Department of Health

ANDREW M. CUOMO
Governor

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

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

January 5, 2017

Ms. Andrea Inman, Audit Director
Office of the State Comptroller
Division of State Government Accountability
110 State Street – 11th Floor
Albany, New York 12236-0001

Dear Ms. Inman:

Enclosed are the Department of Health's comments on the Office of the State Comptroller's Follow-Up Audit Report 2016-F-16 entitled, "Medicaid Payments Made Pursuant to Medicare Part C." (2012-S-133)

Thank you for the opportunity to comment.

Sincerely,

Sally Dreslin, M.S., R.N.
Executive Deputy Commissioner

Enclosure

cc: Marybeth Hefner
Jason A. Helgerson
Dennis Rosen
Erin Ives
Brian Kiernan
JoAnn Veith
Elizabeth Misa
Geza Hrazdina
Jeffrey Hammond
Jill Montag
James Dematteo
James Cataldo
Diane Christensen
Lori Conway
OHIP Audit SM

Department of Health
Comments on the
Office of the State Comptroller's
Follow-Up Audit Report 2016-F-16 entitled,
Medicaid Payments Made Pursuant to Medicare Part C

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 2016-F-16 entitled, "Medicaid Payments Made Pursuant to Medicare Part C." (Report 2012-S-133)

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 1,475,319 fragile and low income New Yorkers. Additionally, Medicaid spending per recipient decreased to $8,305 in 2015, consistent with levels from a decade ago.

Recommendation #1

Formally re-evaluate the existing methodology for processing and paying claims for Medicare Part C cost-sharing liabilities. Include reviews of other states' policies in performing the evaluation.

Status – Implemented

Agency Action – At the time of our initial audit, New York's Medicaid program paid the entire cost-sharing liability billed by a provider, regardless of the amount requested. Effective July 1, 2016, the New York State Social Services Law was changed to limit Medicaid reimbursement of Medicare Part C coinsurance and copayments to 85 percent of the coinsurance and copayment liability reported by the provider. The Department is currently implementing eMedNY system changes that, when completed, will allow the Department to reprocess all relevant claims retroactively to July 1, 2016 and recover any Medicaid dollars incorrectly paid based on the new reimbursement methodology.

Response #1

The Department confirms our agreement with this report.

Recommendation #2

Recover the $70,594 in Medicaid overpayments from the six providers who misreported Medicare Part C cost-sharing data.

Status – Not Implemented

Agency Action – In the Department's formal response to our initial audit, officials stated, "The Office of the Medicaid Inspector General (OMIG) is reviewing the overpayments identified, and will pursue recoveries where appropriate and as resources permit." At the time of our follow-up review, OMIG officials stated their Recovery Audit Contractor was in the preliminary stages of auditing the providers. However, the OMIG could not provide evidence to support that the contractor had reviewed the improper payments, and no recoveries had been made.

Response #2

OMIG's Recovery Audit Contractor (RAC) continues to pursue recoveries of inappropriate payments.

Recommendation #3

As resources and priorities permit, review payments for high-risk Medicare Part C claims, such as those that exceed certain pre-determined dollar limits. Recover any overpayments that are identified.

Status – Not Implemented

Agency Action – OMIG officials stated they were exploring the possibility of acquiring access to Medicare Part C payment data to identify pilot projects that would address billing inconsistencies between the Medicare Part C payment data and the corresponding information reported on Part C claims submitted to Medicaid. However, officials could not provide evidence to support their stated efforts or that high-risk Medicare Part C claims had been reviewed for recovery purposes.

Response #3

OMIG is unable to acquire access to Medicare Part C payment data, that would address billing inconsistencies between the Medicare Part C payment data and the corresponding information reported on Part C claims submitted to Medicaid.

Recommendation #4

Review the $1,637,291 in overpayments for Medicare Part C cost-sharing liabilities that providers billed incorrectly and recover funds where appropriate.

Status – Not Implemented

Agency Action – Our initial audit found that Medicaid overpaid nearly 115,000 claims by $1,637,291 because providers billed Medicare Part C coinsurance for recipients who were actually enrolled in Medicare Part B (not Part C) at the time the services in question were provided. At the time of our initial audit, the Social Services Law limited Medicaid payments of Medicare Part B coinsurance for many common services to 20 percent of the coinsurance charge when Medicare's payment exceeded Medicaid's normal fee. If the providers had correctly submitted these claims, seeking reimbursement for Part B coinsurance, eMedNY would have limited the payments to 20 percent of the coinsurance charges. Therefore, we determined 80 percent of the coinsurance charged on these claims was overpaid.

In the Department's formal response to our initial audit, officials stated "The OMIG is reviewing the overpayments identified, and will pursue recoveries where appropriate and as resources permit." In 2013, the OMIG's third-party recovery contractor determined 313 providers received over $1,000 in overpayments (totaling over $1.1 million) and recommended a plan to pursue these recoveries. However, at the time of our follow-up review, OMIG officials indicated that they had not reviewed or recovered any of the overpayments due to the time and resources needed to fully evaluate the audit findings. While we understand the OMIG's need to evaluate the findings, we note that on January 22, 2013 – in response to our initial audit – the Department implemented an eMedNY edit (i.e., a payment control in the Department's eMedNY Medicaid claims processing and payment system) to deny claims for Medicare Part C cost-sharing when eMedNY indicated the recipient did not have Part C coverage. Therefore, if the claims we identified in the initial audit had been submitted after implementation of the edit, they would not have been paid.

Further, as of September 19, 2016, approximately $872,000 in potential overpayments may no longer be recoverable under regulatory look-back rules that prohibit the Department from recovering a payment more than six years after the date the corresponding claim was filed. To avoid further loss of recoverable overpayments, we strongly encourage the OMIG to place an appropriate priority on the remaining overpayments that are still recoverable.

Response #4

OMIG is unable to acquire access to Medicare Part C payment data, that would address billing inconsistencies between the Medicare Part C payment data and the corresponding information reported on Part C claims submitted to Medicaid.

Recommendation #5

Review the 1,259 instances when Medicaid made a Medicare Part C cost-sharing payment and paid a Medicaid Advantage premium for the same recipient in the same month. As warranted, recover any overpayments identified.

Status – Partially Implemented

Agency Action – Department officials analyzed the instances when Medicaid made a Medicare Part C cost-sharing payment and paid a Medicaid Advantage premium for the same recipient in the same month and made a determination on the appropriateness of the payments (see "Agency Action" for Recommendation 6). Despite the Department's review, however, OMIG officials stated it is not feasible to pursue recoveries due to the time and resources needed to fully evaluate the original audit's findings. Consequently, no recoveries were made. Again, we encourage OMIG officials to pursue recoveries based on the Department's conclusions.

Response #5

OMIG is unable to acquire access to Medicare Part C payment data, that would address billing inconsistencies between the Medicare Part C payment data and the corresponding information reported on Part C claims submitted to Medicaid.

Recommendation #6

Assess eMedNY functionality that allows concurrent payments for Medicaid Advantage premiums and Medicare cost-sharing liabilities on behalf of the same recipient and correct the eMedNY system as necessary.

Status – Partially Implemented

Agency Action – The Department reviewed the instances where Medicaid made a Medicaid Advantage premium payment and a Medicare Part C cost-sharing payment for the same recipient in the same month and determined the claims fell into three categories, as follows:

- Family planning services that were carved out of a particular Advantage Plan's contract;
- Premiums for recipients who were retroactively disenrolled from their Medicaid Advantage Plan; and
- Pharmacy services.

The Department determined claims for cost-sharing liabilities pertaining to family planning services and the corresponding Medicaid Advantage premiums paid correctly. Regarding the remaining two categories, the Department is in the process of developing eMedNY changes that will help prevent improper payments of premiums for retroactively disenrolled recipients and cost-sharing liabilities for pharmacy services.

Response #6

The Department reviewed the 1,258 claims identified as Medicaid Advantage claims and observed that they fell into three categories:

1) Claims identified in the audit that were paid correctly under contract requirements

2) Retroactive disenrollments

3) Pharmacy claims

The Department has taken action to resolve the areas identified in the following manner:

1) Paid claims for reproductive services are carved out of all contracts with New York Catholic Health Plan (Fidelis). Any balances after Medicare are correctly billed to Fee-For-Service (FFS).

2) Retroactive disenrollments are being addressed in two ways; Evolution Project (EP) 1826 was submitted by Third Party Health Insurance to correct the delayed disenrollment from Part C coverage and will address the issues of client accounts open for capitation billing based on system information that has incorrect disenrollment dates. In cases where payments have been made to Plans beyond the eligibility period for Medicaid Advantage, incorrect capitation payments are being reported to the appropriate Local Department of Social Services offices to be transmitted to OMIG for recovery. EP 1826 was implemented on December 12, 2016.

A further review has identified that some claims coming through FFS, should have been paid by the Part C plan. A request will be made to link Part C pharmacy claims to the systems tables that are restricted to cover only those items that Medicare does not provide coverage for.

3) Pharmacy claims were the largest group of claims selected for audit. For Medicare/Medicaid dually eligible members that are enrolled in a Medicare Part C health plan, Medicaid currently reimburses 100% of the Part C coinsurances and copays for outpatient services. Effective July 1, 2016, a change in the Social Services Law limits Medicaid reimbursement of Medicare Part C coinsurances/copays to 85% of the coinsurance/copay liability. This change was made through EP 2126 that is scheduled for implementation on May 25, 2017.

   This change will also apply to pharmacy claims for drugs and supplies when submitted as a pharmacy or professional claim. With the implementation of EP 1826, the Department considers this recommendation fully implemented.