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

July 16, 2018

Mr. Stephen Goss
Audit Director
New York State Office of the State Comptroller
110 State Street, 11th Floor
Albany, New York 12236

Dear Mr. Goss:

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 2016-S-63 entitled, "Medicaid Program - Inappropriate Payments Related to Procedure Modifiers."

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

Sincerely,

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

Enclosure

cc: Estibaliz Alonso

Department of Health
Comments on the
Office of the State Comptroller's
Final Audit Report 2016-S-63 entitled, Medicaid Program - Inappropriate Payments Related to Procedure Modifiers

The following are the Department of Health's (Department) comments in response to the Office of the State Comptroller's (OSC) Final Audit Report 2016-S-63 entitled, "Medicaid Program - Inappropriate Payments Related to Procedure Modifiers."

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 $2.6 million in inappropriate payments made to providers for E/M services and recover overpayments, as appropriate.

Response #1

OMIG reviewed the identified payments, and will determine an appropriate course of action.

Recommendation #2:

Formally advise providers that received inappropriate payments to report accurate claim information when billing Medicaid for E/M services during global surgery periods to ensure claims are paid appropriately.

Response #2:

In the preliminary, the Department stated it would publish a Medicaid Update to remind providers of "global days" and/or "follow-up days" billing requirements and the need to accurately report the appropriate modifiers when billing for Evaluation and Management services and surgical procedures that are provided as separate and distinct services. This update was published in the January 2018 Medicaid Update as follows:

"This is a reminder to providers of fee-for-service (FFS) Medicaid payment rules for global surgery periods, also known as follow-up days or post-operative periods. New York State Medicaid follows

Medicare rules on billing and payment during global surgery periods. Medicare's March 2015 guidance on global surgery periods is available on the Centers for Medicare and Medicaid Services website here: https://www.cms.gov/Outreach-and-Education/Medicare-Learning-Network-MLN/MLNProducts/downloads/GloballSurgery-ICN907166.pdf.

Global surgery includes all necessary services normally furnished by a surgeon before, during, and after a procedure. New York State Medicaid payment for the surgical procedure includes the pre-operative, intra-operative, and post-operative services normally performed by the practitioner. Global surgery days, or follow-up days, are identified on each practitioner's fee schedule. For procedures with 10- and 90-day follow-up periods, all routine services related to the surgery are included in payment for the procedure. There may be instances when evaluation and management services, unrelated to the original procedure, may occur during the post-operative period. ***In these instances, providers may select the appropriate modifier to include on the claim; however, this should not be routine practice.***

Minor procedures and endoscopies may not have a follow-up period (indicated by a "0" in the follow-up days column on the practitioner fee schedule). When the evaluation and management service that leads to the decision to provide the minor procedure occurs on the same day as the procedure, providers should bill Medicaid only for the procedure. There may be instances when the patient's condition requires a significant, separately identifiable evaluation and management service, above and beyond the usual care. ***In these instances, providers may select the appropriate modifier to include on the claim; however, this should not be routine practice****.*

For questions related to Medicaid FFS policy, please contact the Office of Health Insurance Programs, Division of Operations and Systems at (518) 474–8161. Billing questions for individuals enrolled in Medicaid managed care plans should be directed to the individual enrollee's Medicaid managed care plan."