

Department of Health and Human Services

**OFFICE OF
INSPECTOR GENERAL**

**TEXAS DID NOT
APPROPRIATELY SPEND SOME
STATE BALANCING INCENTIVE
PAYMENTS PROGRAM FUNDS**

*Inquiries about this report may be addressed to the Office of Public Affairs at
Public.Affairs@oig.hhs.gov.*



Gloria L. Jarmon
Deputy Inspector General
for Audit Services

December 2017
A-06-15-00041

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: December 2017

Report No. A-06-15-00041

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



Why OIG Did This Review

The Patient Protection and Affordable Care Act of 2010 established the State Balancing Incentive Payments Program (BIPP), which authorized a \$3 billion Federal appropriation over the program's 4-year period. The purpose of the BIPP was to move States' long-term care programs away from institutional care and toward community-based care. We reviewed Texas because it received one of the highest BIPP funding amounts of any participating State.

Our objective was to determine whether Texas spent the additional BIPP Federal funding to provide new or expanded offerings of community-based long-term services and supports in accordance with Federal requirements.

How OIG Did This Review

From October 1, 2012, through June 30, 2016 (BIPP funding period), Texas received \$284.4 million in BIPP funds. We selected eight BIPP projects for detailed review and analyzed supporting documentation for those projects. We traced the expended amounts to reports from the State's computer systems to assess the overall accuracy of the amounts and analyzed the State's methodologies for identifying BIPP expenses.

Texas Did Not Appropriately Spend Some State Balancing Incentive Payments Program Funds

What OIG Found

Texas appropriately spent \$272.4 million of the \$284.4 million in BIPP funds it received. Of the remaining \$12 million, Texas inappropriately spent \$6.3 million for medical service rate increases that did not benefit Medicaid recipients and did not spend \$5.7 million in BIPP funds before the end of the funding period.

Additionally, Texas did not separately track BIPP funds or follow CMS instructions for extending the funding period.

What OIG Recommends and Texas Comments

We recommend that Texas refund \$12 million in BIPP funds that did not benefit Medicaid recipients or that were not spent before the end of the funding period. Additionally, we recommend that, for future grant programs, Texas (1) separately track funds to ensure the funds are not used in violation of applicable statutory restrictions or prohibitions and (2) ensure all grant procedures and requirements are met, including following instructions for extending funding periods.

In written comments on our draft report, Texas did not indicate concurrence or nonconcurrence with our recommendations. Regarding our first recommendation, Texas contends that no refund is due. In expenditure reports subsequent to the report we audited, Texas decreased its BIPP expenditures by the \$6.3 million related to rate increases that did not benefit Medicaid recipients. However, Texas also claimed that it had additional expenditures totaling \$12 million that were recognized after our fieldwork had concluded.

Regarding our second and third recommendations, Texas described steps it has taken to ensure that the accounting system is set up to adequately track grant funds and described its initiative to obtain formal guidance from CMS.

We maintain that our recommendations are valid. Texas recognized that the \$6.3 million for rate increases that did not benefit Medicaid recipients was not an appropriate use of BIPP funds. Additionally, Texas never provided the additional expenditures to us for audit. Therefore, we are unable to render an opinion on their validity.

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INTRODUCTION

WHY WE DID THIS REVIEW

The Patient Protection and Affordable Care Act of 2010 (ACA) established the State Balancing Incentive Payments Program (BIPP), which authorized a \$3 billion Federal appropriation over the program's 4-year period. The purpose of the BIPP was to move States' long-term care programs away from institutional care and toward community-based care. States were required to use the BIPP funding to provide new or expanded community-based long-term services and supports (LTSS). The Centers for Medicare & Medicaid Services (CMS) awarded funds to approved States through an increase in their Federal Medical Assistance Percentage (FMAP) for eligible Medicaid community-based LTSS. We reviewed Texas because it received one of the highest BIPP funding amounts of any participating State.

OBJECTIVE

Our objective was to determine whether the Texas Health and Human Services Commission (State agency) spent the additional BIPP Federal funding to provide new or expanded offerings of community-based LTSS in accordance with Federal requirements.

BACKGROUND

Medicaid Program

The Medicaid program provides medical assistance to low-income individuals and individuals with disabilities. The 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. In Texas, the State agency administers the Medicaid program. Although the State agency has considerable flexibility in designing and operating its Medicaid program, it must comply with applicable Federal requirements. The Federal Government pays its share of a State's Medicaid expenditures based on the FMAP, which varies depending on the State's relative per capita income.

CMS Balancing Incentive Payments to Texas

Section 10202 of the ACA established BIPP, which allowed eligible States to receive an increase in their FMAP for eligible Medicaid community-based LTSS expenditures. As a condition of receiving BIPP funds, ACA section 10202(c)(4) required the States to agree to limited use of additional Federal funds. CMS provided BIPP funds to the State agency through a 2-percent increase to Texas's FMAP for eligible Medicaid community-based LTSS. The State agency chose to use the BIPP funds to provide community-based long-term care medical service expansions, which included increases in service rates and the number of beneficiaries served, as well as computer system enhancements to increase access to community-based LTSS (BIPP projects).

HOW WE CONDUCTED THIS REVIEW

From October 1, 2012, through June 30, 2016 (BIPP funding period), the State agency received \$284,425,744 in BIPP funds. The State agency provided support for \$278,723,324 in BIPP expenditures. We selected eight BIPP projects that represented 98 percent of those expenditures for detailed review and analyzed supporting documentation for those projects. We traced the expended amounts to reports from the State agency's computer systems to assess the overall accuracy of the amounts, and we analyzed the State agency's methodologies for identifying BIPP expenses.

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 appropriately spent \$272,442,918 of the \$284,425,744 in BIPP funds that it received. Of the remaining \$11,982,826, the State agency inappropriately spent \$6,280,406 for medical service rate increases that did not benefit Medicaid recipients and did not spend \$5,702,420 in BIPP funds before the end of the funding period.

Additionally, the State agency did not separately track BIPP funds or follow CMS instructions for extending the funding period.

THE STATE AGENCY SPENT BALANCING INCENTIVE PAYMENTS PROGRAM FUNDS THAT DID NOT BENEFIT MEDICAID RECIPIENTS

ACA section 10202(c)(4) limits a State's use of BIPP funds for purposes of providing new or expanded offerings of community-based LTSS and supports under the State Medicaid program. The Texas BIPP Grant Award Notice states that BIPP funding should be used to provide increased offerings of or access to community-based LTSS, benefit Medicaid recipients, and not be a prohibited use of Medicaid funding.

The State agency spent \$6,280,406 in BIPP funds to increase rates for services under the Title XX Social Services Block Grant program.¹ The individuals receiving these services were not Medicaid beneficiaries. State agency officials thought that these rate increases were an

¹ The Title XX Social Services Block Grant is a capped entitlement program that provides funds to assist States in delivering social services.

appropriate use of BIPP funds because the intent was to increase wages and attract a higher quality work force to provide community-based LTSS.

THE STATE AGENCY DID NOT SPEND SOME BALANCING INCENTIVE PAYMENTS PROGRAM FUNDS BEFORE THE FUNDING PERIOD ENDED

The Texas BIPP Grant Award Notice established October 1, 2012, through September 30, 2015, as the BIPP grant's period of performance and stated that the BIPP funding would be available through the end of that period. Through the BIPP grant's terms and conditions, CMS established that BIPP funds needed to be spent by September 30, 2015, to meet program goals. Additionally, CMS requested that the State agency submit work plan documentation to detail how the State agency planned to use the BIPP funds by September 30, 2015. In April 2015, CMS provided the State agency an extension of the period for spending BIPP funds through June 30, 2016.

As of June 30, 2016, the State agency had not spent \$5,702,420 in BIPP funds it had received for BIPP-eligible uses. The State agency faced a 1-year delay in State legislature approval to spend additional funds on BIPP projects and an almost 3-year delay in the implementation of the State agency's largest BIPP-funded project, which contributed to the State agency's inability to expend the funds by June 30, 2016. Although the State agency began receiving BIPP funds on October 1, 2012, it did not get approval from the State legislature to expend funds on the BIPP-eligible projects until September 1, 2013. Further, the State agency's largest BIPP-funded project was to establish a new State plan option, Community First Choice (CFC).² The State agency struggled to obtain CMS's approval of the CFC State plan amendment and couldn't begin spending funds on the project until June 1, 2015.

THE STATE AGENCY DID NOT SEPARATELY TRACK BALANCING INCENTIVE PAYMENTS PROGRAM FUNDS

As required by Federal regulations, States must expend and account for grant funds in accordance with State laws and procedures that apply to the expenditure of and the accounting for the State's own funds. These procedures must be sufficient to permit the preparation of required reports and the tracing of expenditures at a level adequate to establish that award funds have not been used in violation of any applicable statutory restrictions or prohibitions.³

The State agency sent all BIPP funds out as payments to providers for existing services. Beginning September 1, 2013, almost a year after it first received BIPP funds, the State agency increased State spending on BIPP-eligible uses (e.g., medical service expansions and computer system enhancements) to replace the BIPP funds it had already spent. The State agency did not

² CFC is an optional Medicaid State plan benefit that provides States a 6-percentage-point increase in their FMAP for providing home and community-based attendant services and supports.

³ 45 CFR sections 92.20(a)(1) and (2) (effective at the time of notice of award in 2012). Effective December 26, 2014, States are required to meet similar financial management standards in 45 CFR section 75.302.

establish a method for tracking BIPP funds because the individuals who handled the funds did not have the experience required to do so. As a result, the State agency was unable to track BIPP funds to ensure that they had not been used in violation of applicable regulations.

THE STATE AGENCY DID NOT FOLLOW CMS INSTRUCTIONS FOR EXTENDING THE FUNDING PERIOD

The BIPP Grant Award Notice established October 1, 2012, through September 30, 2015, as the funding period. CMS provided an email to the State agency that outlined steps the State could take to request an extension to the funding period.

In April 2015, a State official sent an informal email to the CMS official who administered the BIPP explaining that Texas would not meet the September 30, 2015, spending deadline. CMS ultimately extended the funding period through June 30, 2016, even though the State agency never took the steps outlined in the official CMS email to request the extension. The individuals at the State agency who handled the BIPP funds did not have the necessary experience to request an extension. As a result, the State agency continued to spend \$84,448,719 in BIPP funds between October 1, 2015, and June 30, 2016, all based on an informal extension to the funding period.

RECOMMENDATIONS

We recommend that the State agency:

- refund \$11,982,826 in BIPP funds, consisting of:
 - \$6,280,406 related to rate increases that did not benefit Medicaid recipients and
 - \$5,702,420 that the State agency did not spend before the end of the funding period;
- separately track funds for any future grant programs to ensure that the funds are not used in violation of applicable statutory restrictions or prohibitions; and
- ensure that all grant procedures and requirements for future grant programs are met, including following instructions for extending funding periods.

STATE AGENCY COMMENTS

In written comments on our draft report, the State agency did not indicate concurrence or nonconcurrence with our recommendations.

Regarding our first recommendation, the State agency contends that no refund is due. In expenditure reports subsequent to the report we audited, the State agency decreased its BIPP

expenditures by the \$6,280,406 related to rate increases that did not benefit Medicaid recipients. However, the State agency also claimed that it had additional expenditures totaling \$12,013,746, consisting of \$10,666,470 in additional CFC expenditures under a home and community-based services waiver and \$1,347,276 in expenditures that were included in the BIPP expenditure report through September 2016.⁴

Regarding our second and third recommendations, the State agency indicated that it would work with State financial staff as necessary to ensure that the accounting system is set up to adequately track grant funds and that it would develop and implement a checklist by December 31, 2017, to ensure that it requests guidance from CMS through formal correspondence rather than emails. The State agency's comments are included in their entirety as Appendix B.

OFFICE OF INSPECTOR GENERAL RESPONSE

After reviewing the State agency's comments, we maintain that our recommendations are valid. Regarding our first recommendation, the State agency recognized that the \$6,280,406 related to rate increases that did not benefit Medicaid recipients was not an appropriate use of BIPP funds because of the decreasing adjustment it made to its BIPP expenditures. However, the State agency did not recognize the \$12,013,746 in additional expenditures until our fieldwork had concluded. Additionally, the State agency never provided the additional expenditures to us for audit. Therefore, we are unable to render an opinion on their validity.

Regarding our second and third recommendations, we recognize the State agency's efforts to adequately track future grant funds and its initiative to obtain formal guidance from CMS, including requests for extending future funding periods.

⁴ States may develop home and community-based services waivers to meet the needs of Medicaid beneficiaries who prefer to receive long-term care services and supports in their home or community rather than in an institutional setting.

APPENDIX A: AUDIT SCOPE AND METHODOLOGY

SCOPE

From October 1, 2012, through June 30, 2016, the State agency received \$284,425,744 in BIPP funds.

Our objective did not require a review of the State agency's overall internal control structure. Therefore, we limited our internal control review to the State agency's procedures for identifying and tracking BIPP expenditures.

We conducted fieldwork at the State agency's offices in Austin, Texas.

METHODOLOGY

To accomplish our objective, we:

- reviewed applicable Federal laws and regulations,
- held discussions with CMS officials to gain an understanding of CMS guidance furnished to the State agency concerning the expending of BIPP funds,
- interviewed State agency officials to obtain an understanding of the State agency's policies and procedures for utilizing BIPP funds,
- selected eight projects for detailed review that represented 98 percent of the State agency's \$278,723,324 in supported BIPP expenditures during the funding period,
- traced the selected project expenditures to reports from the State agency's computer system to assess the overall accuracy of those amounts,
- analyzed the State agency's methodologies for identifying BIPP expenses, and
- discussed our results with 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.

APPENDIX B: STATE AGENCY COMMENTS



Texas Health and Human Services Commission

Charles Smith
Executive Commissioner

October 23, 2017

Ms. Patricia Wheeler
Regional Inspector General for Audit Services
Office of Inspector General, Office of Audit Services
1100 Commerce, Room 632
Dallas, Texas 75242

Reference Report Number A-06-15-00041

Dear Ms. Wheeler:

The Texas Health and Human Services Commission (HHSC) received a draft audit report entitled "Texas Did Not Appropriately Spend Some State Balancing Incentive Payments Program Funds" from the U.S. Department of Health and Human Services Office of Inspector General. The cover letter, dated August 24, 2017, requested that HHSC provide written comments, including the status of actions taken or planned in response to report recommendations.

I appreciate the opportunity to respond. Please find the attached HHSC management response which (a) includes comments related to the content of the findings and recommendations and (b) details actions HHSC has completed or planned.

If you have any questions or require additional information, please contact David M. Griffith, Deputy IG for Audit, HHSC Inspector General. Mr. Griffith may be reached by telephone at (512) 491-2806 or by e-mail at David.Griffith@hhsc.state.tx.us.

Sincerely,



Charles Smith

P.O. Box 13247 • Austin, Texas 78711-3247 • 512-424-6500 • hhs.texas.gov

Texas Health and Human Services Commission
Management Response to the
U.S. Department of Health and Human Services Office of Inspector General Report:
**Texas Did Not Appropriately Spend Some State Balancing Incentive
Payments Program Funds**

DHHS - OIG Recommendation: *We recommend that the State agency refund to the Federal Government the \$11,982,826 in BIPP funds, consisting of:*

- *\$6,280,406 related to rate increases that did not benefit Medicaid recipients.*
- *\$5,702,420 that the State agency did not spend before the end of the funding period.*

HHSC Management Response:

Actions Completed: The audit was based upon expenditures reported to the Centers for Medicare and Medicaid Services (CMS) Balancing Incentive Payments Program (BIPP) project office by the Texas Health and Human Services Commission (HHSC) through June 2016. HHSC submitted two BIPP expenditure reports subsequent to the June 2016 report. An expenditure report including expenditures through September 2016 increased the reported expenditure amount by \$1,347,276.

On May 12, 2017, HHSC submitted a final BIPP expenditure report to the CMS BIPP project office. The final report included a decreasing adjustment to reflect the disallowance of \$6,280,406 in expenditures related to rate increases that did not benefit Medicaid recipients (rate increases for non-Medicaid services).

In addition, the final report included an increasing adjustment of \$10,666,470 to reflect the cost of additional Community First Choice (CFC) expenses resulting from the increased utilization of attendant and habilitation services by individuals receiving services through the Texas Home Living 1915(c) waiver during the first year of CFC implementation (June 2015-May 2016), which had not been reported in prior submittals. This incremental cost increase was not included in the original CFC budget in the BIPP work plan or in previous expenditure reports, because HHSC had initially assumed that all individuals with intellectual and developmental disabilities who were receiving habilitation services through a 1915(c) waiver prior to CFC would not utilize more habilitation services after CFC was implemented. That assumption proved to be incorrect for individuals in the Texas Home Living waiver.

After including the above adjustments as well as the additional expenditures reported in the report for the period through September 2016, the final BIPP expenditure report shows that Texas has fully expended the \$284,456,665 in BIPP funding received by the State (the additional expenditure adjustments

cover the reduction of \$6,280,406 in expenditures related to rate increases that did not benefit Medicaid recipients and the \$5,702,420 identified in the report as not being spent by the end of the funding period). Therefore, no refund of BIPP funds is required.

Completion Date: May 12, 2017

Title of Responsible Person: Chief Financial Officer

DHHS - OIG Recommendation: *We recommend that the State agency separately track funds for any future grant programs to ensure that the funds are not used in violation of applicable statutory restrictions or prohibitions.*

HHSC Management Response:

Actions Planned: Tracking the funding for this particular grant proved very challenging, in large part due to the unique design of the grant. This grant did not have a unique Catalog of Federal Domestic Assistance (CFDA) number, but rather provided a two percentage point more favorable match to the standard Medicaid match for expenditures for Medicaid community long term care services. The state funds that were “freed up” as a result of the more favorable match, rather than actual federal funds, were then to be used to provide new or expanded offerings of community-based long-term services.

In Texas, HHSC must receive legislative approval to expend state funds. During the state legislative budget cycle for state fiscal years 2014 and 2015, HHSC provided the Legislature and the Legislative Budget Board (LBB) with an estimate of the amount of state funds that were expected to be freed up over the three year period from federal fiscal years 2012-2015 as the result of the more favorable BIPP match, as well as a list of proposed items and estimated budget amounts that met the requirements for acceptable use of the BIPP funds. While the Legislature approved and appropriated state funding for projects which were estimated to fully expend the amount of state funds estimated to be freed-up as the result of BIPP, the funds were appropriated as generic (state) General Revenue funds, rather than specifically identified as BIPP-related General Revenue funds.

For future grants, HHSC will work with state financial staff (the LBB and State Comptroller) as necessary to ensure that the accounting system is set up to adequately track grant funds.

HHSC Management Response – Texas Did Not Appropriately Spend Some State
BIPP Funds
October 23, 2017
Page 3

Estimated Completion Date: Ongoing

Title of Responsible Person: Chief Financial Officer/Accounting Director

DHHS - OIG Recommendation: *We recommend that the State agency ensure that all grant procedures and requirements for future grant programs are met, including following instructions for extending funding periods.*

HHSC Management Response:

Actions Planned: As stated in the audit report, HHSC requested an extension and received an email from the CMS project office which authorized the extension of the deadline for expending the BIPP funds.

HHSC will develop and implement a checklist that will be used for future grants to ensure that formal correspondence from the CMS project office is requested, rather than relying on emails for guidance.

Estimated Completion Date: December 31, 2017

Title of Responsible Person: Chief Financial Officer/Accounting Director