



**Department  
of Health**

**ANDREW M. CUOMO**  
Governor

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

**LISA J. PINO, M.A., J.D.**  
Executive Deputy Commissioner

December 29, 2020

Ms. Andrea Inman, Audit Director  
Office of the State Comptroller  
Division of State Government Accountability  
110 State Street – 11<sup>th</sup> Floor  
Albany, NY 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, 2020-F-9 entitled, "Improper Medicaid Payments for Recipients Diagnosed with Severe Malnutrition."

Thank you for the opportunity to comment.

Sincerely,

Lisa J. Pino, M.A., J.D.  
Executive Deputy Commissioner

Enclosure

cc: Diane Christensen  
Jonah Bruno  
Jill Montag  
Theresa Egan  
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**Department of Health Comments on the  
Office of the State Comptroller's  
Follow-Up Audit Report 2020-F-9 entitled, "Improper Medicaid  
Payments for Recipients Diagnosed with Severe Malnutrition"  
(Report 2017-S-85)**

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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 2020-F-9 entitled, "Improper Medicaid Payments for Recipients Diagnosed with Severe Malnutrition."

**Recommendation #1:**

Review the \$411,699 (\$416,237 - \$4,538) in overpayments and make recoveries, as appropriate.

Status – Not Implemented

Agency Action - OMIG investigates and recovers improper Medicaid payments on behalf of the Department. From the issuance of the audit report on April 8, 2019 to the Executive's Declaration of a Disaster in the State of New York on March 7, 2020, OMIG vetted the claims that our audit identified, but did not yet take action to review the overpayments and make recoveries. Since then, according to OMIG officials, "due to the COVID-19 pandemic, OMIG has not yet requested the medical documentation from these hospitals, as it would impose an additional burden on those providers."

**Response #1:**

The Office of the Medicaid Inspector General (OMIG) has requested documentation from the medical providers and commenced processes internally to begin its audits and pursue recovery of payments determined to be inappropriate. OMIG will work with providers to address these audit findings while recouping inappropriate payments. Pursuant to 18 NYCRR Part 519, any identified overpayments OMIG pursues for recovery are subject to the provider's right to due process.

**Recommendation #2:**

Formally remind all hospitals to:

- Ensure clinical assessments for severe malnutrition meet existing standards of professional practice;
- Only bill for severe malnutrition that meets accurate clinical assessments and Medicaid billing rules; and
- Properly document severe malnutrition in a patient's medical record.

Status – Implemented

Agency Action - In the May 2019 edition of the *Medicaid Update* (the Department's official publication for Medicaid providers), providers were reminded to make certain that the level of malnutrition – e.g., mild, moderate, or severe – is accurately reflected in the "ICD-10" diagnosis code reported on the inpatient claim; the medical record includes a proper clinical assessment that supports the member's diagnosis; and proper documentation of a diagnosis of malnutrition and level of malnutrition is included in the patient's medical record and is subject to audit.

**Response #2:**

The Department confirms agreement with this report.