Department of Health and Human Services

OFFICE OF INSPECTOR GENERAL

CALIFORNIA IMPROPERLY CLAIMED $52.7 MILLION IN FEDERAL MEDICAID REIMBURSEMENT FOR CAPITATION PAYMENTS MADE ON BEHALF OF NONCITIZENS WITH UNSATISFACTORY IMMIGRATION STATUS

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May 2024
A-09-22-02004

Office of Inspector General

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Report in Brief
Date: May 2024
Report No. A-09-22-02004

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

California Improperly Claimed $52.7 Million in Federal Medicaid Reimbursement for Capitation Payments Made on Behalf of Noncitizens With Unsatisfactory Immigration Status

Why OIG Did This Audit

States are generally prohibited from claiming Federal reimbursement for Medicaid services, other than treatment of an emergency medical condition, provided to certain noncitizens with unsatisfactory immigration status (UIS). However, California's Medicaid program extends coverage beyond limited Federal Medicaid benefits to these noncitizens and would generally need to pay for nonemergency services using State funds. California applied a proxy percentage (39.87 percent) to capitation payments made on behalf of noncitizens with UIS to identify costs of providing nonemergency services and to avoid claiming Federal reimbursement for these costs. CMS requested that we conduct this audit. Our objective was to determine whether California claimed Federal Medicaid reimbursement for capitation payments made on behalf of noncitizens with UIS in accordance with Federal requirements.

How OIG Did This Audit

Our audit covered $888.8 million ($372.9 million Federal share) for managed care capitation payments made on behalf of noncitizens with UIS from October 1, 2018, through June 30, 2019. We first determined whether California's proxy percentage correctly accounted for the costs of providing nonemergency services by calculating a new percentage using managed care encounter data. Then, we applied this percentage to the capitation payments to determine the allowability of managed care claims.

What OIG Found

Of the $372.9 million in total Federal Medicaid reimbursement for capitation payments made on behalf of noncitizens with UIS, California did not claim $52.7 million in accordance with Federal requirements. Specifically, the proxy percentage (39.87 percent) that California applied to capitation payments did not correctly account for the costs of providing nonemergency services to noncitizens with UIS. This proxy percentage was 8.49 percentage points lower than the percentage that we calculated (48.36 percent).

California improperly claimed $52.7 million in Federal Medicaid reimbursement because it continued to use the proxy percentage that was developed in the early 2000s without assessing whether the percentage correctly accounted for the costs of providing nonemergency services to noncitizens with UIS under managed care. In addition, California did not have any policies and procedures for assessing and periodically reassessing the proxy percentage.

What OIG Recommends and California's Comments

We recommend that California: (1) refund to the Federal Government the improperly claimed Federal reimbursement of $52.7 million for capitation payments made on behalf of noncitizens with UIS and (2) work with CMS to determine the amount of any improperly claimed Federal reimbursement for capitation payments made on behalf of noncitizens with UIS for an agreed-upon period not covered by our audit.

California partially concurred with our first recommendation and concurred with our second recommendation. For our first recommendation, California stated that it does not contest the recommendation but that it is unable to replicate or concur with our recalculated proxy percentage and calculated refund amount; it proposed to return the funds through a manual process.

We acknowledge California's difficulty in replicating our recalculated proxy percentage and calculated refund amount. By refunding the $52.7 million to the Federal Government using a manual process, the State agency would address our first recommendation.

The full report can be found on the OIG website.

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INTRODUCTION

WHY WE DID THIS AUDIT

States are generally prohibited from claiming Federal reimbursement for Medicaid services—other than for treatment of an emergency medical condition—provided to individuals who are not qualified noncitizens and, if applicable, who have not met the 5-year waiting period.[1, 2] However, in California, the Medicaid program (known as Medi-Cal) extends coverage beyond limited Federal Medicaid benefits to certain noncitizens, who are referred to as "noncitizens with unsatisfactory immigration status (UIS)." Medi-Cal covers full-scope services (i.e., both emergency and nonemergency services) provided to noncitizens with UIS, for example, individuals who have been lawfully admitted for permanent residence in the United States regardless of whether those noncitizens have met the 5-year waiting period.[3] Although Medi-Cal covers full-scope services for noncitizens with UIS, California may claim Federal reimbursement only for emergency services provided to these noncitizens and would generally need to pay for nonemergency services using State funds.

According to the Centers for Medicare & Medicaid Services (CMS), in May 2020, the California Department of Health Care Services (the State agency) notified CMS that it had been using a longstanding, CMS-approved methodology related to claiming costs for providing full-scope Medi-Cal coverage to noncitizens with UIS. The methodology applied a proxy percentage to capitation payments made to Medicaid managed care plans on behalf of noncitizens with UIS.[4] The proxy percentage approximates the cost of providing nonemergency services to noncitizens with UIS to ensure that the State agency does not claim Federal reimbursement for these unallowable costs.[5] (We refer to this methodology as the "proxy claiming methodology.") CMS requested that we conduct this audit to determine the allowability of the State agency's claims for Federal reimbursement using the proxy claiming methodology.

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[1] The Social Security Act (the Act) §§ 1903(v)(2) and (v)(3); 42 CFR § 435.406(b)). Federal law (8 U.S.C. § 1641) defines the term "qualified alien," which includes, among other groups of individuals, an alien who is lawfully admitted for permanent residence under the Immigration and Nationality Act at the time the alien applies for, receives, or attempts to receive a Federal public benefit. The Centers for Medicare & Medicaid Services (CMS) uses the term "qualified noncitizen" to describe this group of individuals (42 CFR § 435.406).

[2] To be eligible for federally funded full-scope Medicaid services (i.e., both emergency and nonemergency services), many qualified noncitizens are required to wait 5 years from the date they receive their qualifying status (8 U.S.C. § 1613(a)).

[3] 22 California Code of Regulations § 50301 and California Welfare and Institutions Code §§ 14007 and 14007.5. Medi-Cal also covers the same emergency and nonemergency services for U.S. citizens or nationals and qualified noncitizens who have met the 5-year waiting period.

[4] A capitation payment is a fixed amount of money that the State agency pays per member per month to a managed care plan regardless of services that are provided to a Medi-Cal enrollee during the month.

[5] The State agency refers to this claiming methodology as the "managed care proxy methodology."

OBJECTIVE

Our objective was to determine whether the State agency claimed Federal Medicaid reimbursement for capitation payments made on behalf of noncitizens with UIS in accordance with Federal requirements.

BACKGROUND

Medicaid Program

The Medicaid program is funded under Title XIX of the Social Security Act (the Act) and provides medical assistance to individuals with low income and individuals with disabilities. To participate in Medicaid, States must cover certain groups of individuals (i.e., eligibility groups), including parents with children, pregnant women, older adults, and individuals who are blind or have other disabilities.

States operate and fund Medicaid in partnership with the Federal Government through CMS. States submit a Quarterly Medicaid Statement of Expenditures for the Medical Assistance Program (Form CMS-64) to claim Federal reimbursement for each quarter. CMS reimburses States a specified percentage of program expenditures, called the Federal medical assistance percentage (FMAP), which is developed from criteria such as the State's per capita income.[6, 7] Specifically, the FMAP determines the Federal share of Medicaid expenditures. The remainder is referred to as "the State share."

Within broad national guidelines established by Federal statutes, regulations, and policies, each State establishes its own eligibility standards; determines the type, amount, duration, and scope of services; sets the payment rates for services; and administers its own program. Furthermore, each State may opt to add services or eligibility categories that are fully funded by the State.

Federal Medicaid Coverage for Noncitizens

Federal Medicaid benefits are generally limited to individuals who are citizens or nationals of the United States or qualified noncitizens (42 CFR § 435.406). Examples of qualified noncitizens are noncitizens who are: (1) lawfully admitted for permanent residence under the Immigration and Nationality Act, (2) granted asylum, or (3) refugees (8 U.S.C. § 1641).

[6] The Act § 1905(b); CMS's "Financial Management" for the Medicaid program. Available online at https://www.medicaid.gov/medicaid/financial-management/index.html. Accessed on Aug. 25, 2023.

[7] The standard FMAP varies by State and ranges from 50 percent to 78 percent (86 Fed. Reg. 67479, 67481–67482 (Nov. 26, 2021)).

Generally, many qualified noncitizens are required to wait 5 years from the date they receive their qualifying status to be eligible for federally funded full-scope Medicaid services, such as inpatient hospital services, outpatient hospital services, physician services, and laboratory and x-ray services (8 U.S.C. § 1613(a)).

What Is an Emergency Medical Condition?

An emergency medical condition is a medical condition, including emergency labor and delivery, manifesting itself by acute symptoms of sufficient severity (including severe pain) such that the absence of immediate medical attention could reasonably be expected to result in: (1) placing the patient's health in serious jeopardy, (2) serious impairment to bodily functions, or (3) serious dysfunction of any bodily organ or part (the Act § 1903(v)(3)).

Before meeting the 5-year waiting period, these qualified noncitizens are eligible only for Medicaid services that are for treatment of an emergency medical condition (referred to as "emergency services"). States are prohibited from claiming Federal reimbursement for the costs of providing services other than treatment of an emergency medical condition (referred to as "nonemergency services") to these qualified noncitizens (the Act §§ 1903(v)(2) and (v)(3) and 42 CFR § 435.406(b)).[8]

California's Medi-Cal Coverage for Noncitizens With Unsatisfactory Immigration Status

The State agency administers Medi-Cal, determines Medi-Cal eligibility for California residents who apply for it, and stores its eligibility determination information in its Medi-Cal Eligibility Data System (MEDS).

The State agency uses State funds to provide coverage beyond limited Federal Medicaid benefits to certain noncitizens. Specifically, the State agency covers full-scope Medi-Cal services for: (1) noncitizens who have been lawfully admitted for permanent residence in the United States regardless of whether those noncitizens have met the 5-year waiting period; (2) noncitizens who are otherwise permanently residing in the United States under color of law (PRUCOL); and (3) noncitizens seeking amnesty, as determined under State regulation (22 California Code of Regulations § 50301 and California Welfare and Institutions Code §§ 14007 and 14007.5).[9] The State agency also covers full-scope Medi-Cal services for children younger than the age of 19 who are otherwise eligible for such services but for their

[8] Section 403(b) of the Personal Responsibility and Work Opportunity Reconciliation Act of 1996 (P.L. No. 104-193) and 8 U.S.C. section 1613(b) provide exceptions to the 5-year waiting period for refugees, asylees, noncitizens whose deportation is being withheld, Cuban and Haitian entrants, and Amerasian immigrants, as well as veterans and active-duty members of the Armed Forces and their spouses or unmarried dependent children. In addition, any qualified noncitizen who entered the United States before Aug. 22, 1996, is not subject to the 5-year waiting period. States are allowed to claim Federal reimbursement for full-scope Medicaid services provided to these qualified noncitizens (8 U.S.C. § 1613).

[9] Generally, a person who qualifies as PRUCOL is a person for whom the U.S. Department of Homeland Security is aware of the person's presence in the United States but has no plans to deport or remove the person from the country. PRUCOL is used for eligibility for Medicaid services in California. It is not recognized as an immigration status by U.S. Citizenship and Immigration Services.

immigration status.[10] Together, these groups of noncitizens are referred to as "noncitizens with UIS."[11] The State agency is generally not permitted to claim Federal reimbursement for the costs of providing nonemergency services to noncitizens with UIS.[12]

California's Medi-Cal Managed Care Delivery System

Under the managed care delivery system, the State agency contracts with managed care plans to provide people enrolled in Medi-Cal (Medi-Cal enrollees) with medically necessary services as defined in the contracts.[13] In return, the State agency pays each managed care plan a monthly capitation payment, which is a fixed amount of money per member, regardless of services provided to Medi-Cal enrollees during the month. This monthly capitation payment covers the costs of providing full-scope services, including emergency services, to a Medi-Cal enrollee.

The State agency uses the Capitation Payment Management System (CAPMAN) to maintain information on capitation payments made to managed care plans. Furthermore, the State agency requires each managed care plan to submit encounter data, which is information submitted by health care providers (e.g., doctors and hospitals) documenting the clinical conditions they diagnose as well as the services and items delivered to Medi-Cal enrollees to treat those conditions. The encounter data include a data field in which managed care plans report the amounts paid to providers. The State agency then submits the encounter data to CMS.[14]

[10] Under California Senate Bill (SB) 75, as of May 16, 2016, Medi-Cal began this coverage. In addition, under California SB 104, as of Jan. 1, 2020 (after our audit period), Medi-Cal began covering full-scope services provided to individuals 19 through 25 years of age who are otherwise eligible for full-scope services but for their immigration status.

[11] "Noncitizens with UIS" are certain noncitizens who can receive only emergency Medicaid services under Federal law but for whom the State agency offers full-scope services.

[12] Under section 214 of the Children's Health Insurance Program Reauthorization Act of 2009 (P.L. No. 111-3), California receives Federal reimbursement for the costs of providing full-scope Medicaid services to certain lawfully residing children and pregnant women who were not included in our audit.

[13] As of July 2022, approximately 87 percent of Medi-Cal enrollees were covered under managed care. The remaining 13 percent were covered under the fee-for-service delivery system. (Data are available online at https://www.dhcs.ca.gov/dataandstats/statistics/Documents/Medi-Cal-at-a-Glance-July2022.pdf. Accessed on Aug. 25, 2023.)

[14] Encounter data are essential for measuring and monitoring managed care plans' quality, service utilization, finances, and compliance with contract requirements. The data are also a critical source of information used to set capitation payment rates.

California's Claiming Methodology for Federal Reimbursement Under the Medi-Cal Managed Care Delivery System

The State agency claims the costs of providing emergency services to noncitizens with UIS (i.e., emergency service amounts) for Federal reimbursement on Form CMS-64. To determine the emergency service amounts for Federal reimbursement for the quarterly periods before July 1, 2019, the State agency had been using the proxy claiming methodology.[15] Specifically, the State agency: (1) applied a proxy percentage of 39.87 percent to capitation payments to calculate a portion of capitation payments that was for the costs of providing nonemergency services to noncitizens with UIS (i.e., nonemergency service amounts) and (2) subtracted the nonemergency service amounts from the capitation payments to calculate the emergency service amounts. The State agency then reported the emergency service amounts on Form CMS-64 for Federal reimbursement based on the applicable FMAP.[16]

Figure 1 illustrates how the proxy percentage was applied, according to the State agency, to determine the emergency service amount. The illustration assumes a monthly capitation payment amount of $200.

Figure 1: An Illustration of Applying a Proxy Percentage of 39.87 Percent to a $200 Capitation Payment Amount To Determine the Emergency Service Amount

If the FMAP is 50 percent, the Federal share (i.e., the Federal reimbursement) of the emergency service amount of $120.26 is $60.13 ($120.26 × 50 percent).[17]

[15] The State agency used the eligibility determination information in MEDS (e.g., an indicator that identifies an individual's immigration status and the date of entry to the United States) to identify noncitizens with UIS.

[16] For the quarterly periods starting on July 1, 2019, the State agency planned to discontinue using the proxy claiming methodology. Specifically, from July 1, 2019, through Dec. 31, 2020, and for each calendar year starting with 2021, in response to CMS's request in February 2022, the State agency submitted separate capitation payment rates to CMS for noncitizens with UIS and for those for whom full-scope Medi-Cal services were eligible for Federal reimbursement. According to CMS, having separate capitation payment rates would avoid the need for the State agency to use the proxy claiming methodology, and CMS does not plan to request that the State agency submit separate capitation payment rates for the periods before July 1, 2019.

[17] The State agency's share would also be $60.13. Therefore, the State agency would need to pay a total of $139.87 ($79.74 + $60.13) of the $200 capitation payment amount with State funds. This total State share is the sum of: (1) the amount that should be fully funded by the State agency for nonemergency services and (2) the State share amount based on the FMAP of 50 percent for emergency service amounts.

CMS's Request for Our Audit

CMS requested that we conduct an audit to determine the allowability of the State agency's Medicaid managed care claims submitted for Federal reimbursement using the proxy claiming methodology.

On May 22, 2020, the State agency notified CMS that it had erroneously claimed Federal reimbursement for full-scope services provided to noncitizens with UIS under certain fee-for-service and dental managed care programs. In a memo dated August 6, 2020, the State agency also noted that the same claiming error did not occur under its other managed care programs because it had been using a longstanding proxy claiming methodology to avoid claiming costs related to nonemergency services provided to noncitizens with UIS. The State agency said that CMS had approved this claiming methodology sometime in the early 2000s, and the proxy percentage of 39.87 percent had not been changed since it was developed using fee-for-service claims data.[18]

In a letter to the Office of Inspector General (OIG) dated September 24, 2020, CMS stated: (1) it was not aware that the State agency was using the proxy claiming methodology, (2) CMS and the State agency have not been able to locate records that demonstrate CMS's approval of the methodology, and (3) the State agency has not provided necessary information on the methodology for CMS to determine the allowability of Federal reimbursement for related claims.

In the same letter, CMS requested that we audit the State agency's "managed care proxy process to identify the amounts claimed for past periods, determine if any evidence exists of federal approval, and opine on the allowability of the claims." Specifically, CMS requested that we "audit the historical claims submitted for past periods to determine the amount of related federal overpayments . . .."[19]

HOW WE CONDUCTED THIS AUDIT

Our audit covered $888.8 million ($372.9 million Federal share) for managed care capitation payments that the State agency made on behalf of noncitizens with UIS for three quarters of

[18] The State agency said that the proxy percentage of 39.87 percent was incorporated into CAPMAN when the system became operational in 2011.

[19] According to CMS, it deferred the Federal reimbursement for the quarterly periods after July 1, 2019, that the State agency claimed using the proxy claiming methodology until the separate capitation payment rates were approved. Once approved, the State agency would need to adjust its claims based on the separate capitation payment rates. In July and September 2023, CMS approved separate capitation payment rates for the period from July 1, 2019, through Dec. 31, 2020, and for 2021, respectively. However, as of Oct. 3, 2023, the State agency had not adjusted its claims based on the separate capitation payment rates.

Federal fiscal year (FFY) 2019, from October 1, 2018, through June 30, 2019 (audit period).[20, 21] For these noncitizens with UIS, the State agency claimed Federal reimbursement for emergency service amounts that it calculated using the proxy claiming methodology.

To address CMS's request for audit, we conducted an audit to determine the allowability of costs that the State agency claimed for Federal reimbursement using the proxy claiming methodology. To accomplish our objective, we first determined whether the State agency's proxy percentage (39.87 percent) correctly accounted for the costs of providing nonemergency services to noncitizens with UIS by calculating a new percentage (which we refer to as the "OIG percentage") using the encounter data. Then, we applied the OIG percentage to the capitation payments made on behalf of noncitizens with UIS to determine the allowability of managed care claims that the State agency submitted for Federal reimbursement.[22] Appendix B describes our calculation methodology.

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 describes our audit scope and methodology.

FINDING

Of the $372.9 million in total Federal Medicaid reimbursement for capitation payments made on behalf of noncitizens with UIS, the State agency did not claim $52.7 million in accordance with Federal requirements.[23] Specifically, the proxy percentage (39.87 percent) that the State agency applied to capitation payments did not correctly account for the costs of providing

[20] For our audit period, the State agency identified noncitizens that CAPMAN had erroneously determined as having UIS and adjusted its claims on Form CMS-64. We used claims data that had been adjusted to correct for this error.

[21] We did not review periods before Oct. 1, 2018, because the State agency did not take actions to adjust its claims on Form CMS-64 by identifying noncitizens that CAPMAN had erroneously determined as having UIS. Furthermore, we did not include periods after June 30, 2019, because the State agency developed or was in the process of developing separate capitation payment rates.

[22] We did not review whether eligibility determination information included in the capitation payment data for noncitizens with UIS was accurate. According to the State agency's *Change Request 1360 – Medi-Cal Managed Care Proxy Analysis Document,* version 1.2, May 17, 2021, although there is a risk that an incorrect payment will be made on behalf of a Medi-Cal enrollee if information included in MEDS (e.g., the date of entry to the United States) is incorrect (i.e., missing or not accurate), CAPMAN would rely on MEDS as the system of record for eligibility information. Therefore, we relied on MEDS as the system of record for eligibility information, as CAPMAN did, rather than performing a separate audit of the State agency's eligibility determinations.

[23] The State agency improperly claimed $52,652,689 in Federal reimbursement.

nonemergency services to noncitizens with UIS. This proxy percentage was 8.49 percentage points lower than the OIG percentage (48.36 percent).

The State agency improperly claimed $52.7 million in Federal Medicaid reimbursement because it continued to use the proxy percentage that was developed in the early 2000s without assessing whether the percentage correctly accounted for the costs of providing nonemergency services to noncitizens with UIS under managed care. In addition, the State agency did not have any policies and procedures for assessing and periodically reassessing the proxy percentage.

FEDERAL REQUIREMENTS

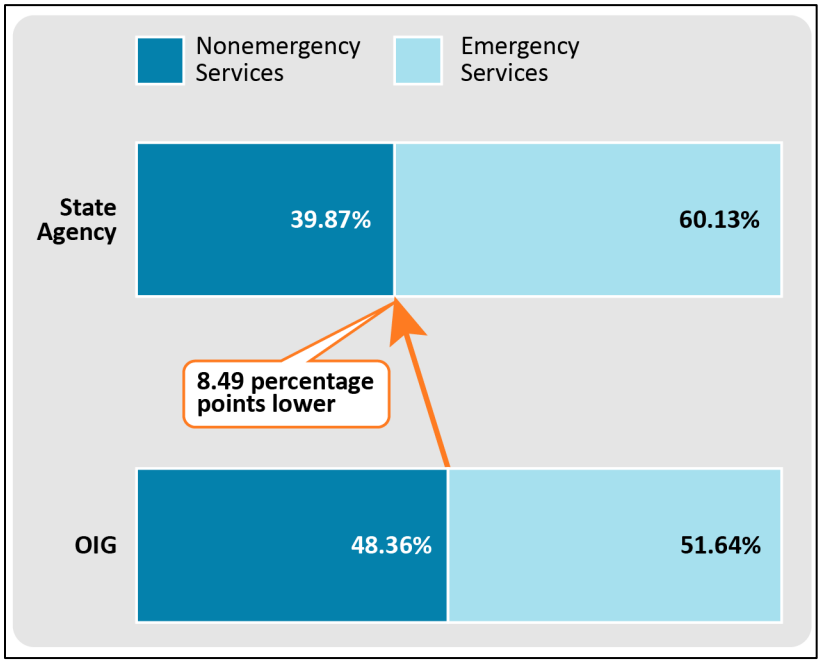
According to sections 1903(v)(2) and 1903(v)(3) of the Act, States are generally prohibited from claiming Federal reimbursement for the costs of providing services other than treatment of an emergency medical condition for noncitizens with UIS. In addition, Federal regulations (45 CFR § 75.403) require that for costs to be allowable under a Federal award, they must be allocable to the Federal award. A cost is allocable to a particular Federal award or other cost objective if the goods or services involved are chargeable or assignable to that Federal award or cost objective in accordance with relative benefits received (45 CFR § 75.405(a)).

THE STATE AGENCY'S PROXY PERCENTAGE DID NOT CORRECTLY ACCOUNT FOR THE COSTS OF PROVIDING NONEMERGENCY SERVICES TO NONCITIZENS WITH UNSATISFACTORY IMMIGRATION STATUS

The proxy percentage that the State agency used (39.87 percent) did not correctly account for the costs of providing nonemergency services to noncitizens with UIS. This percentage was 8.49 percentage points lower than the 48.36 percent we calculated.

Figure 2 on the next page shows the difference between the proxy percentage that the State agency used and the percentage that we calculated to account for the costs of providing nonemergency services to noncitizens with UIS. See Figure 3 in Appendix B for the calculation of the OIG percentage.

Figure 2: Comparison of the State Agency's Proxy Percentage and the OIG Percentage



The State agency's use of a 39.87 percent proxy percentage led it to claim Federal reimbursement for some of the costs of providing nonemergency services to noncitizens with UIS. The State agency should have been fully responsible (i.e., used State funds) for 48.36 percent of the capitation payments for the costs of providing nonemergency services to noncitizens with UIS. The remaining 51.64 percent of capitation payments should have been shared by the State agency and the Federal Government based on the applicable FMAP.

THE STATE AGENCY IMPROPERLY CLAIMED $52.7 MILLION IN FEDERAL REIMBURSEMENT

For the first, second, and third quarters of FFY 2019 (October 1, 2018, through June 30, 2019), the State agency improperly claimed $52,652,689 in Federal reimbursement for the costs of providing nonemergency services to noncitizens with UIS that were not allocable to the Federal award. See Appendix B for a description of our calculation methodology for determining the amount that the State agency improperly claimed in Federal reimbursement for each quarter.

Table 1 on the next page shows the amount that the State agency improperly claimed in Federal reimbursement for each quarter during our audit period.

Table 1: The State Agency's Improperly Claimed Federal Reimbursement Amounts From October 2018 Through June 2019 by Quarter

Quarter	Period	Improperly Claimed Federal Reimbursement
1	October–December 2018	$17,647,961
2	January–March 2019	16,289,905
3	April–June 2019	18,714,823
Total		**$52,652,689**

THE STATE AGENCY CONTINUED TO USE THE PROXY PERCENTAGE DEVELOPED IN THE EARLY 2000s WITHOUT ASSESSING IT

The State agency improperly claimed $52.7 million in Federal Medicaid reimbursement because it continued to use the proxy percentage that was developed in the early 2000s without assessing whether the percentage correctly accounted for the costs of providing nonemergency services to noncitizens with UIS under managed care. In addition, the State agency did not have any policies and procedures for assessing and periodically reassessing the proxy percentage.

According to the State agency, it relied on a longstanding practice of using the proxy percentage (39.87 percent) to determine the amount of costs for providing nonemergency services to noncitizens with UIS, which should be fully funded by the State. The State agency said that "[the] percentage was a longstanding approved percentage and we are unable to produce the historical documentation. [The State agency's] understanding via conversations with staff no longer at the [State agency] is that the percentage was [originally] developed utilizing the [fee-for-service]" claims data in the early 2000s. In addition, according to the State agency, the proxy percentage was incorporated into CAPMAN when it became operational in July 2011. However, the State agency did not have documentation (e.g., an approval letter from CMS) to show how it developed the proxy percentage of 39.87 percent.

CONCLUSION

CMS requested that we conduct an audit to determine the allowability of the State agency's Medicaid managed care claims for Federal reimbursement using the proxy claiming methodology. However, both CMS and the State agency have not been able to locate records that demonstrate CMS's approval of the methodology. Although the State agency did not maintain support for that approval, it maintained: (1) records to support its capitation payments made to managed care plans for noncitizens with UIS and (2) encounter data to support emergency and nonemergency services associated with those payments. Furthermore, CMS stated that it did not plan to request that the State agency develop separate capitation payment rates for our audit period. For these reasons, we concluded that using a methodology similar to the State agency's proxy claiming methodology was the best approach for comparing

the Federal reimbursement that the State agency claimed and should have claimed for the costs of providing emergency services to noncitizens with UIS. By following the calculation methodology described in Appendix B, we determined that the State agency improperly claimed Federal reimbursement of $52,652,689 for capitation payments made on behalf of noncitizens with UIS.

RECOMMENDATIONS

We recommend that the California Department of Health Care Services:

- refund to the Federal Government the improperly claimed Federal reimbursement of $52,652,689 for capitation payments made on behalf of noncitizens with UIS and

- work with CMS to determine the amount of any improperly claimed Federal reimbursement for capitation payments made on behalf of noncitizens with UIS for an agreed-upon period not covered by our audit.

STATE AGENCY COMMENTS AND OFFICE OF INSPECTOR GENERAL RESPONSE

In written comments on our draft report, the State agency partially concurred with our first recommendation and concurred with our second recommendation:

- For our first recommendation, the State agency commented that it does not contest the recommendation; the State agency said, however, that it is unable to replicate or concur with our recalculated proxy percentage and calculated refund amount. The State agency also said that because of system constraints and differences between service and payment dates, retroactively adjusting the proxy percentage in the capitation payment system would pose significant challenges. The State agency proposed to return the funds through a manual process to expedite the refund and stated that it will work closely with CMS to address any additional considerations that may arise during the refund process.

- For our second recommendation, the State agency commented that it has been working and will continue to work closely with CMS to determine the amount of any improperly claimed Federal reimbursement for capitation payments made on behalf of noncitizens with UIS. The State agency also commented that it will continue working with CMS to satisfy an existing corrective action plan imposed by CMS that covers periods after our audit period.

The State agency's comments are included in their entirety as Appendix C.

Regarding our first recommendation, we acknowledge the State agency's difficulty in replicating our recalculated proxy percentage and calculated refund amount due to its own system

constraints. By refunding the $52.7 million to the Federal Government using a manual process, the State agency would address our first recommendation.

APPENDIX A: AUDIT SCOPE AND METHODOLOGY

SCOPE

Our audit covered $888,836,456 ($372,939,274 Federal share) for managed care capitation payments made on behalf of noncitizens with UIS for three quarters of FFY 2019, from October 1, 2018, through June 30, 2019. For these noncitizens with UIS, the State agency claimed Federal reimbursement for emergency service amounts that it calculated using the proxy claiming methodology.

Table 2 shows the capitation payment made by the State agency on behalf of noncitizens with UIS and the associated Federal share for each quarter during our audit period.[24]

Table 2: Capitation Payments That the State Agency Made on Behalf of Noncitizens With Unsatisfactory Immigration Status and the Associated Federal Shares During Our Audit Period

Quarter	Period	Capitation Payment Amount	Federal Share of Capitation Payment Amount
1	October–December 2018	$296,883,679	$125,000,602
2	January–March 2019	274,225,991	115,381,485
3	April–June 2019	317,726,786	132,557,187
Total		$888,836,456	$372,939,274

To address CMS's request for audit, we conducted an audit to determine the allowability of costs that the State agency claimed for Federal reimbursement using the proxy claiming methodology. Because CMS stated that it did not plan to request that the State agency develop separate capitation payment rates for our audit period, the State agency's claims for Federal reimbursement for our audit period would still reflect the application of the proxy claiming methodology. Therefore, we concluded that using a similar methodology in our audit was the best approach to compare the Federal reimbursement that was claimed and should have been claimed for the costs of providing emergency services to noncitizens with UIS.

To accomplish our objective, we first determined whether the State agency's proxy percentage (39.87 percent) correctly accounted for the costs of providing nonemergency services to noncitizens with UIS by calculating a new percentage (i.e., the OIG percentage) using the

[24] Capitation payments are generally made for the most recent service month, i.e., there is a 1-month lag between the service month and the capitation payment. For example, the capitation payments made in March 2019 would cover the service month of February 2019. Therefore, we audited capitation payments and adjustments for the most recent service months associated with each quarter of our audit period. For example, for the second quarter of FFY 2019 (January through March 2019), we included capitation payments and adjustments for the service months December 2018 through February 2019. We excluded capitation payments and adjustments for service months that were fully funded by the State, were for pregnant women, and were for Medi-Cal enrollees younger than the age of 19.

encounter data.[25] Then, we applied the OIG percentage to the capitation payments made on behalf of noncitizens with UIS to determine the allowability of managed care claims that the State agency submitted for Federal reimbursement.[26] Appendix B describes our calculation methodology.

The OIG percentage accounted for emergency services, including labor and delivery services, covered under Medicaid funded by Title XIX of the Act. According to CMS, States have flexibility to determine whether a service is considered an emergency or a nonemergency service. Therefore, we used elements, e.g., procedure and diagnosis codes, for categorizing services as emergency services, including labor and delivery services, that the State agency used when it developed separate capitation payment rates for noncitizens with UIS and for those for whom full-scope Medi-Cal services were eligible for Federal reimbursement.[27] Other pregnancy-related services for unborn children may be covered under CHIP, funded by Title XXI of the Act. Expenditures covered under CHIP were outside the scope of our audit.[28] We determined the improperly claimed Federal reimbursement amount only under Medicaid funded by Title XIX of the Act.

We reviewed the internal controls related to how the State agency applied the proxy percentage to determine the costs of providing nonemergency services to noncitizens with UIS by reviewing CAPMAN system documentation and interviewing State agency staff. Furthermore, we interviewed State agency staff to determine whether the State agency had a process to assess the proxy methodology that it had used to identify the costs of providing nonemergency services to noncitizens with UIS under managed care. However, we were unable to review the design of the proxy percentage because the State agency did not have documentation to show how it developed the proxy percentage, and its staff did not know how the proxy percentage was developed.

We assessed the reliability of the capitation payment data by: (1) testing to determine whether the data contained appropriate values (e.g., checking for missing values), (2) reviewing information the State agency provided about the data and the CAPMAN system that produced the data, and (3) interviewing State agency officials knowledgeable about the data. We

[25] We analyzed 14 months (from Jan. 1, 2018, through Feb. 28, 2019) of encounter data for noncitizens with UIS. According to the State agency, it used 12 months of encounter data to develop separate capitation payment rates for noncitizens with UIS and for those for whom full-scope Medi-Cal services were eligible for Federal reimbursement. We did not review whether encounter data were accurate.

[26] We did not review whether eligibility determination information included in the capitation payment data for noncitizens with UIS was accurate.

[27] We also used CMS guidance and other field values in the encounter data to categorize services as emergency and nonemergency services. See Appendix B, Step 1.

[28] According to CMS, certain categories of services, e.g., postpartum services for women, would not be considered emergency services covered under Medicaid; however, some of those services may be covered under CHIP. We categorized these services as nonemergency services for the purposes of calculating the OIG percentage.

assessed the reliability of the encounter data by: (1) testing the data to determine whether it contained appropriate values (e.g., checking for missing values) and (2) interviewing State agency officials knowledgeable about the data. We determined that the capitation payment data and encounter data were sufficiently reliable for the purposes of this audit.

We conducted our audit from May 2022 to December 2023.

METHODOLOGY

To accomplish our objective, we:

- reviewed applicable Federal laws, regulations, and guidance;

- interviewed officials from the State agency, its contractor, and CMS to obtain an understanding of: (1) policies, procedures, and guidance for categorizing services as emergency and nonemergency services; (2) how the separate capitation payment rates for the period from July 1, 2019, through December 31, 2020, were developed to understand the State agency's categorization of services as emergency and nonemergency services; and (3) encounter data that were used to categorize emergency and nonemergency services;[29]

- obtained from the State agency monthly capitation payment data containing all Medi-Cal enrollees' eligibility information for the second quarter of our audit period (January through March 2019);

- obtained from the State agency monthly capitation payment data containing eligibility information for noncitizens with UIS for the first and third quarters of our audit period (October through December 2018 and April through June 2019);[30]

- calculated the improperly claimed Federal reimbursement for the costs of providing nonemergency services to noncitizens with UIS for our audit period by following the calculation methodology steps described in Appendix B; and

[29] The State agency's contractor assisted with developing separate capitation rates for noncitizens with UIS and for those for whom full-scope Medi-Cal services were eligible for Federal reimbursement.

[30] We initially planned to audit the second quarter of FFY 2019 (January through March 2019). We then learned that the State agency identified noncitizens whom CAPMAN had erroneously determined as having UIS and adjusted its claims on Form CMS-64 for the periods from the first quarter of FFY 2019 through the first quarter of FFY 2020 (October 2018 through December 2020). In addition, in response to CMS's request in February 2022, the State agency submitted separate capitation payment rates for the period from July 1, 2019, through Dec. 31, 2020, which included the fourth quarter of FFY 2019 (July through September 2019), and for each calendar year starting with 2021. Therefore, we expanded our scope to include the first and third quarters of FFY 2019 (October through December 2018 and April through June 2019), for which the claims were adjusted and did not overlap the periods for which the State agency submitted separate capitation payment rates.

- discussed the results of our audit with State agency and 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.

APPENDIX B: CALCULATION METHODOLOGY FOR DETERMINING THE IMPROPERLY CLAIMED FEDERAL REIMBURSEMENT FOR CAPITATION PAYMENTS MADE ON BEHALF OF NONCITIZENS WITH UNSATISFACTORY IMMIGRATION STATUS

To calculate the improperly claimed Federal reimbursement for our audit period, we followed the four steps detailed below.

STEP 1

We determined the OIG percentage (48.36 percent) for capitation payments that should be fully funded by the State, i.e., the costs of providing nonemergency services to noncitizens with UIS. To do so, we did the following:

- We obtained and analyzed 14 months (January 1, 2018, through February 28, 2019) of encounter data for noncitizens with UIS to categorize services as emergency and nonemergency services.[31] To categorize services, we used:

    - the elements used by the State agency for categorizing services as emergency services, including labor and delivery services, when developing separate capitation payment rates for noncitizens with UIS and for those for whom full-scope Medi-Cal services were eligible for Federal reimbursement from July 1, 2019, through December 31, 2020;[32]

    - guidance that CMS issued to the State agency describing services for noncitizens with UIS that are covered under Titles XIX and XXI of the Act and clarifying that labor and delivery services are always considered emergency services;[33] and

[31] Capitation payments are generally made for the most recent service month, i.e., there is a 1-month lag between the service month and the capitation payment. For example, the capitation payments made in March 2019 would cover the service month of February 2019. When developing the separate capitation payment rates for noncitizens with UIS and for those for whom full-scope Medi-Cal services were eligible for Federal reimbursement, the State agency used 12 months of encounter data. Therefore, we chose a 14-month period (January 2018 through February 2019) of encounter data for noncitizens with UIS to cover the 12-month service period before each month for the second quarter (January through March 2019). We did not review whether encounter data were accurate.

[32] The elements were included in a document dated June 24, 2022, that the State agency's contractor submitted to the State agency.

[33] CMS provided written guidance to the State agency clarifying that pregnancy-related services other than labor and delivery are not covered under Medicaid funded by Title XIX of the Act. The guidance also stated that pregnancy-related services for unborn children may be covered under CHIP, funded by Title XXI of the Act. In a written response to our questions about the guidance, the State agency agreed with CMS's guidance and stated that it "believe[s] these services should be considered when estimating any potential repayment of federal funds." However, expenditures funded under Title XXI were outside the scope of our audit.

- data field values included in the encounter data (indicating that a claim was for an emergency service).[34]

- We determined the total cost for providing emergency services and the total cost for providing nonemergency services by using the paid amount field in the encounter data.[35]

- We determined the OIG percentage by dividing the total cost for nonemergency services by the total cost for emergency and nonemergency services.

Figure 3 shows the calculation of the OIG percentage (48.36 percent).

Figure 3: Calculation of the OIG Percentage (48.36 Percent)

Cost for nonemergency services		**$1,291,123,827**
	÷	
Cost for emergency & nonemergency services		**$2,669,820,323**
Percentage of payment for nonemergency services		**48.36%**

STEP 2

For the second quarter of FFY 2019 (January through March 2019), we determined the improperly claimed Federal reimbursement using the OIG percentage of 48.36 percent (from Step 1).

Figure 4 on the next page shows an example of the calculation of the State and Federal share amounts using the State agency's proxy percentage (39.87 percent) compared with using the OIG percentage (48.36 percent) for a noncitizen with UIS. This example assumes a monthly capitation payment of $200 and an FMAP of 50 percent.[36]

[34] In addition to the elements that the State agency used when developing its separate capitation payment rates, we applied additional elements (e.g., the place-of-service code indicating that a service was provided in an emergency room or a modifier code for an emergency service) to categorize services as emergency services.

[35] When calculating the OIG percentage, we used the paid amount field (CLM_LINE_PD_AMT) to assign a value to each encounter record. For encounter records with a $0 paid amount, we assigned the average unit cost of the service based on encounter records that had a paid amount greater than $0. According to the State agency, it also assigned the average unit cost for paid records when developing the separate capitation payment rates.

[36] In California, the FMAP rates varied depending on a Medi-Cal enrollee's eligibility group.

Figure 4: An Example Comparing the Use of the State Agency's Proxy Percentage and the Use of the OIG Percentage When Calculating the State and Federal Share Amounts

Service Amount	Using Proxy Percentage (39.87%)	Using OIG Percentage (48.36%)
Nonemergency (fully funded by State)	$200 × 39.87% = $79.74	$200 × 48.36% = $96.72
Emergency (shared by Federal Government and State agency)	$200 − $79.74 = $120.26	$200 − $96.72 = $103.28
State share	$120.26 × 50% = $60.13	$103.28 × 50% = $51.64
Federal share	$120.26 × 50% = $60.13	$103.28 × 50% = $51.64

In this example, the State agency's use of the proxy percentage, 39.87 percent, which was 8.49 percentage points lower than the OIG percentage (48.36 percent), would have led the State agency to identify: (1) less costs to be fully funded by the State agency ($79.74 instead of $96.72 for providing nonemergency services) and (2) more costs to be shared by the Federal Government and the State agency ($120.26 instead of $103.28 for providing emergency services). As a result, for the $200 capitation payment, the State agency would have improperly claimed $8.49 ($60.13 – $51.64) in Federal reimbursement.[37]

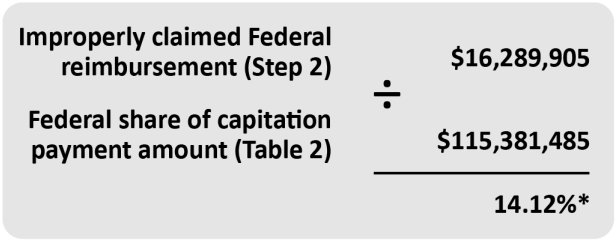
We determined the total improperly claimed Federal reimbursement of $16,289,905 for the second quarter by following the steps in the example for each capitation payment made on behalf of all noncitizens with UIS.

STEP 3

For the second quarter of FFY 2019 (January through March 2019), we determined the percentage of the improperly claimed Federal reimbursement as shown in Figure 5 on the next page.

[37] The total State share would have been $148.36 ($96.72 + $51.64) instead of $139.87 ($79.74 + $60.13).

Figure 5: Determination of the Percentage of the Improperly Claimed Federal Reimbursement for the Second Quarter of Federal Fiscal Year 2019



* This percentage was rounded to the nearest hundredth of a percent. To determine the improperly claimed Federal reimbursement amounts, we used the unrounded percentage.

STEP 4

For the first and third quarters of FFY 2019 (October through December 2018 and April through June 2019), we determined the improperly claimed Federal reimbursement amounts by applying the percentage from Step 3 (14.12 percent) to the Federal shares of $125,000,602 and $132,557,187 for the first and third quarters (from Table 2), respectively, for the capitation payments that were made on behalf of noncitizens with UIS. See Table 1 (on page 10) for the results of our calculation.

APPENDIX C: STATE AGENCY COMMENTS

DHCS
CALIFORNIA DEPARTMENT OF HEALTH CARE SERVICES
Michelle Baass | Director

January 26, 2024

THIS LETTER SENT VIA EMAIL

Jessica Kim
Regional Inspector General
Office of Audit Services, Region IX
U.S. Department of Health and Human Services
90 – 7th Street, Suite 3-650
San Francisco, CA 94103

RE: RESPONSE TO DRAFT REPORT A-09-22-02004

Dear Ms. Kim:

The Department of Health Care Services (DHCS) hereby submits the enclosed response to the Office of Inspector General (OIG) draft report number A-09-22-02004, titled, "California Improperly Claimed $52.7 Million in Federal Medicaid Reimbursement for Capitation Payments Made on Behalf of Noncitizens With Unsatisfactory Immigration Status."

In the above draft report, OIG issued two recommendations for DHCS. DHCS agrees with Recommendation 1, but notes we cannot replicate or concur with OIG's recalculated proxy percentage and calculated refund amount. As such, DHCS proposes an alternative approach to expedite the refund process, which is more thoroughly described in the DHCS' Responses to Draft Report. DHCS agrees with Recommendation 2 and will continue to work closely with the Centers for Medicare and Medicaid (CMS) to satisfy CMS' Corrective Action Plan.

DHCS appreciates the work performed by OIG and the opportunity to respond to the draft report. If you have any questions, please contact the DHCS Office of Compliance, Internal Audits at (916) 445-0759.

Sincerely,

Michelle Baass
Director & Interim State Medicaid Director

cc: DHCS Office of Compliance, Internal Audits

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State of California
Gavin Newsom, Governor

California Health and Human Services Agency

DHCS Department of Health Care Services

Audit: California Improperly Claimed $52.7 Million in Federal Medicaid Reimbursement for Capitation Payments Made on Behalf of Noncitizens With Unsatisfactory Immigration Status.

Audit Entity: Office of Inspector General
Report Number: A-09-22-02004 (22-22) (CA MC Claiming Methodology)
Response Type: DHCS' Response to OIG's Draft Audit Report

Finding 1: THE STATE AGENCY'S PROXY PERCENTAGE DID NOT CORRECTLY ACCOUNT FOR THE COSTS OF PROVIDING NONEMERGENCY SERVICES TO NONCITIZENS WITH UNSATISFACTORY IMMIGRATION STATUS.

Finding 2: THE STATE AGENCY IMPROPERLY CLAIMED $52.7 MILLION IN FEDERAL REIMBURSEMENT.

Recommendation 1
OIG recommends DHCS to refund to the Federal Government the improperly claimed Federal reimbursement of $52,652,689 for capitation payments made on behalf of noncitizens with UIS.

What is DHCS' Response to the Recommendation? Partially Concur

DHCS' Response:
The findings in the draft Audit Report are consistent with the ones shared during the Exit Conference in August 2023. The Department of Health Care Services (DHCS) does not contest the recommendation to refund $52.7 million to the Centers for Medicare and Medicaid Services (CMS); however, DHCS is unable to replicate or concur with the Office of Inspector General's recalculated proxy percentage and calculated refund amount. Please note that, due to system constraints and differences between dates of service and dates of payment, retroactively adjusting the proxy percentage in the capitation payment system would pose significant challenges and require over a year to update and return funds to CMS. Considering this, DHCS proposes an alternative approach to expedite the refund process. DHCS will return the funds through a manual process. This will allow DHCS to promptly reimburse CMS without causing undue disruptions to the payment system. DHCS-will work closely with CMS to address any additional considerations that may arise during the refund process.

Internal Audits' Comments:
None

Finding 1: THE STATE AGENCY'S PROXY PERCENTAGE DID NOT CORRECTLY ACCOUNT FOR THE COSTS OF PROVIDING NONEMERGENCY SERVICES TO NONCITIZENS WITH UNSATISFACTORY IMMIGRATION STATUS.

Finding 2: THE STATE AGENCY IMPROPERLY CLAIMED $52.7 MILLION IN FEDERAL REIMBURSEMENT.

Recommendation 2
OIG recommends DHCS to work with CMS to determine the amount of any improperly claimed Federal reimbursement for capitation payments made on behalf of noncitizens with UIS for an agreed-upon period not covered by our audit.

What is DHCS' Response to the Recommendation? Concurrence

DHCS' Response:
DHCS has been and will continue to work closely with CMS to determine the amount of any improperly claimed federal reimbursement for capitation payments made on behalf of noncitizens with UIS. The Corrective Action Plan (CAP) currently imposed by CMS covers the periods of July 1, 2019, and forward. Nearly all retroactive refunds for the CAP period and go-forward system updates have been implemented as of July 2023. We will continue to work with CMS until the CAP is satisfied and can be closed.

Internal Audits' Comments:
None