



Department of Health

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Governor

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

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

February 5, 2020

Mr. Kenneth Shulman
Assistant Comptroller
New York State 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 2016-S-73 entitled, "Medicaid Program – Overpayments for Therapy Services and Prescription Drugs Covered by Medicare."

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-73 entitled, "Medicaid Program – Overpayments for Therapy Services and Prescription Drugs Covered by Medicare"

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-73 entitled, "Medicaid Program – Overpayments for Therapy Services and Prescription Drugs Covered by Medicare."

Recommendation #1:

Using a risk-based approach, assess the \$20.1 million in claims paid to providers for Medicare-covered services to dual-eligibles and recover overpayments, as appropriate. Ensure prompt attention is paid to those providers who received the largest dollar amounts of payments, and recover the \$3,584 in overpayments we identified from our sample of therapy services.

Response #1:

OSC identified claims from 2012 and 2013 for more than \$7.9 million, which the Office of the Medicaid Inspector General (OMIG) is unable to audit and pursue recovery of, due to the age of the claims. However, OMIG's contractor will review the remaining identified overpayments and pursue recovery of any payment determined to be inappropriate, with an initial focus on those providers who received the largest dollar amounts of payments.

Recommendation #2:

Formally remind providers to comply with all Medicaid and Medicare billing rules, including:

- Recording the NPI of the clinician who rendered services as the attending provider on Medicaid claims;
- Properly using the "GY" modifier code; and
- Billing Medicare prior to Medicaid for services on behalf of dual-eligibles.

Response #2:

The Department will issue a Medicaid Update article to remind all providers to comply with all Medicaid and Medicare billing rules, including accurately reporting the NPI of the clinician who rendered services as the attending provider on Medicaid claims, to accurately use the "GY" modifier code, and when Medicare is present the provider must bill Medicare prior to Medicaid for services on behalf of dual-eligible.

Recommendation #3:

Develop and implement controls to identify and prevent Medicaid overpayments on behalf of dual-eligibles for the types of therapy services and prescription drug claims included in the audit.

Response #3:

The Department asserts that controls are already in place to prevent Medicaid overpayments on behalf of dual-eligibles for the types of therapy services and prescription drug claims included in this audit. The majority of overpayments (\$1.3 million of the \$1.5 million) were due to the

inherent lag factor in updating coverage information in the point-of-sale claims processing system.

OSC Comment to Response #3:

The audit identified \$20.1 million in improper payments for therapy services and prescription drug claims, yet the Department's official response is that "controls are already in place" to prevent these types of overpayments. The \$1.5 million that the Department references as "the majority of overpayments" relates only to the prescription drug claims included in the audit. Another \$18.6 million for therapy services was also identified (over 92 percent of the total \$20.1 million). We strongly urge the Department to put controls in place to stop Medicaid overpayments on behalf of dual-eligibles for the types of claims identified by this audit.

Response to OSC Comment:

The Department has taken OSC's comment into consideration and has requested an eMedNY System Project (6637) to further limit the risk of Medicaid overpayments on behalf of dual-eligibles for the types of claims identified by this audit. While the majority of dual-eligible therapy claims are paid appropriately, the Department will continue working to identify opportunities to ensure all Medicaid payments for dual-eligibles are processed appropriately.