DEPARTMENT OF HEALTH & HUMAN SERVICES

Office of Inspector General

Washington, D.C. 20201

JAN 12 2005

TO: Wynethea Walker
Acting Director, Audit Liaison Staff
Centers for Medicare & Medicaid Services

FROM: Joseph E. Vengrin
Deputy Inspector General
for Audit Services

SUBJECT: Review of Maine's Medicaid Retroactive Claims for School-Based Health Services — January 2001 Through June 2003 (A-01-04-00004)

Attached is an advance copy of our final report on Maine's Medicaid retroactive claims for school-based health services from January 2001 through June 2003. We will issue this report to Maine within 5 business days.

After retroactively increasing the reimbursement rate for previously reimbursed school-based health services, the State agency submitted retroactive claims to the Federal Government and was reimbursed $8,804,013.

The objective of our audit was to determine whether the State agency's retroactive claims for Medicaid school-based health services complied with Federal regulations.

Federal regulations stipulate that (1) it is the State's responsibility to make payments to providers that furnish Medicaid services and (2) the amounts reported on the Quarterly Statement of Expenditures (Form CMS-64) and its attachments must be actual expenditures. In addition, Federal regulations state that if a check remains uncashed beyond 180 days from the date it was issued (i.e., the date of the check), it will no longer be regarded as a program expenditure. If the State has claimed and received Federal funds for the amount of the uncashed check, it must refund the amount received.

The State agency did not follow Federal regulations when it processed the retroactive claims for Medicaid school-based health services. The State did not incur any expenditures because it did not remit the Federal share received for these claims to the provider school districts. Rather, the State deposited the Federal share in the State's general fund.

As part of the public record, the State agency indicated that the Federal funds would not go to the schools but instead would be deposited in the State's general fund to assist in balancing the State budget. As a result, the State agency was overpaid $8,804,013 (Federal share). The State agency made a subsequent adjustment of $5,759,802 to reduce the overpayment. However, the State agency's overpayment remains at $3,044,211 (Federal share).

We recommend that the State agency:

- refund $3,044,211 to the Federal Government and

- follow prescribed procedures to ensure that the State properly refunds the Federal share for uncashed or voided checks in accordance with Federal requirements.

In response to the draft report, the State agency said that it intended to (1) provide for a retroactive fee increase to schools using the same 8-percent cost-of-living adjustment previously used and (2) make payments directly to schools. Therefore, the State agency did not agree to repay the $3,044,211. The State agency agreed that the payment procedures it used to process its claims for retroactive school-based costs were inappropriate and said that it would work with the Centers for Medicare & Medicaid Services to develop an acceptable payment process.

Federal regulations (42 CFR § 433.40) require the State agency to refund all Federal funds that it received for uncashed checks by adjusting Form CMS-64. Accordingly, we believe that any future State agency plans to claim retroactive costs do not waive its responsibility to refund previously disallowed claims.

If you have any questions or comments about this report, please do not hesitate to call me, or have your staff call George M. Reeb, Assistant Inspector General for the Centers for Medicare & Medicaid Audits, at (410) 786-7104 or Michael J. Armstrong, Regional Inspector General for Audit Services, at (617) 565-2689. Please refer to report number A-01-04-00004 in all correspondence.

Attachment

DEPARTMENT OF HEALTH & HUMAN SERVICES OFFICE OF INSPECTOR GENERAL

Office of Audit Services
Region I
John F. Kennedy Federal Building
Boston, MA 02203
(617) 565-2684

JAN 18 2005

Report Number: A-01-04-00004

Mr. Edward A. Karass
State Controller, State of Maine
Burton M. Cross Office Building
Fourth Floor, Station 14
Augusta, Maine 04333-0014

Dear Mr. Karass:

Enclosed are two copies of the Department of Health and Human Services (HHS), Office of Inspector General (OIG) final report entitled "Review of Maine's Medicaid Retroactive Claims for School-Based Health Services — January 2001 Through June 2003." A copy of this report will be forwarded to the HHS action official noted below for review and any action deemed necessary.

Final determination as to actions taken on all matters reported will be made by the HHS action official named below. We request that you respond to the HHS action official within 30 days from the date of this letter. Your response should present any comments or additional information that you believe may have a bearing on the final determination.

In accordance with the principles of the Freedom of Information Act (5 U.S.C. § 552, as amended by Public Law 104-231), OIG reports issued to the Department's grantees and contractors are made available to members of the press and general public to the extent the information is not subject to exemptions in the Act that the Department chooses to exercise (see 45 CFR part 5).

Please refer to report number A-01-04-00004 in all correspondence.

Sincerely yours,

Michael J. Armstrong

Michael J. Armstrong
Regional Inspector General
for Audit Services

Enclosures

Direct Reply to HHS Action Official:

Charlotte S. Yeh, M.D.
Regional Administrator
Centers for Medicare & Medicaid Services
Department of Health and Human Services
John F. Kennedy Federal Building, Room 2325
Boston, Massachusetts 02203

Department of Health and Human Services

OFFICE OF INSPECTOR GENERAL

REVIEW OF MAINE'S MEDICAID RETROACTIVE CLAIMS FOR SCHOOL-BASED HEALTH SERVICES – JANUARY 2001 THROUGH JUNE 2003

JANUARY 2005
A-01-04-00004

Office of Inspector General

http://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 OIG's Office of Audit Services (OAS) provides all 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 in order to reduce waste, abuse, and mismanagement and to promote economy and efficiency throughout the department.

Office of Evaluation and Inspections

The OIG's Office of Evaluation and Inspections (OEI) conducts short-term management and program evaluations (called inspections) that focus on issues of concern to the department, the Congress, and the public. The findings and recommendations contained in the inspections reports generate rapid, accurate, and up-to-date information on the efficiency, vulnerability, and effectiveness of departmental programs. The OEI also oversees State Medicaid fraud control units, which investigate and prosecute fraud and patient abuse in the Medicaid program.

Office of Investigations

The OIG's Office of Investigations (OI) conducts criminal, civil, and administrative investigations of allegations of wrongdoing in HHS programs or to HHS beneficiaries and of unjust enrichment by providers. The investigative efforts of OI lead to criminal convictions, administrative sanctions, 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 in OIG's internal operations. The OCIG imposes program exclusions and civil monetary penalties on health care providers and litigates those actions within the department. The OCIG also represents OIG in the global settlement of cases arising under the Civil False Claims Act, develops and monitors corporate integrity agreements, develops model compliance plans, renders advisory opinions on OIG sanctions to the health care community, and issues fraud alerts and other industry guidance.

Notices

THIS REPORT IS AVAILABLE TO THE PUBLIC
at http://oig.hhs.gov

In accordance with the principles of the Freedom of Information Act (5 U.S.C. 552, as amended by Public Law 104-231), Office of Inspector General, Office of Audit Services reports are made available to members of the public to the extent the information is not subject to exemptions in the act. (See 45 CFR part 5.)

OAS FINDINGS AND OPINIONS

The designation of financial or management practices as questionable or a recommendation for the disallowance of costs incurred or claimed, as well as other conclusions and recommendations in this report, represent the findings and opinions of the HHS/OIG/OAS. Authorized officials of the HHS divisions will make final determination on these matters.

EXECUTIVE SUMMARY

BACKGROUND

In Maine, school administrative units provide school-based health services to students with special needs pursuant to a child's education plan. Services are provided in the school setting or elsewhere and include speech therapy, physical therapy, occupational therapy, audiological services, behavior management, counseling, and other medical services. These services are reimbursable under Medicaid.

From January 1, 2001, through June 30, 2003, Maine's school administrative units were reimbursed $44,483,217 for school-based health services. Subsequently, Maine retroactively increased the reimbursement rate for these services. The State agency submitted retroactive claims to the Federal Government and was reimbursed a total of $8,804,013.

OBJECTIVE

The objective of our audit was to determine whether the State agency's retroactive claims for Medicaid school-based health services complied with Federal regulations.

SUMMARY OF FINDINGS

Federal regulations stipulate that (1) it is the State's responsibility to make payments to providers that furnish Medicaid services and (2) the amounts reported on the Quarterly Statement of Expenditures (Form CMS-64) and its attachments must be actual expenditures. In addition, Federal regulations state that if a check remains uncashed beyond 180 days from the date it was issued (i.e., the date of the check), it will no longer be regarded as a program expenditure. If the State has claimed and received Federal funds for the amount of the uncashed check, it must refund the amount received.

The State agency did not follow Federal regulations when it processed the retroactive claims for Medicaid school-based health services. The State did not incur any expenditures because it did not remit the Federal share received for these claims to the provider school districts. Rather, the State deposited the Federal share in the State's general fund.

As part of the public record, the State agency indicated that the Federal funds would not go to the schools but instead would be deposited in the State's general fund to assist in balancing the State budget. As a result, the State agency was overpaid $8,804,013 (Federal share). The State agency made a subsequent adjustment of $5,759,802 to reduce the overpayment. However, the State agency's overpayment remains at $3,044,211 (Federal share).

RECOMMENDATIONS

We recommend that the State agency:

- refund $3,044,211 to the Federal Government and

- follow prescribed procedures to ensure that the State properly refunds the Federal share for uncashed or voided checks in accordance with Federal requirements.

STATE AGENCY COMMENTS

In response to the draft report, the State agency said that it intended to (1) provide for a retroactive fee increase to schools using the same 8-percent cost-of-living adjustment previously used and (2) make payments directly to schools. Therefore, the State agency did not agree to repay the $3,044,211. The State agency agreed that the payment procedures it used to process its claims for retroactive school-based costs were inappropriate and said that it would work with the Centers for Medicare & Medicaid Services (CMS) to develop an acceptable payment process.

OFFICE OF INSPECTOR GENERAL RESPONSE

Federal regulations (42 CFR § 433.40) require the State agency to refund all Federal funding that it received for uncashed checks by adjusting Form CMS-64. Accordingly, we believe that any future State agency plans to claim retroactive costs do not waive its responsibility to refund previously disallowed claims.

TABLE OF CONTENTS

INTRODUCTION

BACKGROUND

Medicaid Program

Medicaid was established under Title XIX of the Social Security Act as a jointly funded Federal and State Government program to provide need-based medical assistance to pregnant women, children, and individuals who are aged, blind, or disabled. Within broad Federal guidelines, States design and administer the program under the general oversight of CMS. In Maine, the Department of Human Services is the State agency responsible for administering and supervising the Medicaid program.

School-Based Health Services

In Maine, school administrative units provide school-based health services to students with special needs pursuant to a child's education plan. Services are provided in the school setting or elsewhere and include speech therapy, physical therapy, occupational therapy, audiological services, behavior management, counseling, and other medical services. These services are reimbursable under Medicaid.

Maine reimburses school administrative units for health services through bundled monthly rates for each of 13 categories of service. Each category can have four separate monthly rates. If the child was Medicaid eligible that month, the rate associated with the child's disability would be claimed under Medicaid. The State's bundled monthly rates were established on October 1, 1998, when its school-based special education program began.

From January 1, 2001, through June 30, 2003, the State's 261 school administrative units served approximately 33,000 special education students, about 15,000 of whom were Medicaid eligible. The school administrative units were reimbursed $44,483,217 (Federal share) for school-based health services. Subsequently, the State agency retroactively increased the rate of reimbursement for these services. The State agency submitted two retroactive claims (one for $4,645,498 and the other for $4,158,515) to the Federal Government and was reimbursed a total of $8,804,013 for the increased rates.

State Agency's Claiming Procedures

The school administrative units pay out of their budgets for health services rendered and then submit their claims to the State agency. Once the claims are approved, the State agency remits the Federal percentage share of the claims to the school administrative units. The State agency then draws down the Federal share of the claims and reports the expenditures to CMS on the quarterly Form CMS-64. After approving this form, CMS compares the amount that the State expended during the quarter with the amount of the quarterly grant. CMS then increases or decreases the next quarter's grant amount for the difference.

OBJECTIVE, SCOPE, AND METHODOLOGY

Objective

The objective of our audit was to determine whether the State agency's retroactive claims for Medicaid school-based health services complied with Federal regulations.

Scope

We reviewed two retroactive Federal claims ($4,645,498 and $4,158,515, respectively) for which the State agency was reimbursed a total of $8,804,013 under Maine's Medicaid program. The two claims covered payment dates from January 1, 2001, through June 30, 2003. We performed our fieldwork at the State agency from December 2003 through May 2004.

Methodology

To accomplish our objective, we:

- reviewed Federal and State laws, regulations, and guidelines related to school-based health services as they pertained to the Medicaid program and special education;

- obtained an understanding of Maine's rate process, accounting, and justification for the retroactive claims;

- reviewed the State agency's justification and related accounting for its two retroactive claims;

- held discussions with officials from CMS, the State agency, the Maine Department of Education, the Maine State Billing Services, Inc., and Maine State auditors; and

- reviewed the State agency's internal controls over school-based health services budget preparation and expenditure reporting, financial reconciliations, payment rates, and billing processes.

We conducted our audit in accordance with generally accepted government auditing standards.

FINDING AND RECOMMENDATIONS

The State agency's retroactive claims for increased reimbursement rates for Medicaid school-based health services did not comply with Federal regulations. The State agency did not remit the payment checks for the increased reimbursement rates to the school districts; instead, it deposited the money in the State's general fund and did not credit the Medicaid program for the uncashed checks.

The State agency did not follow existing accounting controls to ensure that its Federal claims were for valid Medicaid expenditures. As a result, the State agency was overpaid by $8,804,013 (Federal share). The State agency made a subsequent adjustment of $5,759,802 to CMS to reduce the overpayment. However, the overpayment to the State agency remains at $3,044,211 (Federal share).

REQUIREMENTS ON ACCOUNTING FOR CLAIMS

Federal regulations (42 CFR § 430.0) stipulate that it is the State's responsibility to pay providers that furnish Medicaid services. The regulations (42 CFR § 430.30) require that the amounts reported on Form CMS-64 and its attachments be actual expenditures. In addition, 42 CFR § 433.40 covers the treatment of uncashed or canceled (voided) Medicaid checks and defines an uncashed check as "a Medicaid check issued by a State or fiscal agent which has not been cashed by the payee." The regulations (42 CFR § 433.40(c)) state that:

> If a check remains uncashed beyond 180 days from the date it was issued; i.e., the date of the check, it will no longer be regarded as an allowable program expenditure. If the State has claimed and received FFP [Federal financial participation] for the amount of the uncashed check, it must refund the amount of FFP received.

Further, 42 CFR § 433.40(2) states that "At the end of each calendar quarter, the State must identify those checks that remain uncashed beyond 180 days after issuance. The State agency must refund all FFP that it received for uncashed checks by adjusting the Quarterly Statement of Expenditures for that quarter . . . ." Also, 42 CFR § 433.40(3) states: "If the State does not refund the appropriate amount as specified in paragraph (c)(2) of this section, the amount will be disallowed."

Finally, the Balanced Budget Act of 1997, Subtitle H, Chapter 3, section 4724(a) states that "This provision imposes an explicit ban on the use of Federal Medicaid matching funds for non-health related items . . . not covered by a State's Medicaid plan."

UNCASHED CHECKS

Contrary to Federal requirements, the State agency did not adequately account for its Federal Medicaid claims. Specifically, the State agency did not remit to the school districts payment vouchers (checks or electronic transfers) representing the claimed retroactive costs that the Medicaid program reimbursed. Instead, the State agency deposited the funds in its general fund and did not refund the Federal funds to the Medicaid program within prescribed time periods.

After calculating cost adjustment increases for its school-based health services program, the State agency generated payment vouchers for cash disbursement to each of its school administrative units. Simultaneously, the agency recorded accounting entries to establish the expenditure of funds under the Federal accounts. This triggered accounting entries that released Federal revenues to the State's general fund to cover the cash disbursements to the school districts. However, contrary to Federal requirements, the State deposited the payment vouchers earmarked for the school districts in the general fund as unrestricted revenue and did not reverse

the entries to cancel the Federal expenditures or Federal revenue accounts from which the funds came.

IMPROPER ACCOUNTING FOR CLAIMS

The State agency did not follow procedures to ensure that it adequately accounted for Federal Medicaid claims. Specifically, the State agency did not:

- identify checks that remained uncashed beyond 180 days from the date of the check and refund the amount of Federal funding for these checks to the Medicaid program by adjusting its Form CMS-64,

- credit the Medicaid program for the uncashed checks that it redeposited in the State's general fund, or

- preclude Federal Medicaid matching funds from being used for purposes other than those intended by the Medicaid State plan.

In response to an inquiry from the State's Office of Fiscal and Program Review (a nonpartisan group serving the Maine State Legislature) regarding the State agency's proposal to make the retroactive claims, State agency officials indicated that their proposal was not a retroactive billing of claims, as implied by the inquiry. Rather, the proposal was intended to raise current-year rates to account for inflation. The State agency's response further indicated that the Federal funds would not go to the schools but instead would be deposited in the State's general fund to assist in balancing the State budget. In this regard, the State agency circumvented its normal claiming process because it did not follow established procedures for claiming Medicaid school-based health services in accordance with Federal regulations.

OVERSTATED CLAIM

Because the State agency did not follow Federal regulations, it was overpaid Federal funds totaling $8,804,013. The agency made a subsequent adjustment of $5,759,802 that reduced a portion of the overpaid claim. However, the Federal overpayment to the State remains at $3,044,211.

RECOMMENDATIONS

We recommend that the State agency:

- refund the $3,044,211 to the Federal Government and

- follow prescribed procedures to ensure that the State properly refunds the Federal share for uncashed or voided checks in accordance with Federal requirements.

STATE AGENCY COMMENTS

The State agency said that it intended to (1) provide for a retroactive fee increase to schools using the same 8-percent cost-of-living adjustment previously used and (2) make payments directly to schools. Therefore, the State agency did not agree to repay the $3,044,211.

The State agency agreed that the payment procedures that it used to process its claim for retroactive school-based costs were inappropriate and said that it would work with CMS to develop an acceptable payment process.

The State agency's comments are included in their entirety in the appendix.

OFFICE OF INSPECTOR GENERAL RESPONSE

Federal regulations (42 CFR § 433.40) require the State agency to refund all Federal funding that it receives for uncashed checks by adjusting the Form CMS-64. Such amounts are disallowed. Accordingly, we believe that any future State agency plans to claim retroactive costs do not waive its responsibility to refund previously disallowed claims.

OTHER MATTERS

As stated previously, the State did not follow the prescribed procedures for claiming Federal Medicaid matching funds. Because of this finding and the fact that all of the remaining claimed funds of more than $3 million (Federal share) should be refunded to the Federal Government, we limited our review to the actual calculation of the originally claimed $8,804,013 (Federal share). However, we did sufficient work to raise concerns as to the appropriateness of the retroactive rate increases if subsequently disbursed to the local school districts.

Our review of the State agency's documentation for the proposed retroactive rate increases for 1999 through 2001 found that the State agency did not (1) justify cost adjustment increases based on actual Medicaid cost data for the school-based program or (2) consider increases in Medicaid reimbursement that would have satisfied cost increases during the same periods.

COST ADJUSTMENT INCREASES

Based on the rate of cost increases that the special education program experienced statewide for State fiscal years 1999 through 2001, the State agency calculated an 8-percent (rounded) increase in total statewide special education costs per year. Because the State agency did not have procedures to track actual costs incurred to provide school-based health services to Medicaid-eligible children, the State agency equated the 8-percent increase to Medicaid-only, school-based health services costs for the period of our review. The State agency then applied each yearly 8-percent increase to the Medicaid amounts claimed in the periods of the proposed increase. However, neither we nor the State had assurance that the proposed increases to these Medicaid reimbursements or revenues equaled actual Medicaid costs. The use of a bundled monthly rate in the school-based program did not ensure that increases in special education costs would reflect the same increases in Medicaid costs.

INCREASES IN MEDICAID REIMBURSEMENT

The State agency did not consider increases in Medicaid reimbursement that would have satisfied increases in costs. Although the State agency calculated a 25-percent increase in total statewide special education costs during the period of our review, it did not consider a 39-percent increase in Federal Medicaid reimbursement that it received over the same period. The mixture of services provided under the originally developed bundled rate in 1998 could have changed, causing revenues to increase without increases in costs to provide those services.

APPENDIX

AUGUSTA, MAINE 04333-0014

JOHN ELIAS BALDACCI
GOVERNOR

REBECCA M. WYKE
COMMISSIONER

EDWARD A. KARASS
STATE CONTROLLER

September 24, 2004

Michael J. Armstrong
Department of Health and Human Services
Regional Inspector General
Office of Audit Services
Region I
John F. Kennedy Building
Boston, MA 02203

Reference: A – 01 – 04 – 00004

Dear Mr. Armstrong:

Thank you for the opportunity to respond on behalf of the State Of Maine to your findings and recommendations related to the State's Medicaid Program for school – based health services. We look forward to working with your office and with CMS to resolve the issues contained in your report.

We agree that a different payment procedure should have been followed to provide payments directly to providers rather than re-directing the un-cashed checks to the State Treasury. The State of Maine's Department of Health and Human Services will work cooperatively with CMS to effectuate an acceptable payment process that can be claimed on the CMS 64. The State Controller's Office will ensure that the Department of Health and Human Services will work closely with CMS to ensure a mutual comprehension of proper rate setting and payment procedures.

We do not agree with the finding that the cost adjustment made for School Based Rehab (SBR) services was inappropriate. The State can find no basis in Federal regulation for the assertion that the State must base fee increases for school based rehab services on actual Medicaid cost data. The original formula for development of the rates for SBR services was approved by CMS. The State has an approved State Plan for these services. The Department may provide for fee increases for SBR services, as it does for any other type of service covered under Medicaid. The State has adequately shown increased costs for Special Ed Services and for General Education, which were used in the rate-setting methodology originally approved in the State Plan.

Medicaid rates for SBR services have only been increased once since their inception. Any overall increased payments made to schools for these services would represent increased utilization or changes in the mix of children being served. Schools have not been satisfactorily reimbursed for the increased costs to Special Education for SBR services. The Department is not obligated to rebase the rates for SBR, just as it is not required to rebase rates for any other service under Medicaid. The State believes the COLA was calculated consistent with the methodology originally approved in the State Plan.

The Department intends to provide for a fee increase to schools on a retroactive basis using the same COLA of approximately 8%. However, the Department will make payments directly to the schools. Therefore, we disagree with the repayment you have requested of $3,044,211.

Sincerely,

Edward A. Karass

Edward A. Karass, State Controller