Department of Health and Human Services

OFFICE OF INSPECTOR GENERAL

INCONSISTENCIES IN STATES' REPORTING OF THE FEDERAL SHARE OF MEDICAID DRUG REBATES

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

Brian P. Ritchie
Assistant Inspector General
For Audit Services

June 2014
A-06-13-00001

Office of Inspector General

https://oig.hhs.gov

The mission of the Office of Inspector General (OIG), as mandated by Public Law 95-452, as amended, is to protect the integrity of the Department of Health and Human Services (HHS) programs, as well as the health and welfare of beneficiaries served by those programs. This statutory mission is carried out through a nationwide network of audits, investigations, and inspections conducted by the following operating components:

Office of Audit Services

The Office of Audit Services (OAS) provides auditing services for HHS, either by conducting audits with its own audit resources or by overseeing audit work done by others. Audits examine the performance of HHS programs and/or its grantees and contractors in carrying out their respective responsibilities and are intended to provide independent assessments of HHS programs and operations. These assessments help reduce waste, abuse, and mismanagement and promote economy and efficiency throughout HHS.

Office of Evaluation and Inspections

The Office of Evaluation and Inspections (OEI) conducts national evaluations to provide HHS, Congress, and the public with timely, useful, and reliable information on significant issues. These evaluations focus on preventing fraud, waste, or abuse and promoting economy, efficiency, and effectiveness of departmental programs. To promote impact, OEI reports also present practical recommendations for improving program operations.

Office of Investigations

The Office of Investigations (OI) conducts criminal, civil, and administrative investigations of fraud and misconduct related to HHS programs, operations, and beneficiaries. With investigators working in all 50 States and the District of Columbia, OI utilizes its resources by actively coordinating with the Department of Justice and other Federal, State, and local law enforcement authorities. The investigative efforts of OI often lead to criminal convictions, administrative sanctions, and/or civil monetary penalties.

Office of Counsel to the Inspector General

The Office of Counsel to the Inspector General (OCIG) provides general legal services to OIG, rendering advice and opinions on HHS programs and operations and providing all legal support for OIG's internal operations. OCIG represents OIG in all civil and administrative fraud and abuse cases involving HHS programs, including False Claims Act, program exclusion, and civil monetary penalty cases. In connection with these cases, OCIG also negotiates and monitors corporate integrity agreements. OCIG renders advisory opinions, issues compliance program guidance, publishes fraud alerts, and provides other guidance to the health care industry concerning the anti-kickback statute and other OIG enforcement authorities.

Notices

THIS REPORT IS AVAILABLE TO THE PUBLIC

at https://oig.hhs.gov

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.

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.

INTRODUCTION

States did not consistently report the Federal share of Medicaid drug rebates at different Federal financial participation rates.

WHY WE DID THIS REVIEW

The Social Security Act (the Act) established higher Federal financial participation (FFP) rates for certain medical assistance services, such as those related to family planning, Indian Health Services, and breast and cervical cancer care.[1] On the basis of prior Office of Inspector General work, we were concerned that States may not always use the higher FFP rates when refunding to the Federal Government its share of drug rebates that drug manufacturers paid to the States.

OBJECTIVE

Our objective was to determine whether States and the District of Columbia (States) reported drug rebates at the applicable FFP rates for the period July 1, 2011 through June 30, 2012.

BACKGROUND

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

As part of the implementation of their Medicaid programs, States may submit waiver requests to CMS. These waivers, when approved, allow exceptions to certain requirements or limitations of the Act. Many States operate their Medicaid program using a combination of a fee-for-service payment system and waivers.

Quarterly Medicaid Statement of Expenditures for the Medical Assistance Program

States claim Medicaid expenditures and the associated Federal share on the Form CMS-64, Quarterly Medicaid Statement of Expenditures for the Medical Assistance Program (CMS-64 report). The CMS-64 report is an accounting statement that the States must submit to CMS within 30 days after the end of each quarter. This form shows the disposition of

[1] The Federal Government's share of most Medicaid expenditures varies by State depending on each State's per capita income, and was between 50 percent to just over 73 percent for fiscal year 2013. Section 1903(a)(5) of the Act provides that a State will receive 90 percent of the costs of family planning services and supplies. Section 1905(b) of the Act provides that States will receive 100 percent of the costs of services furnished through an Indian Health Service facility, and will receive a higher, variable rate for optional breast and cervical cancer services.

Medicaid funds used to pay for medical and administrative expenditures for the reporting period and any prior-period adjustments. CMS Regional Offices conduct quarterly reviews of the CMS-64 report, during which staff members examine the accounting records the States used to support the claimed costs. The CMS-64 report has separate sections for the fee-for-service payment system and waivers. These separate sections contain both drug expenditures and drug rebate information.

Medicaid Drug Rebate Program

The Medicaid drug rebate program became effective in 1991 (§1927 of the Act). For a covered outpatient drug to be eligible for Federal Medicaid funding, the drug manufacturer must enter into a rebate agreement with CMS and pay quarterly rebates to the States. Drug rebates are deducted from Medicaid expenditures in the quarter that States receive them (§1927(b)(1)(B)). The drug rebate program does not provide rebates for all of a State's drug expenditures. For example, drugs purchased through the Federal Supply Schedule are already discounted and therefore not eligible for rebates.

HOW WE CONDUCTED THIS REVIEW

During our audit period, States claimed on the fee-for-service sections of their CMS-64 reports Medicaid drug rebates totaling just over $12.9 billion ($7.4 billion Federal share).[2] We analyzed CMS-64 reports to identify instances in which States did not use higher FFP rates when reporting Medicaid drug rebates and used an information request sent to the States to obtain supporting documentation and answers to questions regarding the reporting of drug rebates.

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

Even though States claimed drug expenditures at higher FFP rates, they did not consistently report the Federal share of drug rebates at those higher FFP rates. For one or more quarters in our selected time period:

- Eighteen States reported drug expenditures related to breast and cervical cancer services but did not report drug rebates at the higher FFP rate.

[2] The total fee-for-service rebate amount does not include additional drug rebates eligible for the 100 percent Federal share that was legislated under the Affordable Care Act.

- Seven States reported drug expenditures related to family planning but did not report drug rebates at the higher FFP rate.

- Thirteen States reported drug expenditures related to Indian Health Services but did not report drug rebates at the higher FFP rate; nine States reported drug expenditures related to Indian Health Services and also reported drug rebates at the higher FFP rate.[3]

Responses to our information request revealed that States used different methodologies to determine the Federal share of drug rebates:

- Thirty-one States allocated a portion of the Federal share of drug rebates at different FFP rates based on the percentage of drug expenditures claimed at each FFP rate.

- Nine States tracked their drug expenditures by at least one of the higher FFP rates and, therefore, could determine the applicable rate for the associated drug rebates.

- Seven States used a combination of those two methods.

- Four States either had no method of assigning the Federal share of drug rebates, or we could not determine a method from the information they provided.

Most States did not track rebates back to the original use of the drug. Several States responded that such tracking would be difficult or impossible with their current computer systems.

CMS has not issued specific national guidance that instructs States to report drug rebates at the FFP rates at which drugs were originally reimbursed or that identifies acceptable methods to determine the Federal share of drug rebates. Only seven States indicated that they had received written guidance from a CMS Regional Office. Inconsistent reporting and different methodologies could lead to underreporting of the Federal share of drug rebates on the CMS-64 report and to a loss of Federal share.

RECOMMENDATION

We recommend that CMS issue guidance that clearly instructs States to report drug rebates at the applicable FFP rates and identify acceptable methods to determine the Federal share of drug rebates.

CMS COMMENTS

In written comments on our draft report, CMS concurred with our recommendation. CMS's comments are included in their entirety as Appendix B.

[3] If Indian health facilities purchased drugs using the Federal Supply Schedule, then the State should not collect or report rebates associated with those drugs.

APPENDIX A: AUDIT SCOPE AND METHODOLOGY

SCOPE

During our audit period, States claimed on the fee-for-service sections of their CMS-64 reports Medicaid drug rebates totaling just over $12.9 billion ($7.4 billion Federal share).[4] We analyzed CMS-64 reports to identify instances in which States did not use higher FFP rates when reporting Medicaid drug rebates and used an information request to the States to obtain supporting documentation and answers to questions regarding the reporting of drug rebates.

We limited our review to supporting documentation provided by the States; we did not evaluate drug rebates submitted by manufacturers to determine their validity. Our objective did not require a review of the overall internal control structure of CMS or the States.

METHODOLOGY

To accomplish our objective, we:

- reviewed applicable Federal laws, regulations, and guidance;
- interviewed CMS officials to obtain an understanding of their policies and procedures for reporting Medicaid drug rebates on the CMS-64 report;
- extracted the States' fee-for-service sections of the CMS-64 reports from CMS's Medicaid Budget Expenditure System for the period July 1, 2011, through June 30, 2012;
- analyzed the CMS-64 reports to identify instances in which States did not use higher FFP rates when reporting Medicaid drug rebates;
- used an information request sent to the States to obtain supporting documentation of the CMS-64 reports and answers to questions regarding the reporting of drug rebates;
- analyzed the States' procedures for reporting drug rebates at different FFP rates on their CMS-64 reports; 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.

[4] The total fee-for-service rebate amount does not include additional drug rebates eligible for the 100 percent Federal share that was legislated under the Affordable Care Act.

APPENDIX B: CMS COMMENTS

DEPARTMENT OF HEALTH & HUMAN SERVICES

Centers for Medicare & Medicaid Services

Administrator
Washington, DC 20201

DATE: MAY 21 2014

TO: Daniel R. Levinson
Inspector General

FROM: Marilyn Tavenner
Administrator

SUBJECT: Office of Inspector General (OIG) Draft Report: "Inconsistencies in States' Reporting of the Federal Share of Medicaid Drug Rebates (A-06-13-00001)

Thank you for the opportunity to review and comment on the above-mentioned OIG draft report. The purpose of this report was to determine whether states and the District of Columbia reported drug rebates at the applicable federal financial participation (FFP) rates for the period July 1, 2011 through June 30, 2012. OIG was concerned that states may not always use the higher FFP rates when refunding to the federal government its share of drug rebates that drug manufacturers paid to the states.

During July 1, 2011 through June 30, 2012, OIG found that states did not consistently report the federal share of drug rebates at those higher FFP rates. For one or more quarters in the selected time period--

- Eighteen states reported drug expenditures related to breast and cervical cancer services but did not report drug rebates at the higher FFP rate;
- Seven states reported drug expenditures related to family planning but did not report drug rebates at the higher FFP rate; and
- Thirteen states reported drug expenditures related to Indian Health Services but did not report drug rebates at the higher FFP rate; nine states reported drug expenditures related to Indian Health Services and also reported drug rebates at the higher FFP rate.

Additionally, OIG found that states used different methodologies to determine the federal share of drug rebates as follows:

- Thirty-one states allocated a portion of the federal share of drug rebates at different FFP rates based on the percentage of drug expenditures claimed at each FFP rate.
- Nine states tracked their drug expenditures by at least one of the higher FFP rates and, therefore, could determine the applicable rate for the associated drug rebates.
- Seven states used a combination of those two methods.
- Four states either had no method of assigning the federal share of drug rebates, or we could not determine a method from the information they provided.

- Most states did not track rebates back to the original use of the drug. Several states responded that such tracking would be difficult or impossible with their current computer systems.
- The Centers for Medicare & Medicaid Services (CMS) has not issued specific national guidance that instructs states to report drug rebates at the FFP rates at which drugs were originally reimbursed or that identifies acceptable methods to determine the federal share of drug rebates. Only seven states indicated that they had received written guidance from a CMS Regional Office. Inconsistent reporting and different methodologies could lead to underreporting of the federal share of drug rebates on the CMS-64 report and to a loss of federal share.

OIG Recommendation

The OIG recommends that CMS issue guidance that clearly instructs states to report drug rebates at the applicable FFP rates and identify acceptable methods to determine the federal share of drug rebates.

CMS Response

The CMS concurs with OIG's recommendation. Consistent with longstanding CMS guidance regarding state reporting requirements for collections, CMS does require states to report drug rebates at the applicable federal medical assistance percentage (FMAP) rates at which related expenditures were originally claimed. As such, CMS will issue such guidance to states to ensure that drug rebate amounts are reported at the correct FMAP rate on the CMS-64.

The CMS would like to thank OIG for their continued support in reviewing the States' compliance with their reporting on the CMS-64.