



Department of Health

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Governor

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Commissioner

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Executive Deputy Commissioner

January 16, 2018

Kenneth Shulman
Assistant Comptroller
Division of State Government Accountability
NYS Office of the State Comptroller
110 State Street, 10th Floor
Albany, New York 12236

Dear Mr. Shulman

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 2015-S-6 entitled, "Improper Medicaid Payments to Eye Care Providers."

Please feel free to contact Estibaliz Alonso, Acting Assistant Commissioner, Office of Governmental and External Affairs at (518) 473-1124 with any questions.

Sincerely,

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

Enclosure

cc: Estibaliz Alonso

**Department of Health
Comments on the
Office of the State Comptroller's
Final Audit Report 2015-S-6 entitled,
Improper Medicaid Payments to Eye Care Providers**

The following are the Department of Health's (Department) comments in response to the Office of the State Comptroller's (OSC) Final Audit Report 2015-S-6 entitled, "Improper Medicaid Payments to Eye Care Providers."

Background

New York State (NYS) is a national leader in its oversight of the Medicaid Program. The Office of the Medicaid Inspector General (OMIG) conducts on-going audits of the Medicaid program and managed care plans. The Department and OMIG will continue to focus on achieving improvements to the Medicaid program and aggressively fighting fraud, waste and abuse.

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 1,276,304 fragile and low income New Yorkers. Additionally, Medicaid spending per recipient decreased to \$8,609 in 2016, consistent with levels from a decade ago.

Recommendation #1:

Review the Providers' applications/revalidations to determine if their ownership and control interest disclosures were complete and accurate, and in compliance with regulations. Where necessary, consider remedial actions to ensure compliance, impose sanctions, or remove Providers from the Medicaid program.

Response #1:

The Department reviews provider enrollment applications for compliance with regulations found at 18 NYCRR § 504.2 – *Application for participation*, which require providers to furnish information relevant to the provider's ability to provide high-quality care, services, and supplies, and to be financially responsible. The Department will utilize the optical provider information provided by OSC to evaluate whether enrollment applications submitted by optical providers are complete and accurate. If information is found to be missing, the enrollment application will be returned and pending until the required information is received. The Department will consider potential remedial actions to ensure compliance, impose sanctions, or remove providers from the Medicaid program. Additionally, OMIG has an open active investigation on these providers. After the investigation is completed, OMIG will take appropriate action against the providers.

Recommendation #2:

Revise the Optical Establishment Enrollment Application and Revalidation form to capture all required affiliation data, and establish procedures to verify the accuracy and completeness of ownership, control interest, and affiliation data.

Response #2:

The Department respectfully disagrees that the enrollment form needs to be updated. The Business Provider Enrollment Form requires the optical establishment to report data required by 42 CFR § 455.104(b), including name, address, date of birth and social security number of any person with an ownership or control interest; other tax identification number (TIN) with an ownership or control interest; and information about family relationships, five percent ownership in the company and managing employees. In addition, the application requires the establishment to:

- Complete an OMIG Provider Compliance Certification;
- Provide an employee list;
- Submit an IRS Assignment letter that contains Federal Employer Identification Number and an Application Name (Form SS-4);
- Submit Disclosure of ownership and control information which includes:
 - Name and Federal Identification Number of Entity
 - Ownership in Applicants, including relationship to another person with an ownership or control interest in the business, and
 - Other business addresses of corporations
 - Ownership or control interest of other disclosing Entities
 - When the owner has ownership or controls interest of 5% or more in a Subcontractor
 - When a family member (parent, child, sibling, spouse) has a relationship in its subcontractors
 - Those agents, management employees and those with a control interest (ex: facility administrator, all members of the board of directors, managing employees, compliance officer, or laboratory director.) This also requires the owner to provide the family relationship and type of association to the business.

The Department's staff reviews all documentation for completeness. If any information is missing, a follow-up email or letter is sent requesting the missing information be furnished within three weeks. If the information is not sent within the timeframe, the provider's application is withdrawn.

To verify the accuracy of the application, all persons and entities disclosed in the above required documents are checked at intake against the following databases:

- Social Security Administration Death Master File
- System for Award Management and OMIG list of Restricted and Excluded Providers
- eMedNY sanction File and the National Provider Index National Plan Enumeration.
- Disciplinary Hits (Excluded Parties List System) - food stamp violations and exclusion in federal programs

For optical providers, the Department will now review them against the list of providers found in this audit report.

Recommendation #3:

Consider using other technical tools and resources to verify information reported by providers on applications and revalidations.

Response #3:

The Department will consider using additional technical tools to verify that the information reported by providers is complete, as required.

Recommendation #4:

Coordinate operational procedures between the Department's provider enrollment staff and the OMIG to ensure identification of providers with elevated enrollment or revalidation risk and to conduct additional integrity steps as appropriate.

Response #4:

The Department will continue with its operational procedures to ensure identification of providers with elevated enrollment or revalidation risk and to conduct additional integrity steps as appropriate. As part of ongoing program integrity efforts, provider enrollment and policy staff will evaluate appropriate measures to address optical provider issues. If issues are identified, OMIG will review and make recommendations back to the Department.

Recommendation #5:

Review the Medicaid overpayments totaling \$34,625 for the 1,177 improper procedures and recover payments as appropriate.

Response #5:

OMIG has an open active investigation of these providers. OMIG will review the claims as part of the investigation, and determine an appropriate course of action.

Recommendation #6:

Instruct the Providers that, in submitting claims, they must use the Medicaid identification number of the entity that rendered the services.

Response #6:

CSRA issued the following email blast on its Listserv, on September 1, 2017, reminding all optical providers of the importance of always utilizing the appropriate Provider ID when rendering services:

**“BILLING REMINDER
Optical Establishments**

Optical Establishments must bill with the Medicaid Provider ID Number (MMIS/NPI) of the entity where the services were rendered. They also need to include on the claim the

Medicaid Provider ID # (MMIS/NPI) of the salaried optician or salaried optometrist who performed the service as the rendering/servicing provider.

Billing instructions-

Paper:

The billing provider for paper is reported in field 25A.

The rendering/servicing provider for paper NPI is reported in field 22C and their name is reported in field 22A.

Electronic:

The billing provider for 837P is reported in Ref: Loop 2010AA NM109 or Loop 2310B NM109.

The rendering/servicing provider is reported in 837P Ref: Loop 2310B NM1, and the name is reported in 837P Ref: Loop 2310B NM1.

The billing instructions for vision care specifically state that rendering provider's information MUST be completed ONLY by Optical Establishment providers enrolled with category of service 0401, 0402 or 0423 that employ either or both licensed ophthalmic dispensers (opticians) and/or licensed optometrists. Rendering provider fields SHOULD NOT be completed by categories of service 0404 (self-employed optician), 0405 (eye prostheses supplier) and 0422 (self-employed optometrists) who are the billing providers. If rendering provider and billing provider are the same, the rendering provider field is left blank.

If the rendering or servicing salaried optician or salaried optometrist is not enrolled in NYS Medicaid they must enroll at <https://www.emedny.org/info/ProviderEnrollment/index.aspx> . On this page providers can choose a link to their provider type. Complete the enrollment form, follow all instructions and provide required documentation. Providers can call CSRA at 800-343-9000 for assistance.

NYS Medicaid requires physicians and other healthcare professionals to be enrolled either in fee for service Medicaid as billing provider or as an ordering/prescribing/referring/attending (OPRA) provider.

If the professional is not enrolled in FFS Medicaid (billing or as an OPRA provider), under federal law Medicaid must deny the FFS claim for the ordered service. Consequently, the billing entity must include the respective professional's Medicaid ID or NPI on all claims. If the required Medicaid ID/NPI is not provided, the claim is subject to denial or recoupment if paid in error. More information is provided in the December 2013 Medicaid Update (Special Edition Vol. 29, Number 13).

http://www.health.ny.gov/health_care/medicaid/program/update/2013/dec13_muspec.pdf

The Department has also individually notified by mail, all of the optical providers identified in this audit report as to the proper use of the Provider ID when rendering services.

A reminder was sent to all providers in the form of a Medicaid Update in the September 2017 Medicaid Update package as follows:

“Billing Reminder for all Vision Care Providers

All fee-for-service (FFS) Medicaid providers are reminded to include the rendering provider ID or NPI on claims where the rendering provider is not the same as the billing provider. This applies to Optical Establishment providers enrolled with Category of Service 0401, 0402 or 0423 that employ Licensed Ophthalmic Dispensers (opticians) AND/OR Licensed Optometrists. For ophthalmic providers with Category of Service 0423, this rule applies even when the billing provider and the service provider are one and the same. Providers exempt from this rule include: Self-employed Ophthalmic Dispensers (opticians) enrolled with Category of Service 0404, Eye Prostheses Fitters with category of Service 0405 and Self-employed Optometrists enrolled with Category of Service 0422. Services rendered to Medicaid members at your service address may not be billed through any other provider number.

When any person has submitted or caused to be submitted claims for medical care, services or supplies for which payment should not have been made, the Department may require repayment of the amount overpaid. An overpayment includes any amount not authorized to be paid under the Medicaid Program, whether paid as the result of inaccurate or improper cost reporting, improper claiming, unacceptable practices, fraud, abuse or mistake.

Questions regarding Medicaid fee-for-service billing or claims should be directed to the eMedNY call center at 1-800-343-9000.”

Recommendation #7:

Monitor the Providers’ claims to prevent improper payments, including excessive coinsurance payments.

Response #7:

Information specific to the providers and procedure codes identified in this audit, necessary to monitor provider claims, was provided to the Department’s Bureau of Medical Review and Evaluation’s Pended Claims Unit. Criteria was developed and instituted to pend future claims of these providers for review prior to payment.

State Comptroller’s Comment:

OSC Comment #1:

During the course of our audit, the Department revised the enrollment form a number of times, including a revision that coincided with the issuance of our draft audit report. We are pleased the current enrollment form complies with federal regulations and addresses our recommendation. However, to avoid provider confusion, the Department should update its “Instructions for Completing the NY Medicaid Enrollment Form for Optical Establishment” under Association Types to include Officers (for Corporations) and Partners (for Partnerships).

Response to Comment #1:

The Department reviewed this request and agrees that further provider guidance may be helpful on the Instructions. However, we disagree with the need for additional Association Types based on regulatory definitions of Officers and Partners.

Association Types currently provided on our forms:

Association Types: Enter the letter (B, F, H, M, P or U) which best corresponds to the individual's role:
B: Board of Directors Member F: Facility Administrator H: Compliance Officer
M: Managing Employee P: Supervising Pharmacist U: Laboratory Director

Title 18 of the Codes, Rules and Regulations of the State of New York (NYCRR), Section 504.1(d) defines an affiliated person as an agent, an applicant, indirect ownership interest, managing employee, ownership interest, and a person with an ownership or control interest.

Section 504.1(d)(18) is even more specific as to who is an owner, indirect owner, an officer or director or a partner.

- (18) Person with an ownership or control interest means a person who:
- (i) has an ownership interest totaling five percent or more in a provider;
 - (ii) has an indirect ownership interest equal to five percent or more in a provider;
 - (iii) has a combined direct and indirect ownership interest equal to five percent or more in a provider;
 - (iv) owns an interest of five percent or more in any mortgage, deed of trust, note, or other obligation secured by the provider if that interest equals at least five percent of the value of the property or assets of the provider;
 - (v) is an officer or director of a provider that is organized as a corporation;
 - (vi) is a partner in a provider that is organized as a partnership.

Based on the above section, a person with an ownership or control interest can be an **officer or a partner**, thus negating the need for additional Association Types for these persons.

If a person is an owner as defined in 18 NYCRR Section 504.1, they are required to report this information in Section 1 Ownership in Applicant and to copy the page to report additional owners. Sections 2, 3, 4 and 5 requires the Applicant to report Ownership in Other Disclosing Entities, Ownership in Subcontractors, Familial Relationships in Subcontractors, and Agents, Managing Employees & Those with A Control Interest, respectively. Individuals owning a business are required to report if they are related to another person with an ownership or control interest in the business or entity, also in Section 1 Ownership in Applicant.

To emphasize the need for officers and partners, in Section 1, Ownership in Applicant, the department will add the words “**including officers of corporations and partners in partnerships**” after Entities and/or Individuals, as seen here:

(Entities and/or Individuals, including officers of corporations and partners in partnerships.)

Ownership in Applicant (per 42 CFR, Part 455.104(b)(1)(i) – (Entities and/or Individuals)) Copy this page to report additional owners.

Name of Individual or Entity	Title (if individual)	Date of Birth (if individual) (MM/DD/YYYY)
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Currently, the Department includes a hyperlink to 18 NYCRR Section 504 and a reference to 42 CFR Part 455.104 in the “Disclosure of Ownership and Control” section of the Business, Practitioner, Institutional, and OPRA enrollment forms. To ensure providers are fully aware of the disclosure requirements and definitions, the Department will update the Instructions forms under the General Instructions section to include a reference to 42 CFR Part 455.104 with a hyperlink to 18 NYCRR Section 504.1, repeating the guidance currently on the enrollment forms.