



## Department of Health

ANDREW M. CUOMO  
Governor

HOWARD A. ZUCKER, M.D., J.D.  
Commissioner

SALLY DRESLIN, M.S., R.N.  
Executive Deputy Commissioner

May 15, 2015

Ms. Andrea Inman  
Audit Director  
New York State Office of the State Comptroller  
110 State Street, 11<sup>th</sup> Floor  
Albany, New York 12236

Dear Ms. Inman:

Pursuant to the provisions of Section 170 of New York State Executive Law, I hereby transmit to you a copy of the New York State Department of Health's comments related to the Office of the State Comptroller's final audit report 2014-S-41 entitled, "Medicaid Drug Rebate Program under Managed Care."

Please feel free to contact Amy Nickson, Office of Governmental and External Affairs at (518) 473-1124 with any questions.

Sincerely,

Howard A. Zucker, M.D., J.D.  
Commissioner of Health

**Department of Health  
Comments on the  
Office of the State Comptroller's  
Final Audit Report 2014-S-41 entitled,  
Medicaid Drug Rebate Program Under Managed Care**

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The following are the Department of Health's (Department) comments in response to the Office of the State Comptroller's (OSC) Final Audit Report 2014-S-41 entitled, "Medicaid Drug Rebate Program under Managed Care." The responses to the specific recommendations contained in the report are followed by responses to the OSC's Comments on Page 20 of the February 2015 Report.

**Background**

New York State is a national leader in its oversight of the Medicaid Program. Through the efforts of the Department and the Office of the Medicaid Inspector General (OMIG), over the last five years, New York State alone accounted for 54.9 percent of the national total of fraud, waste, and abuse recoveries. These results reflect a trend of increased productivity and enforcement. Over the last three calendar years, the administration's Medicaid enforcement efforts have recovered over \$1.73 billion, a 34 percent increase over the prior three-year period.

Under Governor Cuomo's leadership, the Medicaid Redesign Team (MRT) was created in 2011 to lower health care costs and improve quality of care for its Medicaid members. Since 2011, Medicaid spending has remained under the Global Spending Cap, while at the same time providing health care coverage to an additional 840,000 fragile and low income New Yorkers. Additionally, Medicaid spending per recipient has decreased to \$7,929 in 2013, consistent with levels from a decade ago.

**Recommendation #1**

Review the identified \$69 million in uncollected rebates and, where appropriate, seek rebates.

**Response #1**

The Department has already begun the process of contacting the managed care plans, requesting that they resubmit previously rejected encounter records for the \$53 million in potential uncollected rebates cited by the OSC. The Department will continue to coordinate and monitor the progress of the managed care plans' resubmissions and had set a target date of February 2015 for those records to be resubmitted.

The Department has also requested the managed care plans attempt to identify and resubmit previously rejected encounter files between October 2011 and August 10, 2012 (OSC was not able to provide rejected encounter records but *estimated* uncollected rebates to be \$16 million for this time period).

All encounter records resubmitted and determined eligible for rebates shall be invoiced, provided the records pass the data validation process for accurate invoicing. The target date to get the resubmitted records invoiced was March 2015. The resubmitted records are being tracked and, to date, 93 percent of the records have been resubmitted by the plans, of which 83 percent have been invoiced. The Department will continue to monitor resubmission rates until such time it has been determined that all encounters eligible for rebates have been resubmitted and invoiced.

## **Recommendation #2**

Coordinate with MCOs to resubmit all rejected encounter claims, including those denied by Edit 78.

## **Response #2**

The Department began the process (in November 2014) of e-mailing the managed care plans requesting that they each resubmit previously rejected encounter records identified by the OSC as well as rejected encounter records between October 2011 and August 10, 2012. The Department has been contacted by the managed care plans and begun to receive a significant number of the previously rejected encounter claims. As mentioned in our response to Recommendation #1, all resubmitted records are being tracked and the Department will continue to monitor resubmission rates until such time it has been determined that all encounters eligible for rebates have been submitted and invoiced.

## **Recommendation #3**

Ensure MCOs are trained regarding submission of encounter claims to reduce rejection of encounter claims and continue to provide assistance.

## **Response #3**

The Department has provided instructions, as recently as October and December 2014, to plans for resubmitting their identified rejected pharmacy encounter records. The Department's Division of Program Development and Management (DPDM) will also, as part of its ongoing dialogue with managed care plans, continue to communicate the importance of reviewing and resubmitting rejected encounter records (in a timely manner) back to the eMedNY system.

## **Recommendation #4**

Develop a process for routinely evaluating rejected encounter claims (and the corresponding edits) and their impact on the rebates to the Medicaid program.

## **Response #4**

Beginning December 2014, the Medicaid Encounter Data System Compliance unit, a member from managed care rate development and a group comprised of pharmacy and rebate specialists from the DPDM, will meet to evaluate and discuss rejected pharmacy encounters as well as review the need for pharmacy evolution projects for potential impact on encounter record submissions and editing.

These meetings will continue on a quarterly basis to determine what action is required, if any, to ensure that managed care pharmacy plans research their rejected encounter records and resubmit corrected records where applicable. Included within these meetings will be a discussion of the rejected encounter records, encounter record editing, and any perceived impacts to Medicaid rebates.

### **Recommendation #5**

Review the identified \$50.3 million in uncollected rebates and, where appropriate, seek rebates.

### **Response #5**

The Department has completed its review of the \$50.3 million in potential rebates identified by the OSC. The Department will generate an invoice for physician-administered drugs claim encounters that have National Drug Codes (NDC) but have not yet been invoiced and are eligible for rebates by April 17, 2015. The Department will retroactively recover rebates for all physician-administered drugs via the resubmission of encounters with NDCs and/or an adjustment to the capitated rate.

### **Recommendation #6**

Evaluate the feasibility of retroactively recovering additional rebates that were earned but not collected prior to the scope of this audit.

### **Response #6**

The Department intends to retroactively recover rebates back to March 23, 2010 (the date the Federal rebate policy allowed States to begin billing for managed care physician administered drug rebates) for managed care physician-administered drugs. This will be accomplished by resubmission of encounters with NDCs and/or an adjustment to the capitated rate.

### **Recommendation #7**

Coordinate with MCOs to resubmit all encounter claims that lack the required NDC information.

### **Response #7**

The Department will develop a strategy to collect rebates for claim encounters for which NDCs were not collected/submitted by the managed care plans by June 12, 2015. This will include resubmission of encounters with NDCs and/or an adjustment to the capitated rate.

### **Recommendation #8**

Evaluate the existing service categories included in the Rebate Program, and consider expanding to include all others with rebate potential. Modify the relevant eMedNY edits to reject physician-administered drug encounter claims with an invalid or a missing NDC in the expanded service categories.

### **Response #8**

The Department has completed its assessment and has determined that all appropriate categories of service are included in the rebate process. The Department will also seek rebates retroactively where the Department has the appropriate data required to submit for a rebate. Any expansion of service categories will include an evaluation of the relevant eMedNY edits as well as State and Federal rebate policy.

### **Recommendation #9**

Evaluate and, as appropriate, modify the relevant eMedNY edits to reject adjustment physician-administered drug encounter claims with an invalid or a missing NDC.

### **Response #9**

The Department has initiated an eMedNY inquiry to determine if there is any systematic logic that inappropriately allows an adjusted physician-administered drug encounter claim to bypass the edit that requires the claim be denied without a submitted NDC. Based on the results of the inquiry, the Department will determine an action plan and/or what system changes are needed, if any.

### **Recommendation #10**

Consider establishing a process to require MCOs to report NDC information on all physician-administered drug encounters.

### **Response #10**

The Department has completed an assessment whether to require Managed Care Organizations (MCOs) to report NDCs on all physician-administered encounters and is now systematically enforcing NDC submission for all appropriate physician encounters.

### **Recommendation #11**

Provide training and assistance to MCOs regarding the proper submission of encounters, including reporting of NDC information.

### **Response #11**

The Department has provided instruction to plans for resubmitting their identified rejected pharmacy encounter records and, as part of its ongoing dialogue with managed care plans, emphasized the importance of including NDC information on the submission of physician-administered encounter records. An eMedNY email blast to plans is currently being prepared and will be followed up with an article in the April 2015 Medicaid Update.

### **Recommendation #12**

Prospectively collect drug rebates for all eligible physician-administered drugs paid for by MCOs.

### **Response #12**

The Department will continue to prospectively invoice and collect drug rebates on all physician-administered drugs paid for by the MCOs in accordance with Federal and Department rebate policy.

**State Comptroller's Comments:**

**OSC Comment #1:**

As detailed in the Background (p. 5) of the report, the federal government typically funded about 49.25 percent of New York's Medicaid program, and the State and its localities funded the balance, about 50.75 percent. As such, we acknowledge that the rebates in question would be shared among those governmental entities in proportion to their respective funding contributions to the program. Moreover, although a significant portion of the rebates identified would be allocated to the federal government, the State and its localities would receive tens of millions of dollars from such rebates.

**Response to Comment #1:**

The Department intends to collect all outstanding rebates either through the plans' resubmission of the necessary data elements or through an adjustment to the capitated rate, and will work with the Financial Management Group (FMG) to ensure that shares are appropriately allocated to the Federal Government, the State and its localities.

**OSC Comment #2:**

We revised our report to state the Department did not collect the available rebates we identified as part of our audit.

**Response to Comment #2:**

The Department acknowledges the revision and reiterates its intent to collect all outstanding rebates, as indicated in our response to Comment #1 above.

**OSC Comment #3:**

We revised our report, as appropriate, to note the target set by the Department to invoice the \$9.7 million in rebates in question.

**Response to Comment #3:**

The Department has met its target date of April 17, 2015 to invoice for the \$9.7 million in question.

**OSC Comment #4:**

We revised our report, as appropriate, to note that officials are in the process of evaluating whether the Department should expand its pursuit of rebates to all categories of service.

**Response to Comment #4:**

The Department intends to collect all outstanding rebates. First through the plans' resubmission of the necessary data elements where possible, and if necessary, through an adjustment to the capitated rate.

**OSC Comment #5:**

As stated on page 7 of our report, the Department does not retain data for rejected encounter claims that are more than two years old. Given the absence of such data, we conservatively estimated (as detailed in the report) that there were about \$16 million in uncollected rebates for the period from October 2011 to July 2012. Further, we commend the Department for requesting managed care plans to identify and resubmit rejected encounter claims for this time period.

**Response to Comment #5:**

The Department will continue to follow up with plans and will track and monitor the collection of inappropriately rejected encounters for the time period of October 2011 to July 2012.