

Department of Health and Human Services

**OFFICE OF
INSPECTOR GENERAL**

**FLORIDA DID NOT REFUND \$106
MILLION FEDERAL SHARE OF MEDICAID
MANAGED CARE REBATES IT RECEIVED
FOR CALENDAR YEARS 2015 THROUGH
2020**

*Inquiries about this report may be addressed to the Office of Public Affairs at
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**Christi A. Grimm
Inspector General**

**August 2023
A-04-22-04089**

Office of Inspector General

<https://oig.hhs.gov>

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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: August 2023

Report No. A-04-22-04089

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



Why OIG Did This Audit

Prior OIG audits found that the audited States had improperly calculated or did not refund the Federal share of recoveries from Medicaid managed care organizations (MCOs).

Florida's Medicaid program operates under a managed care waiver in which MCOs are required to make achieved savings rebates (rebates) to Florida when pretax income exceeds certain thresholds.

Our objective was to determine whether Florida properly calculated the rebates in accordance with Florida statutes and terms of the MCO contracts and refunded the Federal share as required.

How OIG Did This Audit

Our audit covered the \$449 million in MCO rebates that Florida received for calendar years 2015 through 2020 (audit period). We reviewed Florida's general ledger activity for the account containing MCO rebates and the CMS-64 forms Florida filed to determine whether Florida properly reported the rebates and refunded the Federal share. We also confirmed that the MCO rebates were properly calculated.

Florida Did Not Refund \$106 Million Federal Share of Medicaid Managed Care Rebates It Received for Calendar Years 2015 Through 2020

What OIG Found

Florida calculated and received the required MCO rebates totaling \$448,891,916 (\$292,485,420 Federal share) for our audit period in accordance with Florida statutes and the terms of the Medicaid MCO contracts. However, Florida did not properly refund the Federal share of MCO rebates in accordance with Federal requirements. Florida reported only calendar year 2020 rebates on the CMS-64, which totaled \$274,856,893 (\$186,332,359 Federal share), but it did not report rebates for calendar years 2015 through 2019 totaling \$174,035,023 (\$106,153,061 Federal share).

Florida did not report the rebates it received from the MCOs for calendar years 2015 through 2019 on the CMS-64 because Florida officials erroneously believed that they were not required to do so before CMS added the January 15, 2021, provision to the special terms and conditions (STCs) specifically requiring Florida to refund the Federal share of rebates. As a result, before January 15, 2021, Florida did not include a step in its written instructions for preparing the quarterly CMS-64 to report the rebates and refund the Federal share to the Federal Government.

What OIG Recommends and Florida Comments

We recommend that Florida refund \$106,153,061 to the Federal Government, representing the Federal share of rebates for calendar years 2015 through 2019 that Florida did not refund.

In written comments to our draft report, Florida did not concur with our recommendation that it refund \$106,153,061. Florida said that it was not required by CMS to report the rebates until January 15, 2021. Florida also noted that it had updated its processes to report the rebates on the CMS-64.

After reviewing Florida's comments, we maintain that our recommendation to refund the \$106,153,061 is valid. As we indicated in our report, Florida was required by Federal law, regulations, and guidance to refund the Federal share of rebates even though the STCs did not specifically contain such a requirement until January 15, 2021.

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INTRODUCTION

WHY WE DID THIS AUDIT

Prior audits conducted by the Department of Health and Human Services (HHS), Office of Inspector General (OIG) found that the audited States did not always appropriately calculate or refund the Federal share of recoveries from Medicaid managed care organizations (MCOs).¹

In 2005, the Centers for Medicare & Medicaid Services (CMS) approved Florida's Research and Demonstration Waiver (the waiver) for Medicaid reform. In 2013, CMS approved the Managed Medical Assistance amendment to the waiver, which allowed for the implementation of a new statewide managed care delivery system under which the Florida Agency for Health Care Administration (the State agency) contracts with MCOs to pay claims and manage the care of the Medicaid population. One provision of the contracts that the State agency has with MCOs requires them to make refunds to the State agency when the MCOs' pretax incomes exceed certain thresholds. These refunds are known as achieved savings rebates (rebates).

OBJECTIVE

Our objective was to determine whether the State agency properly calculated the required MCO rebates in accordance with the Florida statutes and terms of the MCO contracts and refunded the Federal share of rebates received from MCOs under the waiver in accordance with Federal laws, regulations, and guidance.

BACKGROUND

Medicaid Program

The Medicaid program provides medical assistance to low-income individuals and individuals with disabilities. Federal and State governments jointly fund and administer the Medicaid program. At the Federal level, CMS administers the program. Each State administers its Medicaid program in accordance with a CMS-approved State plan. A State plan establishes which services the Medicaid program will cover. Although a State has considerable flexibility in designing and operating its Medicaid program, it must comply with applicable Federal requirements.

¹ *New Mexico Did Not Always Appropriately Refund the Federal Share of Recoveries from Managed Care Organizations* (A-06-18-09001, February 2019); *Texas Inappropriately Claimed Medicaid Balancing Incentive Payments Program and Family Planning Funding* (A-06-14-00059, February 2016); *Pennsylvania Did Not Refund the Full Federal Share of Recouped Excess Capitation Payments From the Medicaid Behavioral HealthChoices Program* (A-03-10-00204, June 2012); and *Review of Florida's Children's Health Insurance Program Experience Adjustment and Refund Submission Reports* (A-04-10-06123, June 2011).

The Federal Government pays its share of a State's medical assistance costs based on the Federal medical assistance percentage (FMAP), which varies depending on a State's relative per capita income.² In Florida, the State agency administers the Medicaid program.

The Waiver

The State agency operates the waiver, which CMS approved under section 1115 of the Social Security Act (the Act). Under the Act, CMS can authorize experimental, pilot, or demonstration projects that it considers likely to assist in promoting the objectives of the Medicaid program. The purpose of these projects is to evaluate whether State-specific policy approaches can better serve Medicaid populations.

Achieved Savings Rebates

Medicaid MCOs in Florida are required each year to calculate the amount by which their pretax income exceeded established thresholds and provide rebates to the State agency for that portion of their pretax income.³ In addition, the MCOs must allow a certified public accountant (CPA) designated by the State agency to audit the MCO's rebate calculations. The final determination of the rebate amount owed is made by the State agency.

Special Terms and Conditions of Waivers

A waiver's special terms and conditions (STCs) specify the nature, character, and extent of Federal involvement in the waiver and outline the State's obligations to CMS during the life of the waiver.

Three different versions of the STCs related to the CMS waiver for Florida were in effect during our audit, which covered calendar years 2015 through 2020 (audit period). None of the STCs specifically mentioned that the State would be responsible for reporting rebates to CMS;

² The FMAP is used to determine the Federal share of State expenditures for most health care services and is based on a formula that provides higher reimbursement to States with lower per capita incomes relative to the national average (The Act § 1905(b)).

³ The requirement in the contracts is consistent with § 409.967(3)(f) of the Florida statutes, which requires MCOs to refund 100 percent of pretax income that exceeds 10 percent of revenues. In addition, MCOs must refund 50 percent of pretax income that exceeds 5 percent but does not exceed 10 percent of revenues. MCOs that exceed State agency-defined quality measures may retain an additional one percent of revenue.

however, the STCs dated January 15, 2021, required the State agency to report rebates from Medicaid MCOs as refunds on the CMS-64.⁴

HOW WE CONDUCTED THIS AUDIT

Our audit covered the \$448,891,916 (\$292,485,420 Federal share) of rebates that Medicaid MCOs made to the State agency for the audit period. Our audit included the following:

- examining the State agency's general ledger activity for the account used for recording rebates to identify rebates received between December of 2017 and November of 2021;⁵
- reviewing CMS-64 forms for the fiscal quarters subsequent to the State agency's receipt of the MCO rebates to determine whether the State agency refunded the Federal share of the rebates;⁶ and
- assessing the rebate calculations performed by the Medicaid MCOs, the audit reports from the CPAs, and final determination calculations performed by the State agency.

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.

See Appendix A for the details of our audit scope and methodology and Appendix B for applicable Federal and State requirements.

FINDINGS

The State agency properly calculated and received the required Medicaid MCO rebates totaling \$448,891,916 (\$292,485,420 Federal share) for our audit period in accordance with the Florida

⁴ The CMS-64 *Quarterly Medicaid Statement of Expenditures for the Medical Assistance Program* is a summary of expenditures derived from source documents such as invoices, cost reports, and eligibility records that Medicaid State agencies use to report program costs to CMS for Federal financial participation. According to the State Medicaid Manual § 2500.1, the State agency should report the rebates on line 9D of the CMS-64 to refund the Federal share.

⁵ The calendar year 2015 rebates were received in December of 2017, and the calendar year 2020 rebates were received in October and November of 2021.

⁶ States can make adjustments on the CMS-64 that apply to prior periods. We looked at all of Florida's quarterly CMS-64 forms after the date of receipt of the rebates for our audit period through June 30, 2023, which is the current finalized CMS-64.

statutes and terms of the Medicaid MCO contracts. However, the State agency did not properly refund the Federal share of rebates received from Medicaid MCOs in accordance with Federal laws, regulations, and guidance. The State agency properly reported the rebates for calendar year 2020 totaling \$274,856,893 (\$186,332,359 Federal share) on the CMS-64 but did not report the rebates for calendar years 2015 through 2019 totaling \$174,035,023 (\$106,153,061 Federal share). Thus, the State agency received overpayments totaling \$106,153,061, representing the Federal share of the rebates for calendar years 2015 through 2019. See Appendix C for the calculation of the overpayments by year.

The State agency did not report the rebates it received from the MCOs for calendar years 2015 through 2019 on the CMS-64 because State agency officials erroneously believed that they were not required to do so before CMS added the January 15, 2021, provision to the STCs specifically requiring the State agency to refund the Federal share of rebates.⁷ As a result, before January 15, 2021, the State agency did not include a step in its written instructions for preparing the quarterly CMS-64 to report the rebates and refund the Federal share.

THE STATE AGENCY DID NOT REFUND THE FEDERAL SHARE OF ALL ACHIEVED SAVINGS REBATES THAT IT RECEIVED

Although the total Federal share of rebates for the audit period was \$292,485,420, the State agency refunded only \$186,332,359 and thus received overpayments of \$106,153,061.

The Act, section 1903(d)(3)(A), requires States to refund the Federal share of the net amount of medical assistance costs recovered each quarter. Recipients of Federal awards are required under 45 CFR section 75.406(a) to reduce their expenditures for “reduction-of-expenditure-type transactions,” such as rebates, if the transactions relate to allowable costs. *The State Medicaid Manual*, section 2500.1, instructs States to report collections such as “refunds, cancellations, and amounts collected by the imposition of a lien . . .” on line 9D of the CMS-64, which results in a reduction of allowable expenditures. In addition, effective January 15, 2021 (after our audit period), the STCs included a requirement that the State agency refund the Federal share of rebates that it received from MCOs.

According to the rebates formula defined in the Florida statutes and in the MCO contracts, the rebates represent a return of the MCOs’ revenues based on the percentage of pretax income to revenues. The MCOs’ revenues were derived from capitation payments and other medical assistance payments received from the State agency.⁸ The State agency included these

⁷ The State agency received the calendar year 2020 rebates, which it reported on the CMS-64, after the Jan. 15, 2021, effective date of the STC provision that required refunding of the Federal share of rebates.

⁸ Capitation payments in the Medicaid managed care environment are fixed, periodic payments made by a State Medicaid agency—usually on a monthly basis for each member—to an MCO for the provision of risk-based managed care services.

capitation payments and other medical assistance payments in its allowable medical assistance costs on its CMS-64 forms for the audit period. Therefore, the rebates represent a recovery of medical assistance costs within the meaning of the Act, section 1903(d)(3)(A), and are also related to allowable costs within the meaning of 45 CFR section 75.406(a). Thus, the State agency was required to refund the Federal share of rebates that it received from MCOs for the entire audit period, even though the STCs did not specifically contain such a requirement until January 15, 2021.

The State Agency Did Not Report the Achieved Savings Rebates on the CMS-64 for Calendar Years 2015 Through 2019

The State agency reported rebates for calendar year 2020 totaling \$274,856,893 (\$186,332,359 Federal share) on the CMS-64 form but did not report the rebates for calendar years 2015 through 2019 totaling \$174,035,023 (\$106,153,061 Federal share). Because the State agency did not report the rebates for calendar years 2015 through 2019 as it was required to do, it received an overpayment of \$106,153,061, representing the Federal share of those rebates.

The State agency did not report the rebates for calendar years 2015 through 2019 because its officials incorrectly concluded that the absence of a specific mandate in the STCs to refund the Federal share of rebates before January 15, 2021, meant that they were not required to do so. Consequently, the State agency did not include a step in its CMS-64 form preparation instructions to report and refund the Federal share of the rebates that it received from the MCOs before that date.⁹

RECOMMENDATIONS

We recommend that the Florida Agency for Health Care Administration refund \$106,153,061 to the Federal Government, representing the Federal share of rebates for calendar years 2015 through 2019 that the State agency did not refund.

STATE AGENCY COMMENTS AND OFFICE OF INSPECTOR GENERAL RESPONSE

In written comments to our draft report, the State agency did not concur with our recommendation that it refund \$106,153,061 to the Federal Government. The State agency said that it was not required by CMS to report the rebates until January 15, 2021.¹⁰ The State agency also noted that it had updated its processes to report the rebates on the CMS-64.

⁹ As a result of CMS's Jan. 15, 2021, revision to the STCs, the State agency revised its CMS-64 form preparation instructions to include the step to report the rebates.

¹⁰ The effective date of CMS's revision of the STCs, which included the requirement to refund the Federal share of the rebates, was Jan. 15, 2021.

After reviewing the State agency's comments, we maintain that our recommendation to refund the \$106,153,061 is valid. As we indicated in our report, the State agency was required by Federal law, regulations, and guidance to refund the Federal share of rebates even though the STCs did not specifically contain such a requirement until January 15, 2021.¹¹

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

¹¹ The Act, section 1903(d)(3)(A), 45 CFR section 75.406(a), and *The State Medicaid Manual*, section 2500.1.

APPENDIX A: AUDIT SCOPE AND METHODOLOGY

SCOPE

Our audit covered rebates that Medicaid MCOs made to the State agency for calendar years 2015 through 2020 (audit period). For this period, the State agency received rebates totaling \$448,891,916 (\$292,485,420 Federal share).

In planning and performing our audit, we limited our review of the State agency's internal controls to those controls related to the receipt, validation, disposition, and reporting of rebates.

METHODOLOGY

To accomplish our objective, we:

- reviewed applicable Federal and State laws and regulations;
- reviewed the STCs and the State agency's contracts with the MCOs;
- obtained from the State agency a schedule of all rebates it received from MCOs for the audit period;
- reviewed the State agency's Excel spreadsheet calculations of the rebates that it received for the audit period;
- reviewed the more detailed Excel spreadsheet rebate calculation files prepared by the Medicaid MCOs;¹²
- reviewed the independent CPA audit reports for the rebates received for the audit period;
- reviewed the CMS-64 forms for the quarters subsequent to the dates of the rebates received by the State agency to determine whether the State agency refunded the Federal share of the rebates;¹³

¹² The Excel files prepared by the State agency contained only summary information, which the State agency used to calculate the rebates. However, the files prepared by the Medicaid MCOs contained more detailed information, including quarterly revenue and expense data by category (categories included, for example, inpatient hospital, outpatient hospital, primary care physician, specialty physician, mental health) and enrollment data.

¹³ States can make adjustments on the CMS-64 forms that apply to prior periods. We looked at all of Florida's quarterly CMS-64 forms after the date of receipt of the rebates for our audit period through June 30, 2023, which is the current finalized CMS-64.

- reviewed the CMS workpapers that provided details of the amounts that the State agency reported on Line 9D of the CMS-64 form;
- determined the Federal share of the rebates that the State agency received for calendar years 2015, 2016, 2019, and 2020 by applying the average of the four quarterly published FMAPs for each calendar year to the rebates;
- determined the Federal share of the rebates that the State agency received for the combined calendar years of 2017 and 2018 by applying the average of the eight quarterly published FMAPs for those 2 years to the rebates;¹⁴
- compared the OIG-calculated Federal share of calendar year 2020 rebates to the amount that the State agency refunded on the CMS-64 form;
- compared the State agency’s calculated rebate amounts for the audit period to the rebates recorded in the State agency’s general ledger; and
- discussed the results of our audit 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.

¹⁴ State agency officials said that because of the effects of an issue relating to hospital outpatient payment rates that occurred between July 1, 2017, and June 30, 2018, they combined calendar years 2017 and 2018 to determine the rebates due for those years. Thus, we used the average of the eight published FMAPs for those 2 years in determining the Federal share of the rebates.

APPENDIX B: FEDERAL AND STATE REQUIREMENTS

FEDERAL REQUIREMENTS

SOCIAL SECURITY ACT

The Act, section 1903(d)(3)(A), requires States to refund the Federal share of recoveries received during a quarter:

The pro rata share to which the United States is equitably entitled, as determined by the Secretary, of the net amount recovered during any quarter by the State or any political subdivision thereof with respect to medical assistance furnished under the State plan shall be considered an overpayment to be adjusted under this subsection.

CODE OF FEDERAL REGULATIONS

45 CFR section 75.406(a) provides that a grantee must credit to a Federal award “reduction-of-expenditure-type transactions,” such as purchase discounts, rebates or allowances, recoveries or indemnities on losses, insurance refunds or rebates, and adjustments of overpayments or erroneous charges if those transactions relate to allowable costs that the grantee has claimed.

STATE MEDICAID MANUAL

The State Medicaid Manual, section 2500.1, instructs States to report on line 9D of the CMS-64 form the total computable amount and Federal share of “refunds, cancellations, and amounts collected by the imposition of a lien . . .” Amounts reported on line 9D reduce a State’s total allowable Medicaid expenditures. By reporting amounts on this line, a State is refunding the Federal share of the reported amounts.

CMS SPECIAL TERMS AND CONDITIONS FOR THE WAIVER

Item number 82(j) of the STCs that became effective January 15, 2021, requires the State agency to report the rebates that it receives from MCOs on line 9D of the CMS-64 form. The STCs did not contain such a requirement before January 15, 2021.

STATE REQUIREMENTS

FLORIDA STATUTES

Section 409.967(3)(f)

This statute requires MCOs to refund 100 percent of pretax income that exceeds 10 percent of revenues. In addition, MCOs are required to refund 50 percent of pretax income that exceeds 5 percent but does not exceed 10 percent of revenues.

Section 409.967(3)(b)

This statute requires the State agency to designate a CPA to audit the rebates that were determined by the MCOs.

APPENDIX C: CALCULATION OF OVERPAYMENTS BY YEAR

	2015	2016	2017/2018 Combined	2019	2020	Total
Total Rebates Received by State Agency	\$ 1,778,522	\$ 30,440,542	\$ 12,517,103	\$ 129,298,856	\$ 274,856,893	\$ 448,891,916
OIG-Calculated Federal Share Percentage*	59.9575%	60.7775%	61.4163%	61.0200%	67.7925%	-
Calculated Federal Share of Rebates	\$ 1,066,357	\$ 18,501,000	\$ 7,687,542	\$ 78,898,162	\$ 186,332,359	\$ 292,485,420
Federal Share Refunded on CMS-64	-	-	-	-	186,332,359	186,332,359
Calculated Overpayment	\$ 1,066,357	\$ 18,501,000	\$ 7,687,542	\$ 78,898,162	\$ 0	\$ 106,153,061

*The Federal share percentage for each calendar year as calculated by the OIG represents the average of the four quarterly published FMAPs, except for the combined percentage of 2017 and 2018, which is the average of the eight quarterly published FMAPs for those years.

APPENDIX D: STATE AGENCY COMMENTS



RON DESANTIS
GOVERNOR

JASON WEIDA
SECRETARY

July 12, 2023

Ms. Lori S. Pilcher
Regional Inspector General for Audit Services
Department of Health & Human Services
Office of Inspector General
Office of Audit Services, Region IV
61 Forsyth Street, SW, Suite 3T41
Atlanta, GA 30303

Dear Ms. Pilcher:

Thank you for your letter of June 14, 2023, requesting us to provide comments on the draft report number A-04-22-04089 entitled *Florida Did Not Refund \$106 Million Federal Share of Medicaid Managed Care Rebates It Received for Calendar Years 2015 Through 2020*. In accordance with your request, we have sent you an electronic copy of our comments.

If you have any questions regarding our response, please contact Karen Preacher, Audit Director, at 850-412-3968.

Sincerely,

A handwritten signature in blue ink that reads "Jason R. Weida" with a small "for:" written below it.

Jason Weida
Secretary

JW/sgb
Enclosure



Summary of Findings

Florida calculated and received the required MCO rebates totaling \$448,891,916 (\$292,485,420 Federal share) for our audit period in accordance with Florida statutes and the terms of the Medicaid MCO contracts. However, Florida did not properly refund the Federal share of MCO rebates in accordance with Federal requirements. Florida reported only calendar year 2020 rebates on the CMS-64, which totaled \$274,856,893 (\$186,332,359 Federal share); it did not report rebates for calendar years 2015 through 2019 totaling \$174,035,061 (\$106,153,061 Federal share).

Finding#1

The State agency did not refund the Federal share of all Achieved Savings Rebates that it received.

Finding#2

The State agency did not report the Achieved Savings Rebates on the CMS-64 for calendar years 2015 through 2019.

Recommendation

We recommend that the Florida Agency for Health Care Administration refund \$106,153,061 to the Federal Government, representing the Federal share of rebates for calendar years 2015 through 2019 that the State agency did not refund.

Agency Response and Corrective Action Plan:

Nonconcurrency, as the Agency was not required by CMS to report the rebates until January 15, 2021.

In 2021, the Agency updated their processes to report the rebates on the CMS-64.

Anticipated Completion Date:

Already implemented.

Agency Contact:

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