

Department of Health and Human Services

**OFFICE OF
INSPECTOR GENERAL**

**NEW YORK DID NOT COMPLY
WITH FEDERAL GRANT
REQUIREMENTS FOR CLAIMING
MARKETPLACE CONTRACT
COSTS TO MEDICAID AND THE
CHILDREN'S HEALTH
INSURANCE PROGRAM**

*Inquiries about this report may be addressed to the Office of Public Affairs at
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Deputy Inspector General
for Audit Services

March 2018
A-02-15-01014

Office of Inspector General

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OFFICE OF AUDIT SERVICES FINDINGS AND OPINIONS

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

Report in Brief

Date: March 2018

Report No. A-02-15-01014



Why OIG Did This Review

New York established a health insurance marketplace under the provisions of the Patient Protection and Affordable Care Act to allow individuals and small businesses to shop for health insurance. The New York marketplace provides eligibility determination and enrollment services for both private health insurance plans offered through the marketplace and its State-based public health care programs: Medicaid and the Children's Health Insurance Program (CHIP).

New York amended an existing contract with Maximus, Inc., to expand a centralized State-wide Medicaid and CHIP enrollment center to include marketplace customer services to New Yorkers seeking to enroll in a qualified health plan. At the Federal level, the Centers for Medicare & Medicaid Services (CMS) administers the Medicaid and CHIP programs.

This review is related to a prior review of grants awarded to New York for the establishment of its marketplace.

Our objective was to determine whether New York followed Federal requirements in claiming Maximus contract costs to Medicaid and CHIP.

How OIG Did This Review

We reviewed \$4.4 million in Federal reimbursement for selected contract costs that New York claimed to Medicaid and CHIP for the period June 2012 through April 2014.

New York Did Not Comply With Federal Grant Requirements for Claiming Marketplace Contract Costs to Medicaid and the Children's Health Insurance Program

What OIG Found

New York did not always follow Federal requirements for claiming Maximus contract costs to Medicaid and CHIP. Specifically, New York claimed unallowable costs totaling as much as \$954,521 (as much as \$852,992 in unallowable profit fees and \$101,529 in unallowable general and administrative costs and related profit fees).

This occurred because New York did not establish a basis for the profit fee rate with Maximus at the beginning of the contract and did not require Maximus to always use its final cost rate for general and administrative costs. Further, New York did not require Maximus to retroactively adjust the calculation of its profit fee and general and administrative costs by removing project costs that should not have been subject to these charges.

What OIG Recommends and New York's Comments

We recommend that New York (1) refund to CMS \$852,992 in unallowable profit fees or work with CMS to determine the appropriate amount that should have been claimed to Medicaid and CHIP and (2) refund to CMS \$101,529 in unallowable general and administrative costs and related profit fees.

In written comments on our draft report, New York disagreed with our recommendations. Specifically, New York stated that the fact that different contract terms were negotiated for a subsequent period did not result in unallowable profit fees and general and administrative costs in prior periods.

After reviewing New York's comments, we maintain that our findings and recommendations are valid. New York's original contract terms with Maximus did not specify a profit fee rate or what such a rate should be based on. Therefore, New York has no basis to establish that the profit fee costs were reasonable, as required by Federal regulations. Further, Maximus' final general and administrative cost rate was not applied for the period October 2012 through September 2013, as required by Federal regulations.

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INTRODUCTION

WHY WE DID THIS REVIEW

The New York State Department of Health (the State agency) operates the New York State of Health (New York marketplace) that was established under the provisions of the Patient Protection and Affordable Care Act¹ to allow individuals and small businesses to shop for health insurance. The New York marketplace provides eligibility determination and enrollment services for both private health insurance plans offered through the marketplaces, known as qualified health plans (QHPs), and New York's public health care programs: Medicaid and the Children's Health Insurance Program (CHIP).

A prior review of marketplace establishment grants awarded to New York found that the State agency did not always follow Federal cost allocation requirements.² This review focuses on costs allocated to Medicaid and CHIP that were incurred by Maximus, Inc., under a contract with the State agency to operate a marketplace customer service center. (We refer to these costs as "contract costs" throughout the report.) We separately reviewed Maximus costs allocated to New York's marketplace establishment grants.³

OBJECTIVE

Our objective was to determine whether the State agency followed Federal requirements in claiming contract costs to Medicaid and CHIP.

BACKGROUND

Medicaid and Children's Health Insurance Programs

Medicaid provides medical assistance to low-income individuals and individuals with disabilities. CHIP provides free or affordable health care coverage to targeted low-income children. The Federal and State Governments jointly fund and administer both programs. At the Federal level, the Centers for Medicare & Medicaid Services (CMS) administers the programs. Each State administers its Medicaid program and CHIP in accordance with a CMS-approved State plan. The State plan is a comprehensive document that defines how each State will operate its programs, including program administration, eligibility criteria, service coverage,

¹ P.L. No. 111-148 (Mar. 23, 2010), as amended by the Health Care and Education Reconciliation Act of 2010, P.L. No. 111-152 (Mar. 30, 2010), collectively referred to as "ACA."

² *New York Misallocated Costs to Establishment Grants for a Health Insurance Marketplace* (A-02-14-02017, November 21, 2016). Available at: <https://oig.hhs.gov/oas/reports/region2/21402017.asp>.

³ *New York Did Not Comply With Federal Grant Requirements for Allocating and Claiming Marketplace Contract Costs* (A-02-15-02008, December 22, 2016). Available at: <https://oig.hhs.gov/oas/reports/region2/21502008.asp>.

and provider reimbursement. In New York, the State agency administers both Medicaid and CHIP.

Federal Requirements Related to Contract Costs

Title 45, part 92, of the Code of Federal Regulations (CFR) establishes uniform administrative requirements for grants to State governments. Allowable costs are determined in accordance with the cost principles applicable to the organization incurring the costs (45 CFR § 92.22(b)). The allowability of costs incurred by commercial organizations is determined in accordance with the provisions of the Federal Acquisition Regulation at 48 CFR part 31.

The New York Marketplace

New York chose to establish and operate its own State-based marketplace. Because the New York marketplace provides eligibility determination and enrollment services for Medicaid, CHIP, and QHPs, it sought funding from various Federal sources that provided benefits for these programs. Additionally, the State agency developed methodologies for allocating costs related to customer support services to the benefitting programs.

In June 2012, the State agency amended an existing Maximus contract to expand a centralized State-wide Medicaid and CHIP enrollment center to include marketplace customer services to New Yorkers seeking to enroll in a QHP. The State agency allocated \$60.5 million (\$34.2 million Federal share) in customer services contract costs to Medicaid and CHIP for the period June 2012 through March 2015.

HOW WE CONDUCTED THIS REVIEW

We reviewed \$7,561,958 (\$4,438,126 Federal share⁴) in profit fees⁵ and general and administrative (G&A) costs for the period June 2012 through April 2014 that the State agency claimed to Medicaid and CHIP.⁶ We limited our review of internal controls to the systems and procedures for claiming costs to Medicaid and CHIP. We recalculated allowable profit fees and G&A costs by applying Maximus operating profit margin and final G&A rate to allowable project costs.

⁴ The Federal share amounts in this report were calculated based on the ratio of the total amount reimbursed to the total amount claimed for each voucher.

⁵ Profit fees are payments made to a contractor that are in addition to the reimbursement of expenses to allow for a profit.

⁶ The Maximus contract contains a clause stating that the contractor will maintain complete and accurate records pertinent to performance under the contract, and authorized entities will have access to those records. The Office of Inspector General (OIG) has authority to conduct an examination of these records because the State agency allocated the contract costs to two CMS-administered programs: Medicaid and CHIP.

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.

FINDINGS

The State agency did not always follow Federal requirements for claiming contract costs to Medicaid and CHIP and claimed unallowable costs totaling as much as \$954,521. Specifically, the State agency claimed unallowable profit fees totaling as much as \$852,992 and unallowable G&A costs and related profit fees totaling \$101,529.

This occurred because the State agency did not establish a basis for the profit fee rate with Maximus at the beginning of the contract and did not require Maximus to always use its final cost rate for G&A costs. Further, the State agency did not require Maximus to retroactively adjust the calculation of its profit fees and G&A costs by removing project costs that should not have been subject to those charges.

THE STATE AGENCY CLAIMED UNALLOWABLE PROFIT FEES

A cost is reasonable if, in its nature and amount, it does not exceed that which would be incurred by a prudent person in the conduct of competitive business (48 CFR § 31.201-3(a)). What is reasonable depends on a variety of considerations and circumstances, including generally accepted sound business practices and any significant deviations from the contractor's established practices (48 CFR § 31.201-3(b)).

Indirect costs that meet the definition of an "excessive pass-through charge" are unallowable (48 CFR § 31.203(i)). Excessive pass-through charges are charges to the Government for indirect costs or profit on work performed by a contractor that adds no or negligible value to a contract (48 CFR § 52.215-23(a)).

The State agency claimed unallowable profit fees. Specifically, the State agency's contract with Maximus provided for payment of a profit fee calculated by applying a fee percentage to project costs. However, the contract did not specify the fee percentage or the project costs to which the fee should be applied for the period June 2012 through April 2014. During this period, the State agency claimed profit fees to Medicaid and CHIP totaling \$4,645,104 (\$2,723,885 Federal share).⁷ The profit fees were calculated by applying a profit fee rate of

⁷ This amount does not include the unallowable profit fees related to the unallowable G&A costs discussed later in this report.

17.65 percent to project costs, including travel and State agency office space costs.⁸ However, there was no explanation as to what the profit fee rate was based on or how it was calculated. The State agency subsequently negotiated a profit fee for the period May 2014 through April 2015 based on Maximus’ fiscal year profit margin. The State agency and Maximus also agreed that the profit fee rate would not be applied to pass-through costs such as travel and office space costs.

We re-calculated the profit fees for the period June 2012 through April 2014 by applying the appropriate period profit margin reported by Maximus⁹ and excluding travel and office space costs, as detailed in Table 1. We found that the State agency claimed unallowable profit fees totaling as much as \$1,462,190 (\$852,992 Federal share) to Medicaid and CHIP. This occurred because the State agency did not establish a basis for the profit fee rate or require Maximus to retroactively adjust the calculation of its profit fee charges by removing travel and office space costs, even though Maximus and the State agency subsequently agreed that those project costs should not have been subject to these charges.

Table 1: OIG Re-calculation of Profit Fee Charges (June 2012 Through April 2014)

Period	Maximus Calculation of Profit Fee Charges			OIG Re-calculation of Profit Fee Charges			Unallowable Costs (Federal share) (Difference)
	Project Costs Subject to Profit Fees (Federal share)	Profit Fee Rate	Profit Fee Charges (Federal share)	Project Costs Subject to Profit Fees (Federal share)	Profit Margin Percentage	Profit Fee Charges (Federal share)	
June 2012 – August 2013	\$5,162,910	17.65	\$911,254	\$5,017,253	13.20	\$662,277	\$248,977
September 2013 – April 2014	10,269,865	17.65	1,812,631	10,071,797	12.00	1,208,616	604,015
Total	\$15,432,775		\$2,723,885	\$15,089,050¹⁰		\$1,870,893	\$852,992¹¹

⁸ For the rest of the report, we will refer to these costs as “office space costs.”

⁹ According to its annual report filed with the U.S. Securities and Exchange Commission, Maximus had a profit margin for its Health Services Segment of 13.2 percent for October 2010 through September 2011 and 12 percent for October 2011 through September 2012.

¹⁰ The difference of \$343,725 between the project costs subject to profit fees calculated by Maximus and the project costs subject to profit fees calculated by the OIG consists of travel and office space costs.

¹¹ Of this amount, \$792,324 was attributed to the use of the operating profit margin to re-calculate the profit fee costs, and \$60,668 was attributed to the removal of the pass-through costs to re-calculate the profit fee costs.

THE STATE AGENCY CLAIMED UNALLOWABLE GENERAL AND ADMINISTRATIVE COSTS

Indirect costs that meet the definition of an “excessive pass-through charge” are unallowable (48 CFR § 31.203(i)). Excessive pass-through charges are charges to the Government for indirect costs or profit on work performed by a contractor that adds no or negligible value to a contract (48 CFR § 52.215-23(a)).

A base period for allocating indirect costs is “the cost accounting period during which such costs are incurred and accumulated for allocation of work performed in that period” (48 CFR § 31.203(g)). Billing rates and final indirect cost rates shall be used in reimbursing indirect costs under cost-reimbursement contracts (48 CFR § 42.703-1(b)). Within 120 days after settlement of the final annual indirect cost rate, the contractor must submit an invoice or voucher reflecting the settled amounts and rates (48 CFR § 42.705(b)).

The State agency claimed unallowable G&A costs and related profit fees. Specifically, the State agency’s contract with Maximus did not specify the project costs to which the G&A rate should have been applied for the period June 2012 through April 2014. Maximus developed G&A rates at the beginning of each fiscal year which were used for provisional billing. Final G&A rates were developed after the conclusion of each fiscal year. The State agency claimed G&A costs to Medicaid and CHIP totaling \$2,891,878 (\$1,699,009 Federal share) from June 2012 through April 2014. Maximus calculated these costs by applying provisional and final rates to project costs, including travel and office space costs. But the State agency and Maximus subsequently agreed that the G&A rate should not be applied to pass-through costs such as travel and office space costs.

We re-calculated the G&A costs from June 2012 through April 2014 by applying the appropriate final G&A rate and excluding travel and office space costs, as detailed in Table 2 (next page). We found that the State agency claimed unallowable G&A costs totaling \$141,510 (\$86,298 Federal share) to Medicaid and CHIP. The profit fee charges related to these G&A costs totaled \$24,977 (\$15,231 Federal share).¹² Therefore, the unallowable G&A costs and related profit fees claimed to Medicaid and CHIP totaled \$166,487 (\$101,529 Federal share). This occurred because the State agency did not require Maximus to always use its final cost rate for G&A costs or require Maximus to retroactively adjust the calculation of its G&A costs by removing travel and office space costs, even though the State agency and Maximus subsequently agreed that these costs should not have been subject to G&A charges.

¹² G&A costs are subject to profit fees. Therefore, unallowable G&A costs would have related profit fees. We calculated the related profit fees by applying the profit fee rate of 17.65 percent to the unallowable G&A costs. The profit fees related to the unallowable G&A costs do not duplicate the unallowable profit fees discussed earlier in the report.

**Table 2: OIG Re-calculation of General and Administrative Costs Plus Profit Fees
(June 2012 Through April 2014)**

Period	Maximus Calculation of G&A Costs			OIG Re-calculation of G&A Costs			Unallowable Costs (Federal share) (Difference)
	Project Costs Subject to G&A (Federal share)	Applied G&A Rate	G&A Costs (Federal share)	Project Costs Subject to G&A (Federal share)	Final G&A Rate	G&A Costs (Federal share)	
June 2012 – September 2012	\$100,241	17.19	\$17,231	\$90,816	17.19	\$15,611	\$1,620
October 2012 – September 2013	5,284,129	14.20	750,346	5,108,427	13.39	684,018	66,328
October 2013 – April 2014	8,050,403	11.57	931,432	7,891,805	11.57	913,082	18,350
	\$13,434,773		\$1,699,009	\$13,091,048¹³		\$1,612,711	\$86,298
Related Unallowable Profit Fees (Federal share)							\$15,231
Total Unallowable G&A and Related Profit Fees (Federal share)							\$101,529¹⁴

RECOMMENDATIONS

We recommend that the State agency:

- refund to CMS \$852,992 for unallowable profit fees or work with CMS to determine the appropriate amount that should have been claimed to Medicaid and CHIP and
- refund to CMS \$101,529 for unallowable G&A costs and related profit fees.

¹³ The difference of \$343,725 between the project costs subject to G&A costs calculated by Maximus and the project costs subject to G&A costs calculated by the OIG consists of travel and office space costs.

¹⁴ Of this amount, \$48,682 is unallowable because Maximus did not use the final G&A rate for the period October 2012 through September 2013. The remaining \$52,847 is unallowable because Maximus did not remove pass-through costs for the period June 2012 through April 2014.

**STATE AGENCY COMMENTS AND
OFFICE OF INSPECTOR GENERAL RESPONSE**

In written comments on our draft report, the State agency disagreed with our recommendations. Specifically, the State agency stated that the fact that different contract terms were negotiated for a subsequent period did not result in unallowable profit fees and G&A costs in prior periods.

After reviewing the State agency's comments, we maintain that our findings and recommendations are valid. We maintain that the unallowable profit fees and G&A costs claimed by the State agency are excessive pass-through charges that are not allowable for Federal reimbursement. Further, the State agency's original contract terms with Maximus did not specify a profit fee rate or what such a rate should be based on. Therefore, the State agency has no basis to establish that the profit fee costs were reasonable, as required by Federal regulations. Finally, the final G&A rate was not applied for the period October 2012 through September 2013, as required by Federal regulations.

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

APPENDIX A: AUDIT SCOPE AND METHODOLOGY

SCOPE

We reviewed \$7,561,958 (\$4,438,126 Federal share) in profit fees and G&A costs for the period June 2012 through April 2014 that the State agency claimed to Medicaid and CHIP. We limited our review of internal controls to the systems and procedures for claiming costs to Medicaid and CHIP.

We conducted our fieldwork at the State agency's offices in Albany, New York, from June 2015 through February 2017.

METHODOLOGY

To accomplish our objective, we:

- reviewed applicable Federal laws, regulations, and guidance;
- reviewed the State agency's policies and procedures for financial management of the contract;
- reviewed the contract, contract amendments, and task orders to gain an understanding of the contract deliverables, terms and conditions, and costs associated with the contract;
- obtained Form CMS-64, Quarterly Medicaid Statement of Expenditures for the Medical Assistance Program reports (CMS-64), submitted by the State agency to CMS for the quarters ending December 31, 2013, through December 31, 2015;
- obtained Form CMS-21, Quarterly Children's Health Insurance Program Statement of Expenditures for Title XXI reports (CMS-21), submitted by the State agency to CMS for the quarters ending March 31, 2014, through June 30, 2015;
- obtained vouchers submitted by Maximus to the State agency for the period June 1, 2012, through March 31, 2015;
- reconciled the voucher amounts to the CMS-64 and CMS-21 reports to verify that the contract costs were allocated and claimed to Medicaid and CHIP;
- reviewed Maximus' methodology for charging profit fees and G&A costs;

- reviewed Maximus' annual report submitted to the U.S. Securities and Exchange Commission to identify the operating profit margins for its Health Services Segment for the years ended September 30, 2012, and 2013;
- re-calculated Maximus' profit fees for the period June 2012 through April 2014 by excluding travel and office space costs and applying the appropriate profit margin;
- determined the amount of unallowable profit fees that were claimed to Medicaid and CHIP;
- reviewed Maximus' independent accountant reports for the financial and compliance review of the final G&A rates for the years ended September 30, 2013, 2014, and 2015;
- re-calculated the G&A costs for the period June 2012 through April 2014 by excluding travel and office space costs and applying the final G&A rate;
- determined the amount of unallowable G&A costs and related profit fees that were claimed to Medicaid and CHIP; 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.

APPENDIX B: STATE AGENCY COMMENTS



ANDREW M. CUOMO
Governor

Department
of Health

HOWARD A. ZUCKER, M.D., J.D.
Commissioner

SALLY DRESLIN, M.S., R.N.
Executive Deputy Commissioner

December 21, 2017

Ms. Brenda Tierney
Regional Inspector General for Audit Services
Department of Health and Human Services - Region II
Jacob Javitz Federal Building
26 Federal Plaza
New York, New York 10278

Ref. No: A-02-15-01014

Dear Ms. Tierney:

Enclosed are the New York State Department of Health's comments on the United States Department of Health and Human Services, Office of Inspector General's Draft Audit Report A-02-15-01014 entitled, "New York Did Not Comply With Federal Grant Requirements for Claiming Marketplace Contract Costs to Medicaid and the Children's Health Insurance Program."

Thank you for the opportunity to comment.

Sincerely,

Sally Dreslin

Sally Dreslin, M.S., R.N.
Executive Deputy Commissioner

Enclosure

cc: Marybeth Hefner
Jason Helgeson
Donna Frescatore
Sue Bannen
Elizabeth Misa
Geza Hrazdina
Jeffrey Hammond
Jill Montag
James Dematteo
James Cataldo
Diane Christensen
Lori Conway
OHIP Audit SM

**New York State Department of Health
Comments on the
Department of Health and Human Services
Office of Inspector General
Draft Audit Report A-02-15-01014 entitled
“New York Did Not Comply with Federal Grant Requirements for
Claiming Marketplace Contract Costs to Medicaid and the Children’s
Health Insurance Program”**

The following are the New York State Department of Health’s (Department) comments in response to the Department of Health and Human Services, Office of Inspector General (OIG) Draft Audit Report A-02-15-01014 entitled, “New York Did Not Comply with Federal Grant Requirements for Claiming Marketplace Contract Costs to Medicaid and the Children’s Health Insurance Program”

Background:

New York State (NYS) is a national leader in its oversight of the Medicaid Program. The Office of the Medicaid Inspector General (OMIG) conducts on-going audits of the Medicaid program and managed care plans. The Department and OMIG will continue to focus on achieving improvements to the Medicaid program and aggressively fighting fraud, waste and abuse. Under Governor Cuomo’s leadership, the Medicaid Redesign Team (MRT) was created in 2011 to lower health care costs and improve quality of care for its Medicaid members. Since 2011, Medicaid spending has remained under the Global Spending Cap, while at the same time providing health care coverage to an additional 1,276,304 fragile and low income New Yorkers. Additionally, Medicaid spending per recipient decreased to \$8,609 in 2016, consistent with levels from a decade ago.

Recommendation #1:

Refund to CMS \$852,992 for unallowable profit fees or work with CMS to determine the appropriate amount that should have been claimed to Medicaid and CHIP.

Response #1:

The Department disagrees that the profit fees claimed are unallowable. The fact that different contract terms were negotiated for a subsequent period does not result in unallowable costs in the previous periods.

Recommendation #2:

Refund to CMS \$101,529 for unallowable G&A costs and related profit fees.

Response #2:

The Department disagrees that the general and administrative costs and related profit fees claimed are unallowable. The fact that different contract terms were negotiated for a subsequent period does not result in unallowable costs in the previous periods.