

NEW YORK
state department of
HEALTH

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

Sue Kelly
Executive Deputy Commissioner

April 23, 2014

Andrea Inman, Audit Manager
Office of the State Comptroller
Division of State Government Accountability
110 State Street, 11th Floor
Albany, New York 12236

Dear Ms. Inman:

Enclosed are the Department of Health's comments on the Office of the State Comptroller's Follow-Up Report 2013-F-23 on Department actions relative to the recommendations contained in earlier OSC Report 2010-S-72 entitled, "Rebates and Discounts on Physician-Administered Drugs."

Thank you for the opportunity to comment.

Sincerely,



Sue Kelly
Executive Deputy Commissioner

Enclosure

cc: Jason A. Helgerson
James C. Cox
Michael J. Nazarko
Diane Christensen
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Robert Loftus
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**Department of Health
Comments on the
Office of the State Comptroller's
Follow-Up Audit Report 2013-F-23 Entitled
Rebates and Discounts on Physician-Administered Drugs**

The following are the Department of Health's (Department) comments in response to the Office of the State Comptroller's (OSC) Follow-Up Audit Report 2013-F-23 entitled, "Rebates and Discounts on Physician-Administered Drugs."

Recommendation #1:

Formally assess the option of obtaining rebates on the physician-administered drug claims we identified. This would include requesting providers who failed to include National Drug Codes (NDC)s to resubmit such claims with the pertinent NDC data.

Status - Implemented

Agency Action – The Department assessed the option of obtaining rebates on the physician-administered drug claims we identified. As a result, in December 2013, the Department sent letters to 20 providers who the Department determined had the highest amount of obtainable rebates. In the letter, the Department requested that the providers review their previously submitted physician-administered drug claims that lacked NDCs and resubmit the claims with the appropriate NDC information.

Response #1:

The Department confirms our agreement with this report.

Recommendation #2:

Obtain rebates on all physician-administered drug claims, regardless of claim type.

Status – Implemented

Agency Action – Effective January 29, 2014, the Department expanded the number of claim types that rebates will be collected on. Our initial audit determined the Department only collected rebates on physician-administered drug claims that were processed as two claim types (practitioner and referred ambulatory). However, eMedNY also processes rebate-eligible physician-administered drug claims as other claim types. Because of Department delays in expanding the rebate process to other claim types, we determined that nearly \$26.2 million in rebates went uncollected from April 2011 (the end of our prior audit's scope period) through January 2014. Department officials state they are taking steps to obtain rebates back to January 1, 2008 on the physician-administered drug claims processed under the additional claim types.

The Department is also evaluating the feasibility of adding another claim type to their rebate collection efforts.

Response #2:

The Department confirms our agreement with this report, however, would like to update its response by stating that it is taking steps to obtain rebates back to January 1, 2008 on “Fee-For-Service” administered drug claims and March 23, 2010 for “Managed Care Claims” processed under additional claim types. The invoicing of a large portion of these additional claims is scheduled to be completed by June 2014. The Department is also evaluating the feasibility of adding another claim type to its rebate collection efforts.

Recommendation #3:

Take steps to improve the eMedNY system edit controls in place for physician-administered drug claims. This would include:

- setting the edit to deny all types of physician-administered drug claims submitted without an NDC, and
- ensuring adjustment claims do not bypass the edit.

Status – Partially Implemented

Agency Action - The Department has taken steps to improve the eMedNY system edits for physician-administered drug claims. On September 20, 2013, the Department implemented an eMedNY project to deny certain physician-administered drug claims lacking an NDC that we identified in our initial audit. However, the new edit controls do not deny all physician-administered drug claims submitted without NDC information. For example, eMedNY will not deny claims for “Durable Medical Equipment/Supply” physician-administered drug claims that lack an NDC. As a result, Department officials are taking steps to establish a new eMedNY project to remedy the shortcomings of the edit. In addition, the Department is taking steps to ensure adjustment claims submitted without an NDC do not bypass the edit.

Response #3

An eMedNY project request has been submitted to ensure claims, as well as adjusted claims without a NDC will be denied. The expected implementation date is September 30, 2014.

Recommendation #4:

Recover the \$1.4 million in overpayments made to the hospitals identified by our audit and review payments for high risk 340B claims (when charges exceed the Medicaid maximum fee) made to other providers.

Status – Partially Implemented

Agency Action – The Office of the Medicaid Inspector General (OMIG) investigates and recovers improper Medicaid payments on behalf of the Department. Although the OMIG recently began a review of the overpayments identified in our initial audit, none of the \$1.4 million in overpayments has been recovered and no timeline for recoveries has been established. In addition, the Department has taken steps to review high risk 340B claim payments by introducing a prepayment review process for providers that meet certain “high risk” criteria.

Response #4:

The OMIG is reviewing the claims data and invoice data to determine the correct recovery amount, which OMIG expects to be less than \$1.4 million. In addition to incorrect adjustments, the OMIG has found the hospitals to be rebilling the identical claims without using the correct (340B) modifier, even though the invoice identifies the cost as 340B.

Recommendation #5:

Take steps to ensure that payments for 340B drug claims are proper. At a minimum, these steps should include:

- formally reminding all 340B participating providers to charge drug acquisition costs with the appropriate discounts on 340B drug claims;
- monitoring high risk providers to ensure future claims for physician-administered drugs contain accurate drug acquisition costs; and
- implementing an eMedNY system edit to capture and pend claims with unreasonably high charges for 340B drugs.

Status – Partially Implemented

Agency Action – The Department has taken steps to ensure that payments for 340B drug claims are proper. The steps taken include the following:

- In August 2013, the Department published a Medicaid Update article that reminded 340B providers to bill Medicaid for the actual drug acquisition cost on 340B drug claims.
- The Department placed 36 providers on a prepayment review list. These providers will be required to submit invoices supporting their drug acquisition costs, which will help ensure accurate Medicaid reimbursements.
- At the time of our follow-up, the Department had not implemented an eMedNY system edit to capture and pend claims with unreasonably high charges for 340B drugs. However, officials had initiated a project to create an edit to deny payment of such claims.

Response #5:

An eMedNY Evolution Project (EP) #1861 requesting reasonability edits for physician-administered drug and/or 340b drugs has been submitted. The new edit will capture and pend claims with unreasonably high charges. EP#1861 is scheduled for implementation on July 24, 2014.