United States Senate
WASHINGTON, DC 20510

August 22, 2024

VIA ELECTRONIC TRANSMISSION

The Honorable Chiquita Brooks-LaSure
Administrator
Centers for Medicare and Medicaid Services

Dear Administrator Brooks-LaSure:

The Medicaid program, under Title XIX of the Social Security Act, requires the federal government to reimburse states, through the Centers for Medicare and Medicaid Services (CMS), only a specified percentage of the state's program costs, called the federal medical assistance percentage (FMAP).[1] The federal share of Medicaid expenses is based on factors such as the state's per capita income, while a state must pay in full anything beyond the federal program's scope.[2] According to a May 2024 Department of Health and Human Services (HHS) Office of Inspector General (OIG) report entitled, *Reimbursement for Capitation Payments Made on Behalf of Noncitizens With Unsatisfactory Immigration Status*, conducted at the request of CMS, California improperly claimed an additional $52.7 million in Medicaid expenditures for federal reimbursement.[3]

The federal government limits reimbursement payments to either United States citizens or qualified noncitizens generally after five years since being deemed eligible for Medicaid.[4] For those qualified noncitizens before the five-year mark, those with an Unsatisfactory Immigration Status (UIS) may only be eligible for "emergency services" to treat emergency medical conditions.[5] Nevertheless, California's Medicaid system (Medi-Cal) uses state funds to provide full coverage for noncitizens with UIS[6] by paying each managed care plan a monthly capitation

[1] Medicaid.gov, *Financial Management*, accessed August 14, 2024, https://www.medicaid.gov/medicaid/financial-management/index.html.
[2] Dep't of Health and Human Servs. Off. of Inspector Gen., *California Improperly Claimed $52.7 Million in Federal Medicaid Reimbursement for Capitation Payments Made on Behalf of Noncitizens With Unsatisfactory Immigration Status*, HHS OIG, (May 2024) https://oig.hhs.gov/documents/audit/9894/A-09-22-02004.pdf.
[3] *Id*.
[4] 42 CFR § 435.406 (examples of qualified noncitizens are noncitizens who are: (1) lawfully admitted for permanent residence under the Immigration and Nationality Act, (2) granted asylum, or (3) refugees).
[5] 8 U.S.C. 1613(a); *see also supra* note 2 at 3 ("An emergency medical condition is a medical condition, including emergency labor and delivery, manifesting itself by acute symptoms of sufficient severity (including severe pain) such that the absence of immediate medical attention could reasonably be expected to result in: (1) placing the patient's health in serious jeopardy, (2) serious impairment to bodily functions, or (3) serious dysfunction of any bodily organ or part.").
[6] 22 California Code of Regulations § 50301 and California Welfare and Institutions Code §§ 14007 and 14007.5 (The State agency covers full-scope Medi-Cal services for: (1) noncitizens who have been lawfully admitted for permanent residence in the United States regardless of whether those noncitizens have met the 5-year waiting period;

payment that provides medically necessary services to Medi-Cal enrollees.[7] Under California's Capitation Payment Management System (CAPMAN), the state pays the managed care plan providers a fixed amount per Medi-Cal enrollee to provide full-scope services.[8] The managed care plans report the healthcare usage by Medi-Cal enrollees as encounter data, which California submits to CMS. On the Form CMS-64, before 2019, California would use a flat proxy percentage to determine what percent of its monthly capitation payments were going to nonemergency services, then subtract that amount to determine the amount to submit to CMS for reimbursement.[9]

California reportedly had been using the 39.87 proxy percentage as early as 2011 with no apparent changes,[10] claiming in an August 2020 memo to CMS on an unrelated matter that CMS had approved of the methodology and the percentage amount in the early 2000s.[11] CMS promptly requested HHS OIG investigate the matter, and found no record of California's proxy percentage methodology nor CMS's prior approval.[12] The investigation found that the state over counted its reimbursable emergency care percentage by 8.49 percent, and had improperly claimed $52,652,698 from the start of October 2018 to the end of June 2019.[13] HHS OIG recommended that California refund the $52.7 million improperly claimed during that period and work with CMS to find any additional improperly claimed reimbursements for periods outside of the OIG audit.[14]

According to HHS OIG, California didn't dispute the amount to be paid, and partially concurred with HHS OIG's first recommendation and concurred with the second.[15] As of today, the recommendations remain unimplemented.[16]

CMS must ensure that proper care is taken to protect the American taxpayer from fraud, waste, and abuse. So that Congress may conduct an independent review, please answer the following questions no later than September 5, 2024:

---

(2) noncitizens who are otherwise permanently residing in the United States under color of law (PRUCOL); and (3) noncitizens seeking amnesty).

[7] *Supra* note 2 at 4.

[8] *Id*.

[9] *Id*. at 5.

[10] *Id*. at 1, note 18.

[11] *Id*. at 6.

[12] *Id*. (California's memo to CMS was August 6, 2020, and CMS's request for an OIG investigation was data September 24, 2020, less than 50 days later).

[13] *Id*. at 7, note 21, note 23 (California did not adjust its Form CMS-64 claims with erroneous CAPMAN data on people with UIS until October 2018).

[14] *Id*. at 1.

[15] *Id*. ("We recommend that California: (1) refund to the Federal Government the improperly claimed Federal reimbursement of $52.7 million for capitation payments made on behalf of noncitizens with UIS and (2) work with CMS to determine the amount of any improperly claimed Federal reimbursement for capitation payments made on behalf of noncitizens with UIS for an agreed upon period not covered by our audit. California partially concurred with our first recommendation and concurred with our second recommendation. For our first recommendation, California stated that it does not contest the recommendation but that it is unable to replicate or concur with our recalculated proxy percentage and calculated refund amount; it proposed to return the funds through a manual process.").

[16] Emails with HHS OIG on file with Committee Staff (Aug. 16, 2024).

1. Has California repaid any portion of the money it improperly received from the federal Medicaid program? If so, how much and when? If not, why not?

2. Has CMS initiated any review of California's Form CMS-64 filings or FMAP payments outside of the audit period? If not, why not?

    a. If so, what is the total amount of Medicaid funding that California has improperly claimed since the proxy percentage was developed in the early 2000s? Does CMS plan to recover these improper payments? If not, why not?

3. Has there been any communication from the California state government on reviewing FMAP payments? Provide all records.[17]

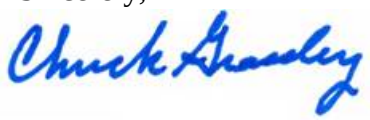
4. Has CMS found any historical documentation since the publication of the OIG report regarding California's proxy percentage methodology or CMS's approval? Provide all records.

5. Does CMS have records to indicate that any other U.S. states or territories apply a proxy percentage to the Form CMS-64? For any that do, what audit procedures are in place to verify the accuracy of the claimed federal share of Medicaid? Provide all records.

6. Please provide California's Form CMS-64 for 2020 through 2023, and the federal share for each quarter.

Thank you for your prompt review and responses. If you have any questions, please contact Tucker Akin on my Committee staff at (202) 224-0642.

Sincerely,



Charles E. Grassley
Ranking Member
Committee on the Budget

[17] "Records" include any written, recorded, or graphic material of any kind, including letters, memoranda, reports, notes, electronic data (emails, email attachments, and any other electronically created or stored information), calendar entries, inter-office communications, meeting minutes, phone/voice mail or recordings/records of verbal communications, and drafts (whether they resulted in final documents).