

Department of Health and Human Services

**OFFICE OF  
INSPECTOR GENERAL**

**CALIFORNIA INCORRECTLY CLAIMED  
ADDITIONAL MEDICAID FUNDING  
AUTHORIZED UNDER THE  
RECOVERY ACT WHEN RECLAIMING  
OVERPAYMENTS MADE TO BANKRUPT  
OR OUT-OF-BUSINESS PROVIDERS**

*Inquiries about this report may be addressed to the Office of Public Affairs at  
[Public.Affairs@oig.hhs.gov](mailto:Public.Affairs@oig.hhs.gov).*



**Gloria L. Jarmon  
Deputy Inspector General  
for Audit Services**

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# *Office of Inspector General*

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## EXECUTIVE SUMMARY

*Over 4 years, California incorrectly claimed \$6.6 million in additional Medicaid funding authorized under the Recovery Act by using incorrect Federal medical assistance percentages when reclaiming Federal reimbursement for overpayments that it had made to providers determined to be bankrupt or out of business.*

### WHY WE DID THIS REVIEW

Overpayments are payments made to providers in excess of the amount allowed for the services furnished. States are required to refund to the Federal Government the Federal share of a Medicaid overpayment at the end of the 1-year period following the date the overpayment is identified. If, after refunding the Federal share, a State determines that the overpayment cannot be collected from the provider because the provider is bankrupt or out of business, the State is allowed to reclaim the Federal share of the overpayment.

For Federal fiscal years 2010 through 2013, California claimed \$58.3 million in Federal reimbursement for Medicaid overpayments that it made to providers who were determined to be bankrupt or out of business (uncollectible overpayments). We reviewed California because the Federal reimbursement it claimed for uncollectible overpayments during this period represented approximately 70 percent of the total nationwide.

Our objective was to determine whether the California Department of Health Care Services (State agency) complied with Federal requirements when reclaiming Federal Medicaid reimbursement for uncollectible overpayments.

### BACKGROUND

The Federal Government pays its share of a State's medical assistance expenditures under Medicaid on the basis of the Federal medical assistance percentage (FMAP), which varies depending on the State's relative per capita income. A State may reclaim the Federal share of any uncollectible overpayment that it previously refunded to the Federal Government if the provider to which the overpayment was made is determined to be bankrupt or out of business, and the State has not been able to collect the full overpayment. To reclaim the Federal share, the State must submit to the Centers for Medicare & Medicaid Services documentation that it has made reasonable efforts to collect the overpayment. For a refund or reclaim of any overpayment, a State is required to calculate the Federal share using the FMAP that was in effect when the original expenditure was made.

The American Recovery and Reinvestment Act of 2009 (Recovery Act), as amended, provided fiscal relief to States to protect and maintain State Medicaid programs during the economic downturn by providing additional Medicaid funding from October 1, 2008, through June 30, 2011 (recession adjustment period), through temporary increases in States' FMAPs.

## **HOW WE CONDUCTED THIS REVIEW**

For Federal fiscal years 2010 through 2013 (October 1, 2009, through September 30, 2013), the State agency claimed Federal reimbursement for 437 uncollectible overpayments totaling \$103,483,280 (\$58,331,516 Federal share). On the basis of their dollar values and possible duplication, we reviewed a judgmental sample of 86 uncollectible overpayments, totaling \$64,481,909 (\$34,753,308 Federal share), to determine whether they met the requirements for the Federal share to be reclaimed. After determining that the State agency incorrectly claimed the additional Federal reimbursement authorized under the Recovery Act for 45 of these 86 overpayments, we identified that the State agency had claimed the additional reimbursement for 250 of the 437 overpayments. As a result, we expanded our review to determine whether the remaining 205 uncollectible overpayments for which the State agency claimed the additional Federal reimbursement were eligible to be claimed at the increased FMAPs.

## **WHAT WE FOUND**

The State agency complied with Federal requirements when reclaiming Federal Medicaid reimbursement for uncollectible overpayments. However, the State agency incorrectly used Recovery Act FMAPs to claim additional Federal reimbursement of \$6,589,892 for 250 uncollectible overpayments that were not originally made during the recession adjustment period or were not previously refunded to the Federal Government using the increased FMAPs.

## **WHAT WE RECOMMEND**

We recommend that the State agency:

- refund \$6,589,892 to the Federal Government and
- ensure that it uses the FMAPs in effect when the original overpayments were made and refunded when claiming Federal reimbursement for uncollectible overpayments.

## **STATE AGENCY COMMENTS**

In written comments on our draft report, the State agency agreed with our recommendations and provided information on actions that it had taken or planned to take to address our recommendations.

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## INTRODUCTION

### WHY WE DID THIS REVIEW

Overpayments are payments made to providers in excess of the amount allowed for the services furnished. States are required to refund to the Federal Government the Federal share of a Medicaid overpayment at the end of the 1-year period following the date the overpayment is identified. If, after refunding the Federal share, a State determines that the overpayment cannot be collected from the provider because the provider is bankrupt or out of business, the State is allowed to reclaim the Federal share of the overpayment.

For Federal fiscal years 2010 through 2013, California claimed \$58.3 million in Federal reimbursement for Medicaid overpayments that it made to providers who were determined to be bankrupt or out of business (uncollectible overpayments).<sup>1</sup> We reviewed California because the Federal reimbursement it claimed for uncollectible overpayments during this period represented approximately 70 percent of the total nationwide.

### OBJECTIVE

Our objective was to determine whether the California Department of Health Care Services (State agency) complied with Federal requirements when reclaiming Federal Medicaid reimbursement for uncollectible overpayments.

### BACKGROUND

#### The Medicaid Program

The Medicaid program provides medical assistance to low-income individuals and individuals with disabilities. The Federal and State Governments jointly fund and administer the Medicaid program. At the Federal level, 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 the State has considerable flexibility in designing and operating its Medicaid program, it must comply with applicable Federal requirements. In California, the State agency administers the Medicaid program.

Federal reimbursement is available to a State only for the total amount expended as medical assistance and for the proper and efficient administration of a CMS-approved State plan (Social Security Act (the Act) § 1903(a)(1)). The Federal Government pays its share of a State's medical assistance expenditures under Medicaid on the basis of the Federal medical assistance percentage (FMAP), which varies depending on the State's relative per capita income. The Federal share is calculated using the FMAP in effect when the expenditure was made (the Act § 1903(a)(1)). Although FMAPs are adjusted annually for economic changes in the States, Congress may increase FMAPs at any time.

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<sup>1</sup> For this report, the term "claim" refers to a State's reporting to CMS of a Medicaid expenditure for the purpose of obtaining the Federal share of that expenditure. The term "reclaim" refers to a State's claiming of the Federal share of an overpayment that was previously refunded to the Federal Government.

## The American Recovery and Reinvestment Act's Temporary Increases in States' Federal Medical Assistance Percentages

The American Recovery and Reinvestment Act of 2009 (Recovery Act), as amended, provided fiscal relief to States to protect and maintain State Medicaid programs during the economic downturn.<sup>2</sup> For the recession adjustment period (October 1, 2008, through December 31, 2010), the Recovery Act provided an estimated \$87 billion in additional Medicaid funding through temporary increases in States' FMAPs.<sup>3</sup> These increases were intended to help avert cuts in health care payment rates, benefits, or services and to prevent changes to income eligibility requirements that would reduce the number of individuals eligible for Medicaid (the Recovery Act § 5000(a)). The Recovery Act stated that a State's increased FMAP during the recession adjustment period would be no less than its 2008 FMAP increased by 6.2 percentage points and that a State could receive an increase greater than 6.2 percentage points on the basis of increases to its average unemployment rate (§§ 5001(a), (b), and (c)).

Medicaid expenditures incurred during the recession adjustment period were claimed at the increased FMAP in effect for the quarter in which the expenditure was made. The additional Federal reimbursement was calculated by multiplying the total amount expended by the increased Recovery Act FMAP in effect when the expenditure was made and was reported separately from the regular Medicaid reimbursement on the Quarterly Medicaid Statement of Expenditures for the Medical Assistance Program (Form CMS-64).

The FMAPs in effect for California during the recession adjustment period are shown in the table below.

**Table: California FMAPs During the Recession Adjustment Period**

Federal Fiscal Year	Quarter	Regular FMAP	Recovery Act FMAP Percentage-Point Increase
2009	Q1-Q4	50%	11.59
2010	Q1-Q4	50%	11.59
2011	Q1	50%	11.59
2011	Q2	50%	8.77
2011	Q3	50%	6.88

### Medicaid Overpayments

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

<sup>2</sup> P.L. No. 111-5, enacted February 17, 2009, § 5001.

<sup>3</sup> The Education Jobs and Medicaid Assistance Act, P.L. No. 111-226, extended the recession adjustment period for the increased FMAPs through June 30, 2011 (§ 201).

section 1902 of the Act and which is required to be refunded under section 1903 of the Act” (42 CFR § 433.304).

An overpayment is discovered on the earliest of (1) the date the State first notifies a provider in writing of an overpayment and specifies a dollar amount that is subject to recovery, (2) the date the provider acknowledges an overpayment to the State in writing, or (3) the date the State initiates a formal action to recoup a specific overpaid amount from a provider without having first notified the provider in writing (42 CFR § 433.316(c)). This is known as the date of discovery (CMS *State Medicaid Manual*, Pub. No. 45 (the Manual), § 2853.2).

### **Uncollectible Overpayments for Bankrupt and Out-of-Business Providers**

Generally, a State is required to refund the Federal share of an overpayment made to a provider at the end of the 1-year period following the date of discovery, whether or not the overpayment has been collected (the Act § 1903(d)(2)(C)). However, the State is not required to refund the Federal share when it is unable to collect the overpayment amount because the provider has been determined to be bankrupt or out of business (42 CFR § 433.312(b)).

A State may reclaim the Federal share of any uncollectible overpayment that it previously refunded if the provider is determined to be bankrupt or out of business. To do so, the State must submit to CMS documentation that it has made reasonable efforts to collect the overpayment (42 CFR § 433.320(g)).

For a refund or reclaim of any overpayment, a State is required to calculate the Federal share using the FMAP in effect when the original expenditure was made.

In California, the State agency refunds overpayments in the quarter in which the overpayments are discovered. The State agency reclaims Federal reimbursement for uncollectible overpayments that it had previously refunded after it determines that a provider is bankrupt or no longer in business.

### **HOW WE CONDUCTED THIS REVIEW**

For Federal fiscal years 2010 through 2013 (October 1, 2009, through September 30, 2013), the State agency claimed Federal reimbursement for 437 uncollectible overpayments totaling \$103,483,280 (\$58,331,516 Federal share). On the basis of their dollar values and possible duplication, we reviewed a judgmental sample of 86 uncollectible overpayments, totaling \$64,481,909 (\$34,753,308 Federal share), to determine whether they met the requirements for the Federal share to be reclaimed. After determining that the State agency incorrectly claimed the additional Federal reimbursement authorized under the Recovery Act for 45 of these 86 overpayments, we identified that the State agency had claimed the additional reimbursement for 250 of the 437 overpayments. As a result, we expanded our review to determine whether the remaining 205 uncollectible overpayments for which the State agency claimed the additional Federal reimbursement were eligible to be claimed at the increased FMAPs.

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**

The State agency complied with Federal requirements when reclaiming Federal Medicaid reimbursement for uncollectible overpayments. However, the State agency incorrectly used Recovery Act FMAPs to claim additional Federal reimbursement of \$6,589,892 for 250 uncollectible overpayments that were not originally made during the recession adjustment period or were not previously refunded to the Federal Government using the increased FMAPs.

### **FEDERAL REQUIREMENTS**

Federal reimbursement is available to a State for its Medicaid expenditures in an amount equal to the FMAP of the total amount expended during each quarter (the Act § 1903(a)(1)). Additionally, the Manual provides that reimbursement will be made at the FMAP in effect for the quarter in which the expenditure was made, even if the expenditure is not claimed for Federal reimbursement until some later quarter (§ 2500(D)(2)). Further, States are required to report recoveries, like overpayments, at the FMAP that was in effect at the time the expenditure was made (the Manual § 2500.6(B)).

### **THE STATE AGENCY INCORRECTLY CLAIMED ADDITIONAL FEDERAL REIMBURSEMENT WHEN RECLAIMING UNCOLLECTIBLE OVERPAYMENTS**

For the 86 uncollectible overpayments that we reviewed, the State agency correctly reclaimed \$34,753,308 in Federal reimbursement.<sup>4</sup> However, the State agency incorrectly used Recovery Act FMAPs to claim additional Federal reimbursement of \$6,589,892 for 250 uncollectible overpayments that were not originally made during the recession adjustment period or were not previously refunded to the Federal Government using the increased FMAPs.

For the 250 uncollectible overpayments, after reclaiming the Federal reimbursement at the regular FMAP, the State agency incorrectly claimed additional reimbursement using the increased FMAPs authorized under the Recovery Act. For each quarter of the recession adjustment period, the State agency calculated the additional reimbursement by applying the increased FMAP in effect for the quarter to the total uncollectible overpayments that it reported on Form CMS-64 in that quarter. The State agency claimed the additional reimbursement for the overpayments (i.e., using the increased FMAPs) even though the expenditures associated with the overpayments were not originally made during the recession adjustment period and the

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<sup>4</sup> We determined that the State agency complied with Federal requirements in attempting to collect the overpayments and correctly calculated and reclaimed the Federal share for each overpayment by multiplying the overpayment amount by the FMAP originally recorded in the State agency's accounting system.

Federal share of the overpayments was not previously refunded at the increased FMAPs. As a result, the overpayments were not eligible for the additional Federal funding under the Recovery Act.

State agency officials told us that CMS had approved the State agency's use of the increased FMAPs for the reclaimed overpayments but did not provide evidence of CMS's approval.

### **RECOMMENDATIONS**

We recommend that the State agency:

- refund \$6,589,892 to the Federal Government and
- ensure that it uses the FMAPs in effect when the original overpayments were made and refunded when claiming Federal reimbursement for uncollectible overpayments.

### **STATE AGENCY COMMENTS**

In written comments on our draft report, the State agency agreed with our recommendations and provided information on actions that it had taken or planned to take to address our recommendations. The State agency's comments are included in their entirety as Appendix B.

## **APPENDIX A: AUDIT SCOPE AND METHODOLOGY**

### **SCOPE**

For Federal fiscal years 2010 through 2013 (October 1, 2009, through September 30, 2013), the State agency claimed Federal reimbursement for 437 uncollectible overpayments totaling \$103,483,280 (\$58,331,516 Federal share). On the basis of their dollar values and possible duplication, we reviewed a judgmental sample of 86 uncollectible overpayments, totaling \$64,481,909 (\$34,753,308 Federal share), to determine whether they met the requirements for the Federal share to be reclaimed. After determining that the State agency incorrectly claimed the additional Federal reimbursement authorized under the Recovery Act for 45 of these 86 overpayments, we identified that the State agency had claimed the additional reimbursement for 250 of the 437 overpayments. As a result, we expanded our review to determine whether the remaining 205 uncollectible overpayments for which the State agency claimed the additional Federal reimbursement were eligible to be claimed at the increased FMAPs.

Our objective did not require a review of the overall internal control structure of the State agency. Therefore, we limited our internal control review to the State agency's procedures for claiming Federal reimbursement related to uncollectible overpayments.

We performed fieldwork at the State agency's offices in Sacramento, California.

### **METHODOLOGY**

To accomplish our objective, we:

- reviewed applicable Federal and State laws, regulations, and guidance for reclaiming overpayments determined uncollectible because the providers were bankrupt or out of business;
- held discussions with CMS officials to gain an understanding of the adjustments made for uncollectible overpayments;
- interviewed State agency officials to gain an understanding of the State agency's policies and procedures for pursuing the collection of overpayments and refunding and reclaiming the Federal share of uncollectible overpayments;
- reconciled the State agency's refunded and reclaimed overpayments with claim schedules and amounts reported on Form CMS-64;
- reviewed the State agency's claim schedules and compared them with a detailed list of overpayments, including the FMAP at which each overpayment was originally reported, refunded, and reclaimed;
- selected a judgmental sample of 86 overpayments for which the State agency had reclaimed Federal reimbursement and reviewed its documentation supporting its

(1) determination of the providers' bankrupt or out-of-business status, (2) efforts to collect overpayments from the providers, and (3) claim schedules used to calculate the Federal share of the uncollectible overpayments that it had refunded and reclaimed;<sup>5</sup>

- for the 250 overpayments that the State agency reclaimed during the recession adjustment period, reviewed the State agency's documentation for the dates of discovery to determine whether the additional Federal reimbursement that the State agency claimed was allowable; and
- discussed the results of our review with State agency 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>5</sup> We selected the 86 overpayments on the basis of their dollar values and possible duplication. Included in the 86 overpayments were 76 overpayments from 30 providers with overpayments totaling more than \$400,000 and 10 overpayments (from 2 providers) that appeared to be duplicates. The documentation included State agency audit reports identifying overpayments, court decisions on bankruptcy actions, State agency demand letters sent to providers, and narratives of State agency efforts to contact the providers.

## APPENDIX B: STATE AGENCY COMMENTS



State of California—Health and Human Services Agency  
Department of Health Care Services



EDMUND G. BROWN JR.  
GOVERNOR

February 10, 2017

Ms. Lori A. Ahlstrand  
Regional Inspector General for Audit Services  
Office of Audit Services, Region IX  
90 – 7<sup>TH</sup> Street, Suite 3-650  
San Francisco, CA 94103

Dear Ms. Ahlstrand

The California Department of Health Care Services (DHCS) has prepared its response to the U.S. Department of Health and Human Services, Office of Inspector General (OIG) draft report entitled, *California Incorrectly Claimed Additional Medicaid Funding Authorized Under the Recovery Act When Reclaiming Overpayments Made to Bankrupt or Out-of-Business Providers*.

DHCS appreciates the work performed by OIG and the opportunity to respond to the draft report. Please contact Ms. Sarah Hollister, External Audit Manager, at (916) 319-8529 if you have any questions.

Sincerely,

[original signed by Jennifer Kent]

Jennifer Kent  
Director

Enclosure

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Ms. Lori Ahlstrand  
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**Department of Health Care Services Response to the Office of the Inspector General (OIG) draft audit report entitled, *California Incorrectly Claimed Additional Medicaid Funding Authorized Under the Recovery Act When Claiming Overpayments Made to Bankrupt or Out-of-Business Providers***

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**Finding #1: The State agency incorrectly used Recovery Act FMAPs to claim additional Federal reimbursement of \$6,589,892 for 250 uncollectible overpayments that were not originally made during the recession adjustment period or were not previously refunded to the Federal Government using the increased FMAPs.**

**Recommendation 1: DHCS should refund \$6,589,892 to the Federal Government.**

**Response: DHCS agrees with the recommendation.**

As a corrective measure, DHCS will refund \$6,589,892 to the Federal Government in FY 2017-18.

**Recommendation 2: DHCS should ensure that it uses the FMAPs in effect when the original overpayments were made and refunded when claiming Federal reimbursement for uncollectable overpayments.**

**Response: DHCS agrees with the recommendation.**

DHCS has corrected the reporting error to ensure that the FMAP used when claiming Federal reimbursement for uncollectible overpayments is the FMAP that was in effect when the original overpayment was made.

This recommendation was fully implemented during calendar year 2015.