

Department of Health and Human Services

**OFFICE OF  
INSPECTOR GENERAL**

**THE CENTERS FOR MEDICARE &  
MEDICAID SERVICES HAD NOT  
RECOVERED MORE THAN A  
BILLION DOLLARS IN MEDICAID  
OVERPAYMENTS IDENTIFIED BY  
OIG AUDITS**

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Daniel R. Levinson  
Inspector General

December 2018  
A-05-17-00013

# *Office of Inspector General*

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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.

## Report in Brief

Date: December 2018

Report No. A-05-17-00013

U.S. DEPARTMENT OF HEALTH & HUMAN SERVICES  
**OFFICE OF INSPECTOR GENERAL**



### Why **OIG** Did This Review

In a previous review, **OIG** determined that the Centers for Medicare & Medicaid Services (**CMS**) had recovered the majority of Medicaid overpayments that we had identified in audit reports issued during Federal fiscal years (**FYs**) 2000 through 2009. However, millions of dollars remained uncollected at the time we issued our report. We performed the current audit as a followup to the previous audit to determine whether **CMS** recovered Medicaid overpayments for a more recent period, as well as remaining overpayments in the previous audit.

Our objective was to determine whether **CMS** recovered overpayments identified in **OIG** audit reports in accordance with Federal requirements.

### How **OIG** Did This Review

We reviewed **CMS's** efforts to collect overpayments identified in 313 audits issued in **FYs** 2010 through 2015 (the current period) that recommended recovering overpayment amounts totaling \$2.7 billion and 10 audits issued for **FYs** 2004 through 2009 (the prior period) that recommended recovering overpayment amounts totaling \$225.6 million. For these 323 audits, we chose only the overpayments that we had recommended for recovery and with which **CMS** had concurred, which totaled \$2.6 billion for the current period and \$191.3 million from the prior period.

## The Centers for Medicare & Medicaid Services Had Not Recovered More Than a Billion Dollars in Medicaid Overpayments Identified by **OIG** Audits

### What **OIG** Found

**CMS** had not recovered all of the overpayments identified in **OIG** audit reports in accordance with Federal requirements. Specifically, **CMS** did not collect \$1.6 billion in overpayments identified in 77 current period audits and \$188.6 million in overpayments identified in 7 prior period audits. **CMS** is in discussions with State officials regarding 26 reports and 51 outstanding overpayments that continue to be in the disallowance process. In addition, **CMS** did not ensure that States correctly reported Medicaid overpayments on the Quarterly Medicaid Statement of Expenditures for the Medical Assistance Program Form **CMS-64** (**CMS-64**). Finally, we could not verify the accuracy of \$2.7 million that **CMS** told us was reported by States because before our review **CMS** disposed of documents supporting that overpayments were recovered.

**CMS** had not recovered all overpayments covered by this review because its policies and procedures did not include timelines for resolving overpayments when State agencies disagreed with the recommendations. **CMS** did not ensure that States correctly reported Medicaid overpayments because it did not always verify that States followed its guidance. **CMS** did not retain documentation to support that overpayments were recovered because its standard operating procedures included a retention period that was inconsistent with Federal retention guidelines.

**CMS's** prompt recovery of overpayments helps ensure that Federal funds are effectively and efficiently used to carry out the activities for which they are authorized. **CMS's** failure to collect and States' failure to pay illustrates a significant financial stewardship vulnerability.

### What **OIG** Recommends and **CMS** Comments

We recommend that **CMS** recover the remaining \$1.6 billion due the Federal Government from the current period and \$188.6 million due the Federal Government from the prior period and improve the timeliness of recovering overpayments by setting guidelines about the time **CMS** has to work with States to obtain documentation and issue disallowance letters to States. We also recommend that **CMS** verify that States report overpayments correctly, require States to resubmit corrected **CMS-64s** when they do not, and continue to educate States about their responsibility to report overpayments correctly.

In written comments on our draft report, **CMS** concurred with our recommendations and described actions that it has taken or plans to take to address the recommendations.

The full report can be found at <https://oig.hhs.gov/oas/reports/region5/51700013.asp>.

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## INTRODUCTION

### WHY WE DID THIS REVIEW

In a previous review, the Office of Inspector General (OIG) determined that the Centers for Medicare & Medicaid Services (CMS) had recovered the majority of Medicaid overpayments that we had identified in audit reports issued during Federal fiscal years (FYs) 2000 through 2009. However, millions of dollars remained uncollected at the time we issued our report.<sup>1</sup> We performed the current audit as a followup to the previous audit. Specifically, we wanted to determine whether CMS has recovered the remaining amounts that we identified as uncollected in the previous review, as well as Medicaid overpayments identified in OIG audit reports issued in FYs 2010 through 2015.

### OBJECTIVE

Our objective was to determine whether CMS recovered overpayments identified in OIG audit reports in accordance with Federal requirements.

### BACKGROUND

#### Medicaid Program

Title XIX of the Social Security Act (the Act) established the Medicaid program, which 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.

#### Audit Resolution

CMS policy states that all audit recommendations in OIG final reports should be cleared<sup>2</sup> within 6 months of the date the final report is issued. CMS uses the OCD to report to OIG CMS's concurrence or nonconcurrence with each recommendation and the management decisions and actions taken on both monetary and nonmonetary recommendations.

CMS may concur with a recommendation to recover overpayments but elect to recover an amount different from the overpayment recommendation. CMS indicates the amount that it agrees to recover as a sustained amount on the OCD. When a State agrees in writing with OIG or CMS to refund the overpayment, the State should refund the unallowable expenditure on its

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<sup>1</sup> *The Centers for Medicare & Medicaid Services Collected the Majority of Medicaid Overpayments but Millions Remain Uncollected* (A-05-11-00071, issued February 19, 2013).

<sup>2</sup> CMS considers recommendations to be cleared when (1) it submits an OIG Clearance Document (OCD) to OIG detailing the corrective actions that it will take on recommendations and (2) OIG accepts CMS's corrective actions.

next Quarterly Medicaid Statement of Expenditures for the Medical Assistance Program Form CMS-64 (CMS-64).

CMS's Regional Office Standard Operating Procedure, Number FM-8, *Audit Resolution Process* (SOP FM-8), sets forth CMS policies for followup on OIG audit recommendations. If a State concurs with OIG, CMS describes in the OCD the action the State has taken or plans to take to address OIG's recommendation.

If a State does not concur with OIG, CMS, as directed by SOP FM-8, contacts the appropriate State officials to discuss the audit findings and obtain documentation to substantiate the State's position. If CMS agrees with the State's position, CMS follows certain procedures to "nonconcur" with OIG and close<sup>3</sup> the recommendation on the OCD. CMS submits the adjusted OCD to OIG so that OIG can approve or disapprove of the decision to close the recommendation within 6 months after the audit report is issued.

When CMS does not agree with the State's decision to nonconcur, CMS must clear the recommendation and initiate the disallowance process. CMS closes the OCD after the State has taken action necessary to fully implement all the audit recommendations; however, the audit resolution process does not provide any specific timeframe for closing audit recommendations.

## **HOW WE CONDUCTED THIS REVIEW**

We reviewed CMS's efforts to collect overpayments identified in 313 audit reports issued in FYs 2010 through 2015 (the current period) that recommended recovering overpayments totaling \$2,728,483,479 and 10 reports issued in FYs 2004 through 2009 (the prior period) that had recommended recovering overpayments totaling \$225,603,567. For these 323 audit reports, we reviewed only the overpayments that we recommended for recovery and with which CMS concurred, which totaled \$2,550,775,745 for the current period and \$191,338,407 for the prior period.<sup>4</sup>

To determine whether CMS recovered the overpayments in accordance with Federal requirements, we reviewed the relevant CMS-64s, OCDs, supporting documentation, and negative grant awards<sup>5</sup> for all 323 audit reports.

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<sup>3</sup> CMS considers recommendations to be closed when it has implemented the agreed-upon corrective actions.

<sup>4</sup> Since our previous review, CMS reversed its concurrence with respect to \$34,265,160 identified in three audit reports, which decreased the CMS concurrence to \$191,338,407. Of the \$34,265,160, CMS, through an 85-percent memo, declined to recover any of the \$34,008,370 related to one report and reduced \$1,781,032 in OIG-recommended recoveries related to two reports to \$1,524,242. An 85-percent memo is required when an audit recommendation exceeds \$100,000 and a proposed resolution of the recommendation amount is less than 85 percent of the amount recommended by the OIG. The head of the operating division or his or her deputy for operations must approve an 85-percent memo, and then it must be cleared by the regional operating division's headquarters.

<sup>5</sup> A negative grant award is an offset that CMS makes against a State's quarterly Medicaid grant award.

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. Appendix B contains a list of audit reports covered by this audit with the outstanding recovery amounts and the time that elapsed between issuance of the most recent OCD for those reports and March 2018.

## FINDINGS

CMS had not recovered all of the overpayments identified in OIG audit reports in accordance with Federal requirements. As of May 2, 2018, CMS had recovered a total of \$909,285,502 of the \$2,742,114,152 in Medicaid overpayments identified in the current and prior periods. However, CMS did not collect the remaining \$1,832,828,650 for 84 OIG audit reports. Specifically, CMS had not collected \$1,644,235,438 in overpayments identified in 77 current period audits and \$188,593,212 in overpayments identified in 7 prior period audits. In addition, CMS did not ensure that States correctly reported Medicaid overpayments on the CMS-64. Finally, we could not verify the accuracy of \$2,693,583 that CMS told us was reported by States because before our review CMS disposed of documents supporting that overpayments were recovered.

CMS had not recovered all overpayments covered by this review because its policies and procedures did not include timelines for resolving overpayments when State agencies do not agree with recommendations. CMS did not ensure that States correctly reported Medicaid overpayments because it did not always verify that States followed its guidance. CMS did not retain documentation to support that overpayments were recovered because its standard operating procedures included a retention period that was inconsistent with Federal retention guidelines.

### **CMS HAD NOT RECOVERED ALL OVERPAYMENTS IN ACCORDANCE WITH FEDERAL REQUIREMENTS**

Federal regulations define an overpayment as “the amount paid by a Medicaid agency to a provider which is 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” (42 CFR § 433.304). Under the Act, the Secretary of Health and Human Services must recover the Federal share of a Medicaid overpayment from the State (§ 1903(d)(2)(A)). The Secretary has delegated that responsibility to CMS. Under the Federal Claims Collection Act of 1966, as amended, and 45 CFR § 30.10, CMS must aggressively and in a timely manner recover the Federal share of all the overpayments States owe the Federal Government.



Office of Management and Budget Circular No. A-50 Revised, *Audit Followup* (the Circular), sets out policies and procedures for executive agencies to use when considering OIG audit reports that require followup. The Circular generally defines audit resolution as having occurred when the management of both the audit organization and the agency (e.g., CMS) agree on actions to take on reported findings (§ 6(b)). The Circular requires resolution of audit recommendations within 6 months after issuance of a final report and states that “[c]orrective action should proceed as rapidly as possible” (§ 8(a)(2)).

According to the *CMS State Medicaid Manual* (the Manual), when OIG performs an audit and recommends a financial adjustment and a State agrees in writing with OIG or CMS to refund the overpayment, the State should refund the unallowable expenditure on the next CMS-64 submitted after the written agreement (§ 2500.6(O)). The Manual further states that when a State does not report the adjustment on the next CMS-64 submission, CMS should initiate a negative grant award within 15 days of receiving the CMS-64 that should have included the refund.

### **CMS Had Not Recovered All Outstanding Overpayments From the Current Period**

CMS recovered \$906,540,307 of the \$2,550,775,745 identified in 313 OIG audit reports in which we recommended recovery and with which CMS concurred. However, as of the conclusion of our fieldwork, CMS had not recovered the \$1,644,235,438 in overpayments related to 77 audits. The State agencies did not agree to refund the overpayments that remain outstanding.

CMS is still in discussions with State officials regarding the audit findings and obtaining documentation to substantiate the States’ positions regarding the recovery amounts associated with 26 reports totaling \$201,137,294 in outstanding overpayments. The 51 outstanding overpayments totaling \$1,443,098,144 continued to be in the disallowance process as of the conclusion of our fieldwork; i.e., CMS regional offices prepared a “disallowance package”<sup>6</sup> and sent copies to CMS’s Central Office and Office of General Counsel for review and approval before issuing the disallowance letters to the States.

### **CMS Had Not Recovered All Outstanding Overpayments From the Prior Period**

CMS recovered \$2,745,195 of the \$191,338,407 identified in 10 OIG audit reports in which we recommended recovery and with which CMS concurred. However, as of the conclusion of our fieldwork, CMS had not recovered \$188,593,212 in overpayments related to seven audits because the State agencies had not agreed to refund the overpayments. All of these outstanding overpayments remain in the disallowance process.

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<sup>6</sup> This package includes the accounting, legal, and other documentation needed to support the disallowance actions. The documentation should identify pertinent citations to the law, regulations, Departmental Appeals Board decisions, guides, and policy instructions needed to support the finding that the claims are unallowable.

## **CMS's Policies and Procedures Did Not Include Timeframes for Recovering Overpayments When State Agencies Disagreed With Recommendations**

CMS did not recover all overpayments covered by this review because its policies and procedures did not include timeframes for resolving overpayments when State agencies disagreed with recommendations. CMS had policies and procedures in place to ensure that Medicaid overpayments were recovered; however, these policies and procedures included timeframes for recovering overpayments only when States agreed with the recommendation or opted to go through the Departmental Appeals Board process. The SOP FM-8, which includes procedures for resolving findings when a State does not concur with a finding or appeal, does not include any timeframes for recovering overpayments. CMS's prompt recovery of overpayments helps ensure that Federal funds are effectively and efficiently used to carry out the activities for which they are authorized. CMS's failure to collect and States' failure to pay illustrate a significant financial stewardship vulnerability.

## **CMS DID NOT ENSURE THAT STATES CORRECTLY REPORTED ALL MEDICAID OVERPAYMENTS ON THE CMS-64**

According to the Manual (§ 2500.6(O)):

[W]hen the RO [Regional Office] or the Office of Inspector General (OIG), Office of Audit, issues a financial management review report or an audit report to you containing a recommended financial adjustment and you agree in writing to refund the amount in question, HCFA [CMS] allows you to refund the unallowable expenditure by making a Line 10.A or 10.B adjustment on the next quarterly expenditure report (Form HCFA-64) submission following the date you agree regardless if the HCFA-64 submitted is for a period that precedes the date of the agreement letter.

When States chose to report Medicaid overpayments on the CMS-64, CMS did not ensure that they reported the overpayments correctly. States incorrectly reported the overpayments 25 times (10 were from 1 multi-State report) out of 269<sup>7</sup> overpayments recovered. For all of these refunds, the States adjusted or offset current expenditures on lines other than Line 10 of the CMS-64.

Although CMS provided training to States on how to correctly report overpayments on the CMS-64, the States did not always follow CMS's guidance. CMS did not verify the overpayments were reported correctly on line 10 of the CMS-64. When States do not properly report overpayments on the correct line of the CMS-64, they make it more difficult for CMS to

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<sup>7</sup> This number includes the 234 that were completely reported, 6 that were partially reported, and 29 of 33 reported from the multi-State report. It does not include the eight we could not verify were reported because of lack of documentation.

identify and verify the recovered Federal share of overpayments during the quarterly review of the submitted CMS-64s. Additionally, CMS does not penalize States for incorrectly reporting the overpayments.

### **CMS DID NOT RETAIN DOCUMENTATION TO SUPPORT THAT OVERPAYMENTS WERE RECOVERED**

CMS's documentation retention policy in effect during our audit period required the retention of quarterly expenditure reports (i.e., CMS-64s) and related documents for 6 years and 3 months after the period covered by the accounts.<sup>8</sup> This policy was superseded after our audit period in 2017. The new documentation retention policy requires the retention of quarterly expenditure reports for 7 years.<sup>9</sup>

Although most of the ROs followed the documentation retention policy in effect during our audit period, some ROs retained source documents supporting recovery of overpayments for only 3 years after the end of the FY. As a result, CMS could not provide all of the source documents it used to verify that the identified overpayments were recovered. Specifically, CMS was unable to provide documents supporting eight of the overpayments (four overpayments from one multi-State report) totaling \$2,693,583.

Some ROs did not retain source documents for the required period because, before CMS updated its documentation retention policy, the only guidance CMS provided to the ROs was SOP FM-8, which stated: "Audit files must be retained according to the retention guidelines, which are currently three years after the end of the federal fiscal year in which the audit is closed or no longer needed (i.e., litigation holds). ROs have the option of retaining for a longer period of time" (§ III, p. 5). After our audit period, CMS updated the SOP FM-8 to reflect the new record retention policy and distributed it to the ROs.

### **RECOMMENDATIONS**

We recommend that CMS:

- recover the remaining \$1,644,235,438 due the Federal Government from the current period;
- recover the remaining \$188,593,212 due the Federal Government from the prior period;
- develop policies and procedures to improve the timeliness of recovering overpayments when the States disagree with recommendations by setting guidelines for the amount of

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<sup>8</sup> National Archives and Records Service, Disposition Authority Number NC1-440-82-4 (1982), "22. States Accountable Expenditures and Estimate of Account Files," p. 7.

<sup>9</sup> National Archives and Records Administration, Disposition Authority Number DAA-0440-2015-0004 (2017).

time CMS has to:

- discuss with State officials regarding the audit findings,
  - obtain documentation to substantiate the State's position, and
  - issue the disallowance letter to the State;
- verify that future overpayment recoveries are reported correctly on line 10 of the CMS-64;
  - require States to submit corrected CMS-64s to identify recovered overpayments on line 10 when done incorrectly; and
  - continue to educate States about their responsibility to report overpayments on the correct line of the CMS-64 to improve oversight of the reporting process.

### **CMS COMMENTS**

In written comments on our draft report, CMS concurred with our recommendations and described actions that it has taken or plans to take to address the recommendations. For our first recommendation, CMS stated that it has issued disallowance letters for \$238,683,856 and will continue efforts to collect the Federal portion of the remaining overpayments on amounts with which it concurred. For our second recommendation, CMS stated that it has issued disallowance letters for \$144,798,024 and will continue efforts to collect the Federal portion of the remaining overpayments on amounts with which it concurred. For our third recommendation, CMS stated that it is exploring options for improving the timeliness of discussions with State officials, obtaining documentation from States, and issuing disallowance letters. For our fourth, fifth, and sixth recommendations, CMS stated that it has begun verifying overpayment recoveries are reported correctly on line 10 of the CMS-64, has communicated to the States the requirement to submit corrected CMS-64s when they have been done incorrectly, and continues to provide education to the States on this topic. CMS's comments are included in their entirety as Appendix C.

## APPENDIX A: AUDIT SCOPE AND METHODOLOGY

### SCOPE

We reviewed 313 audit reports, issued in FYs 2010 through 2015 (current period), that recommended recovering overpayments totaling \$2,728,483,479 and 10 reports from the previous nation-wide review, issued for FYs 2004 through 2009 (prior period), that had recommended recovering overpayments totaling \$225,603,567. From these audit reports, we tested only the overpayments that we recommended for recovery and with which CMS concurred, which totaled \$2,550,775,745 for the current period and \$191,338,407 from the prior period.

To determine whether CMS recovered the overpayments in accordance with Federal requirements, we reviewed the relevant CMS-64s, OCDs, supporting documentation, and negative grant awards for all 323 audit reports to determine whether the States had refunded the overpayments.

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

We performed fieldwork from May 2017 through May 2018 at the Indianapolis field office and CMS offices in Chicago, Illinois.

### METHODOLOGY

To accomplish our objective, we:

- reviewed applicable Federal requirements;
- interviewed CMS officials to gain an understanding of the overpayment recovery process;
- obtained and reviewed CMS policies and procedures related to concurrence with OIG recommendations and recovery of overpayments;
- prepared a list of 446<sup>10</sup> audit reports issued in the current period, which had recommended recoveries of \$2,858,938,368;
- prepared a list of 10 audit reports issued in the prior period from a previous review, which had recommended recoveries of \$225,603,567;

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<sup>10</sup> This number comprises all Medicaid reports for the audit period listed in one of our computer systems.

- identified 313<sup>11</sup> audit reports issued in the current period with overpayments coded as recommended for recovery with which CMS concurred, totaling \$2,550,775,745;
- identified 10 audit reports issued in the prior period with overpayments coded as recommended for recovery with which CMS concurred, totaling \$191,338,407;
- reviewed OCDs for audit recommendation amounts with which CMS concurred;
- determined whether CMS issued negative grant awards because of overpayments that the States did not report on their CMS-64s;
- reviewed CMS's Audit Status Follow-Up Reports<sup>12</sup> to (1) track CMS's progress in clearing and closing OIG audit recommendations, (2) identify CMS's actions taken to recover overpayments, and (3) track States' actions to address recommendations;
- reviewed the relevant CMS-64s, OCDs, supporting documentation, and any applicable negative grant awards for all 323 audit reports to determine whether the States had reported the overpayments; and
- discussed the results of our review with 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 objectives.

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<sup>11</sup> This number does not include the 133 audit reports we removed from the 446 because they did not contain amounts recommended for recovery.

<sup>12</sup> CMS prepares these reports quarterly and uses them to report and track the status of OIG Office of Audit Services and OIG Office of Evaluation and Inspections recommendations that have been cleared but not yet closed.

**APPENDIX B: ELAPSED TIME FROM THE DATE OF THE MOST RECENT OIG CLEARANCE DOCUMENT THROUGH MARCH 2018 FOR UNRECOVERED OVERPAYMENTS**

CURRENT PERIOD					
Report No.	Report Issued	OCD Date	CMS Concurrence Amount	Outstanding Recovery	Months From OCD Date to 3/30/18 <sup>13</sup>
A-07-08-03107	3/18/2010	7/9/2010	\$20,469,670	\$19,894,633	94.0
A-05-09-00103	9/17/2010	2/17/2011	1,320,131	896,459	86.6
A-02-08-01005	10/13/2010	2/25/2011	100,335,472	100,335,472	86.3
A-02-08-01006	1/3/2011	5/25/2011	203,641,959	203,641,959	83.4
A-02-09-01005	5/25/2011	10/11/2011	3,156,501	3,156,501	78.7
A-02-09-01006	6/1/2011	10/11/2011	1,555,291	1,555,291	78.7
A-05-10-00046	8/3/2011	2/27/2012	82,929,010	82,929,010	74.1
A-06-09-00062	3/12/2012	3/12/2012	888,683	888,683	73.6
A-02-08-01017	11/30/2011	4/5/2012	16,951,335	16,951,335	72.8
A-02-09-01002	12/29/2011	4/24/2012	145,405,192	145,405,192	72.2
A-06-09-00063	5/15/2012	5/15/2012	4,483,492	4,483,492	71.5
A-07-11-03161	2/6/2012	6/13/2012	5,519,029	5,519,029	70.5
A-07-11-03168	2/29/2012	6/13/2012	5,639,664	5,639,664	70.5
A-06-09-00117	6/15/2012	6/15/2012	404,817	404,817	70.5
A-02-09-01034	3/22/2012	7/11/2012	2,654,293	2,654,293	69.6
A-02-10-01002	4/20/2012	8/31/2012	8,177,970	8,177,970	67.9
A-06-09-00064	9/11/2012	9/11/2012	10,962,174	10,962,174	67.5
A-02-09-01028	5/31/2012	10/18/2012	30,589,719	30,589,719	66.3
A-01-10-00014	1/19/2012	10/26/2012	432,655	432,655	66.0
A-02-08-01009	3/8/2012	11/8/2012	22,481,421	22,481,421	65.6
A-01-11-00008	10/10/2012	2/28/2013	2,695,809	2,695,809	61.9
A-02-10-01029	4/23/2012	3/14/2013	60,740,637	60,740,637	61.4
A-02-10-01022	11/29/2012	3/19/2013	69,121,473	69,121,473	61.2
A-02-07-01050	11/4/2011	3/21/2013	5,023,626	5,023,626	61.2
A-06-11-00064	6/22/2012	3/22/2013	25,012,996	125,653	61.1
A-02-10-01001	9/24/2012	4/5/2013	774,274	774,274	60.7
A-02-10-01024	3/26/2013	6/4/2013	27,467,320	27,467,320	58.7
A-05-12-00050	6/21/2013	6/21/2013	21,375,765	21,375,765	58.1
A-07-12-01121	3/13/2013	7/17/2013	862,398	862,398	57.2
A-05-12-00042	2/8/2013	7/22/2013	5,841,815	5,841,815	57.1
A-09-11-02016	4/15/2013	8/21/2013	1,170,497	139,778	56.1

<sup>13</sup> The 3/30/2018 CMS-64 was the last one filed by the States prior to the end of our fieldwork.

CURRENT PERIOD (continued)					
Report No.	Report Issued	OCD Date	CMS Concurrence Amount	Outstanding Recovery	Months From OCD Date to 3/30/18
A-05-12-00040	5/30/2013	10/28/2013	7,567,455	7,567,455	53.8
A-09-07-00051	3/22/2010	11/13/2013	19,926,220	19,926,220	53.3
A-05-12-00041	6/21/2013	12/18/2013	7,092,206	7,092,206	52.1
A-05-07-00036	9/11/2013	2/4/2014	22,839,628	22,839,628	50.5
A-01-12-00014	4/29/2013	2/18/2014	334,610	334,610	50.0
A-05-11-00040	9/27/2013	2/19/2014	998,466	998,466	50.0
A-04-12-08014	8/27/2013	3/21/2014	88,197,498	88,197,498	49.0
A-07-11-03170	3/6/2013	4/8/2014	88,406	88,406	48.4
A-07-11-03171	9/24/2012	4/8/2014	23,320,626	23,320,626	48.4
A-07-13-03189	12/12/2013	4/11/2014	1,670,386	1,670,386	48.3
A-09-12-02080	4/24/2014	4/24/2014	2,326,099	2,063,891	47.9
A-02-10-01043	5/21/2013	4/30/2014	54,265,195	54,265,195	47.7
A-02-11-01008	9/20/2013	4/30/2014	31,482,913	31,482,913	47.7
A-02-11-01038	9/5/2013	4/30/2014	7,576,306	7,576,306	47.7
A-07-12-01118	1/28/2014	4/30/2014	487,351	487,351	47.7
A-02-10-01042	3/27/2014	8/22/2014	22,004,768	22,004,768	43.9
A-02-10-01025	8/7/2013	9/12/2014	523,919	523,919	43.2
A-02-11-01003	10/21/2013	9/12/2014	7,780,626	7,780,626	43.2
A-02-11-01036	6/16/2014	9/25/2014	1,113	1,113	42.7
A-05-12-00056	7/10/2014	12/1/2014	36,903,169	36,903,169	40.5
A-05-12-00055	7/10/2014	12/1/2014	17,395,647	17,395,647	40.5
A-02-12-01011	7/3/2014	1/27/2015	14,108,014	14,108,014	38.6
A-02-10-01009	9/24/2012	2/6/2015	1,403,736	1,403,736	38.3
A-07-13-03193	10/30/2014	2/9/2015	11,464,069	11,464,069	38.2
A-04-14-08028	9/9/2014	2/11/2015	19,484,644	19,484,644	38.1
A-02-13-01004	9/29/2014	3/24/2015	23,054,993	23,054,993	36.7
A-02-14-01003	3/4/2015	5/12/2015	6,276,189	6,276,189	35.1
A-02-12-01004	2/26/2015	5/15/2015	12,063,508	12,063,508	35.0
A-02-13-01035	11/17/2014	5/21/2015	11,855,610	11,855,610	34.8
A-06-11-00048	6/3/2015	6/2/2015	126,687,148	126,687,148	34.4
A-06-14-00010	6/22/2015	6/22/2015	79,428	79,428	33.7
A-05-12-00070	1/30/2015	7/30/2015	26,426	26,426	32.5
A-07-14-06051	4/13/2015	8/14/2015	34,837,957	34,837,957	32.0
A-04-13-08021	3/18/2015	9/11/2015	262,076	262,076	31.0
A-02-11-01014	4/30/2015	10/7/2015	8,405,262	8,405,262	30.2



CURRENT PERIOD (continued)					
Report No.	Report Issued	OCD Date	CMS Concurrence Amount	Outstanding Recovery	Months From OCD Date to 3/30/18
A-03-13-00202	6/29/2015	10/23/2015	34,155,857	34,155,857	29.6
A-02-12-01012	7/22/2015	12/4/2015	2,835,361	2,835,361	28.2
A-04-14-08035	7/21/2015	12/8/2015	34,813,442	34,813,442	28.1
A-07-14-03201	8/12/2015	12/8/2015	3,034,157	3,034,157	28.1
A-07-14-06056	9/18/2015	1/15/2016	52,968	52,968	26.8
A-05-13-00046	6/4/2015	2/5/2016	488,456	488,456	26.1
A-02-13-01022	8/26/2015	2/24/2016	32,236,308	32,236,308	25.5
A-02-10-01044	1/6/2015	3/10/2016	79,328	79,328	25.0
A-05-09-00021	10/26/2010	5/11/2016	38,897,675	26,950,340	22.9
A-03-12-00205	8/21/2014	1/13/2017	2,503,014	1,436,187	14.7
A-06-12-00053	10/20/2014	3/1/2017	24,455,258	24,455,258	13.1
<b>Total</b>			<b>\$1,684,428,579</b>	<b>\$1,644,235,438</b>	

PRIOR PERIOD					
Report No.	Report Issued	OCD Date	CMS Concurrence Amount	Outstanding Recovery	Months From OCD Date to 3/30/18
A-07-05-03071	5/23/2005	12/2/2005	\$710,305	\$134,989	150.0
A-07-06-01029	3/23/2007	9/14/2007	8,235,595	8,235,595	128.3
A-05-01-00102	10/18/2004	7/25/2008	4,516,112	4,516,112	117.8
A-05-01-00099	10/13/2004	7/29/2008	140,281,912	140,281,912	117.7
A-07-06-04063	6/13/2008	10/17/2008	2,937,056	2,937,056	115.0
A-02-07-01028	5/26/2009	9/22/2009	16,189,125	16,189,125	103.7
A-05-07-00076	3/30/2009	10/1/2009	16,298,423	16,298,423	103.4
<b>Total</b>			<b>\$189,168,528</b>	<b>\$188,593,212</b>	

## APPENDIX C: CMS COMMENTS




DEPARTMENT OF HEALTH & HUMAN SERVICES

Centers for Medicare & Medicaid Services

*Administrator*  
Washington, DC 20201

**Date:** October 22, 2018

**To:** Daniel R. Levinson  
Inspector General  
Office of Inspector General

**From:** Secma Verma   
Administrator  
Centers for Medicare & Medicaid Services

**Subject:** Office of Inspector Draft Report: "The Centers for Medicare and Medicaid Services Did Not Recover More Than A Billion Dollars in Medicaid Overpayments Identified by OIG Audits" (A-05-17-00013)

The Centers for Medicare & Medicaid Services (CMS) appreciates the opportunity to review and comment on the OIG draft report on Medicaid overpayment recoveries. CMS is committed to providing Medicaid beneficiaries with high quality health care while protecting taxpayer dollars by preventing and recovering Medicaid overpayments.

Because Medicaid is jointly funded by states and the Federal Government, and is administered by states within Federal guidelines, both CMS and states have key roles as stewards of the program, and work together closely to carry out these responsibilities. As such, CMS conducts multiple activities to oversee Medicaid expenditures and verify that Federal funds are only spent on allowable activities in the Medicaid program. For example, CMS staff work with states to provide clarification and guidance around allowable expenditures and coordinate with state auditors and the OIG to ensure that state expenditures and corresponding claims for Federal matching funds are allowable.

As part of our efforts to protect the integrity of CMS programs, CMS identifies and recovers overpayments in accordance with agency policies and procedures. In instances where the states do not agree to refund overpayments, CMS works with state officials to obtain documentation to make a determination on the allowability of audit findings. If CMS cannot substantiate the position of disagreement and the state does not voluntarily return Federal funds associated with unallowable claims, CMS can attempt to recover funds by issuing a disallowance. The process of determining whether to issue a disallowance consists of significant legal, financial, and policy analyses to ensure our final determination is consistent with Medicaid statute and regulations. In addition, states have the ability to request administrative reconsideration to CMS and/or appeal the disallowance to the Departmental Appeals Board. An administrative reconsideration or an appeal to the Departmental Appeals Board may necessitate statutory, regulatory, or sub-regulatory fixes that may take additional time to resolve.

However, CMS is committed to achieving more expeditious resolution of these types of issues, as they arise, thereby ensuring Federal funds are repaid in a timely manner.

Lastly, CMS has taken action to clear out a number of potential disallowances that were not issued in the past. Since March 2017, CMS has issued over \$590 million in total disallowances. CMS is also exploring modifications to its policies and procedures to ensure timely issuance of disallowance letters.

**OIG Recommendation**

CMS should recover the remaining \$1,644,235,438 due the Federal Government from the current period.

**CMS Response**

CMS concurs with this recommendation and has already issued disallowances for \$238,683,856 of the remaining \$1,644,235,438. CMS will continue efforts to collect the Federal portion of the remaining overpayments on amounts with which CMS concurred in accordance with Federal requirements.

**OIG Recommendation**

CMS should recover the remaining \$188,593,212 due the Federal Government from the prior period.

**CMS Response**

CMS concurs with this recommendation and has already issued disallowances for \$144,798,024 of the remaining \$188,593,212. CMS will continue efforts to collect the Federal portion of the remaining overpayments on amounts with which CMS concurred in accordance with Federal requirements.

**OIG Recommendation**

CMS should develop policies and procedures to improve the timeliness of recovering overpayments when the States disagree with recommendations by setting guidelines for the amount of time CMS has to:

- o discuss with State officials regarding the audit findings,
- o obtain documentation to substantiate the State's position, and
- o issue the disallowance letter to the State.

**CMS Response**

CMS concurs with this recommendation. CMS already has policies and procedures in place for the recovery of Medicaid overpayments. In instances where the state agrees with the recommendation or opts to go through the Departmental Appeals Board process, CMS has set

timeframes for the recovery of overpayments. However, as mentioned above, when a state disagrees with the recommendation for overpayment recovery, CMS must work with the state to substantiate its position which can take time to resolve in a fair and accurate manner. CMS is exploring options for improving timeliness of discussions with State officials, obtaining documentation from States, and issuing disallowance letters.

**OIG Recommendation**

CMS should verify that future overpayment recoveries are reported correctly on line 10 of the CMS- 64.

**CMS Response**

CMS concurs with this recommendation. Since the audit review period, CMS has begun verifying that overpayment recoveries are reported correctly on line 10 of the CMS-64.

**OIG Recommendation**

CMS should require States to submit corrected CMS-64s to identify recovered overpayments on line 10 when done incorrectly.

**CMS Response**

CMS concurs with this recommendation. Since the audit review period, CMS has communicated to states the requirement to submit corrected CMS-64s when states incorrectly report overpayment recoveries.

**OIG Recommendation**

CMS should continue to educate States about their responsibility to report overpayments on the correct line of the CMS-64 to improve oversight of the reporting process.

**CMS Response**

CMS concurs with this recommendation. CMS continues to provide education to the states on this topic during quarterly meetings between CMS and the states.