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

Division of State Government Accountability

Medicaid Payments for Pharmacy Claims – Joia Pharmacy and a Related Prescriber

Medicaid Program
Department of Health

Report 2013-S-4 June 2017

Executive Summary

Purpose

To determine whether Medicaid made proper payments to Joia Pharmacy, Inc. (Joia) and a related prescriber (herein referred to as "the Doctor") in compliance with applicable Medicaid laws and regulations, and the rules and policies set forth by the Department of Health (Department) and the State Education Department. Our audit covered the period January 1, 2008 through December 31, 2012. ***Note:*** During the course of the audit, the audit fieldwork was temporarily suspended to avoid interfering with a review by other external oversight authorities of some of the matters addressed in this report. Subsequent to that review, we provided the Department with updated audit findings pertaining to matters addressing the Doctor's prescribing activity for the period January 1, 2013 through June 30, 2016.

Background

The Department is responsible for administering New York State's Medicaid program. Medicaid is a federal, state, and locally funded program that provides a wide range of medical services to those who are economically disadvantaged and/or have special health care needs. For the State fiscal year ended March 31, 2016, New York's Medicaid program had approximately 7.4 million enrollees and Medicaid claim costs totaled about $56 billion.

Prescription drugs can be dispensed to Medicaid beneficiaries by licensed pharmacists who work at pharmacies that are enrolled in the Medicaid program. During the audit period, Joia, doing business as Soho Pharmacy, was a privately owned pharmacy located in Lower Manhattan. Soho Pharmacy was still in business at the time of this report; however, it has operated under different corporate ownership since 2014. For the period January 1, 2008 through December 31, 2012, the Department paid Joia more than $7.7 million for 50,060 claims on behalf of 706 recipients. The Doctor was listed as the prescriber on 31,351 (63 percent) of the 50,060 claims.

Key Findings

- Based on a statistical projection of our audit sample results, we found that the Department overpaid Joia $1,485,121 for improper pharmacy claims. Disallowances included:
  - Claims billed for excess quantities of drugs (for instance, quantities billed exceeded quantities prescribed);
  - Claims for drugs in which the prescriptions were missing or invalid;
  - Claims in which the medication dispensing labels contained inaccurate instructions for use;
  - Claims wherein the drug and drug strength were different from what the physician prescribed; and
  - Claims for unauthorized and inappropriate refills.
- Our audit also identified a range of practices by both Joia and the Doctor that warrant further review. For example, we found:
  - The Doctor was listed as the prescriber on 63 percent of Joia's claims; among these claims, we found high volumes of prescriptions for individual patients on single days, and instances of drug conflicts and prescriptions that exceeded utilization limits – some of

which appeared potentially dangerous;
- Instances where Joia did not dispense controlled substances in compliance with New York State Controlled Substances Act requirements, which increases the risk that these drugs could have been diverted for inappropriate, unauthorized, or illegal use;
- Three claims, totaling $485, for medications for a recipient who was deceased at the time the pharmacy claims were processed;
- Over 71 percent of Medicaid's payments to Joia were for patients who lived approximately one hour away (one way); and
- 134 of the 270 claims in the statistical sample had questionable patient signatures denoting prescription pick-ups (e.g., the signatures looked identical for different patients).

Key Recommendations

- Review the Medicaid payments made to Joia and recover any improper payments, as warranted.
- Formally review and assess the factors that led to Joia's submission of the improper claims. Take actions, as warranted, to remediate any improper policies and practices that are identified. Such a review should include determining whether the pharmacy – under the new ownership – and its employees have corrected any such deficiencies.
- Follow up on all other matters identified in this report, including having a Department physician review the issues involving the Doctor, and take appropriate action, as warranted.
- Assess the appropriateness of the providers' (pharmacists and physicians) future participation in the Medicaid program. This assessment should also address the propriety of referring the providers to the State Education Department's Office of the Professions.

Other Related Audits/Reports of Interest

Department of Health: Improper Payments for Controlled Substances That Exceed Allowed Dispensing Limits (2013-S-59)
Department of Health: Optimizing Medicaid Drug Rebates (2015-S-1)

State of New York
Office of the State Comptroller

Division of State Government Accountability

June 27, 2017

Howard A. Zucker, M.D., J.D.
Commissioner
Department of Health
Corning Tower
Empire State Plaza
Albany, NY 12237

Dear Dr. Zucker:

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 entitled *Medicaid Payments for Pharmacy Claims – Joia Pharmacy and a Related Prescriber.* 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.

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

State Government Accountability Contact Information:
Audit Director: Andrea Inman
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

The Department of Health (Department) is responsible for administering New York State's Medicaid program. Medicaid is a federal, state, and local government funded program that provides a wide range of medical services to those who are economically disadvantaged and/or have special health care needs. For the year ended March 31, 2016, New York's Medicaid program had approximately 7.4 million enrollees and Medicaid claim costs totaled about $56 billion. The federal government funded about 53.2 percent of New York's Medicaid claim costs, the State funded about 30.6 percent, and the localities (City of New York and counties) funded the remaining 16.2 percent.

The Department's eMedNY computer system processes Medicaid claims submitted by health care providers, including pharmacies, for services rendered to Medicaid-eligible recipients and generates payments to reimburse the providers for their claims. Annually, eMedNY processes more than 330 million claims.

Prescribed drugs and medical/surgical supplies can be dispensed to Medicaid beneficiaries by pharmacies that are enrolled in the Medicaid program. The pharmacists who fill the prescriptions must be licensed and registered with the State Education Department's (SED) Board of Pharmacy. Various laws, rules, regulations, and policies govern how pharmacies are reimbursed for prescription drugs under the Medicaid program. For example:

- Drugs cannot be dispensed without a prescription ordered by a person legally authorized to issue prescriptions;
- Drugs should not be dispensed unless prescription forms have complete and accurate information;
- Prescriptions cannot be refilled more than 180 days after issuance; and
- Pharmacies are required to maintain prescriptions supporting Medicaid claims for a period of six years.

During the audit period, Joia Pharmacy, Inc. (Joia), doing business as Soho Pharmacy, was a privately owned pharmacy located in Lower Manhattan. For the period January 1, 2008 through December 31, 2012, the Department paid Joia more than $7.7 million for 50,060 claims for 706 recipients. While Soho Pharmacy was still in business at the time of the audit report, it has operated under different corporate ownership since 2014. Further, as of April 1, 2014, Soho Pharmacy (under its new corporate ownership) was no longer enrolled in the Medicaid program as a fee-for-service provider (i.e., it no longer billed Medicaid fee-for-service claims); however, it continued billing claims to Medicaid managed care organizations on behalf of Medicaid recipients.

During the audit period, a related prescriber (herein referred to as "the Doctor") was listed as the prescriber on 31,351 (63 percent) of Joia's 50,060 Medicaid claims.

Audit Findings and Recommendations

We found that the Department made improper payments totaling $1,485,121 to Joia for pharmacy claims that did not comply with Medicaid's applicable laws, rules, regulations, and policies. Further, our audit identified other practices of both Joia and the Doctor that we found warrant further review.

During the course of this audit, the audit fieldwork was temporarily suspended to avoid interfering with a review by other external oversight authorities of some of the matters addressed in this report. (Accordingly, some of the disallowances we identified may no longer be recoverable because of, among other things, regulatory look-back rules that generally prohibit the Department from auditing claims falling outside the six-year limitation period.) Subsequent to that external review, we provided the Department with updated audit findings pertaining to the prescribing activities of the Doctor.

Improper Pharmacy Claims

We tested a random statistical sample of 270 claims (totaling $138,158) of Joia's 50,060 Medicaid pharmacy fee-for-service claims (totaling $7.7 million) during the five-year period ended December 31, 2012, and found 84 instances (totaling $37,833) where claims did not comply with Medicaid's applicable laws, rules, regulations, and policies. Because seven of these claims were not in compliance for two different reasons, we found that 77 claims (29 percent of the 270 claims) were improperly overpaid by $33,578. (See Table 1 for a summary of the claim disallowances.) Using appropriate statistical sampling methods, we projected our random sample results to the population of total claims, and found that the Department made improper payments totaling $1,485,121 to Joia for the audit period.

Table 1 – Summary of Disallowances Based on Statistical Sample Review

Reason for Disallowance	Number of Improper Claims	Amount of Improper Payments	Notes to Table 1*
Excess Quantity Billed	54	$14,959	A,G,H
Missing/Invalid Prescriptions	13	11,305	B,D,G-J, L
Incorrect Directions	8	2,016	E
Incorrect Drug or Drug Strength	6	7,077	G,H,M
Unauthorized Refills	2	2,259	F
Refill Beyond 180 Days	1	217	C,K
Totals	**84**	**$37,833**	
Less: Disallowances for More Than One Reason	(7)	(4,255)	
Net Disallowance From Statistical Sample	**77**	**$33,578**	
Statistical Sample Projected Amount**		**$1,485,121**	

*A summary of the applicable laws, rules, regulations, and policies used to develop our recommended disallowances is presented in the Notes to Table 1 at the end of this report.

**An extrapolation of the 77 overpayments from the random sample of 270 claims to the population of 50,060 claims, using statistically valid methods and a 95 percent single-sided confidence level, resulted in a projected overpayment of $1,485,121.

Of the sample of 270 claims, we identified 54 claims where Joia billed Medicaid, and received payment, for excess quantities of medications. For 49 of these claims, the quantity billed exceeded the quantity ordered by the prescriber (e.g., the pharmacy billed for 90 pills when the prescriber had ordered only 30 pills). In these instances, we considered the cost of the excess quantities of medications to be overpayments. The remaining five claims involved prescriptions that were overdue for pick-up by the patient and that Joia should have voided. On the dates the medications were finally picked up (28 to 72 days after they were originally filled), Joia also dispensed the same or similar medications to the patients. For example, on March 15, 2010, Joia dispensed three orders for the same medication, Maxalt MLT 5-mg tablets, to a single patient: one order was a new prescription and two were refills from a previous prescription that the patient never picked up. In total, the patient picked up over $1,900 worth of medication, including a sampled claim for $639, which we disallowed.

We also disallowed 30 claims, as follows:

- For 13 claims, either Joia could not provide the applicable prescriptions or the prescriptions were missing required information, such as the order date, the prescriber's signature, and the prescribed quantity.
- For eight claims, the usage directions that Joia pharmacy staff entered on the dispensing label directly conflicted with the physician's directions on the prescription form. For example, on a prescription for which the physician directed that two pills should be taken every morning and three pills should be taken every evening, Joia's dispensing label stated that three pills should be taken twice daily.
- Six claims were improperly paid because the pharmacy billed for either a different drug strength (five claims) or a different drug (one claim) than what the physician ordered on the prescription.
- Two claims involved refills that were not authorized by the prescriber.
- For one claim, Joia refilled a prescription beyond the allowable 180 days after it was initiated by the prescriber.

Other Matters That Warrant Attention

Our audit also uncovered other practices by Joia – as well as the Doctor – that we found warrant further review.

Controlled Substances

We reviewed a judgmental sample of 40 claims and found eight claims (totaling $1,220) where Joia billed for controlled substances either on a date earlier than allowed; or for a quantity greater than allowed by the New York State Controlled Substances Act; or where the prescription lacked required information, such as the patient's address and age. Due to the high risk of controlled substances being diverted for inappropriate, unauthorized, or illegal use, the Department should follow up on these improper claims.

Deceased Recipients

Because cases of pharmacy fraud frequently involve prescriptions on behalf of recipients who are deceased, we compared the dates of all the claims submitted by Joia during our audit period with an eMedNY data field that indicates the dates of death for deceased recipients. We identified three claims totaling $485 that Joia submitted to Medicaid for a recipient who was deceased at the time the pharmacy claims were processed. Joia officials could not provide signature logs showing that the medications had been picked up.

Geographic Location of Joia Customers

Of the 50,060 claims paid to Lower Manhattan-based Joia during our audit period, over 71 percent of the payments were for patients who lived in Bronx, NY, compared with only 4.3 percent for patients from Manhattan. Further, based on eMedNY data, many of the Bronx patients lived in the same neighborhood and even in the same apartment complex. We question why these patients would engage in a 12-mile, nearly hour-long trip (using mass transit) to Lower Manhattan to have their prescriptions filled by Joia. To further our understanding, we conducted an analysis of Medicaid claims submitted by similar-sized pharmacies in the same geographic area as Joia, and found that these pharmacies served a much higher percentage of Manhattan residents. For example, for two of the pharmacies, Medicaid payments for Manhattan residents comprised 30 percent and over 50 percent, respectively, of the Medicaid payments made for pharmacy claims. During our interviews with four Medicaid recipients, two stated they make the trip into Manhattan to see the Doctor, who they were referred to or became aware of through advertisements. The Doctor stated he does not instruct his patients to use any particular pharmacy.

Prescription Pick-Up Signatures

From our review of the statistical sample of 270 claims, we found that 134 of the electronically signed prescription receipts, indicating pick-up of the prescribed medications, appeared questionable. On many of these receipts, which were supposed to be signed by different people, the signatures looked identical or very similar and other signatures were indecipherable, increasing the risk that they were not authentic.

Missing Prescriptions

Of the 270 claims in our statistical sample, Joia officials were unable to provide us with prescriptions supporting 33 claims – and on 20 of these, the Doctor was listed as the prescribing physician. According to Joia officials, they were unaware they were required to maintain prescriptions supporting Medicaid claims for a period of six years, and had discarded certain prescriptions before the six-year period expired. In response to our concern about the missing prescriptions, Joia officials obtained affidavits from all but one of the prescribing physicians, certifying that they had, in fact, prescribed the medications that Joia billed. Each affidavit contained information such as the recipient's name, the name of the medication, the date it was prescribed, and directions for use. In his affidavit, the Doctor certified that he prescribed the 20 medications noted above.

However, upon reviewing the Doctor's patient records, we found two instances in which the patient records did not validate that the medications had been prescribed. We disallowed these two claims, as well as the claim for which Joia could not obtain an affidavit. These disallowances were included in our previously reported statistical sample findings.

Incorrect or Incomprehensible Directions for Use

In addition to the eight claims we disallowed in our previously reported statistical sample for drugs that Joia had dispensed with incorrect directions for use, the statistical sample included another 39 claims, totaling $29,476, for medications dispensed with questionable directions for use entered on the dispensing labels. For example, on a prescription for a drug used to treat ulcers, Carafate 1 gm/10 ml, the directions for use provided by the prescriber (the Doctor) – "Take for 10 days ml for 10 days cc by mouth every 6 as needed orally" – were incomprehensible, and did not properly indicate the amount to be taken per dose or frequency of dose administration. Furthermore, instead of clarifying the directions with the Doctor and ensuring the dispensing label contained accurate instructions, the Joia pharmacist dispensed the medication using the same incomprehensible directions on the dispensing label. We also found instances of faulty directions involving migraine medications. Joia pharmacists routinely omitted important usage information provided by the prescriber, including the maximum daily dosage and instructions that the medication should only be taken "as needed."

We did not disallow these 39 claims because the dispensing labels did not directly conflict with the primary directions for use on the prescriptions. Nonetheless, we brought these claims to the Department's attention because of the potential risk that such faulty or flawed instructions posed to the patients' health and safety. In addition, the high number of incorrect labeling that we identified at Joia strongly suggests systemic weakness of pharmacy controls and vulnerability to misuse and abuse (e.g., medications not actually being dispensed).

Prescriber ID Conflict

For two Joia claims in our statistical sample, the prescriber ID numbers on the prescription forms did not match the prescriber ID numbers entered on the claims. Since we already identified other reasons for which we made disallowances related to these claims, we reported this issue under Other Matters That Warrant Attention. Nonetheless, Joia officials should have ensured that the prescriber ID numbers were correct on the claims.

Practices Involving Joia and the Doctor That Warrant Further Review

Physician Prescribing Activity

Our analysis of the 50,060 pharmacy claims, totaling more than $7.7 million, that the Department paid to Joia during the five-year period ended December 31, 2012 revealed an inordinate number stemming from one provider: the Doctor, who was listed as the prescriber on 31,351 (63 percent) of the claims. Further analysis of these claims identified the following:

- 671 instances where the Doctor ordered 10 or more prescriptions for a recipient on a single given date. (***Note:*** About 40 percent of the Doctor's patients who filled prescriptions at Joia received 10 or more prescriptions on a single given date at least once during the audit period.)
- 210 instances where recipients received 16 to 31 prescriptions on a single given date.
- One recipient who received over 400 prescriptions during the audit period (818 claims totaling $120,273). On eight different days, the Doctor ordered 25 or more prescriptions for this patient, as detailed in Table 2.

Table 2 – Single Date, High Volume Prescriptions Ordered by the Doctor for One Patient for the Period January 2008–December 2012

Order Date	Number of Prescriptions
03/10/2009	25
12/15/2009	31
04/05/2010	27
07/27/2010	30
09/28/2010	30
11/23/2010	26
04/12/2011	26
08/09/2011	28

Conflicting Medications

Given the risk associated with drug interaction, we reviewed eMedNY pharmacy drug utilization data to identify instances of drug conflicts among the medications prescribed by the Doctor and dispensed, and claimed, by Joia. We found about 8 percent of the claims for prescriptions ordered by the Doctor and dispensed by Joia (2,573 of 31,351 claims) involved therapeutic duplications or drug interactions indicating the prescribed drugs could conflict with each other. For these claims, Joia pharmacists overrode the conflicts and dispensed the prescribed drugs. Given that the prescriptions for Medicaid recipients associated with these types of overrides for all other pharmacies (where the Doctor was the prescriber) averaged only 4.7 percent of claims, the prescribing practices of the Doctor and the dispensing practices at Joia warrant further review.

Additionally, we found instances where the Doctor prescribed a medication for a patient despite his own notation in the patient's records that indicated, on the contrary, that the medication should not be taken. For example, in one patient's treatment notes, the Doctor wrote that the patient should discontinue an anti-inflammatory gel. However, we found a Joia pharmacy claim for an anti-inflammatory gel that the Doctor prescribed for that patient on the same day he made the notation. The Department paid Joia $436 for this claim. In another instance, the Doctor prescribed a nonsteroidal anti-inflammatory drug (NSAID) for a patient with severe gastroesophageal reflux disease, despite his notation in the patient's treatment notes advising the patient not to take NSAIDs (NSAIDs can increase the risk of serious gastrointestinal adverse events, including

bleeding, ulceration, and perforation of the stomach or intestines). The Department paid Joia $225 for this claim.

Medication for Migraine Headaches and Hepatitis

Drugs used for the acute treatment of migraine headaches such as Maxalt and Imitrex (or a generic equivalent) have strict maximum dose requirements. For instance, the manufacturer's instructions for Maxalt state that the maximum daily dose should not exceed 30 mg in any 24-hour period and that the safety of treating, on average, more than four headaches in a 30-day period has not been established. Consequently, many third-party drug coverage plans set limitations for these medications (e.g., 12 Maxalt 10-mg tablets per 30 days based on a maximum of 30 mg/day to treat a maximum of four migraines [i.e., up to three 10-mg tablets per migraine episode]). To ensure appropriate utilization, the Department set quantity and frequency limits for these types of medications: 18 intranasal or oral dosage units per month, or the equivalent of nine days at the recommended dose, as appropriate. This limit was based on Food and Drug Administration-approved labeling for indications, dosing, and administration, as well as European Federation of Neurological Societies guidelines.

We found that of the 40 claims in our statistical sample (of 270 claims) that were for Maxalt or Imitrex (or a generic equivalent), 34 (85 percent) were for prescriptions for 30 tablets or more with a day supply of 30 days or less, far exceeding the Department's quantity and frequency limits. Although the Department set these limits after the prescriptions were filled, applicable drug manufacturers and health care organizations issued similar guidance before the fill dates. Furthermore, many of these prescriptions were refilled on a consistent basis.

For example, on behalf of one recipient, Joia billed Medicaid for 13 claims, totaling 390 tablets of Maxalt MLT 10 mg, within a 328-day period, for which the Department paid $8,637 – and the Doctor was the prescriber of the entire supply. Again, the prescribing practices of the Doctor warrant further review, as Maxalt should only be taken after a clear diagnosis of a migraine headache and only symptomatically rather than as preventive care. Moreover, according to the manufacturer's prescribing information, use of acute migraine drugs for ten or more days per month may lead to an exacerbation of headaches, referred to as "medication overuse headache." Medication overuse headache may present as migraine-like daily headaches, or as a marked increase in the frequency of migraine attacks. Further, overdosage may cause adverse cardiovascuclar reactions. During our audit period, the Department paid Joia over $20 for each Maxalt tablet. Based on the Medicaid frequency limits noted previously, this recipient would have been limited to 197 tablets, or 193 fewer than what Joia billed – a Medicaid savings of $4,279.

We also found that Joia's claims included a high volume of drugs ordered by the Doctor to treat hepatitis. For the five-year period ended December 31, 2012, the Department paid more than $2.9 million for 3,759 claims for hepatitis drugs that the Doctor prescribed, with claims for certain patients exceeding $2,000 per month.

While these claims for migraine and hepatitis drugs are a concern because of the excessive costs to Medicaid, we also note the Doctor, who prescribed such a high volume of these drugs, is not a neurologist, pain specialist, or infectious disease or gastroenterology specialist.

The Doctor indicated he is prescribing in the best interests of his patients and that when prescribing, he evaluates whether the benefits of certain medications outweigh the risks. The Doctor also acknowledged that sometimes errors are made. For instance, when we asked him why he prescribed a long-acting insulin to be injected three times a day, he indicated that it was an error and questioned why pharmacy staff did not call him for clarification.

The Doctor's More Current Prescribing Activity

Because our fieldwork was temporarily suspended to avoid interfering with a review by other external oversight authorities, we subsequently provided the Department with the Doctor's more current prescribing activities.

An analysis of all pharmacy claims paid during the 3.5-year period from January 1, 2013 through June 30, 2016 shows that the Doctor was listed as the prescribing physician on 215,175 claims totaling $8,145,250 and was listed as the billing provider on an additional 93,973 claims totaling $2,717,975. Further analysis of these claims identified the following:

- 2,812 instances where the Doctor ordered 10 or more prescriptions for a recipient on a single given date. (***Note:*** About 25 percent of the Doctor's patients received 10 or more prescriptions on a single given date at least once during the 3.5-year period.)
- 633 instances where recipients received 16 to 33 prescriptions on a single given date.
- One recipient who received over 400 prescriptions during this period (928 claims totaling $28,281). On six different days, the Doctor ordered 24 or more prescriptions for this patient, as detailed in Table 3.

Table 3 – Single Date, High Volume Prescriptions Ordered by the Doctor for One Patient for the Period January 2013–June 2016

Order Date	Number of Prescriptions
6/23/2013	24
3/24/2015	25
6/21/2015	26
9/20/2015	26
3/24/2016	25
6/23/2016	24

Also, the Doctor continued to prescribe drugs used for the acute treatment of migraine headaches, such as generic equivalents of Maxalt and Imitrex, and for hepatitis. For the 3.5-year period ended June 30, 2016, the Doctor was listed as the prescribing physician on:

- 913 claims for acute treatment migraine drugs totaling $11,207.
- 2,793 claims for hepatitis drugs totaling $2,539,988, with claims for certain patients exceeding $1,000 per month.

Recommendations

1. Review the Medicaid payments made to Joia and recover any improper payments, as warranted.

2. Formally review and assess the factors that led to Joia's submission of the improper claims. Take actions, as warranted, to remediate any improper policies and practices that are identified. Such a review should include determining whether the pharmacy – under the new ownership – and its employees have corrected any such deficiencies.

3. Follow up on all other matters identified in this report, including having a Department physician review the issues involving the Doctor, and take appropriate action, as warranted.

4. Assess the appropriateness of the providers' (pharmacists and physicians) future participation in the Medicaid program. This assessment should also address the propriety of referring any of the providers to SED's Office of the Professions.

Audit Scope, Objective, and Methodology

The objective of our audit was to determine whether Medicaid made proper payments to Joia and the Doctor in compliance with applicable Medicaid laws and regulations, and the rules and policies set forth by the Department and SED. Our audit covered the period January 1, 2008 through December 31, 2012. ***Note:*** During the course of the audit, the audit fieldwork was temporarily suspended to avoid interfering with a review by other external oversight authorities of some of the matters addressed in this report. Subsequent to that review, we provided the Department with updated audit findings pertaining to matters addressing the Doctor's prescribing activity for the period January 1, 2013 through June 30, 2016.

To accomplish our objective and assess the relevant internal controls, we reviewed relevant Medicaid laws, rules, regulations, and policies pertaining to the reimbursement of pharmacy claims. We interviewed Joia staff as well as officials from the Department and the Office of the Medicaid Inspector General (OMIG). From the population of claim payments, we selected a random statistical sample of 270 claims for prescriptions totaling $138,158 for 125 recipients. For the 270 claims, we analyzed eMedNY data and examined documentation maintained by Joia. We projected the amount of overpayments by applying results from the random sample to the overall population, using statistically valid methods and a 95 percent single-sided confidence level. We also performed various other tests, including comparing the dates of all claim payments to Joia during our audit period with recipient dates of death from eMedNY.

We conducted our performance audit in accordance with 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 objective. 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 to certain boards, commissions, and public authorities, some of whom have minority voting rights. 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 the report. In their response, Department officials noted that the OMIG has an ongoing investigation of the provider. Further, officials indicated the actions the Department will take to address the audit's recommendations, pending the results of the OMIG's investigation.

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 recommendations were not implemented, the reasons why.

Contributors to This Report

Andrea Inman, Audit Director
Dennis Buckley, Audit Manager
Salvatore D'Amato, Audit Supervisor
Kamal Elsayed, Examiner-in-Charge
Joseph Gillooly, Examiner-in-Charge
Mostafa Kamal, Examiner-in-Charge
Preeti Grover, Student Assistant
Mary McCoy, Senior Editor

Division of State Government Accountability

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

Tina Kim, Deputy Comptroller
518-473-3596, tkim@osc.state.ny.us

Brian Mason, Assistant Comptroller
518-473-0334, bmason@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.

Notes to Table 1

The Department may impose fiscal sanctions, including payment denials and restitution, against persons who engage in unacceptable practices. An unacceptable practice is conduct by a person which conflicts with any of the policies, standards or procedures set forth in the rules and regulations of the Department or any other State or federal statute or regulation which relates to quality of care, services and supplies or the fiscal integrity of the Medicaid Program. The following Notes refer to the applicable laws, rules, regulations, and policies used to develop our recommended disallowances. We summarized the applicable sections to explain the basis for each disallowance.

Medicaid Policy Guidelines

A. Quantities for prescription drugs shall be dispensed in the amount prescribed, taking into consideration drugs should be ordered in a quantity consistent with the health needs of the Medicaid beneficiary and sound medical practice.
B. All prescriptions and fiscal orders must bear the date on which it was written, quantity of the drug prescribed, and signature of the prescriber who has written or initiated the prescription or fiscal order.
C. No prescription or fiscal order for a drug or supply may be refilled 180 days after it has been initiated by the prescriber.

Article 137 of the New York State Education Law

D. Section 6810(1) - No drug for which a prescription is required by the provisions of the Federal Food, Drug, and Cosmetic Act or by the commissioner of health shall be distributed or dispensed to any person except upon a prescription written by a person legally authorized to issue such prescription.
E. Section 6810(1) - No drug for which a prescription is required shall be dispensed without affixing to the immediate container in which the drug is sold or dispensed a label bearing the directions for the use of the drug by the patient as given upon the prescription.
F. Section 6810(2)(a) - A prescription may not be refilled more times than allowed on the prescription.

Title 18 of the New York Codes, Rules and Regulations

G. Section 504.3(f) - The provider agrees to submit claims on officially authorized claim forms in the manner specified by the Department in conformance with the standards and procedures for claims submission.
H. Section 504.3(h) - The provider agrees that the information provided in relation to any claim for payment shall be true, accurate and complete.
I. Section 505.3(b)(5) - For telephone orders, the pharmacy must record the time of the call and the initials of the person taking the call and the dispenser, prior to dispensing the drug.

J. Section 505.3(c) - A pharmacy must keep on file the signed written order of the practitioner for audit by the Department or other authorized agency, for six years from the date of payment for any drug dispensed.
K. Section 505.3(d)(2) - No written order for drugs may be refilled more than six months after the date of issuance.

Rules of the SED Board of Regents

L. Section 29.7(a)(1) - Unprofessional conduct includes dispensing a written prescription which does not bear the strength and quantity of the drug prescribed, the date on which it was written, and the signature of the prescriber.
M. Section 29.7(a)(1) - Unprofessional conduct includes using or substituting, without authorization, one or more drugs in the place of the drug or drugs specified in a prescription.

Agency Comments

NEW YORK STATE OF OPPORTUNITY. | 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 17, 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 Draft Audit Report 2013-S-4 entitled, "Medicaid Payments for Pharmacy Claims – Joia Pharmacy and a Related Prescriber."

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

Empire State Plaza, Corning Tower, Albany, NY 12237 | health.ny.gov

Department of Health
Comments on the
Office of the State Comptroller's
Draft Audit Report 2013-S-4 entitled, Medicaid Payments for Pharmacy Claims – Joia Pharmacy and a Related Prescriber

The following are the Department of Health's (Department) comments in response to the Office of the State Comptroller's (OSC) Draft Audit Report 2013-S-4 entitled, "Medicaid Payments for Pharmacy Claims – Joia Pharmacy and a Related Prescriber."

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

Review the Medicaid payments made to Joia and recover any improper payments, as warranted.

Recommendation #2

Formally review and assess the factors that led to Joia's submission of the improper claims. Take actions, as warranted, to remediate any improper policies and practices that are identified. Such a review should include determining whether the pharmacy – under the new ownership – and its employees have corrected any such deficiencies.

Recommendation #3

Follow up on all other matters identified in this report, including having a Department physician review the issues involving the Doctor, and take appropriate action, as warranted.

Recommendation #4

Assess the appropriateness of the providers' (pharmacists and physicians) future participation in the Medicaid program. This assessment should also address the propriety of referring any of the providers to SED's Office of the Professions.

Response to Recommendations #1 through #4

OMIG's investigation of this provider is ongoing. If OMIG determines Medicaid made inappropriate payments to the providers, actions will be taken to recover those payments. If the investigation reveals that the providers' actions warrant sanctions, OMIG will take appropriate action against the providers. Pharmacy law governs omitting to label drugs, or labeling them

wrongly & adulterating, misbranding & substituting. These types of edits cannot be systematically enforced as defined in Article 137 of the New York State Education Law. Medicaid has claims edits and prior authorization processes that promote high quality pharmacy services in conformance with professional standards. However, some of the deficiencies identified by OSC cannot be identified or prevented by Medicaid claim edits.