy drugs) and physician-administered drugs.

States use two primary payment models to pay for drugs: fee-for-service (hereinafter referred to as Medicaid FFS) and MCOs. Under the Medicaid FFS model, States pay pharmacies and providers directly for each service. Under the MCO model, States prospectively pay MCOs a fixed monthly amount for each Medicaid beneficiary, regardless of whether a beneficiary gets services during the month. States may choose to use one payment model or both.

Medicaid Drug Rebate Program

The Omnibus Budget Reconciliation Act of 1990 established the Medicaid Drug Rebate Program.[6] The program requires that, for covered outpatient drugs (hereinafter referred to as drugs) to be eligible for Federal financial participation through Medicaid, manufacturers must pay rebates to States on these drugs when the drugs are dispensed to Medicaid beneficiaries and paid for by Medicaid.[7] States essentially share a portion of these rebates with the Federal government.[8]

In 2010, ACA expanded the Medicaid Drug Rebate Program to require payment of rebates for drugs paid through MCOs if a MCO is responsible for coverage of such

[3] The NDC is a unique three-segment number that the Food and Drug Administration assigns to a drug product. NDCs serve as universal product identifiers for drugs.
[4] The term "covered outpatient drug" is defined at 42 U.S.C. § 1396r-8(k)(2).
[5] OIG analysis of data from the Centers for Medicare & Medicaid Services (CMS) Medicaid Budget and Expenditure System (MBES) and analysis of Medicaid State utilization data, June 2015. We combined Medicaid FFS expenditures (from MBES) and MCO expenditures (from Medicaid State utilization data). This estimate does not reflect Medicaid rebates.
[6] The Omnibus Budget Reconciliation Act of 1990, P.L. No. 101-508, § 4401; 42 U.S.C. § 1396r-8.
[7] 42 U.S.C. §§ 1396r-8(a)(1) and 1396r-8(b)(1).
[8] 42 U.S.C. §§ 1396r-8(b)(1).

drugs.[9] Prior to the ACA, only drugs paid through Medicaid FFS were subject to rebates under the Medicaid Drug Rebate Program.

MCO Rebates

To collect MCO rebates, States determine the amount of MCO rebates owed for each quarter and send invoices to manufacturers. This process begins when MCOs send States data containing the number of units of each drug (by NDC) dispensed to their beneficiaries in the quarter.[10] Using these data, States determine the total number of units reimbursed by MCOs for each NDC.[11] States then multiply the total number of units by the NDC's unit rebate amount (URA) to determine the total quarterly amount of MCO rebates owed for each NDC. Finally, States send invoices to manufacturers reflecting the total quarterly amount of MCO rebates owed for the manufacturers' respective NDCs.

To calculate and invoice MCO rebates, States need to know which specific NDCs were dispensed or administered to MCO beneficiaries. This information is readily available in MCO data on pharmacy drugs because providers use NDCs to bill for pharmacy drugs. To bill for physician-administered drugs, however, providers use Healthcare Common Procedure Coding System (HCPCS) codes. Because a single HCPCS code may be associated with more than one NDC for a given physician-administered drug, States cannot always determine from the MCO data which specific drugs were actually administered unless providers have also included NDCs on claims when billing. Accordingly, the Deficit Reduction Act of 2005 essentially required that States require providers to submit NDCs on physician-administered drug claims to secure rebates.[12]

Related Office of Inspector General Work

In September 2012, OIG published a review of States' collection of rebates for drugs paid through MCOs.[13] OIG found that, of 22 States paying for drugs through MCOs, 10 had not invoiced manufacturers for MCO rebates in 2011. OIG recommended that CMS follow up with these 10 States and take action to enforce rebate collection if necessary. CMS concurred with this recommendation and noted steps it had taken to address the issue.

In August 2014, OIG published a review of the Medicaid Drug Rebate dispute resolution process.[14] OIG found that although drug rebate disputes only involve a small percentage of rebate dollars, certain types of disputes occur frequently within this small percentage. States reported that poor-quality claims data lead to disputes regarding physician-administered drugs. To address this finding, OIG recommended that CMS work with States to improve the quality of claims data submitted by providers and pharmacies.

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[9] ACA, P.L. No. 111-148 § 2501(c); 42 U.S.C. § 1396b(m)(2) and 42 U.S.C. § 1396r-8(b)(1).
[10] CMS, *State Medicaid Director Letter #10-006*, April 22, 2010.
[11] Each drug has an NDC. NDCs contain information that States need to calculate and invoice MCO rebates, including a drug's manufacturer and dosage form and strength.
[12] 42 U.S.C. § 1396r-8(a)(7); 42 CFR § 447.520'.
[13] OIG, *States' Collection of Rebates for Drugs Paid Through Medicaid Managed Care Organizations*, OEI-03-11-00480, September 2012.
[14] OIG, *Medicaid Drug Rebate Dispute Resolution Could Be Improved*, OEI-05-11-00580, August 2014.

In March 2015, OIG published an audit reviewing Oregon's compliance with the requirement to collect MCO rebates—specifically, examining Oregon's collection of MCO rebates for physician-administered drugs.[15] The audit found that the State did not invoice manufacturers for rebates because during the period the audit reviewed, the State's Medicaid Management Information System did not have an edit to ensure that NDCs were present and valid in the MCO drug utilization data for physician-administered drugs.

METHODOLOGY

Scope

This report examines the status of States' collection of MCO rebates between July 1, 2013, and June 30, 2014. This report does not cover States' collection of rebates for drugs paid through Medicaid FFS. We did not attempt to quantify the amount of rebate-eligible drugs for which States were unable to invoice and collect. This report also does not break down rebate amounts by pharmacy drugs and physician-administered drugs.

Data Collection and Analysis

To address our objective, we conducted electronic surveys and structured interviews with State Medicaid agencies in November and December 2014.

State surveys. In November 2014, we surveyed 51 States. We sent the surveys to State Medicaid pharmacy directors with instructions to delegate to other State staff and rebate vendors as appropriate. We asked whether States paid for either pharmacy drugs or physician-administered drugs through MCOs, and whether States had invoiced and collected rebates for those drugs between July 1, 2013 and June 30, 2014. We also asked States to provide the amount of MCO rebates that were invoiced and collected for each of the four quarters between July 1, 2013 and June 30, 2014. We received responses from all 51 States, a 100-percent response rate.

Of the 51 States, 42 reported that they paid for all or some drugs through MCOs between July 1, 2013, and June 30, 2014, whereas 9 States reported that they did not pay for drugs through MCOs. Table 1, on the next page, shows the breakdown of all 51 States.

[15] OIG, *Oregon Did Not Bill Manufacturers for Rebates for Physician-Administered Drugs Dispensed to Enrollees of Medicaid Managed-Care Organizations,* A-09-13-02037, March 2015.

Table 1: States Paying for Prescription Drugs through Medicaid MCOs

Use of MCOs for Prescription Drugs		Number of States
Paid for all or some drugs through MCOs	Paid for drugs through MCOs (i.e., pharmacy drugs and/or physician-administered drugs)	37
	Paid for only a small volume of drugs through MCOs	4
	Paid for drugs through an MCO that is not eligible for rebates	1
Did not pay for any drugs through MCOs		9
Total		**51**

Source: OIG survey of States, 2014.

We excluded 5 of the 42 States that paid for drugs through MCOs, leaving 37 States in our analysis. Of the five States we excluded, four were excluded because they paid for only a small volume of drugs through MCOs (e.g., for a small number of beneficiaries enrolled in Program of All-Inclusive Care for the Elderly (PACE) plans).[16] These States reported that they are not collecting MCO rebates because it is not cost-effective to do so for such a small volume of drugs; the States said that the administrative cost to calculate, track, and receive rebates would exceed the benefit of collecting MCO rebates. We excluded the remaining State because it paid for drugs through an MCO that was not eligible for rebates. In this case, the MCO purchased drugs at discounted prices through the 340B Drug Pricing Program and such drugs are not subject to rebates under the Medicaid Drug Rebate Program.[17]

For the nine States that reported that they did not pay for drugs through MCOs, we confirmed that this was the case by checking three CMS data sources for any evidence suggesting that the States had paid for drugs through MCOs. These three sources were CMS's National Summary of State Medicaid Managed Care Programs for 2012, the CMS-64 expenditure data for each State, and the Medicaid drug utilization for each State.[18] We checked the 2012 summary for any listed plans with outpatient drug coverage.[19] We also checked CMS-64 expenditure data and Medicaid drug utilization data—both of which States submit to CMS—for any dollar amounts associated with

[16] According to CMS's PACE Fact Sheet, a PACE organization is a not-for-profit private or public entity that is engaged primarily in providing comprehensive medical and social services. PACE services use an interdisciplinary team approach in an adult day health center. Available online at https://www.cms.gov/Medicare/Health-Plans/pace/downloads/PACEFactSheet.pdf.

[17] Covered outpatient drugs are not subject to rebates under the Medicaid Drug Rebate Program if they are dispensed by MCOs and subject to discounts under the Health Resource and Services Administration's 340B Drug Pricing Program. See 42 U.S.C. § 1396r-8(j)(1).

[18] States use Form CMS-64 to report their expenditures for Medicaid and the Children's Health Insurance Program.

[19] This was the most current available version of the report.

drugs paid through MCOs. If we found any such evidence, we contacted the State to resolve the discrepancy and confirm that it was not paying for drugs through MCOs.[20]

State interviews. In December 2014, we conducted structured interviews with staff from the 37 States that paid for drugs using MCOs and were not among the States we excluded.

Limitations

The findings are based on survey and interview responses provided by States. We did not verify the accuracy of the rebate amounts reported by States. The rebate amounts in this report were current as of December 2014, when we completed our data collection.

Standards

This report was conducted in accordance with the *Quality Standards for Inspection and Evaluation* issued by the Council of the Inspectors General on Integrity and Efficiency.

RESULTS

Nearly all 37 States in this analysis collected MCO rebates, which represents an increase from the number of States collecting rebates in 2011

Thirty-five of the thirty-seven States in this analysis collected MCO rebates, representing a higher proportion of States collecting rebates than in OIG's 2012 report. That report found that only 12 of 22 States paying for drugs through MCOs collected MCO rebates in 2011.[21] All 10 of the States that were not collecting MCO rebates in 2011 reported that they are now doing so.[22] OIG previously recommended that CMS follow up with those 10 States to ensure that they collect MCO rebates as required.[23] CMS concurred with this recommendation and noted steps it had taken to address the issue.

However, 9 of the 35 States that collected MCO rebates reported to us that they were unable to do so for all rebate-eligible drugs paid through MCOs. Although these States invoiced and collected some MCO rebates, they reported that they could not invoice all eligible MCO rebates. Five of these nine States did not invoice or collect MCO rebates for any physician-administered drugs.

Two of the thirty-seven States in this analysis did not invoice or collect any MCO rebates. One of the two States was not able to load drug claim data sent by MCOs into its claims processing system because its system required updates to accommodate the MCO data. The other State received inaccurate and incomplete information from its

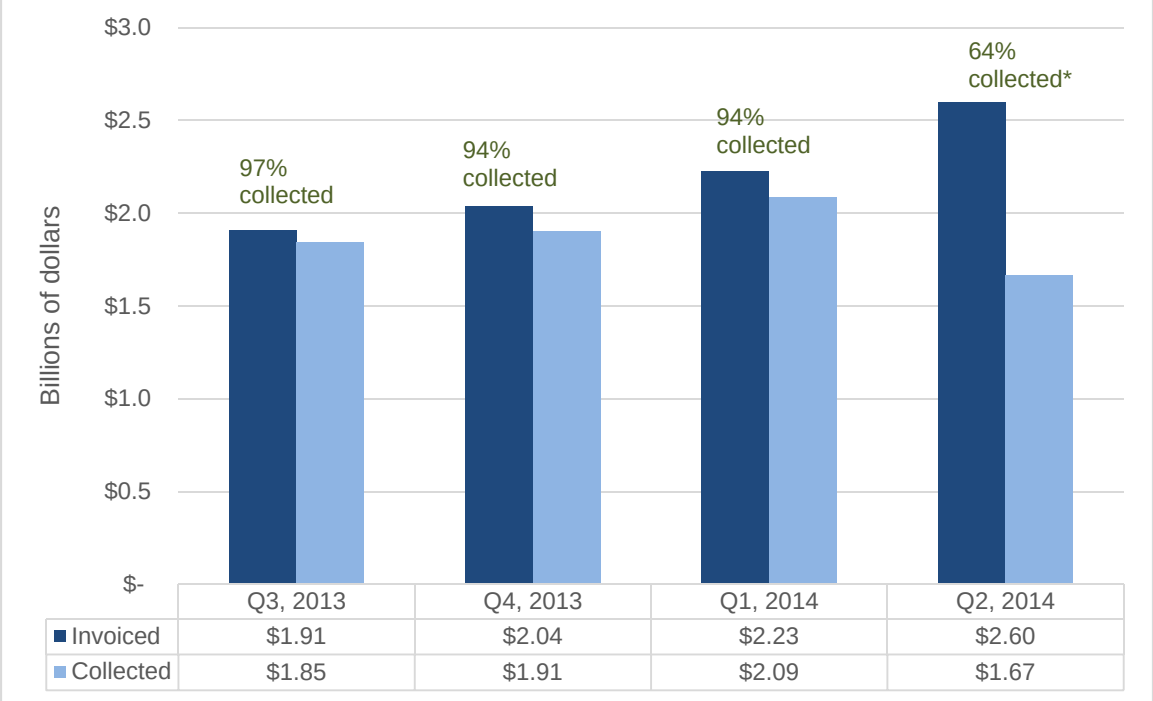
[20] In some cases, we found plans with outpatient drug coverage listed in CMS's National Summary report for States that reported that they did not pay for drugs through MCOs. When we contacted them, however, these States reported that the listed plans either did not cover outpatient drugs or had been discontinued.
[21] OIG, *States' Collection of Rebates for Drugs Paid Through Medicaid Managed Care Organizations*, OEI-03-11-00480, September 2012.
[22] See Appendix C in OEI-03-11-00480. These 10 States are California, the District of Columbia, Florida, Hawaii, Kansas, Mississippi, New Mexico, Virginia, Washington, and West Virginia.
[23] OIG, *States' Collection of Rebates for Drugs Paid Through Medicaid Managed Care Organizations*, OEI-03-11-00480, September 2012.

MCO. Both States were in the process of resolving these issues and planned to invoice for MCO rebates as soon as possible.

See Appendix A for details about which States collected MCO rebates for pharmacy drugs and physician-administered drugs.

States collected approximately $7.51 billion of $8.77 billion invoiced in MCO rebates
The thirty-five States that reported collecting MCO rebates collected approximately $7.51 billion of the $8.77 billion they invoiced. Figure 1 shows the total amount of MCO rebates invoiced and collected between July 1, 2013, and June 30, 2014, by quarter. The amounts reported represent MCO rebates for pharmacy drugs and physician-administered drugs reported by States.

Figure 1: MCO Rebates Invoiced and Collected between July 1, 2013, and June 30, 2014 (in billions)



Source: OIG survey of States, 2014.
Note: These quarters represent the four quarters between July 1, 2013, and June 30, 2014.
* The percentage collected in the second quarter of 2014 is lower than for other quarters because States were still waiting for manufacturer payments for that quarter at the time we collected our data.

Individual States' collection rates for the same period ranged from 49 percent to 100 percent, with an average of 84 percent. See Appendix B for State-specific details. These percentages will likely change over time; States told us that invoice amounts and collection amounts are constantly in flux because of continual adjustments and recalculations (e.g., URA adjustments). States also reported that because of manufacturer disputes, they did not routinely collect 100 percent of the amounts they had invoiced.

Prior OIG work has highlighted the role that manufacturer disputes play in uncollected Medicaid drug rebates.[24, 25]

Although most States are now collecting MCO rebates, problems persist in collecting MCO rebates for physician-administered drugs

Nine States reported that they had problems collecting MCO rebates for physician-administered drugs. The primary problem that States reported was that they could not reliably obtain NDCs from physician-administered drug claims. States need to know which specific NDCs were associated with drugs administered to MCO beneficiaries to calculate and invoice MCO rebates for such drugs. See Appendix A for details about which States were able to collect MCO rebates for physician-administered drugs.

Some States could not reliably obtain NDCs from claims for physician-administered drugs because their MCOs sent NDC data in file formats that were incompatible with States' systems for processing MCO claims. States reported that to resolve these technical issues, they were working to modify their systems to accept the files from MCOs.

One State could not reliably obtain NDCs from claims for physician-administered drugs because hospitals were not always reporting them to MCOs. The State noted that a claims-processing edit for MCO claims did not always force hospitals to enter the NDC, so many claims were submitted without NDCs. This State reported that it plans to implement a claims processing edit that will be more effective in forcing hospitals to report NDCs.

Previous OIG work found similar issues related to rebates for physician-administered drugs. A 2015 OIG audit in one State found that the State was unable to collect such rebates because it was not consistently receiving NDCs from MCOs.[26, 27] Further, in a 2014 OIG report, States reported that even when providers submitted NDCs for physician-administered drugs, those NDCs were not always correct.[28] States need correct NDCs to create accurate rebate invoices, but they reported that they had limited ability to determine whether the NDCs submitted by providers were correct.

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[24] OIG, *States' Collection of Rebates for Drugs Paid Through Medicaid Managed Care Organizations*, OEI-03-11-00480, September 2012.

[25] OIG, *Medicaid Drug Rebate Dispute Resolution Could Be Improved*, OEI-05-11-00580, August 2014.

[26] OIG, *Oregon Did Not Bill Manufacturers for Rebates for Physician-Administered Drugs Dispensed to Enrollees of Medicaid Managed-Care Organizations*, A-09-13-02037, March 2015.

[27] Oregon is not one of the nine States that reported problems collecting MCO rebates for physician-administered drugs. The OIG audit was performed on data from 2010, and the audit noted that Oregon planned to correct its process. During data collection for this report, Oregon reported it was able to invoice and collect MCO rebates for physician-administered drugs for the timeframe of July 1, 2013, to June 30, 2014.

[28] OIG, *Medicaid Drug Rebate Dispute Resolution Could Be Improved*, OEI-05-11-00580, August 2014.

CONCLUSION

States have made progress in collecting MCO rebates since 2011, but not all States are collecting MCO rebates as required. Although the 10 States that were not collecting MCO rebates in 2011 report are now doing so, we found additional States that are not collecting MCO rebates. Moreover, we found that nine States collected some, but not all, eligible MCO rebates. States that are not collecting all eligible MCO rebates fail to realize all of the savings that they are owed under the Medicaid Drug Rebate Program. This also affects the Federal government because it does not receive its share of these eligible, but uncollected, MCO rebates. In keeping with OIG's previous recommendation, CMS should continue to work to ensure that all States are invoicing and collecting MCO rebates.

One specific challenge that States reported as hampering their ability to collect all eligible rebates for drugs paid through MCOs related to collecting rebates for physician-administered drugs. States reported that they could not reliably obtain the NDCs from claims for physician-administered drugs, and these NDCs are a necessary component for invoicing rebates for these drugs. A 2014 OIG study on the Medicaid Dispute Resolution Program recommended that CMS work with States to improve the quality of claims data submitted by providers and pharmacies, specifically noting NDCs for physician-administered drugs as an example. We continue to encourage CMS to address that recommendation in light of this report's finding that States still struggle to obtain NDCs from claims for physician-administered drugs.

This report is being issued directly in final form because it contains no new recommendations. If you have comments or questions about this report, please provide them within 60 days. Please refer to report number OEI-05-14-00431 in all correspondence.

APPENDIX A

States' Coverage of Drugs through MCOs and Related Rebate Collection

State	MCOs Cover Pharmacy Drugs?	Collected MCO Rebates for Pharmacy Drugs?	MCOs Cover Physician-Administered Drugs?	State Collected MCO Rebates for Physician-Administered Drugs?	State Collected Eligible MCO Rebates?
Arizona	Yes	✓	Yes	✓	✓
California	Yes	~	Yes	~	~
D.C.	Yes	✓	Yes	✓	✓
Delaware	No	N/A	Yes	✓	✓
Florida	Yes	✓	Yes	✓	✓
Georgia	Yes	✓	Yes	✓	✓
Hawaii	Yes	✓	Yes	✓	✓
Iowa	No	N/A	Yes	×	×
Illinois	Yes	✓	Yes	✓	✓
Indiana	No	N/A	Yes	✓	✓
Kansas	Yes	✓	Yes	✓	✓
Kentucky	Yes	✓	Yes	✓	✓
Louisiana	Yes	✓	Yes	✓	✓
Massachusetts	Yes	✓	Yes	×	~
Maryland	Yes	✓	Yes	✓	✓
Michigan	Yes	✓	Yes	✓	✓
Minnesota	Yes	✓	Yes	✓	✓
Mississippi	Yes	✓	Yes	✓	✓
North Dakota	Yes	✓	Yes	✓	✓
Nebraska	No	N/A	Yes	~	~
New Hampshire	Yes	×	Yes	×	×
New Jersey	Yes	✓	Yes	×	~
New Mexico	Yes	✓	Yes	✓	✓
Nevada	Yes	✓	Yes	✓	✓
New York	Yes	✓	Yes	✓	✓
Ohio	Yes	✓	Yes	×	~
Oregon	Yes	✓	Yes	✓	✓
Pennsylvania*	Yes	~	Yes	~	~
Rhode Island	Yes	✓	Yes	×	~
South Carolina	Yes	~	Yes	✓	~
Tennessee	No	N/A	Yes	✓	✓
Texas	Yes	✓	Yes	✓	✓
Utah	Yes	✓	Yes	✓	✓
Virginia	Yes	✓	Yes	✓	✓
Washington	Yes	✓	Yes	✓	✓
Wisconsin	Yes	✓	Yes	×	~
West Virginia	Yes	✓	Yes	✓	✓

Source: OIG survey of States, 2014.
* Pennsylvania collected MCO rebates both for pharmacy drugs and physician-administered drugs, but State staff did not know whether the State had collected all eligible MCO rebates for the two categories of drugs. Accordingly, we categorized Pennsylvania as having invoiced for "some (but not all)" eligible MCO rebates.

Key: × = State did not collect any MCO rebates
✓ = State invoiced for all eligible MCO rebates and collected MCO rebates
~ = State invoiced for some (but not all) eligible MCO rebates and collected MCO rebates

APPENDIX B

MCO Rebates Collected by States between July 1, 2013, and June 30, 2014

State	Amount Invoiced	Amount Collected	Percentage of Invoiced Amount Collected
Arizona	$318,181,037	$274,786,225	86%
California	$454,759,133	$392,871,243	86%
D.C.	$35,080,120	$26,695,115	76%
Delaware	$8,223,331	$6,107,223	74%
Florida	$282,625,487	$274,956,704	97%
Georgia	$134,029,479	$128,760,597	96%
Hawaii	$78,788,049	$62,479,766	79%
Iowa	$0	$0	-
Illinois	$109,895,722	$81,658,417	74%
Indiana	$3,990,567	$3,357,553	84%
Kansas	$217,934,623	$204,251,081	94%
Kentucky	$264,068,108	$217,544,048	82%
Louisiana	$116,247,767	$116,138,682	100%
Massachusetts	$198,809,119	$140,726,603	71%
Maryland	$157,400,842	$154,333,129	98%
Michigan	$244,735,792	$239,563,273	98%
Minnesota	$222,807,221	$184,121,166	83%
Mississippi	$72,044,530	$56,836,455	79%
North Dakota	$1,271,338	$620,901	49%
Nebraska	$1,057,212	$759,009	72%
New Hampshire	$0	$0	-
New Jersey	$361,829,523	$336,149,505	93%
New Mexico	$24,317,198	$21,138,285	87%
Nevada	$20,897,677	$19,520,688	93%
New York	$1,896,706,923	$1,730,274,331	91%
Ohio	$486,155,452	$419,767,906	86%
Oregon	$132,408,122	$120,703,594	91%
Pennsylvania	$1,080,767,357	$853,398,423	79%
Rhode Island	$47,230,168	$44,775,094	95%
South Carolina	$138,174,280	$127,844,605	93%
Tennessee	$16,800,548	$12,521,800	75%
Texas	$1,155,443,626	$864,772,615	75%
Utah	$41,306,860	$38,461,080	93%
Virginia	$226,583,055	$193,319,794	85%
Washington	$176,412,325	$124,493,625	71%
Wisconsin	$2,010,590	$1,725,421	86%
West Virginia	$42,085,197	$32,181,813	76%

Source: OIG survey of States, 2014.