

Report on Medicare Compliance Volume 32, Number 26. July 24, 2023

OIG: COVID-19 UIP Overpaid Providers \$784M; HRSA Will Recoup Money

By Nina Youngstrom

Hospitals and other providers should brace for recoupment of possibly hundreds of millions of dollars they were reportedly overpaid for services provided under the COVID-19 uninsured program (UIP) in the wake of new audit findings from HHS Office of Inspector General (OIG).^[1] In just the first 10 months of the UIP—which reimbursed providers for testing, treatment and, later, vaccines provided to people without insurance—OIG contends providers received \$784 million in overpayments stemming from services that weren't related to COVID-19 or for services provided to people with insurance.

OIG recommended HHS Health Resources and Services Administration (HRSA), which runs the UIP, recoup overpayments. HRSA agreed and said reviews were already underway.

"It's potentially a significant audit risk," said attorney Brian Lee, with Alston & Bird in Washington, D.C. HRSA paid providers \$24.5 billion through December 2022, fivefold of what OIG sampled, he said. Complicating matters is the fact that HRSA treats UIP as a federal grant program more than a conventional insurance program, added attorney Christopher "CJ" Frisina, with Alston & Bird in Washington, D.C. That world is unfamiliar to many providers. "They don't know the game they're playing," he said. "Cricket sort of looks like baseball but it's a different game with different rules." Another difference is that the UIP, unlike Medicare, was "an airplane built while in the air" as the world grappled with a pandemic, Lee said. "They weren't thinking about near-concurrent assessment of the validity of claims submitted and subsequent payments." It seems "almost entirely clear" that HHS's plan was "we are going to pay, and at some point down the line we will chase," Lee said. And now that time is here.

The attorneys have a suggestion for softening the blow of recoupment. Because the UIP is a grant program, providers could argue that overpayments are unallowable costs that should be deducted from allowable costs—unpaid claims for services provided to uninsured patients when the UIP dollars stopped flowing on March 22, 2022, for testing and treatment and April 5, 2022, for vaccines.

"You would have to prove the claim, but the idea you can offset unallowable costs with allowable costs is in the GAO Redbook and in case law," Frisina said.

'There Will Be a Lot of Dollar-Chasing'

It's unfortunate all the weight is falling on the providers, said attorney Gregory Etzel, with Morgan, Lewis & Bockius LLP in Houston. Providers are faced with repaying HRSA in connection with services provided to patients who had insurance and then trying to recover it from their insurers. "There will be a lot of dollar-chasing for these payments," he said. "My thought would have been to put the onus on the HRSA contractor to chase the other payers" when the contractor failed to identify the patients' insurance.

According to OIG, Congress appropriated \$178 billion to the Provider Relief Fund (PRF), and HHS used a portion of the money for treating uninsured people with a primary diagnosis of COVID-19. Because time was of the

essence in setting up the program, HRSA hired a contractor to run the UIP portal, which providers used to enroll in UIP, submit patient rosters to confirm patient eligibility and access customer support. The contractor also was responsible for verifying patients' insurance status and processing claims.

Providers were required to attest to meeting the UIP's terms and conditions—which included not balance billing patients—and confirm the patients were uninsured. Social Security numbers (SSNs) were used to confirm insurance, but HRSA didn't force the issue. If patients balked, providers relied on their attestation that they were uninsured, but HRSA said the contractor could only be confident the patient was uninsured when an SSN was available. The contractor had a health insurance validation process and assigned a patient identification number for providers to use after confirming the patient had no insurance.

After patient IDs were assigned, providers could submit claims to the UIP for one of six COVID-19 diagnosis codes. The contractor said it only paid claims if COVID-19 was the primary diagnosis on the claim and the patient ID was valid.

Auditors reviewed a stratified random sample of 300 patients with associated provider payments totaling \$2,838,023 and divided the sampling frame into six strata according to whether an identification number (SSN or state ID) was submitted by the provider for the patient, and then by the total payment amount for all associated claims.

The findings: Payments for 58 patients worth \$294,294 were improper because the patients had health insurance or the payments were for testing and treatment not provided or unrelated to COVID-19. On the basis of its sample results, OIG estimated that almost \$784 million, or 19%, of \$4.2 billion in UIP payments to providers during the audit period were improper. While OIG said it understands HRSA was under orders to disburse money fast to help prevent the spread of COVID-19, "HRSA established procedures with its contractor that were not effective at ensuring that the UIP only reimbursed claims for services to uninsured individuals or for services related to the testing and treatment of COVID-19."

Ankle Surgery Is Not COVID-Related

On the bright side, providers didn't engage in balance billing. But there were other problems. For 22 of the 300 patients sampled, HRSA paid UIP claims for COVID-19 services for testing or treatment that wasn't provided or was unrelated to COVID-19. OIG noted that HRSA only provided billing guidelines, not coding guidance.

With 14 of the patients, the items or services weren't provided or weren't related to COVID-19 testing. For example, one patient presented to the emergency room with a broken ankle and was admitted for ankle surgery the next day. Before the surgery, the patient was tested for COVID-19, with a negative result. "The ER visit, hospital observation, surgery, and related items and services were billed as a COVID-19 testing claim, and the provider was reimbursed by the UIP for \$6,505.33. Per UIP testing terms and conditions, only the \$100 COVID-19 test was eligible for reimbursement," OIG said.

For eight of the sampled patients, HRSA paid for services when COVID-19 was not the primary reason for them. For example, a patient went to the ER after vomiting blood, was admitted and turned out to be positive for COVID-19. But the medical records noted that "(1) COVID-19 was an 'incidental finding,' (2) the patient did not have any respiratory symptoms, and (3) the patient did not require treatment for COVID-19 at that time," OIG said. "Additionally, COVID-19 was not listed as the primary reason for admitting the patient or the primary diagnosis on the patient's discharge paperwork." The \$14,063 claim was improper per UIP terms and conditions.

Insurance Coverage Usually Wasn't Verified

Also, of the 300 patients sampled, 38 had health insurance, but the UIP reimbursed providers for services they received anyway, OIG said. The HRSA contractor didn't verify the insurance coverage for 29 of them because no SSNs were provided and HRSA's procedures for confirming coverage weren't effective. "HRSA's contractor indicated that it was unable to check its internal and third-party databases to verify a patient's health insurance coverage status unless an SSN was provided. However, for 25 of the 29 sampled patients we were able to independently verify that the patients had Medicare and/or Medicaid coverage through CMS's Integrated Data Repository (IDR) using additional data fields collected by HRSA's contractor (e.g., a patient's first name, last name, date of birth, and address)," OIG said. "Furthermore, HRSA stated that it intended to conduct postpayment reviews of claims associated with patients for whom SSNs were not provided. However, HRSA's UIP assessment strategy for reviewing postpayment provider claims did not include any steps other than reviews of patient information initially collected by providers and provider billing records." As a result, OIG said, health insurance coverage status wasn't verified for most patients for whom claims were paid by UIP.

OIG recommended HRSA recover the \$294,294 in improper UIP payments, identify additional overpayments (almost \$784 million) "and take remedial action" and strengthen procedures for future programs (e.g. expand insurance verifications).

HRSA said it's seeking repayment from providers for 22 of the 58 ineligible claims and is analyzing the rest. It agreed with the recoupment recommendation on the extrapolated amount and "has already taken action."

Because the UIP paid providers for testing, treatment and vaccines, no type of provider will avoid scrutiny in HRSA audits, Lee and Frisina said. In fact, post-2020 UIP payments were probably very high in light of the 2021 Omicron spike. Providers also submitted a high volume of claims in early 2022 when HRSA announced it was closing the UIP doors.

False Claims Act (FCA) lawsuits also are a risk for PRF or UIP overpayments. One FCA lawsuit over PRF payments has been unsealed. According to the whistleblower's complaint, CarePoint Health in New Jersey, which owns three hospitals, allegedly received PRF "high-impact" payments for patients who didn't have COVID-19—and failed to return the overpayments.^[2] The whistleblower, Vijayant Singh, M.D., the former chief hospital executive of one of the hospitals, Bayonne Medical Center, alleged he informed the compliance officer that the failure to repay the PRF overpayments was a "severe" risk. Singh also alleged the hospitals used PRF money for reasons unrelated to the pandemic, including a new weight loss center. The Department of Justice declined to intervene in the lawsuit.

Contact Lee at brian.lee@alston.com, Frisina at christopher.frisina@alston.com and Etzel at gregory.etzel@morganlewis.com.

¹ Christi A. Grimm, *HRSA Made Covid-19 Uninsured Program Payments To Providers On Behalf Of Individuals Who Had Health Insurance Coverage And For Services Unrelated To COVID-19*, A-02-21-01013, Office of Inspector General, U.S. Department of Health & Human Services, July 2023, <https://bit.ly/3Y1Lyu3>.

² Nina Youngstrom, "FCA Lawsuit Alleges Three Hospitals Were Overpaid PRF 'High-Impact' Money and Kept It," *Report on Medicare Compliance* 32, no. 23 (June 26, 2023), <https://bit.ly/3OlQyGx>.

This publication is only available to subscribers. To view all documents, please log in or purchase access.

[Purchase Login](#)