

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.

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