



New York State Office of the State Comptroller
Thomas P. DiNapoli

Division of State Government Accountability

Payments for Fraudulent and Improper Claims Submitted by Davis Ethical Pharmacy

Medicaid Program Department of Health



Report 2012-S-11

August 2013

Executive Summary

Purpose

To determine whether Davis Ethical Pharmacy (Davis Ethical) inappropriately billed Medicaid for prescription medications. The audit covered the period from January 1, 2008 through December 13, 2011.

Background

The New York State Medicaid Program provides prescription drug coverage for enrollees. Davis Ethical is an independently owned pharmacy located in Rockville Centre, New York. For the period from January 1, 2008 through December 13, 2011, Medicaid paid Davis Ethical \$776,849. During this period, Davis Ethical was owned and operated by William Davis, a licensed pharmacist. Pursuant to allegations of improper billing practices, there have been several investigations of Davis Ethical by oversight authorities, including the Nassau County District Attorney (NCDA) and the New York State Department of Financial Services (DFS). In December 2011, Davis Ethical was sold. We limited our audit to claim payments made to Davis Ethical during the time it was owned by William Davis.

Key Findings

- From January 1, 2008 through December 13, 2011, Medicaid overpaid Davis Ethical \$94,460 for 169 of the 267 selected prescriptions that we tested. Nearly all of these improper payments resulted from efforts by Davis Ethical that appear to have been designed to defraud the Medicaid program.
- The improper payments included \$68,307 for 136 prescriptions for medications purportedly dispensed to Medicaid recipients who, at the time the medications were prescribed, were not patients of the purported prescribing physicians. In one instance, the prescribing physician was deceased at the time the prescription was written.
- The improper payments also included \$25,825 for 30 prescriptions that were not authorized by the purported prescribing physicians, although the recipients were patients of the physicians.
- For the three remaining prescriptions, Davis Ethical billed Medicaid for excessive quantities.

Key Recommendations

- Coordinate with the NCDA, DFS and other authorities as requested to assist in any further investigation and recover the \$94,460 in improper payments made to Davis Ethical, as identified by this audit.
- Formally assess the payments we did not test and determine the extent to which Davis Ethical submitted other fraudulent or improper claims. Recover improper payments, as warranted.
- Formally assess the conduct of William Davis and determine whether he should be allowed to continue to participate in the Medicaid program or face other sanctions. Consider referring William Davis to the State Education Department for assessment of his professional conduct as a licensed pharmacist.

Other Related Audits/Reports of Interest

[Department of Health: Medicaid Claims Processing Activity April 1, 2010 through September 30, 2010 \(2010-S-15\)](#)

[Department of Health: Rebates and Discounts on Physician-Administered Drugs \(2010-S-72\)](#)

[Department of Health: Inappropriate Medicaid Billings for Dental Services \(2008-S-67\)](#)

**State of New York
Office of the State Comptroller**

Division of State Government Accountability

August 13, 2013

Nirav R. Shah, M.D., M.P.H.
Commissioner
Department of Health
Corning Office Building
Empire State Plaza
Albany, NY 12237

Dear Dr. Shah:

The Office of the State Comptroller is committed to helping State agencies, public authorities and local government agencies manage government resources efficiently and effectively and, by so doing, providing accountability for tax dollars spent to support government operations. The Comptroller oversees the fiscal affairs of State agencies, public authorities and local government agencies, as well as their compliance with relevant statutes and their observance of good business practices. This fiscal oversight is accomplished, in part, through our audits, which identify opportunities for improving operations. Audits can also identify strategies for reducing costs and strengthening controls that are intended to safeguard assets.

Following is a report of our audit of the Medicaid program entitled *Payments for Fraudulent and Improper Claims Submitted by Davis Ethical Pharmacy*. This audit was performed pursuant to the State Comptroller's authority under Article V, Section 1 of the State Constitution and Article II, Section 8 of the State Finance Law.

This audit's results and recommendations are resources for you to use in effectively managing your operations and in meeting the expectations of taxpayers. If you have any questions about this report, please feel free to contact us.

Respectfully submitted,

*Office of the State Comptroller
Division of State Government Accountability*

Table of Contents

| | |
|---|----|
| Background | 5 |
| Audit Findings and Recommendations | 6 |
| Fabricated and Other Improper Pharmacy Claims | 6 |
| Recommendations | 8 |
| Audit Scope and Methodology | 9 |
| Authority | 10 |
| Reporting Requirements | 10 |
| Contributors to This Report | 11 |
| Agency Comments | 12 |

State Government Accountability Contact Information:

Audit Director: Brian Mason

Phone: (518) 474-3271

Email: StateGovernmentAccountability@osc.state.ny.us

Address:

Office of the State Comptroller
 Division of State Government Accountability
 110 State Street, 11th Floor
 Albany, NY 12236

This report is also available on our website at: www.osc.state.ny.us

Background

Medicaid is a federal, state and local government program that provides a wide range of medical services, including medically necessary prescription and non-prescription medications, to those who are economically disadvantaged or have special health care needs. The Department of Health (Department) administers the Medicaid program in New York State. For the year ended March 31, 2012, New York's Medicaid program had more than 5.5 million enrollees, and Medicaid claims totaled approximately \$50 billion. The federal government funds about 49 percent of New York's Medicaid costs, the State funds about 34.5 percent, and localities (the City of New York and counties) fund the remaining 16.5 percent.

Davis Ethical Pharmacy (Davis Ethical) is an independently owned pharmacy located in Rockville Centre, New York. From January 1, 2008 through December 13, 2011, Medicaid paid Davis Ethical \$776,849 for 7,053 claims. During this period, William Davis owned Davis Ethical and worked there as a practicing pharmacist. On December 14, 2011, William Davis sold Davis Ethical to a new owner. Our audit scope period and related findings pertain to payments Medicaid made to Davis Ethical during the time it was owned by William Davis.

In October 2011, the Office of the State Comptroller received allegations of improper billing practices by Davis Ethical. In particular, it was alleged that Medicaid had paid Davis Ethical for medications that were neither prescribed nor dispensed. At that time, we learned that the Nassau County District Attorney (NCDA) and the New York State Department of Financial Services (DFS) had received similar allegations and had initiated an investigation into Davis Ethical. We then coordinated our audit and investigative work with the NCDA and DFS.

In addition to this audit of Medicaid payments to Davis Ethical, the State Comptroller concurrently audited claims submitted by Davis Ethical under the New York State Health Insurance Program (NYSHIP). A separate report (2012-S-10), addressed to United HealthCare, includes details of improper claims submitted by Davis Ethical under NYSHIP.

Audit Findings and Recommendations

Fabricated and Other Improper Pharmacy Claims

Medicaid made improper payments totaling \$94,460 to Davis Ethical for 169 of the 267 prescriptions we selected for testing. Based on information obtained from the named prescribers (the physicians who were indicated on the claims), we determined that Davis Ethical likely fabricated nearly all of the improper claims. Davis Ethical processed many of the improper claims well outside of normal business hours and often lacked records verifying that patients received the drugs billed to Medicaid. Moreover, as a result of our audit, we concluded that Davis Ethical routinely submitted fraudulent claims to Medicaid and received payments for those claims. The following table summarizes our audit findings.

| Nature of Problem With Prescription | Number of Improper Prescriptions | Improper Medicaid Payment |
|--|---|----------------------------------|
| Recipient Was Not a Patient of the Prescriber | 136 | \$68,307 |
| Prescriber Denied Writing / Authorizing Prescription for Patient | 30 | \$25,825 |
| Quantity Claimed Exceeded Amount on Prescription | 3 | \$328 |
| Totals | 169 | \$94,460 |

Davis Ethical referenced 136 (80 percent) of the 169 improper prescriptions to nine physicians who did not treat the recipients in question at the time the prescription forms were allegedly prepared. We contacted eight of the ostensible prescribers of record and they told us they did not prescribe the drugs. Moreover, the physicians advised us that the recipients in question were not their patients at the time the prescriptions were allegedly written. In certain instances, the recipients were never patients of the prescribing physicians. We also determined that the remaining prescriber of record was deceased at the time a particular prescription was allegedly written.

The following example provides details of one of these 136 prescriptions. Medicaid paid Davis Ethical \$2,502 for a prescription (including 5 refills) for Pulmicort, an asthma medication for children. According to Davis Ethical's records, William Davis prepared the related phoned-in prescription form for Pulmicort in May 2009. Nevertheless, the office of the physician who allegedly prescribed this drug informed us that the recipient was not a patient of that physician at the time the phoned-in order was written. Moreover, based on information provided by this physician's office and other physicians we contacted, we concluded that Davis Ethical fabricated

each of these 136 prescriptions, which cost Medicaid \$68,307.

In addition, we determined that physicians did not authorize 30 other prescriptions costing Medicaid \$25,825, although the recipients in question were patients of the related physicians. The evidence indicates that Davis Ethical fabricated these prescriptions as well. For example, in October 2009, William Davis prepared a form for a phoned-in prescription for Advair, a medication for bronchial diseases. This prescription, including 5 refills, cost Medicaid \$1,201. The physician of record informed us that the recipient listed on the prescription was his patient, but that he did not phone-in this prescription.

Also, Davis Ethical billed excessive quantities for three other prescriptions, overcharging Medicaid \$328 for them. For example, Medicaid paid Davis Ethical \$75 for a claim for 90 tablets of Endocet, a controlled substance. We concluded that the corresponding prescription, which had been written in January 2010, was authentic. Nevertheless, the prescription was written for only 30 tablets, not 90.

There were other problems with many of the questionable prescriptions. Davis Ethical's standard business hours were Monday through Friday from 9:00 a.m. to 6:00 p.m. and Saturday from 9:00 a.m. to 4:00 p.m. From the available records, we determined that 90 (53 percent) of the 169 improper prescriptions were processed during the pharmacy's normal business hours. Thus, the pharmacy processed all or portions of the remaining 79 prescriptions (47 percent) outside normal hours. Specifically, 48 prescriptions were processed in full outside normal hours. Further, Davis Ethical processed the remaining 31 prescriptions, which included multiple refills, 138 times. We determined that 89 (64 percent) of these 138 orders were processed outside normal hours. Three of the suspect prescriptions were allegedly filled between 11:00 p.m. and midnight - more than five hours after Davis Ethical's usual closing time. Although it is reasonable to expect a limited number of prescriptions to be processed outside of normal business hours, we question why nearly half of the improper prescriptions were processed after normal hours.

Further, during our review period, Davis Ethical implemented an electronic system to record customers' signatures when they picked-up their medications and employees' signatures when they delivered medications to customers. The electronic system was in place when the pharmacy processed 89 of the 169 questionable prescriptions. Yet, the system had no signatures for customer pick-up or employee delivery for 45 (51 percent) of the 89 prescriptions. (Note: For the remaining 44 prescriptions, electronic signature images were available but we were unable to verify the authenticity of those signatures). We question why there were no signatures for the pick-ups/deliveries of half of the prescriptions tested.

We derived our overall audit results from an initial sample of 172 prescriptions and a supplemental sample of 95 prescriptions from the nine physicians who were not treating the patients for whom the prescriptions were allegedly written. 74 of the 169 improper prescriptions were from our initial sample. Among these was the aforementioned prescription for Pulmicort, for which William Davis prepared a phoned-in order form. Medicaid requires pharmacies to maintain prescription forms for six years. According to available records, 69 of the 74 improper prescriptions from our initial sample were allegedly phoned-in by physicians' offices. Consequently, Davis Ethical employees

prepared the forms for these 69 prescriptions. Further, William Davis was the pharmacist who generated 67 of these 69 forms.

This is significant because a pharmacy can easily fabricate forms for prescriptions that are allegedly phoned-in. In contrast, prescriptions generated externally on official New York State forms are more difficult to falsify. Also, Davis Ethical could not provide the forms for four of the remaining five prescriptions that were not phoned-in. Thus, 73 of the 74 improper prescriptions from our initial sample were allegedly phoned-in or lacked the required physician-written forms. In the remaining case, an official State prescription form existed; however, the quantity charged to Medicaid exceeded the quantity written on the prescription.

Our overall audit findings and observations pertained to prescriptions and their related Medicaid payments processed throughout our audit period (nearly four years). Moreover, we identified aberrant billing patterns that suggest a conscious and continuous effort to fabricate required records and were likely intended to defraud the Medicaid program. As noted previously, 74 (43 percent) of the initial sample of 172 prescriptions was improper. These prescriptions corresponded to 55 percent (\$61,021 / \$110,861) of the related claim payments.

Also, as noted previously, Medicaid paid Davis Ethical \$776,849 during our audit period and our audit included prescriptions related to payments totaling \$144,300. Thus, our test samples did not include prescriptions and their related payments totaling \$632,549 (\$776,849 - \$144,300). There is significant risk that many of the untested prescriptions were also improper and/or fraudulent - and that the additional amounts of improper payments were high. Thus, we will continue to assist the NCD and DFS in their further investigation and recommend that Department officials and other appropriate authorities examine the remaining prescriptions and related payments and recover any other improper payments made to Davis Ethical.

If a provider has violated statutory or regulatory requirements related to the Medicaid program, the Department can impose sanctions against that provider. The sanctions range from additional participation requirements to termination from the Medicaid program. Based on our audit work, we believe that William Davis acted to defraud Medicaid. Given the nature of our findings, the Department should formally assess the conduct of William Davis and determine if he should be allowed to continue as a Medicaid provider. In addition, the Department should consider referring William Davis to the State Education Department's Office of Professional Licensing for an assessment of his professional conduct as a licensed pharmacist.

Recommendations

1. Coordinate with the NCD, DFS and other authorities as requested in any further investigation and recover the \$94,460 in improper payments made to Davis Ethical, as identified by this audit.
2. Formally assess the \$632,549 in prescription payments we did not test and determine the extent to which Davis Ethical submitted other fraudulent or improper claims. Recover improper payments, as warranted.

3. Formally assess the conduct of William Davis and determine if he should be allowed to continue to participate in the Medicaid program or face other sanctions. Consider referring William Davis to the State Education Department for assessment of his professional conduct.

Audit Scope and Methodology

The objective of our audit was to determine if Davis Ethical inappropriately billed Medicaid for prescription medications. Our audit covered the period from January 1, 2008 through December 13, 2011.

To perform our audit, we met with Department officials and reviewed the applicable laws, rules and regulations. Using forensic audit and data analysis tools, we identified high risk claims. Specifically, we identified claims that were submitted (or originated) outside of normal store hours or had no record of the date the drug was received by the patient. We linked those claims with their corresponding prescription numbers and selected claims corresponding to questionable prescriptions. From this claims grouping, we selected an initial sample of 172 prescriptions totaling \$110,861 from Davis Ethical's 29 highest prescribers.

We conducted site visits to Davis Ethical and obtained copies of documentation for the prescriptions we sampled. We interviewed one physician and requested confirmations from other prescribers to verify: the date the prescription was written; the patient's name; the drug's name, strength, quantity, and dosage; and the number of refills authorized. For prescribers who responded that recipients were not their patients on the date of the prescription, we selected 95 additional prescriptions totaling \$33,439 for review. In total, we examined 267 prescriptions corresponding to payments of \$144,300. Also, we coordinated as necessary with the NCDA and DFS.

We conducted our performance audit according to 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 objective.

In addition to being the State Auditor, the Comptroller performs certain other constitutionally and statutorily mandated duties as the chief fiscal officer of New York State. These include operating the State's accounting system; preparing the State's financial statements; and approving State contracts, refunds, and other payments. In addition, the Comptroller appoints members (some of whom have minority voting rights) to certain boards, commissions, and public authorities. These duties may be considered management functions for purposes of evaluating organizational independence under generally accepted government auditing standards. In our opinion, these functions do not affect our ability to conduct independent audits of program performance.

Authority

The audit was performed pursuant to the State Comptroller's authority as set forth in Article V, Section 1 of the State Constitution and Article II, Section 8 of the State Finance Law.

Reporting Requirements

We provided a draft copy of this report to Department officials for their review and formal comment. We considered the Department's comments in preparing this report and have included them in their entirety at the end of it. In their response, Department officials concurred with our recommendations and indicated that certain actions will be taken to address them.

Within 90 days of the final release of this report, as required by Section 170 of the Executive Law, the Commissioner of Health shall report to the Governor, the State Comptroller, and the leaders of the Legislature and fiscal committees, advising what steps were taken to implement the recommendations contained herein, and where the recommendations were not implemented, the reasons why.

Contributors to This Report

Brian Mason, Audit Director
Andrea Inman, Audit Manager
Edward Durocher, Audit Supervisor
Wendy Matson, Examiner-in-Charge
Lauren Bizzarro, Staff Examiner
Corey Harrell, Information Technology Specialist
Devin McCarthy, Student Assistant
Nelson Sheingold, Counsel for Investigations
Anthony Cartusciello, Senior Assistant Counsel - Investigations
Joseph Fiore, Chief Investigator - Investigations

Division of State Government Accountability

Andrew A. SanFilippo, Executive Deputy Comptroller
518-474-4593, asanfilippo@osc.state.ny.us

Elliot Pagliaccio, Deputy Comptroller
518-473-3596, epagliaccio@osc.state.ny.us

Jerry Barber, Assistant Comptroller
518-473-0334, jbarber@osc.state.ny.us

Vision

A team of accountability experts respected for providing information that decision makers value.

Mission

To improve government operations by conducting independent audits, reviews and evaluations of New York State and New York City taxpayer financed programs.

Agency Comments



Nirav R. Shah, M.D., M.P.H.
Commissioner

Sue Kelly
Executive Deputy Commissioner

July 17, 2013

Mr. Brian Mason, Audit Director
Office of the State Comptroller
Division of State Government Accountability
110 State Street, 11th Floor
Albany, New York 12236-0001

Dear Mr. Mason:

Enclosed are the Department of Health's comments on the Office of the State Comptroller's Draft Audit Report 2012-S-11 entitled, "Payments for Fraudulent and Improper Claims Submitted by Davis Ethical Pharmacy."

Thank you for the opportunity to comment.

Sincerely,

A handwritten signature in black ink that reads "Sue Kelly". The signature is written in a cursive style with a long, sweeping underline.

Sue Kelly
Executive Deputy Commissioner

Enclosure

cc: Michael J. Nazarko
Jason A. Helgerson
James C. Cox
Robert W. LoCicero, Esq.
Diane Christensen
Ronald Farrell
Lori Conway
OHIP BML

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**Department of Health
Comments on the
Office of the State Comptroller's
Draft Audit Report 2012-S-11 entitled
Payments for Fraudulent and Improper Claims
Submitted by Davis Ethical Pharmacy**

The following are the Department of Health's (Department) comments in response to the Office of the State Comptroller's (OSC) Draft Audit Report 2012-S-11 entitled, "Payments for Fraudulent and Improper Claims Submitted by Davis Ethical Pharmacy."

Recommendation #1:

Coordinate with the NCDA, DFS and other authorities as necessary to recover the \$94,460 in improper payments made to Davis Ethical, as identified by this audit.

Response #1:

In coordination with the Nassau County District Attorney and other authorities as necessary, the Office of the Medicaid Inspector General (OMIG) will review and recover overpayments as appropriate.

Recommendation #2:

Formally assess the \$632,549 in prescription payments we did not test and determine the extent to which Davis Ethical submitted other fraudulent and/or improper claims. Recover improper payments, as warranted.

Response #2:

In coordination with the Nassau County District Attorney and other authorities as necessary, the OMIG will review the pharmacy claims and recover overpayments as appropriate.

Recommendation #3:

Formally assess the conduct of William Davis and determine if he should be allowed to participate in the Medicaid program or face other sanctions. Consider referring William Davis to the State Education Department for assessment of his professional conduct.

Response #3:

The OMIG will conduct an assessment of William Davis to determine the appropriate level of participation in the Medicaid program. In addition, referrals will be made as appropriate to other agencies.