Department of Health

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Acting Executive Deputy Commissioner

February 14, 2022

Andrea Inman
Audit Director
Division of State Government Accountability
NYS Office of the State Comptroller
110 State Street, 11th Floor
Albany, New York 12236

Dear Ms. Inman:

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 2019-S-2 entitled, "Medicaid Program: Improper Medicaid Payments for Claims Not in Compliance with Ordering, Prescribing, Referring and Attending (OPRA)."

If you have additional questions, please feel free to contact Sam Miller, Associate Commissioner, Office of Governmental and External Affairs, at (518) 473-1124.

Sincerely,

Kristin M. Proud
Acting Executive Deputy Commissioner

Enclosure

cc: Sam Miller

Department of Health Comments on the Final Audit Report OSC 2019-S-2 entitled, "Improper Medicaid Payments for Claims Not in Compliance with Ordering, Prescribing, Referring, and Attending Requirements" by the Office of the State Comptroller

The following are the responses from the New York State Department of Health (the Department) Final Audit Report 2019-S-2 entitled, "Improper Medicaid Payments for Claims Not in Compliance With Ordering, Prescribing, Referring, and Attending (OPRA) Requirements" by the Office of the State Comptroller (OSC).

Recommendation #1:

Review the $1,483,787,367 in payments to providers for Medicaid claims that did not meet federal and State OPRA regulations, and determine an appropriate course of action, including determining if any recoveries should be made.

Response #1:

Given that OSC's audit and the associated recommendations relate to different types of Medicaid-covered services that are subject to OPRA rules, including those services that are subject to oversight by different parts of the Department or other State agencies, such as the Office of Mental Health (OMH) and the Office of Addiction Services and Supports (OASAS), the Department's response is organized by service type. Depending on the services to which OSC's audit findings and recommendations apply, the pertinent responses may differ to reflect unique program and operating requirements for each service type.

- Early Intervention Services
    - Claims with Missing Attending National Provider Identifiers (NPIs)

    The Department disagrees with OSC's categorization that many Medicaid claims for Early Intervention (EI) services were not in compliance with OPRA requirements, as OSC's findings fail to account for the nuances and requirements of how EI services are rendered and billed. As OSC is aware, and consistent with the State Plan Amendments (SPA) (last updated in 2018 (18-0039)) approved by the Centers for Medicare & Medicaid Services (CMS) that authorize Medicaid reimbursement for EI services, only a limited subset of EI services require a written order by a licensed practitioner (physician (MD), physician assistant (PA), nurse practitioner (NP)), including Occupational Therapy (OT), Physical Therapy (PT), Speech Therapy (ST)[1], Nursing, and Nutrition). Other EI services do not require a written order, including Special Instruction, Group Development, Screening and Evaluation, Social Work, and Family Training. Accordingly, it is common for claims for EI services to not have a traditional attending provider. To ensure compliance with OPRA rules in light of these programmatic rules, the Department issued guidance to EI providers dating back to 2015 that instructs providers to include an appropriate NPI for the referring providers for each service. This guidance noted the following:

[1] ST services may also be ordered by the Speech Language Pathologist (SLP).

State Comptroller's Comment – The Department's statement that our findings failed to account for the nuances and requirements of how EI services are rendered and billed is incorrect. Our audit accounted for the program rules that the Department references, and the audit's conclusions are based on laws and regulations, Department-issued guidance, meetings and communications with Department personnel, and a review of claim data from the Medicaid Data Warehouse (MDW) as well as Department-provided data from the New York Early Intervention System (NYEIS).

EARLY INTERVENTION SERVICE METHOD TYPE	REFERRING PROVIDER NPI **Provider must be enrolled in Medicaid when submitting to Medicaid for payment.**
Service Coordination Core Evaluations Supplemental Evaluations	Physician NPI, OR Nurse Practitioner NPI, OR Physician Assistant NPI, OR Institutional Medicaid provider NPI (Agency or Individual)
Licensed Professional Services- Speech Language Pathology (SLP)	SLP provider NPI, OR Physician NPI, OR Nurse Practitioner NPI, OR Physician Assistant NPI
Licensed Professional Services- All other services (Physical Therapy, Occupational Therapy, Nursing)	Physician NPI, OR Nurse Practitioner NPI, OR Physician Assistant NPI
All other EI services (e.g. Special Instruction)	Institutional Medicaid provider NPI (Agency or Individual), OR Physician NPI, OR Nurse Practitioner NPI, OR Physician Assistant NPI

Based on this guidance, it is often necessary to use institutional NPIs for these services. While institutional NPIs are used, OSC failed to recognize that the Department, and its Bureau of Early Intervention's Provider Approval Unit, reviews all provider applications for the specific providers that render services, including services rendered by providers who have not been traditionally enrolled in the Medicaid program. This review includes screening against the Office of Children and Family Services (OCFS) State Central Register of Child Abuse and Maltreatment, Justice Center Criminal Background Exclusion List, NYS Sex Offender Registry, NYS Department of Corrections, Medicaid exclusion lists, and verifying current registration, licensure, or certification as applicable. This screening, validation and approval process mirrors what would occur in eMedNY if the provider were enrolled in eMedNY and their NPI submitted on EI claims.

State Comptroller's Comment – The Department's statement that we failed to recognize that provider applications are reviewed is incorrect. Further, regardless of whether the Department has a process for screening and approving providers, our audit found that substantial amounts of EI service claims were processed and paid where the attending NPIs (which weren't in the eMedNY system for claims processing, but rather were only in NYEIS) were not in compliance with laws and regulations. For example, Table 1 on page 11 of the audit report pertaining to attending NPIs shows nearly $230 million where the attending NPIs were not on Bureau of Early Intervention-approved files during our audit. Accordingly, based on the audit findings, the

Department can't be assured of the validity or qualifications of all attending providers.

The OSC report does not acknowledge that the Early Intervention Program achieves substantive compliance with OPRA rules, as it is able to identify who is furnishing services to a child through its data systems and to ensure that the provider is appropriately screened before services are provided, and periodically thereafter.

- Claims with No Referring NPI or a Non-Enrolled Referring NPI

With respect to EI claims identified by OSC without an attending provider's NPI, the attending provider is the provider furnishing the service (rendering provider) who has oversight of the child's plan of care. The New York Early Intervention System (NYEIS) has edits in place to ensure that the attending provider is currently registered, licensed or certified, as in the case of special education teachers, and qualified to provide the service. The attending provider is not always required to be enrolled in Medicaid where such provider is an employee or a subcontractor of an enrolled billing agency.

The applicable SPA and associated state rules do not require EI providers to be enrolled with Medicaid to furnish services or to be affiliated with the EI billing agency. Additionally, certain services such as Special Instruction, Group Developmental, and Evaluations may be provided by providers who are not categorically enrollable as Medicaid providers. Of the more than $1.2 billion in claims identified by OSC as potentially not meeting OPRA requirements, the Department notes the following:

- Approximately $583M consist of Special Instruction, Group Developmental Intervention, and Evaluations that may be provided by non-enrollable approved EI providers;
- Approximately $335M consist of Speech Therapy provided by Speech Language Pathologists (SLPs) that are not required to be enrolled in Medicaid; and
- Approximately $300M consist of OT and PT services rendered by providers who are not required to be enrolled in Medicaid.

State Comptroller's Comment – The Department's response is misleading and does not address the audit's findings. The audit findings for EI services fall into two categories: (1) claims with missing attending NPIs totaling over $1.2 billion and (2) claims with either no referring NPI or a non-enrolled referring NPI totaling over $464 million. We found eMedNY processed and paid claims that did not contain required attending or referring practitioner NPIs because NYEIS either did not transmit attending NPIs to eMedNY or did not require a proper referring NPI. Further, the Department relied on eMedNY to validate referring NPIs, which it could not do due to edit control overrides.

Despite the Department's assurances regarding control over attending professionals providing EI services, if an attending practitioner is not required to be enrolled in Medicaid, the attending practitioner must be affiliated with the servicing entity. However, despite this requirement, an example in Table 1 on page 11 of the audit report shows over $595 million where the attending practitioner had no active Medicaid enrollment and was not reported as a facility provider. We also found over $27 million in claims where the attending NPI belonged to a facility (not a person). Lastly, when reviewing the referring provider field for EI claims, we took the Department's guidance into consideration, and our referring finding population does not include claims where the NPI of an enrolled institutional provider was in the referring field.

With the difficult application of OPRA rules to EI services in mind, the Department is collaborating with the Office of the Medicaid Inspector General (OMIG) on the development of a comprehensive strategy, including guidance and possible corrective actions for the EI claims identified by OSC, to identify and make appropriate recoveries where services delivered by EI providers were not ordered, referred, or provided by eligible OPRA practitioners on the date of service, to the extent applicable. Pursuant to State regulations, any identified overpayments OMIG pursues for recovery are subject to the provider's right to due process.

State Comptroller's Comment – We are pleased the Department and stakeholder agencies are taking corrective steps to address the audit findings pertaining to over $1.26 billion in EI claims.

- Behavioral Health Services

The Department has established an internal workgroup to support DOH executive leadership and staffed by subject matter experts dedicated to assisting all interagency policy owners – including but not limited to various DOH divisions, OMH, OASAS, OPWDD, and OCFS – with their holistic review of all eMedNY edits associated with OPRA, including edits which validate that the provider was enrolled in the Medicaid program and was affiliated with the billing institution on the date of service. Additionally, the workgroup is examining all edits to ensure compliance with federal OPRA and HIPAA X.12 reporting requirements. This ongoing review is anticipated to result in phased modifications to eMedNY as determined by executive leadership as necessary and appropriate. This holistic agile-based mitigation endeavor, otherwise known as Evolution Project 7008 entitled "*Interagency OPRA Remediation Initiative*," remains a significant and resource-intensive undertaking for all involved agencies and is expected to remain so throughout the course of the project's lifecycle.

OMIG will identify and make appropriate recoveries where services delivered by outpatient programs licensed/certified by OMH and OASAS were not ordered, referred, or provided by eligible OPRA practitioners on the date of service, when required. Pursuant to State regulations, any identified overpayments OMIG pursues for recovery are subject to the provider's right to due process.

State Comptroller's Comment – We are pleased the Department and stakeholder agencies are taking corrective steps to address the audit findings pertaining to over $208 million in behavioral health claims.

- The School Supportive Health Services Program (SSHSP) Claims

The Department disagrees with OSC's findings related to the SSHSP psychological evaluation and counseling service claims. Similar to EI services, the referring provider for psychological evaluations and counseling services is not required to be Medicaid enrolled under federally approved Medicaid reimbursement rules. State regulations, as codified in 18 NYCRR § 505.18 and based on CMS-approved SPAs, permit non-licensed ordering professionals to provide these services.

In response to the OSC audit, the Department identified 32,669 claims totaling $1,218,450 for psychological evaluations and counseling services that contained the NPI of non-enrolled

Medicaid providers in the referring field. For example, the Department identified 653 claims for psychotherapy services totaling $27,801 that included the NPI of an unenrolled licensed Speech Language Pathologist (SLP) as the referring provider. Consistent with federal approvals, the Department has authority to permit payment of Medicaid claims for psychological services that are recommended by an unlicensed person, such that these claims are not required to contain an enrolled provider NPI.

State Comptroller's Comment – The Department's statements are false. The audit findings took all of the rules into account, and the $1,218,450 in claims were not in compliance with requirements. As stated in our report on page 15, the Department's own guidance requires claims for services ordered by a non-licensed professional be submitted with the enrolled billing provider's NPI in the referring field. The claims totaling $1,218,450 did not contain an NPI of an enrolled Medicaid provider in the referring field as required by the Department.

The Department further stated it identified the claims totaling $1,218,450; however, this too is false. The Department did not identify these claims in response to our audit; these claims were identified by our audit during the course of our fieldwork, as referenced on page 15 of our report. The Department portrayed our work as their own in this manner in its initial response to our preliminary audit report and, at that time, the Department issued a subsequent response that removed this language.

With the difficult application of OPRA rules to SSHSP services in mind, the Department is collaborating with OMIG on the development of a comprehensive strategy, including guidance and possible corrective actions for SSHSP services identified by OSC, to identify and make appropriate recoveries where services delivered by providers were not ordered, referred, or provided by eligible OPRA practitioners on the date of service, to the extent applicable. Pursuant to State regulations, any identified overpayments OMIG pursues for recovery are subject to the provider's right to due process.

State Comptroller's Comment – We are pleased the Department and stakeholder agencies are taking corrective steps to address the audit findings pertaining to over $1.2 million in SSHSP claims.

- Referred Ambulatory and Professional Services Claims

  The Department disagrees with OSC's statement that the rendering provider cannot be the referring provider on an Ordered Ambulatory (OA) claim. When applied to OA services, there are a number of circumstances in which it is appropriate for the rendering provider to also be reported as the referring provider on a claim. The following are frequent examples of OA billing where the services/drugs are carved out of the Ambulatory Provider Group (APG) payment methodology and billed as OA claims and the rendering of the OA services may be the same:

  1. Chemotherapy drugs (Referring provider may also be the attending/servicing provider and administer the drug);
  2. Intrauterine Devices (IUD) (Referring provider may also be the provider who places the IUD, attending servicing on OA claim); and
  3. Botox injections (Referring provider may also be the provider injecting the Botox).

State Comptroller's Comment – The Department's response is misleading because the $1,775,762 for the 62,086 claims we identified did not contain any information in the referring field, as required. Furthermore, the guidance that the Department references pertains to only *certain* practitioner services provided in an ambulatory surgical setting. Many of the services we identified in the 62,086 claims (such as echocardiography, private-duty nursing, radiology, sleep studies, and non-invasive vascular diagnostic studies) require the service to be referred by a provider other than the rendering and billing provider. That was disclosed in the audit report on page 15 where we referenced only certain services.

The Department also misrepresents the findings by referencing what it calls three "frequent examples." Only 11 out of the 62,086 claims were for Botox injections, an IUD, or chemotherapy drugs that did not contain any information in the referring field, as required. The majority of services that made up the $1,775,762 consisted of over $1.1 million for services such as echocardiography, private-duty nursing, radiology, sleep studies, and non-invasive vascular diagnostic studies.

Accordingly, the Department requires further review of the claims flagged for potential recovery to determine whether they were paid appropriately. To that end, the Department is collaborating with OMIG on the development of a comprehensive strategy, including guidance and possible corrective actions for OA claims identified by OSC, to identify and make appropriate recoveries where services delivered by providers were not ordered, referred, or provided by eligible OPRA practitioners on the date of service, to the extent applicable. Pursuant to State regulations, any identified overpayments OMIG pursues for recovery are subject to the provider's right to due process.

State Comptroller's Comment – We are pleased the Department and stakeholder agencies are taking corrective steps to address the audit findings pertaining to over $1.7 million in Referred Ambulatory and Professional Services claims.

- Medicaid Payments for Medicare Crossover Claims

The Department has established an internal workgroup to support DOH executive leadership and staffed by subject matter experts dedicated to assisting all interagency policy owners – including but not limited to various DOH divisions, OMH, OASAS, OPWDD, and OCFS – with their holistic review of all eMedNY edits associated with OPRA, including edits which validate that the provider was enrolled in the Medicaid program and was affiliated with the billing institution on the date of service. Additionally, the workgroup is examining all edits to ensure compliance with federal OPRA and HIPAA X.12 reporting requirements. This ongoing review is anticipated to result in phased modifications to eMedNY as determined by executive leadership as necessary and appropriate. This holistic agile-based mitigation endeavor, otherwise known as Evolution Project 7008 entitled "*Interagency OPRA Remediation Initiative*," remains a significant and resource-intensive undertaking for all involved agencies and is expected to remain so throughout the course of the project's lifecycle.

Recommendation #2:

Improve system controls over clinic and practitioner claims as well as claims submitted through the Medicare crossover system to ensure that these claims are paid in accordance with federal

and State OPRA regulations.

Response #2:

The Department has established an internal workgroup to support DOH executive leadership and staffed by subject matter experts dedicated to assisting all interagency policy owners – including but not limited to various DOH divisions, OMH, OASAS, OPWDD, and OCFS – with their holistic review of all eMedNY edits associated with OPRA, including edits which validate that the provider was enrolled in the Medicaid program and was affiliated with the billing institution on the date of service. Additionally, the workgroup is examining all edits to ensure compliance with federal OPRA and HIPAA X.12 reporting requirements. This ongoing review is anticipated to result in phased modifications to eMedNY as determined by executive leadership as necessary and appropriate. This holistic agile-based mitigation endeavor, otherwise known as Evolution Project 7008 entitled "*Interagency OPRA Remediation Initiative*," remains a significant and resource-intensive undertaking for all involved agencies and is expected to remain so throughout the course of the project's lifecycle.

Recommendation #3:

Improve system controls to prevent issuance of prior approvals for dental services that do not contain an enrolled servicing dentist NPI as required by Department policies.

Response #3:

The Department planned to incorporate business logic into eMedNY to identify and prevent claim payment and prior approval processing for dental services that do not contain the NPI of an enrolled servicing dentist or the NPI of the enrolled dentist responsible for the treatment plan in March 2020. However, this system change request was paused due to the onset of the public health emergency (PHE) and the retasking of staffing resources to emergency response and other critical priorities.

Subsequently, the Department has established an internal workgroup to support DOH executive leadership and staffed by subject matter experts dedicated to assisting all interagency policy owners – including but not limited to various DOH divisions, OMH, OASAS, OPWDD, and OCFS – with their holistic review of all eMedNY edits associated with OPRA, including edits which validate that the provider was enrolled in the Medicaid program and was affiliated with the billing institution on the date of service. Additionally, the workgroup is examining all edits to ensure compliance with federal OPRA and HIPAA X.12 reporting requirements. This ongoing review is anticipated to result in phased modifications to eMedNY as determined by executive leadership as necessary and appropriate. This holistic agile-based mitigation endeavor, otherwise known as Evolution Project 7008 entitled "*Interagency OPRA Remediation Initiative*," remains a significant and resource-intensive undertaking for all involved agencies and is expected to remain so throughout the course of the project's lifecycle.

Substantive and noteworthy remediation progress has been made. To that point, OHIP's internal workgroup has adapted the Unique Identifier (UID) process, previously established by OMIG, to enhance oversight within the home health provider sector, and will apply it to non- enrollable providers and agencies. This mitigation effort, which is similar in nature to a pre- existing Medicaid Redesign Team Initiative known as the "*Unique Identifier for Home Care Workers*," calls for the generation of a UID by the Department for each non-enrollable provider for

appearance on both electronic and physical claims. Non-enrollable providers will be required to apply for a Unique ID within the eMedNY Provider Portal. The Unique ID will mirror a MMIS ID to identify the individual providing services to a Medicaid Member or the Agency coordinating services to the Medicaid population. The Department plans on doing the same level of background checks for the non-enrolled providers obtaining a Unique ID as customarily associated with the traditional enrollment process. This complies with OPRA regulations while concurrently being less burdensome on the affected provider and agency communities. However, the UID approach does place an additional burden and cost upon the Department as it will need to establish a staffed call center to address UID questions and concerns from providers and agencies. The workgroup is currently in the process of developing an external communications plan for the Department to assist providers in their understanding of necessary changes to the enrollment process. Targeted implementation date is scheduled for the 3rd Quarter of 2022.

Recommendation #4:

Formally remind providers to include the NPI of enrolled referring and attending providers on Medicaid claims in accordance with federal and State regulations.

Response #4:

As OSC mentioned in the Draft Audit Report, OMH issued guidance on July 24, 2020 to clarify and restate policies regarding the use of the attending and referring provider field on Medicaid claims. This guidance directed that:

- the referring provider field on the claim requires a Type 1 NPI of a Medicaid-enrolled provider;
- if the attending provider reported on the claim is enrolled in NYS Medicaid, the referring provider field may be left blank and the attending provider will be considered the referring provider in these instances; and
- the attending provider field must be completed with the Type 1 NPI of the clinician who provided the service.

The Department, OMH, and OASAS will issue additional guidance to all providers on completing referring and attending provider fields once all system controls (edits) have been enabled consistent with the Department's response to Recommendation #2.

Recommendation #5:

Review the payments totaling $57,376,791 to pharmacies for Medicaid claims that did not meet federal and State OPRA regulations and determine an appropriate course of action, including determining if any recoveries should be made.

Response #5:

- $17,346,603 in improper payments for 279,137 claims where the prescribing field contained the NPI of a licensed professional, according to the Medicaid Data Warehouse (MDW), but who was not enrolled as a Medicaid provider on the date of service.

The Department implemented enhanced editing in eMedNY on May 26, 2019 to address these

types of claims. The edits reference State Education Department (SED) files to validate that providers are licensed in the State as of the date of service. The claims reviewed by OSC were for the time period between January 1, 2014 through December 31, 2018, before the system edit was in place. This enhanced editing addresses OSC's recommendation, except in a few instances when the provider is out of state and prescribes in emergency circumstances or when the services are provided more readily in another state.

- $9,960,823 in questionable payments for 213,877 claims where the prescribing field appeared to contain the NPI of a student.

The Department does not permit interns, residents, and foreign physicians to enroll as providers in Medicaid because they are unlicensed. However, under State law, Medicaid does allow a student under the supervision of an enrolled provider to write prescriptions for Medicaid members. Additionally, interns, residents, and foreign physicians can prescribe under State law. Given that these pharmacy claims were based on appropriately prescribed drugs, the Department disagrees with OSC's findings.

State Comptroller's Comment – As our report states, it appears these NPIs belonged to students based on our analysis, which identified NPIs for prescribers who obtained a license after the claim date of service. We encourage the Department to review these questionable payments.

- $30,069,366 in questionable payments for 624,468 claims where the prescribing field contained unknown NPIs.

The Department sampled multiple NPIs and found that the vast majority of these providers have multiple taxonomy codes on file with National Plan and Provider Enumeration System (NPPES), which may be why OSC believes these payments are questionable. However, there may be a discrepancy between transmission of the claim and an update to the NPPES system. CMS does not provide the dates on when taxonomy codes are issued.

Based on explanatory guidance from CMS, the Healthcare Provider Taxonomy Codes and code descriptions that health care providers select when applying for NPIs may not be the same as the categorizations used by Medicare and other health plans in their enrollment and credentialing activities. Furthermore, "the Healthcare Provider Taxonomy Code or code description information collected by NPPES is used to help uniquely identify health care providers in order to assign them NPIs, not to ensure that they are credentialed or qualified to render health care."[2] Accordingly, the Department believes that these providers had NPIs on the dates when the claim was submitted; however, the Department intends to explore additional options to validate these NPIs.

State Comptroller's Comment – The Department's reference to multiple taxonomy codes as the reason why we found the payments to be questionable is not correct (in fact, on pages 20 and 21 of the audit report, we reported on the multiple taxonomy codes). We found the payments were questionable because the prescribing NPI was not associated with a license in the MDW and, therefore, Medicaid paid the claims without validating the NPI. Consequently, the claims were processed and paid without knowing if the person was a student, did not have authority to

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[2] https://www.cms.gov/Medicare/Provider-Enrollment-and-Certification/MedicareProviderSupEnroll/Taxonomy.

prescribe, or was licensed in another state and not enrolled. We used data found in NPPES and taxonomy information to evaluate the total unknown NPI population and highlight these risks. Lastly, the Department stated it sampled multiple NPIs. We obtained the Department's sample of five NPIs and found the NPIs further prove our audit conclusions that the Department does not know who students are (the NPIs did not match a license in the MDW/eMedNY when the services were provided). We also found one of the five individuals was licensed in New York in 2019 (after the audit period), but is not enrolled in Medicaid and the NPI associated with the person's license in the MDW/eMedNY belongs to someone else.

Recommendation #6:

Improve system controls to prevent payment of pharmacy claims where the prescribing NPIs are for out-of-state licensed practitioners not enrolled in Medicaid to ensure these claims are paid in accordance with federal and State OPRA regulations.

Response #6:

The Medicaid Provider Enrollment Compendium (MPEC) allows for payment of prescription claims prescribed by out of state licensed physicians or Ordering or, Referring Physicians or Other Professional (ORP) under limited circumstances: "However, for claims representing care or items (including, but not limited to, prescription drugs) provided to a participant pursuant to the order or referral made by an out-of-state ORP, the SMA may pay such claims where the ORP is not enrolled in the reimbursing state's Medicaid plan, in limited circumstances."

Out of state licensed prescribers who are either enrolled in Medicare with an "approved" status or are enrolled in their own state's Medicaid plan, may prescribe in the following circumstances:

- a *single instance* of emergency medical care or order for *one* Medicaid member, or
- multiple instances of care provided to *one* Medicaid member when the services provided are more readily available in another state.

The OSC report does not indicate whether these exceptions were considered. Accordingly, the Department is unable to analyze how many claims were affected by this finding after the Department updated eMedNY edit logic in 2019.

State Comptroller's Comment – Our audit did consider the exception circumstances, as indicated by our example on page 21, where an out-of-state licensed prescriber wrote prescriptions not in accordance with MPEC. We also note that the Department's response does not capture the entirety of the MPEC criteria, in that single or multiple instances of care may not exceed a 180-day period. Lastly, if the Department determined how many claims did not include a prescriber license number in the unknown population, it could analyze and determine how many claims would have been affected after the updated edit logic in 2019.

Recommendation #7:

Improve monitoring over the pharmacy override usage to ensure claims are paid in accordance with federal and State OPRA regulations.

Response #7:

The Department currently has a report that looks at Drug Utilization Review (DUR) conflict override; however, this report does not specifically examine OPRA compliance. Accordingly, the Department will work to develop a report that will isolate the OPRA override, which will assist in monitoring.

Recommendation #8:

Review the 739 NPIs on 226,650 claims totaling $19,387,173 for individuals who, according to regulations, should not be on Medicaid claims or who should be further reviewed by the Department due to past misconduct, and determine if any recoveries should be made.

Response #8:

The Department is collaborating with OMIG on the development of a comprehensive strategy, including guidance and possible corrective actions for claims identified by OSC, to identify and make appropriate recoveries where services delivered by providers were not ordered, referred, or provided by eligible OPRA practitioners on the date of service, to the extent applicable. Pursuant to State regulations, any identified overpayments OMIG pursues for recovery are subject to the provider's right to due process.

Of the $19,387,173, more than $12 million is beyond the six-year lookback restriction for audit and recovery. OMIG is performing data analysis on the remaining OSC-identified overpayments not already adjusted or recovered to ensure the data used by OSC is complete and to confirm the accuracy of the claims detail for use in OMIG audit activities.

Recommendation #9:

Review the 2,891 NPIs associated with active attending practitioner-facility affiliations that were excluded, deactivated, invalid, inappropriately affiliated to a facility, or associated with an incorrect license, and enhance system controls to ensure that non-enrolled attending practitioner-facility affiliations are in accordance with federal and State regulations.

Response #9:

The Department initiated an eMedNY system change to update the association process to include additional validations that will ensure practitioners being associated by a facility are the intended practitioner and the data in eMedNY is current and matches the intended practitioner. Additionally, the Department is developing a provider enrollment portal within eMedNY that will automate the provider enrollment process and enhance the real time data validations and messaging to the applicant. The provider portal will go live in phases, with the first phase, practitioners, anticipated to go live by April 1, 2022. A subsequent release of the portal will include facilities who perform the associations and is tentatively targeted for the first calendar quarter of 2023. Based on a review of sample of the NPIs provided by OSC, the proposed system changes will enhance controls and improve provider compliance for the situations identified.

Recommendation #10:

Formally remind providers to report accurate information during the attending practitioner–facility affiliation process and remind providers of their responsibility to appropriately screen affiliated attending practitioners.

Response #10:

The Department is developing guidance to remind facilities of their responsibility to screen affiliated practitioners appropriately and to enter information accurately when making the affiliation in eMedNY. This language will be communicated directly on the eMedNY "Enter Facilities Practitioners NPI" tool where facilities affiliate, as well as in a forthcoming *Medicaid Update* article.

Recommendation #11:

Enhance data entry and system controls to ensure OMIG-excluded practitioners are properly recorded in eMedNY.

Response #11:

Data entry and system controls currently exist. OMIG has a process in place to confirm that eMedNY is updated accurately, in order to prevent claims from being paid when a provider was excluded. OMIG is currently working with the Department to automate the eMedNY updates of NYS Medicaid excluded entities.

Recommendation #12:

Enhance system controls to identify claims containing an excluded, sanctioned, or otherwise inappropriate NPI in an OPRA field and prevent improper payments

Response #12:

As indicated in response #9, the provider enrollment portal will enable various system controls to further ensure only eligible providers are enrolled and/or remain one of the 213,389 active providers in the Medicaid program. This update will allow eMedNY to better identify inappropriately reported NPIs on claims.