Department of Health and Human Services

OFFICE OF INSPECTOR GENERAL

NEW YORK DID NOT HAVE EVIDENCE AVAILABLE IN READILY REVIEWABLE FORM TO SUPPORT THAT IT REIMBURSED MEDICAID DIABETIC TESTING SUPPLY REBATES TO THE FEDERAL GOVERNMENT

Inquiries about this report may be addressed to the Office of Public Affairs at <u>Public.Affairs@oig.hhs.gov</u>.



Gloria L. Jarmon Deputy Inspector General for Audit Services

> June 2015 A-02-13-01002

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. New York did not have evidence available in readily reviewable form to support that it reimbursed the Federal share of Medicaid diabetic testing supply rebates totaling over \$65 million during a nearly 3-year period.

INTRODUCTION

WHY WE DID THIS REVIEW

While the Federal Government is statutorily required to match a State's Medicaid expenditures based on the Federal medical assistance percentage, States have a duty to share their savings with the Federal Government. Through its preferred diabetic supply program, the New York State Department of Health (Health Department) has negotiated rebates for blood glucose monitors and test strips with manufacturers of diabetic testing supplies. Rebates such as these must be used to offset the amount of the State's Medicaid expenditures claimed to the Federal Government.

OBJECTIVE

Our objective was to determine whether the Health Department reimbursed to the Federal Government its share of rebates reported to the Centers for Medicare & Medicaid Services (CMS) as having been collected from diabetic testing supply manufacturers.

BACKGROUND

The Medicaid Program

The Medicaid program provides medical assistance to low-income individuals and individuals with disabilities. The Federal and State Governments jointly fund and administer the Medicaid program. At the Federal level, CMS administers the Medicaid program. Each State administers its Medicaid program in accordance with a CMS-approved State plan. In New York, the Health Department administers the Medicaid program.

A State must adjust its medical assistance expenditures to account for applicable credits. "Applicable credits" are those receipts or reductions of expenditure-type transactions that offset or reduce expense items allocable to Federal awards as direct or indirect costs (e.g., rebates collected by a State).¹ A State must account for those credits on its Quarterly Medicaid Statement of Expenditures for the Medical Assistance Program (Form CMS-64).²

The amounts reported on the Form CMS-64 and its attachments must represent actual expenditures and credits for which all supporting documentation, in readily reviewable form, has been compiled and is available at the time the claim is filed.³

¹ 2 CFR part 225, App. A, § C.4.a.

² Section 1903(d)(3) of the Social Security Act and 45 CFR § 92.21(f).

³ 42 CFR § 430.30(c) and the CMS State Medicaid Manual, § 2500.2.

New York's Preferred Diabetic Supply Program

The Health Department is required to identify methods to contain the growth of Medicaid spending and methods to improve the efficiency and effectiveness of existing service delivery.⁴ One way the Health Department reduced Medicaid program expenditures was its implementation of a preferred diabetic supply program through which it obtains rebates from diabetic testing supply manufacturers.

The Health Department's accounting records showed that it collected rebates from diabetic testing supply manufacturers totaling \$101,446,996 during the period October 1, 2009, through June 30, 2012.

HOW WE CONDUCTED THIS REVIEW

Our review covered \$101,446,996 in rebates the Health Department recorded that it collected from diabetic testing supply manufacturers through its preferred diabetic supply program for the period October 1, 2009, through June 30, 2012 (11 calendar quarters). We compared these recorded rebates to total rebates reported on the Health Department's Forms CMS-64 and reimbursed to the Federal Government.

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 A contains the details of our audit scope and methodology.

FINDING

NO EVIDENCE TO SUPPORT THAT DIABETIC TESTING SUPPLY REBATES WERE REIMBURSED TO THE FEDERAL GOVERNMENT COMPILED AND AVAILABLE IN READILY REVIEWABLE FORM AT THE TIME ITS CMS-64 CLAIM WAS FILED

A State must adjust its medical assistance expenditures to account for applicable credits by reporting those credits on its Forms CMS-64.⁵ The amounts reported on the Form CMS-64 and its attachments must represent actual expenditures and credits for which all supporting documentation, in readily reviewable form, has been compiled and is available at the time the claim is filed.⁶

⁴ New York State Social Services Law, Title 11 § 363-C.

⁵ 2 CFR part 225, App. A, § C.4.a.

⁶ 42 CFR § 430.30(c) and the CMS State Medicaid Manual, § 2500.2.

The Health Department provided documentation to support that it reimbursed the Federal Government for its share of \$36,305,838 in recorded rebates from diabetic testing supply manufacturers for 3 calendar quarters (quarters ending June 2010, June 2011, and September 2011). For these 3 calendar quarters, the Health Department reported diabetic testing supply rebates and certain drug rebates on Line 7A2 (Drug Rebate Offset) of its Forms CMS-64 and maintained documentation to support the amounts related to diabetic testing supply rebates. Health Department officials informed us that the Health Department reported \$65,141,158 in rebates for the remaining 8 quarters on Line 49 (Other Care Services) of its Forms CMS-64. However, the Health Department did not provide documentation to support that this amount related to diabetic testing supply rebates.

According to Health Department officials, the Health Department did not have support for the \$65,141,158 in rebate collections that it reported for the 8 calendar quarters because of limited staff resources available during those quarters to effectively track and report on rebates as they were being collected.

In response to our draft report, the Health Department compiled from source documents sufficient evidence that the Federal share of \$65,141,158 in recorded diabetic testing supply rebates were reimbursed to the Federal Government during the period October 1, 2009, through June 30, 2012. While the evidence supported the Health Department's claims on its Forms CMS-64, the supporting documentation had not been compiled in readily reviewable form and made available when it filed these claims.

RECOMMENDATION

We recommend that the Health Department ensure that the Federal share of all Medicaid diabetic testing supply rebates collected after June 30, 2012, are reported on its Forms CMS-64 and have supporting documentation compiled in readily reviewable form when it files these claims.

HEALTH DEPARTMENT COMMENTS AND OFFICE OF INSPECTOR GENERAL RESPONSE

In written comments on our draft report, the Health Department agreed with the draft's recommendation⁷ and, under separate cover, provided evidence that it reimbursed \$65,141,158 in recorded diabetic testing supply rebates to the Federal Government during the period October 1, 2009, through June 30, 2012. The Health Department also provided evidence that it reimbursed recorded diabetic testing supply rebates for the period July 2012 through December 2014. The Health Department also stated that it will follow CMS direction and accurately report diabetic testing supply rebates on the Form CMS-64.

⁷ In our draft report, we recommended that the Health Department refund the Federal share of \$65,141,158 in recorded diabetic testing supply rebates to the Federal Government or provide evidence that the Federal share of these rebates was properly reimbursed to the Federal Government during the period October 1, 2009, through June 30, 2012. We have revised our final report based on evidence provided by the Health Department in response to our draft report.

The Health Department's comments are included in their entirety as Appendix B.

We did not verify the evidence provided by the Health Department for the period July 2012 through December 2014 because this was outside the scope of our audit.

APPENDIX A: AUDIT SCOPE AND METHODOLOGY

SCOPE

Our audit covered \$101,446,996 the Health Department recorded in its accounting records that it collected from diabetic testing supply manufacturers during the period October 1, 2009, through June 30, 2012.

We did not review the Health Department's overall internal control structure. Rather, we limited our internal control review to those applicable to our objective.

We performed our fieldwork at the Health Department's office in Albany, New York, from October 2012 through January 2014.

MEHODOLOGY

To accomplish our audit objective, we:

- reviewed applicable Federal and State requirements;
- met with Health Department officials to gain an understanding of the Health Department's process for collecting rebates from diabetic testing supply manufacturers;
- determined the amount of rebates the Health Department recorded as having received from diabetic testing supply manufacturers during the period October 1, 2009, through June 30, 2012;
- obtained and reviewed available documentation from the Health Department to support rebates recorded in its accounting records;
- determined whether the appropriate share of the rebates were reimbursed to the Federal Government by comparing accounting records to Form CMS-64;
- discussed the results of our review with Health Department officials; and
- reviewed documentation compiled by the Health Department in response to our draft report.

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: HEALTH DEPARTMENT COMMENTS



ANDREW M. CUOMO Governor HOWARD A. ZUCKER, M.D., J.D. Acting Commissioner SALLY DRESLIN, M.S., R.N. Executive Deputy Commissioner

April 14, 2015

Mr. James P. Edert Regional Inspector General for Audit Services Department of Health and Human Services - Region II Jacob Javitz Federal Building 26 Federal Plaza New York, New York 10278

Ref. No: A-02-13-01002

Dear Mr. Edert:

Enclosed are the New York State Department of Health's comments on the United States Department of Health and Human Services, Office of Inspector General's Draft Audit Report A-02-13-01002 entitled, "New York Did Not Provide Evidence to Support That It Reimbursed the Federal Government Its Share of Rebates Collected From Diabetic Testing Supply Manufacturers."

Thank you for the opportunity to comment.

Sincerely,

Salle Droslin

Sally Dreslin, M.S., R.N. Executive Deputy Commissioner

Enclosure

Empire State Plaza, Corning Tower, Albany, NY 12237 | health ny.gov

New York's Medicaid Reimbursement of Diabetic Testing Supply Rebates (A-02-13-01002)

cc: Michael J. Nazarko Robert W. LoCicero, Esq. Jason A. Helgerson Thomas Meyer Robert Loftus James Cataldo Ronald Farrell Brian Kiernan Elizabeth Misa Ralph Bielefeldt Diane Christensen Lori Conway OHIP Audit SM

New York State Department of Health Comments on the Department of Health and Human Services Office of Inspector General Draft Audit Report A-02-13-01002 entitled "New York Did Not Provide Evidence to Support That It Reimbursed the Federal Government Its Share of Rebates Collected From Diabetic Testing Supply Manufacturers"

The following are the New York State Department of Health's (Department) comments in response to the Department of Health and Human Services, Office of Inspector General (OIG) Draft Audit Report A-02-13-01002 entitled, "New York Did Not Provide Evidence to Support That It Reimbursed the Federal Government Its Share of Rebates Collected From Diabetic Testing Supply Manufacturers."

Recommendation #1:

Refund the Federal share of \$65,141,158 in recorded diabetic testing supply rebates to the Federal Government or provide evidence that the Federal share of \$65,141,158 was properly reimbursed to the Federal Government during the period October 1, 2009 to June 30, 2012.

Response #1

The OIG determined that the Department collected a total of \$101,446,996 in drug rebates for diabetic testing supplies during the period October 1, 2009 to June 30, 2012 (11 calendar quarters). Upon review of Quarterly Expenditure Report (QER) documentation on file at the Department, OIG found that the federal share of \$36,305,838 in recorded rebates from diabetic testing supplies were credited back to the Federal Government for 3 calendar quarters. The difference in the total value of rebates of \$101,446,996 and the amount documented to be reimbursed of \$36,305,838 is the remaining value of \$65,141,158 recommended to be refunded.

Based on OIG findings, the Department further researched the \$65,141,158 in question and provided evidence to OIG that demonstrates that the \$65,141,158 in recorded diabetic testing supply rebates in question are included in the total value of supplemental drug rebates reported on the QER for 8 calendar quarters and have already been reimbursed to the Federal Government. Refunding the Federal share of \$65,141,158 pursuant to this audit would be a duplicate refund to the Federal Government.

Recommendation #2:

Ensure that the Federal share of all diabetic testing supply rebates collected after June 30, 2012 are accurately reported on Forms CMS-64.

Response #2

The Department provided evidence to OIG that demonstrates drug rebates for diabetic testing supplies reported on the QER for periods after June 30, 2012 through December 31, 2014 are included in the total value of supplemental drug rebates reported on CMS Form 64.9Base as current quarter expenditures on Line 7A2 'Drug Rebate Offset – State Sidebar Agreement'. The Department will follow CMS direction to report diabetic testing supply drug rebates on the QER form CMS-64.