Department of Health

Medicaid Program: Improper Medicaid Payments for Claims Not in Compliance With Ordering, Prescribing, Referring, and Attending Requirements

Report 2019-S-2 | August 2021

OFFICE OF THE NEW YORK STATE COMPTROLLER
Thomas P. DiNapoli, State Comptroller

Division of State Government Accountability

Audit Highlights

Objective

To determine whether the Department of Health (Department) paid for claims in violation of federal and State regulations that require an appropriate National Provider Identifier (NPI) for ordering, prescribing, referring, and attending (OPRA) health care providers. The audit covered the period from January 1, 2014 through December 31, 2018.

About the Program

The New York State Medicaid program 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, 2020, New York's Medicaid program had approximately 7.3 million recipients and Medicaid claim costs totaled $69.8 billion (comprising $27.4 billion in fee-for-service health care payments and $42.4 billion in managed care premium payments).

The Affordable Care Act and implementing federal regulations mandated that state Medicaid agencies require all ordering and referring physicians and other professionals providing services through the Medicaid fee-for-service program to be enrolled as participating providers and their NPIs to be included on Medicaid claims. Accordingly, beginning January 1, 2014, New York's Medicaid program required that physicians and other health care professionals who order, prescribe, refer, or attend Medicaid services be appropriately screened and enrolled in Medicaid.

Through the screening and provider enrollment process, the Department gains a level of assurance over the OPRA provider's validity to provide Medicaid services. It further allows the Department to verify the provider's licensing and other credentials to furnish services. Additionally, the Department must verify that all providers are not prohibited from participating in a Medicaid program by the federal government, which further enhances the safety of the Medicaid program and its members.

Key Findings

The audit identified system processing weaknesses in eMedNY, the Medicaid claims processing and payment system, which improperly allowed payments for Medicaid claims that did not contain an appropriate NPI in the OPRA fields and resulted in:

- $1.5 billion in payments for clinic and professional claims that did not contain an appropriate referring or attending NPI (for example, some claims contained NPIs of providers who were not enrolled in Medicaid while other claims did not contain an NPI);
- $57.3 million in payments for pharmacy claims that did not contain an appropriate prescriber NPI (for example, claims contained NPIs of prescribers who were not enrolled in Medicaid, including NPIs of prescribers not known by the Department's systems to be properly licensed); and
- $19.4 million in payments for claims that contained an OPRA NPI but, according to regulations, should not be included on Medicaid claims or that should be further reviewed by the Department due to past misconduct.

Key Recommendations

- Review the Medicaid payments for claims not containing an appropriate OPRA NPI identified by the audit and determine an appropriate course of action.
- Enhance system controls to prevent improper Medicaid payments for claims not containing an appropriate OPRA NPI.

Office of the New York State Comptroller
Division of State Government Accountability

August 17, 2021

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 their resources efficiently and effectively. By so doing, it provides 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 of the Medicaid program entitled *Improper Medicaid Payments for Claims Not in Compliance With Ordering, Prescribing, Referring, and Attending Requirements*. 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,

Division of State Government Accountability

Contents

Glossary of Terms

Term	Description	Identifier
CMS	Centers for Medicare & Medicaid Services	*Agency*
Department	Department of Health	*Auditee*
Dual-eligibles	Individuals enrolled in both Medicaid and Medicare	*Key Term*
EI	Early Intervention	*Key Term*
EI Program	New York State Early Intervention Program	*Program*
eMedNY	The Department's Medicaid claims processing and payment system	*System*
Facility	Clinic, hospital, group practice, or other health care facility	*Key Term*
LPN	Licensed Practical Nurse	*Key Term*
MDW	Medicaid Data Warehouse	*System*
Non-enrolled	Practitioners who provide services to Medicaid recipients even though they are not enrolled in the Medicaid program	*Key Term*
NPI	National Provider Identifier	*Key Term*
NPPES	National Plan and Provider Enumeration System	*System*
NYCRR	New York Codes, Rules and Regulations	*Law*
NYEIS	New York State Early Intervention System	*System*
OASAS	Office of Addiction Services and Supports	*Agency*
OMH	Office of Mental Health	*Agency*
OMIG	Office of the Medicaid Inspector General	*Agency*
OPRA	Ordering, prescribing, referring, or attending	*Key Term*
SSHSP	School Supportive Health Services Program	*Program*

Background

The New York State Medicaid program 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 State fiscal year ended March 31, 2020, New York's Medicaid program had approximately 7.3 million recipients and Medicaid claim costs totaled about $69.8 billion (comprising $27.4 billion in fee-for-service health care payments and $42.4 billion in managed care premium payments). The federal government funded about 56.3 percent of New York's Medicaid claim costs, and the State and the localities (the City of New York and counties) funded the remaining 43.7 percent.

The federal Centers for Medicare & Medicaid Services (CMS) oversees state Medicaid programs and issues regulations that set general parameters for states to follow in administering the Medicaid program at the state level. Each state must administer its Medicaid program in accordance with a CMS-approved Medicaid State Plan, which dictates the policies and procedures the state must follow in administering the Medicaid program. In New York State, the Medicaid program is administered by the Department of Health (Department).

Federal regulations published on January 23, 2004 required all health care providers to obtain a National Provider Identifier (NPI) – a unique identification number issued by the federal government intended to improve the efficiency and effectiveness of electronic transmission of health information and reduce fraud and abuse. NPIs are assigned through CMS' National Plan and Provider Enumeration System (NPPES), which also maintains and updates information about health care providers with NPIs.

The Affordable Care Act and implementing federal regulations mandated that, by January 1, 2011, state Medicaid agencies must require all ordering and referring physicians and other professionals providing Medicaid fee-for-services to be enrolled as participating providers and provider NPIs to be included on Medicaid claims. If the NPI is not provided on the claim or the NPI is not enrolled, CMS requires the Medicaid program to deny the claim. However, CMS allows Medicaid to pend claims with a non-enrolled ordering, prescribing, referring, or attending (OPRA) practitioner to allow the provider to become enrolled, at which time payment can be made.

Beginning January 1, 2014 and in accordance with CMS regulations, New York's Medicaid State Plan was amended to require that physicians and other health care professionals who provide OPRA Medicaid services be appropriately screened and enrolled in Medicaid (hereafter referred to as OPRA enrollment requirements). Through the screening and provider enrollment process, the Department gains a level of assurance over the provider's validity to provide OPRA Medicaid services. Further, the OPRA provider application process allows the Department to verify the provider's licensing and other credentials to furnish services. Additionally, the Department must verify that all providers are not prohibited from participating in a Medicaid program by the federal government (for example, by the Office of Inspector General), which further enhances the safety of the Medicaid program and its members.

According to the New York Codes, Rules and Regulations (NYCRR), prior to approving a provider for participation in the Medicaid program, the Department must consider a number of risk factors, including whether the provider has any previous or current suspension, exclusion, or involuntary withdrawal from participation in the Medicaid program from any state or from any other government or private medical insurance program such as Medicare or Workers' Compensation. The NYCRR also states that no payments will be made to or on behalf of any person for medical care, services, or supplies furnished by or under the supervision of a person excluded from participation in the Medicaid program. An individual excluded from participating in the Medicaid program cannot be involved in any activity relating to furnishing medical care, services, or supplies to Medicaid recipients.

The Department requires facilities to screen employees and contractors providing health care services and stated this should be done at the time of hiring and monthly thereafter. This screening process includes reviewing the Excluded Provider List issued by the Office of the Medicaid Inspector General (OMIG). OMIG is an independent entity created within the Department that conducts and coordinates the investigation, audit, and review of Medicaid providers to ensure their compliance with laws and regulations. When OMIG determines a provider is barred from participating in the Medicaid program due to unethical behavior, OMIG places the provider on its Excluded Provider List. Prior to January 2017, OMIG submitted a non-enrolled excluded provider list to the Department's Bureau of Provider Enrollment on a monthly basis for update in eMedNY, the Department's Medicaid claims processing and payment system. The Bureau of Provider Enrollment manually entered this information into the provider sanction table of eMedNY and, if the excluded individual was an enrolled provider, updated the provider profile to reflect the exclusion. As of January 2017, OMIG is responsible for manually updating the provider sanction table of eMedNY.

The Department does not require attending practitioners employed by a clinic, hospital, or other health care facility (facilities) billing for Medicaid services to enroll in Medicaid as providers, but all facility services must be referred by an enrolled Medicaid provider. Facilities that bill for Medicaid services must register the NPI, license number, license profession code, licensing state, and effective date of their attending practitioners with Medicaid through eMedNY, which enables the system to validate the relationship between the attending practitioner and the billing facility. The attending practitioner NPI on the claim must be for an individual and not for a physician's group or other entity. If, at any time, the attending practitioner ceases to be affiliated with the facility, the facility must enter an end date for the affiliation in eMedNY. Facilities also have the option to delete affiliations, and if a facility identifies an error with an affiliated practitioner's information, the Department directs the facility to delete the affiliation and re-enter all of the information. However, doing so effectively removes all evidence that the attending practitioner was ever affiliated with the facility.

The eMedNY system uses various automated controls, or edits, to determine whether claims are eligible for reimbursement, including to verify that OPRA NPIs

are reported in the claim's OPRA fields, as required. Some edits prevent payment on claims that contain an OPRA NPI that is not enrolled in the Medicaid program or the NPI of an unaffiliated practitioner in the attending field (for facilities); other edits prevent payment on claims that contain an OPRA NPI or license from the eMedNY provider sanction table. The Department advised Medicaid providers that, effective January 1, 2014, system claim edits would be implemented to enforce the OPRA enrollment requirements.

Audit Findings and Recommendations

Despite the implementation of eMedNY system changes and claim edits, providers are still submitting claims without a proper OPRA NPI, increasing the risk that excluded or otherwise unqualified practitioners are providing Medicaid services. During the course of our audit, we reviewed over $1.5 billion in payments where eMedNY processed claims that did not contain an enrolled or affiliated OPRA NPI as required or where the OPRA NPI was not properly validated by the Department at the time of payment. We identified significant inappropriate Medicaid payments for items and services ordered, prescribed, referred, and attended by physicians and professionals not enrolled in Medicaid.

We also point out a limitation with our analyses involving practitioner–facility affiliations: as discussed in the Background, facilities are able to delete affiliations from eMedNY, which effectively eliminates any record of the affiliation from the Medicaid Data Warehouse (MDW). Identifying deleted practitioner–facility affiliations requires obtaining a download of the audit history table (not available in the MDW). Our analyses, therefore, necessarily present only a partial picture of improper claim payments involving affiliated NPIs that could, in fact, be larger.

We recommend the Department review the findings identified in this report and determine an appropriate course of action, including recovery of improper payments as appropriate. The Department should also remind providers to follow all established billing procedures, including the requirement to include an enrolled OPRA NPI on the claim. Payment controls should also be enhanced or implemented to prevent the inappropriate Medicaid payments we identified.

Improper Payments for Clinic and Professional Services Despite eMedNY Preventive Controls

The eMedNY system uses various automated controls, or edits, to determine whether claims are eligible for reimbursement, including verifying that OPRA NPIs are reported as required. We reviewed these edits and determined they do not always prevent improper claim payments as intended and, in some cases, were intentionally circumvented by the Department.

Early Intervention Services

The Department's New York State Early Intervention Program (EI Program) provides a variety of therapeutic and support services to children under the age of three who have a confirmed disability or established developmental delay. Providers of Early Intervention (EI) services are required to document and bill for their EI Program activities in the New York State Early Intervention System (NYEIS), a centralized web-based system that electronically manages EI Program administrative tasks and provides for the exchange of information, including with eMedNY.

Claims for EI services are subject to federal and State regulations requiring appropriate attending and referring practitioner information. The Department's billing guidance states that providers submitting EI institutional claims to Medicaid

are required to report the attending practitioner's NPI (eMedNY derives the license number based on the reported NPI). Only qualified professionals who are approved by the Department as an EI provider or who are employed by a Department-approved EI agency may provide services. Services provided by student interns are also reimbursable if provided under direct supervision of an appropriately licensed and qualified practitioner. If an EI attending professional is not enrolled in Medicaid, they must be affiliated with the billing provider prior to claim submission.

The Department's guidance also states that EI claims for nursing services, physical therapy, occupational therapy, and speech therapy must be referred by a Medicaid-enrolled physician, nurse practitioner, or physician assistant or speech language pathologist for speech therapy services. For EI service coordination, evaluations, special instruction, or group developmental services, if the service was provided by a licensed professional (e.g., physical therapist), the referring NPI on the claim must be that of a Medicaid-enrolled physician, nurse practitioner, or physician assistant. If the service is provided by a non-licensed qualified individual, the billing provider's NPI may be used in the referring provider field.

From January 1, 2014 to December 31, 2018, we identified more than 16 million claims for EI services totaling $1,267,900,950 that did not contain the required OPRA information on the Medicaid claim.

Claims With Missing Attending NPIs

We identified 14,623,153 clinic claims for EI speech, physical, and occupational therapy as well as evaluations, special instruction, and group developmental services, totaling $1,218,729,066 (of the $1,267,900,950), that did not contain the attending practitioner's NPI on the Medicaid claim in eMedNY as required. These claims were processed and paid because, in October 2008, the Department applied an eMedNY system bypass to EI claims that allowed those without an NPI in the attending field to be processed. The Department stated that while NYEIS requires billing providers to enter an attending NPI, this information is not transmitted to eMedNY and therefore does not appear on the Medicaid claim. The Department provided us with a NYEIS data download for EI claims in our scope period; however, for 788 of these claims, totaling $57,731, there was no attending NPI. At the time of our report, the Department had not provided an explanation as to why the records from NYEIS pertaining to these claims did not contain an attending NPI.

We evaluated the 22,231 attending NPIs for the remaining 14,622,365 claims, totaling $1,218,671,335. Our analysis is reported in Table 1.

Table 1 – Summary of EI Claims With 22,231 Missing Attending NPIs

Category	Total Number of NPIs	Total Number of Claims	Total Paid Amount
Active Medicaid enrollment	4,995	4,698,244	$361,335,604
Non-active or no Medicaid enrollment *And:*	17,236	9,924,121	$857,335,731
• Not reported as a facility provider as of 10/16/2020	10,736	6,500,491	$595,655,667
• Not on Bureau of Early Intervention-approved files as of 9/30/2020	6,739	2,658,390	$229,845,335
Facility NPI (not a person)	286	314,160	$27,332,854

Note: The subcategories will not add up to the remaining 14,622,365 claims totaling $1,218,671,335 because NPIs can be in more than one subcategory.

As outlined in Table 1, we found instances where the attending NPI contained in NYEIS was inappropriate according to federal and State OPRA regulations. For example, one attending NPI that was listed on 12,343 claims, totaling $924,436, was not associated with any other Medicaid provider IDs and belonged to a non-enrolled physical therapy office. A facility NPI (i.e., the physical therapy office's NPI) was listed as the attending on the records we received from NYEIS; however, even if eMedNY received the attending information (NYEIS does not currently transmit attending NPIs to eMedNY), it would be unable to identify or validate whether the individual providing the service was appropriately qualified and licensed.

We also note that some of the 10,736 NPIs that were not reported as a facility practitioner could be students or interns. We provided five of these NPIs to Department officials and they confirmed those individuals were under the supervision of a licensed practitioner at the time the service was provided. However, according to EI billing information, in the instance the individual rendering the service is a student or intern, NYEIS will automatically add the rendering individual's supervisor to the claim. We reached out to the Department to determine why student or intern NPIs might appear on the NYEIS data download we received and they stated the guidance we referenced describes how a claim is created in NYEIS and that the attending NPI will be submitted to eMedNY once the Department reaches an agreement on the appropriate attending NPI. We note that, in the School Supportive Health Services Program (a program similar to EI and discussed below), the attending practitioner is considered to be the clinician who has the overall responsibility for the child's medical care and treatment within the confines of the program. In cases where these services are being provided by an intern or student working under the supervision of a licensed practitioner, the licensed practitioner is considered the attending.

Department officials informed us that they intend to implement a new EI system in March 2021, known as the "EI Hub," that will transmit attending practitioner

information to eMedNY. While this a step in the right direction, it does not address the issue of continued improper Medicaid payments for EI claims that do not include an appropriate attending NPI or do not list an NPI at all. Furthermore, with the eMedNY system bypass still in place, Medicaid continues to process and improperly pay EI claims not meeting OPRA regulations, and the Department can't be assured of validity or qualifications of the referring or attending providers.

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

We identified 6,454,379 EI claims, totaling $464,196,323 (of the $1,267,900,950), that did not include an enrolled referring provider NPI as required, as shown in Table 2.

Table 2 – Summary of EI Claims Without an Enrolled Referring Provider NPI

Category	Total Number of Claims	Total Paid Amount
No referring NPI on claim	5,833,253	$420,396,065
Referring NPI not enrolled in Medicaid on date of service	621,126	43,800,258
Totals	**6,454,379**	**$464,196,323**

Prior to October 1, 2015, NYEIS did not require billing providers to enter a referring NPI on claims for EI services, and therefore a total of 5,794,813 claims, totaling $417,829,478, were paid without an NPI in the referring field. To be in compliance with OPRA enrollment requirements, the Department initiated an update to NYEIS that would require billing providers to enter the NPI of the referring provider. This update also included transferring the referring NPI to eMedNY. Because existing eMedNY system edits implemented January 1, 2014 would have denied EI claims without an enrolled referring NPI, the Department applied an eMedNY system bypass that allowed EI claims without the required referring NPI of an enrolled provider to be processed and paid. This bypass was applied to avoid disruption in EI services while NYEIS was being updated.

During discussions with Department officials, we determined that NYEIS does not ensure the referring NPI is enrolled in Medicaid and relies on eMedNY to perform this function. Furthermore, as of February 2021, the Department still had not removed the system bypass from EI claims. As a result, system edits designed to deny claims with non-enrolled referring NPIs are not functioning, and 621,126 claims, totaling $43,800,258, were paid without an enrolled NPI in the referring field. For example, Medicaid reimbursed one provider a total of $772,800 for physical therapy services. The referring NPI reported on these claims belonged to a physical therapist even though EI guidance requires physical therapy services be referred by a physician, physician's assistant, or nurse practitioner.

We also identified 38,440 claims, totaling $2,566,587, for EI services provided in 2017 and 2018 that were adjudicated between July 2019 and March 2020 that did not contain an NPI in the referring field. A NYEIS data download that the Department provided for these 38,440 claims identified 1,325 total NPIs. We determined that 153 of these NPIs were not enrolled in Medicaid on the date of service, accounting

for $118,100 in improper Medicaid payments for 2,015 claims. Department officials explained that a system transmittal error caused the referring NPIs to be omitted upon transmission from NYEIS to eMedNY, but did not address the larger issue of continued improper Medicaid payments for EI claims that do not include an appropriate enrolled referring NPI due to the eMedNY system bypass that is still in place.

In response to our preliminary reports, the Department maintained that some of these EI services would not require an enrolled practitioner's NPI in the referring field because some services (e.g., service coordination and core evaluations) can be referred by a non-health care professional (e.g., a non-licensed person). However, Department guidance requires the billing provider's NPI in the referring field for this scenario. Furthermore, the Department doesn't require providers to use procedure codes that accurately reflect the service provided on EI rate-based claims for service coordination, core evaluations, supplemental evaluations, special instruction, or group developmental services. Therefore, the type of referring NPI required (enrolled practitioner NPI or billing provider NPI) can't be determined based on existing Medicaid claim information alone. Without the required OPRA provider information on the claim, the Department cannot be assured that services for children in the EI program are being referred, overseen, or provided by appropriately qualified or licensed professionals.

Behavioral Health Services

The Medicaid program covers behavioral health services, which include treatment for mental illness and addiction. The Office of Mental Health (OMH) administers and regulates the provision of mental health services provided to Medicaid recipients. These programs include various inpatient and outpatient, emergency, community support, residential, and family care programs. The Office of Addiction Services and Supports (OASAS) oversees addiction services provided to Medicaid recipients. These services provide treatment and recovery programs for those living with alcohol and/or chemical dependencies, or compulsive gambling disorders.

Behavioral health service claims must contain either the NPI of an affiliated attending practitioner and an enrolled referring provider or, in the absence of a referring provider, an affiliated and enrolled attending provider. All claims for these services require the billing provider to enter the attending professional's NPI. If the provider does not enter a separate referring professional's NPI, this field will automatically populate with the attending professional's information.

On January 1, 2014, the Department implemented an eMedNY system OPRA edit that pends claims without the required referring NPI of an enrolled provider. At the same time, the Department also implemented an eMedNY system bypass of this edit to allow claims for behavioral health services to be processed and paid, because it had interpreted these claims to be exempt from the OPRA regulations requiring an enrolled referring provider's NPI. (Notably, officials from OMH and OASAS stated they were unaware of the system bypass and, to the contrary, have issued guidance to providers of behavioral health services to include an enrolled referring provider's

NPI on all claims.) As a result, for the five-year audit scope, we identified 1,869,521 behavioral health claims, with payments totaling $208,524,239, that did not contain the required attending or referring NPI of an enrolled Medicaid provider.

For example, from January 1, 2014 to November 22, 2015, Medicaid paid an opioid treatment provider $700,801 for 4,302 claims that contained the non-enrolled attending and referring NPI of a Licensed Practical Nurse (LPN) who was placed on OMIG's Excluded Provider List in June 2012 after admitting to illegal possession of a controlled substance. The provider hired the LPN a year later, in June 2013. (According to the provider, a third-party service hired to check for medical sanctions at the time of hire found none, and the provider also does not conduct the subsequent monthly checks.) When the provider linked the LPN as an affiliated attending practitioner in eMedNY, it entered an incorrect license number – which the provider described as a clerical error. Furthermore, prior to 2013, OMIG did not capture excluded providers' NPIs in its Excluded Provider List; rather, excluded providers were identified only by name and/or license number, when applicable. Therefore, eMedNY system edits could not prevent claim payment because the facility-reported license was valid, albeit incorrect, and the excluded LPN's NPI was not on the eMedNY provider sanction table.

The Department's billing guidelines for opioid treatment services require providers to bill one claim that contains all dates of service for a recipient's weekly episode of care and to include the attending NPI of the practitioner who signed the medication dispensing form. In response to our finding, the provider stated it uses the NPI of the attending practitioner from the first date of service, even if that practitioner did not sign the medication dispensing forms for all the dates of service. To determine if the OMIG-excluded LPN was actually providing services, we judgmentally sampled claims from this provider that contained the NPI in an OPRA field for 60 dates of service, totaling $1,552. Our results are as follows:

- For 32 dates of service (53 percent), the medication dispensing forms were signed by a licensed LPN. However, these claims should not have been paid because the claim contained the excluded, non-enrolled LPN's NPI.
- For 16 dates of service (27 percent), the medication dispensing forms were signed by the OMIG-excluded LPN.
- For the remaining 12 dates of service (20 percent), the medication dispensing forms either did not have a required signature or were not provided.

In response to our audit, on July 24, 2020, OMH published a memo to clarify and restate its policies regarding allowable use of the attending and referring provider fields on Medicaid claims. The memo reiterated that only the NPI belonging to an individual health care professional can be used in the attending and referring fields. The memo also stated that the referring field may only be left blank when the NPI in the attending field belongs to an enrolled Medicaid provider. In addition, it stated that while the attending practitioner doesn't need to be enrolled, the NPI does need to be affiliated with the facility.

School Supportive Health Services Program

The School Supportive Health Services Program (SSHSP) provides Medicaid reimbursement to school districts and counties for certain diagnostic and health support services for Medicaid-eligible students with disabilities. According to the SSHSP Handbook, which the Department developed in conjunction with the State Education Department, claims submitted to Medicaid must include the NPI of both the attending and a Medicaid-enrolled referring professional, with the following exception. Psychological evaluations and counseling services may be referred by an individual who is not eligible to enroll in the Medicaid program, such as an appropriate school official, classroom teacher, or other licensed provider (e.g., a Licensed Clinical Social Worker or Licensed Master Social Worker). Under these circumstances, the Department requires claims for these services to be submitted with the enrolled billing provider's NPI in the referring field. On January 1, 2014, the Department implemented a bypass for eMedNY system edit 02216 to pay claims for certain SSHSP services that do not include the required referring NPI of a Medicaid-enrolled provider.

For the audit scope period, we identified 32,669 claims, totaling $1,218,450, for psychological evaluations and counseling services where the referring field contained the NPI of a provider who was not enrolled in Medicaid. For example, we identified 653 claims for psychotherapy services, totaling $27,801, that included the NPI and license of a non-enrolled licensed speech-language pathologist as the referring provider. Furthermore, according to NPPES, this NPI belongs to a school district and not the speech-language pathologist. In addition to the $1,218,450, we also identified 821 claims, totaling $48,008, for physical, speech, and occupational therapy services that did not contain any NPIs in either the attending or the referring field, as required. Without the required OPRA provider information on the claim, the Department cannot be assured that services for children in the SSHSP are being referred, overseen, or provided by appropriately qualified or licensed professionals.

Referred Ambulatory and Professional Services

The Department's Medicaid Policy Guidelines for referred ambulatory services and professional services require the service to be referred by a provider, and for certain services (such as echocardiography, private-duty nursing, radiology, sleep studies, and non-invasive vascular diagnostic studies), a provider other than the rendering and billing provider. For the audit scope period, we identified 62,086 claims, totaling $1,775,762, for the aforementioned services that did not contain an NPI in the referring field. Medicaid paid these claims because system edits are not applied when the referring provider fields on a claim are left blank.

Dental Services

According to the Department's Dental Policy and Procedure Code Manual, dental providers must be licensed and enrolled as Medicaid providers in order to participate in the Medicaid program and provide services. The Department also requires that all

claims and prior approval requests from dental schools or orthodontic clinics contain the NPI in the service-rendering field of either the dentist who provided the service or the dentist responsible for the treatment plan.

For the period January 1, 2014 to December 31, 2018, we identified 2,832 claims, totaling $678,313, from seven dental schools and orthodontic clinics that did not contain the required NPI of an enrolled service-rendering provider. These claims were processed and paid because system edits that could prevent improper payments either are not applied to dental claims or are not properly applied if the billing provider enters spaces or leaves the service-rendering fields blank.

The Department also uses eMedNY system edits to process prior approvals. However, the edit that denies facility prior approval requests that do not contain the NPI of an enrolled individual who would be performing the service is not applied to dental services. Of the 2,832 claims, we identified 1,047 claims, totaling $261,515, for services that were authorized by the Department on 550 prior approvals that did not contain an enrolled servicing NPI, as required.

For example, of the 550 prior approvals, 401 prior approvals for 757 claims contained the servicing NPI of a dentist who was reported as deceased on September 18, 2014. We found a provider ID for this dentist in eMedNY; however, the dentist had not been enrolled as a participating provider since February 1, 2000. Additionally, the NPI requirement was not implemented until 2007, and because the dentist was not a participating enrolled provider, the provider profile in eMedNY was never updated with the NPI. Of the 401 prior approvals, we identified four, for seven claims totaling $1,450, that were submitted by the billing provider and approved by the Department after the servicing provider's date of death.

In response to our preliminary findings report, the Department agreed with our findings, and noted the need to identify and prevent prior approval processing and claim payments 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. Department officials stated that, in March 2020, required system changes to address these issues would be added to an existing eMedNY edit project as a priority.

Medicaid Payments for Medicare Crossover Claims

Many of the State's Medicaid recipients are also enrolled in Medicare, the federal health insurance program for people 65 years of age and older and people under age 65 with certain disabilities. Individuals enrolled in both Medicaid and Medicare are commonly referred to as "dual-eligibles." Generally, Medicare is the primary payer for medical services provided to dual-eligible recipients. Accordingly, after Medicare adjudicates a claim, it is transferred to eMedNY via the automated Medicare crossover system. Medicaid then pays the balance not covered by Medicare (typically a coinsurance or deductible) that would otherwise be the financial obligation of the recipient. According to federal requirements, claims for dual-eligibles require that the referring provider be enrolled in both Medicare and Medicaid. However, we determined that eMedNY system edits that would deny claims that

do not contain the required NPI of an enrolled referring provider are not applied to Medicare crossover claims.

From January 1, 2014 to December 31, 2018, we identified 175,732 Medicare crossover claims, totaling $3,641,645, for various services, including practitioner and clinic services, that did not contain the NPI of an enrolled referring provider, as required. Claims for these same services, not subject to system bypasses, would have been denied by system edits if they had been submitted directly to Medicaid for payment. For example, we identified 537 claims for psychological services totaling $106,232 that contained the NPI of a Licensed Master Social Worker. Medicaid does not allow Licensed Master Social Workers to enroll in Medicaid as providers. Therefore, the NPI of a Licensed Master Social Worker should never be included on a claim as a referring provider. Had these claims been submitted directly to Medicaid, they would have been denied.

Recommendations

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.

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.

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.

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

Improper Payments for Pharmaceutical Services and Misuse of Pharmacy Override Option

Federal and State regulations require practitioners prescribing pharmacy services for Medicaid recipients to be appropriately licensed and enrolled. CMS' Medicaid Provider Enrollment Compendium provides guidance to state Medicaid programs on compliance with federal regulations regarding provider screening and enrollment. The Compendium also gives each state Medicaid program the autonomy to determine which NPI should appear on claims when the professional is eligible to prescribe but not eligible to enroll as a Medicaid provider (such as unlicensed residents), and requires each state to notify providers of its requirements.

According to New York State Education Law and the NYCRR, unlicensed residents, interns, and foreign physicians in training programs (students) are legally authorized to prescribe, but because they are unlicensed, the Department does not allow them to enroll in Medicaid as providers. However, Medicaid will process and pay for pharmacy services prescribed by a student under the supervision of a provider enrolled in Medicaid. According to the eMedNY Pharmacy Billing Guidelines and the Pharmacy Policy Guidelines in effect for our audit scope, the enrolled supervising physician's NPI should be entered in the prescribing field on prescription claims written by students.

To enforce the OPRA enrollment requirements effective January 2014, the Department implemented eMedNY's system edit 02218, which denies pharmacy claims that do not contain the NPI of an enrolled provider in the prescribing field. However, to allow providers time to adapt to the new regulations, the Department implemented a system override option for pharmacies. The allowed use of this override option for non-enrolled, licensed prescribers ended in August 2014, but the Department issued Medicaid Updates directing pharmacies to continue use of the override option for students in the event the enrolled supervising physician's NPI could not be obtained.

The Department's override policy, as stated in their Medicaid Updates, is partially in accordance with the Compendium, which allows states to determine which NPI should appear on claims when the professional is eligible to prescribe but not eligible to enroll as a Medicaid provider. However, the Medicaid Updates are inconsistent with the Department's own eMedNY Pharmacy Billing Guidelines and the Pharmacy Policy Guidelines in effect for our audit scope that state the enrolled supervising physician's NPI must be on the claim. The Medicaid Updates also contradict the OPRA Provider Enrollment FAQs, first issued in February 2014 and reissued by the Department's Bureau of Provider Enrollment as recently as February 2020, which state the enrolled supervising physician's NPI must be on the prescription.

In response to our questions, officials from the Department's Pharmacy Bureau maintained that the override directives in the Medicaid Update are the correct policies and that the Billing and Policy Guidelines hadn't yet been updated. During the course of our audit, the Department updated the Policy Guidelines in October 2019 and the Billing Guidelines in September 2020. The statement requiring an enrolled supervising physician's NPI in the prescriber field on the claim has been removed. However, the Department doesn't have a way to identify if someone is a student and, as our analysis will show, simply because an NPI is not linked to a license in the MDW does not ensure they are a student.

For the five-year period from January 1, 2014 to December 2018, we identified 1,117,482 claims paid for pharmacy services, totaling $57,376,791, where the prescriber NPI was not enrolled in Medicaid on the date of service. Using the codes and fields cited in the Department's override guidance, we determined that 1,019,159 claims, totaling $52,116,041, were processed and paid because the pharmacy used the system override option. For the remaining 98,323 claims, totaling $5,260,750, we

were unable to determine why the claims were paid due to missing information in the MDW. With assistance from the MDW Help Desk, we determined that one of these remaining claims was transferred from eMedNY to the MDW with missing information (indicating use of the override option). While we believe these remaining claims were also paid using the override option, without manually viewing each claim in eMedNY, we cannot be certain of this.

When submitting a claim through eMedNY, a pharmacy has nine sets of fields available to input override reasons. However, if the first set of fields is left blank, no data input on any of the other eight sets is transferred to the MDW – as may have been the case for the 98,323 claims. During the course of our audit, we brought this issue to the Department's attention. As a result, on June 25, 2020, the Department implemented an eMedNY system change that would capture all override reasons, regardless of which data set is used to enter the reason for override.

The Compendium also requires state Medicaid programs to validate the prescribing NPI and to deny the claim if the NPI is not for an enrolled provider, unless the prescribing NPI is a professional within a provider type not eligible to enroll in Medicaid. For the scope of our audit, the Department did not validate prescribing NPIs on pharmacy override claims, as required. The misuse of the pharmacy override option and system control weaknesses allowed improper and questionable Medicaid payment of claims with a prescribing NPI that was not enrolled or was unqualified to be a prescriber. Our breakdown of findings is as follows:

- $17,346,603 in improper payments for 279,137 claims where the prescribing field contained the NPI of a licensed professional according to the MDW but who was not enrolled as a Medicaid provider on the date of service.
- $9,960,823 in questionable payments for 213,877 claims where the prescribing field appeared to contain the NPI of a student.
- $30,069,365 in questionable payments for 624,468 claims where the prescribing field contained unknown NPIs.

Inappropriate Pharmacy Payments for Licensed But Non-Enrolled Prescribers

Federal and State regulations require any licensed practitioner prescribing services for Medicaid recipients to be enrolled as a provider. From January 1, 2014 to December 31, 2018, we identified 279,137 pharmacy claims, with payments totaling $17,346,603, where the prescribing field contained the NPI of a licensed professional according to the MDW but who was not enrolled as a Medicaid provider on the date of service. These claims were processed and paid by Medicaid because the pharmacy inappropriately used the override option. We identified a total of 12,173 NPIs in the prescribing field on these claims, of which 12,136 belonged to a licensed professional with the authority to prescribe and who should have been enrolled in Medicaid as a provider. The remaining 37 NPIs belonged to licensed professionals who do not have the authority to prescribe, such as pharmacists, registered nurses,

and social workers. These 37 NPIs were in the prescribing field on 188 claims, totaling $4,752.

Questionable Pharmacy Payments for Claims With Students' NPIs

To determine whether claims for pharmacy services may have been prescribed by students, we selected all NPIs for prescribers who obtained a license after the claim date of service (for instance, an individual may have been in a residency program before obtaining a license). From January 1, 2014 to December 31, 2018, we identified 213,877 pharmacy claims, totaling $9,960,823, that may have contained 7,055 student NPIs in the prescribing field. For example, the NPI of one student appeared in the prescribing field on 9,878 claims, accounting for a total of $633,779 in Medicaid payments from June 1, 2015 to October 9, 2018. This individual tried to enroll in Medicaid, but was denied in February 2016 due to a limited permit to practice medicine and was ineligible to enroll as a physician. This individual subsequently obtained a nurse practitioner license in October 2018, but didn't enroll in Medicaid as required until August 2019.

Questionable Pharmacy Payments for Unknown Prescribers

Federal and State regulations require practitioners prescribing pharmacy services to New York Medicaid recipients to be appropriately licensed and enrolled, even if the prescriber is located out-of-state. To evaluate the remainder of the pharmacy claims where the prescribing NPI was not associated to a license in the MDW, we used the NPI taxonomy (a code that designates an individual's classification and specialization; e.g., health care student, family medicine physician, internal medicine physician) and license fields self-reported in NPPES. For the period January 1, 2014 to December 31, 2018, we identified 624,468 claims, totaling $30,069,366, with 30,335 prescriber NPIs that did not match to a license in the MDW. Our findings are broken out as follows:

- $15,541,850 for 296,814 claims that contained 15,606 NPIs with a license value reported in NPPES:
  - $12,458,268 for 232,022 claims that had a taxonomy other than a student.
  - $3,083,582 for 64,792 claims that had a taxonomy of a student only or a student and other professional.
- $14,437,918 for 326,625 claims that contained 14,563 NPIs with no reported license value in NPPES:
  - $560,739 for 16,139 claims that had a taxonomy other than a student.
  - $13,877,179 for 310,486 claims that had a taxonomy of a student only or a student and other professional.

- $89,597 for 1,029 claims that contained 166 NPIs that did not exist in NPPES or had no taxonomy reported.

These findings illustrate that not all NPIs without a known license are students. For example, one of the NPIs was in the prescriber field on 52 claims, totaling $253,101, and had a reported license number in the state of Massachusetts, according to NPPES. We verified the name and license number on the Massachusetts licensing website and determined this practitioner was licensed in that state and therefore should be enrolled in Medicaid. We also identified pharmacy claims with an NPI in the prescribing field that, based on reported taxonomy code, would not have the authority to prescribe. The taxonomies included provider types such as social workers, registered nurses, LPNs, and addiction counselors. For example, we identified six claims, totaling $7,674, for an anticonvulsant where, according to NPPES, the prescribing NPI belonged to a social worker.

Pharmacy Record Review

To determine whether pharmacies were appropriately applying the pharmacy override option, we judgmentally sampled and reviewed prescriptions from seven pharmacies for 115 claims, totaling $11,259. We compared the prescription information to determine whether the prescriber listed on the claim was the prescriber on the prescription, and if a student was the prescriber, whether the claim listed the NPI of a supervising physician, as required. Results of our record review show that pharmacies are not always using the system override as intended by the Department (i.e., when students prescribe and the enrolled supervising physician's NPI cannot be obtained). Of the 115 claims, only 40, accounting for $3,615 in payments, were for student prescribers and included an enrolled supervisor's NPI. Results are summarized in Table 3.

Table 3 – Summary of Claims Reviewed

Prescriber	Number of Claims	Percent of Total Claims	Total Amount Paid
Non-student; not enrolled in Medicaid	46	40%	$4,321
Student; enrolled supervisor NPI on prescription	40	35%	3,615
Enrolled prescriber on prescription; claim contained different NPI	14	12%	1,861
Student; no supervisor NPI on prescription	8	7%	1,388
No/inadequate documentation	7	6%	74
Totals	**115**	**100%**	**$11,259**

In response to our preliminary report, the Department noted that, because the health care professional information in NPPES is self-reported, including license numbers, it is unlikely to be entirely accurate. We agree that self-reported data comes with "accuracy" caveats – but point out that these same risks have implications for the Department's pharmacy override option: lacking verifiable student data, there is no

assurance that pharmacies are applying the override as the Department intended – that is, for claims by student prescribers only, with the NPI of the supervising physician listed.

In May 2019, during our fieldwork, the Department implemented system changes to no longer allow edit 02218 to be overridden by a pharmacy if the NPI listed on the claim is for a licensed prescriber (the edit is supposed to deny pharmacy claims that do not contain the NPI of an enrolled provider in the prescribing field). License information allows eMedNY to check for enrollment. Prescriber license information can be input by the pharmacy or can be derived by eMedNY if the prescriber NPI is associated with a license in eMedNY. The Medicaid Pharmacy Policy Guidelines were also updated in October 2019 to include information about this change and state that if the override is attempted for a licensed practitioner, the claim will continue to be denied and a new prescription from an enrolled provider must be obtained.

While these steps are important, the system changes to the override option do not prevent reimbursement of all claims containing a licensed but non-enrolled prescriber NPI when the NPI is not associated with a license in eMedNY – as was the case for the 52 claims totaling $253,101 discussed previously, where the provider's license was not in the MDW because the individual was out-of-state. Out-of-state license data is not known to the eMedNY system and would only be added to eMedNY if the prescriber enrolled. Therefore, if the pharmacy only entered the NPI and not the license information, the system would still process and pay these claims (because the edit is allowed to be overridden when there is no license information in eMedNY).

According to Department pharmacy staff, they estimate that the pharmacy override option was inappropriately used for a non-enrolled licensed prescriber only 3 percent of the time. Based on our fieldwork, we determined that the override option accounted for $52.1 million in pharmacy claim payments, including about $15 million in claims with known non-enrolled licensed prescribers. These claims represent 24 percent of the total pharmacy override claims, well over the Department's estimated 3 percent risk. Furthermore, Department pharmacy staff stated that OMIG is responsible for, and actively monitors, the pharmacy override usage. While OMIG confirmed it has been in discussions with the Department regarding review of overridden pharmacy claims, there are no formal procedures, nor have they performed any audits. Neither the Department nor OMIG provided supporting documentation regarding OMIG's role.

Not only has the Department paid pharmacy claims out of compliance with federal and State regulations, it has vastly underestimated the risk of inappropriate use of the override option and has not properly monitored overridden pharmacy claims. In response, Department officials stated they intend to rely on enhanced system controls for much of the monitoring of pharmacy override usage.

Recommendations

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.

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.

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

Payments for Claims With Improper and/or Excluded NPIs

During the course of our audit, we completed matches of non-enrolled OPRA NPIs on submitted Medicaid claims to several data sets to determine whether Medicaid made payments for claims with improper or excluded NPIs. For the period January 1, 2014 to December 31, 2018, we identified 739 OPRA NPIs on 226,650 claims totaling nearly $19.4 million that, according to regulations, should not be included on Medicaid claims or that should be further reviewed by the Department due to past misconduct. Our findings are outlined as follows.

Claims With Improper Practitioner–Facility Affiliations

As of 2008, the NPI of a facility is not allowed in the attending field on Medicaid claims. The attending field on Medicaid claims is meant to capture the individual who is providing the service or who is responsible for the overall care of the recipient. The Department's eMedNY system lacks system controls to ensure that billing facilities correctly submit the NPI and corresponding license information of non-enrolled affiliated attending practitioners. For example, while eMedNY verifies that the attending NPI and license number on a facility's claim are each affiliated with the facility, it doesn't verify that the NPI–license combination is accurate.

We identified 172 facility NPIs that were improperly entered in the attending field on 130,404 claims totaling $10,683,308. For example, one hospital, which had improperly affiliated an attending practitioner license with one of its own non-enrolled facility NPIs, billed 38,533 claims from January 1, 2014 to July 1, 2017, totaling $6,568,542. These claims were billed on behalf of 1,159 members receiving weekly opioid treatment. When this licensed attending practitioner enrolled in Medicaid, the Department determined that the hospital NPI, and not the practitioner's NPI, had been incorrectly associated with the individual's provider license profile in eMedNY. The Department corrected the provider license profile; however, it did not correct the license and NPI association on the hospital's affiliated practitioners list in eMedNY. Therefore, the hospital could still bill Medicaid for services using its own facility NPI instead of the NPI of an attending practitioner.

We also identified 208 NPIs that were affiliated with an incorrect license included in the attending field on 86,289 claims billed by 178 facilities, totaling $7,360,551. Incorrect NPI–license combinations in eMedNY create the risk of improper Medicaid payments for services provided by excluded or otherwise unqualified practitioners. As evidenced in an example discussed earlier (see Behavioral Health Services), from January 1, 2014 to November 22, 2015, Medicaid paid an opioid treatment provider $700,801 for 4,302 claims that contained the non-enrolled attending and referring NPI of an LPN who was on OMIG's Excluded Provider List. These claims were paid because the billing facility incorrectly associated this LPN's NPI with a valid license belonging to another individual.

Claims With Excluded or Improper Provider NPIs

According to the NYCRR, prior to approving a provider for participation in the Medicaid program, the Department must consider a number of risk factors, including whether the provider has any previous or current suspension, exclusion, or involuntary withdrawal from participation in the Medicaid program from any state or from any other government or private medical insurance program such as Medicare or Workers' Compensation. The NYCRR also states that no payments will be made to or on behalf of any person for medical care, services, or supplies furnished by or under the supervision of a person excluded from participation in the Medicaid program. An individual excluded from participating in the Medicaid program cannot be involved in any activity relating to furnishing medical care, services, or supplies to Medicaid recipients.

We reviewed several State and federal databases to determine whether or not they contained non-enrolled OPRA NPIs from our claims population. We found Medicaid made payments with improper NPIs, as follows:

- $1,326,464 for 9,915 claims that included 306 NPIs that were either deactivated or invalid according to NPPES;
- $703,589 for 4,455 claims that included 31 practitioners who were excluded from participating in the Medicaid program by OMIG;
- $160,296 for 332 claims that included NPIs of six individuals not authorized to provide treatment for Workers' Compensation-related injury or illness;
- $47,853 for 598 claims that included NPIs of five individuals who had received disciplinary action from the State Education Department;
- $2,635 for 64 claims that included 24 NPIs that had been excluded from participating in the state of New Jersey's Medicaid program;
- $1,122 for 29 claims that included NPIs of two individuals who had received disciplinary action from the Department's Office of Professional Medical Conduct; and

- $938 for 84 claims that included 14 NPIs that had been excluded from providing federally funded health care services by the federal government.

As mentioned, prior to January 2017, identifying and documenting excluded practitioners involved separate manual processes by both OMIG and the Department, which created risk for errors. We also identified further deficiencies in system controls. We identified OMIG-excluded practitioners who were not also listed in eMedNY's provider sanction table. If OMIG-excluded practitioners' NPIs are not in the provider sanction table, established system edits can't prevent inappropriate claim payments for services provided by these individuals. Furthermore, there are no system edits in eMedNY to prevent payment on Medicare crossover claims that include a non-enrolled OMIG-excluded OPRA NPI, even when the practitioner is on eMedNY's provider sanction table.

In addition to control weaknesses with the OMIG-excluded practitioner process, we also identified control weaknesses in the practitioner–facility affiliation process. Officials from the Department's Bureau of Provider Enrollment stated they do not review facility affiliations because those attending practitioners are not enrolling in Medicaid as a provider. Therefore, the Department relies on facilities to appropriately screen their affiliated attending practitioners. However, there is no oversight of this screening process. Because non-enrolled OPRA practitioners aren't subject to the scrutiny received during the Medicaid provider enrollment process, Medicaid made improper payments totaling $2,242,897, as documented above. For example, one NPI was identified in the referring field on 50 claims for alcohol rehabilitation and detox services totaling $155,925. This NPI had been removed from participation as an approved Workers' Compensation provider in 2013, and we determined this individual died in 2011.

To further highlight the potential for additional improper payments, we obtained attending practitioner–facility affiliations in eMedNY on January 22, 2020 and compared attending practitioner NPIs to NPPES and MDW license data. In total, we identified active attending practitioner–facility affiliations involving 2,891 NPIs that were excluded, deactivated, invalid, and/or inappropriately affiliated with a facility or associated with an incorrect license.

For example, 49 percent of these NPIs were deactivated according to NPPES but still actively affiliated with enrolled facility providers in eMedNY. We also identified 63 non-enrolled but actively affiliated attending NPIs that were on OMIG's Excluded Provider List, of which 44 percent were not on eMedNY's provider sanction table. Because these deactivated and excluded non-enrolled NPIs are not known to eMedNY, there is a risk of Medicaid making additional improper payments on claims for Medicaid services by these practitioners. On October 29, 2020, in response to our audit, the Department requested a system change citing the need for eMedNY to verify that affiliated practitioner NPI and license data entered by a facility is correct.

Recommendations

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.

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.

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.

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

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

Audit Scope, Objective, and Methodology

The objective of our audit was to determine whether the Department paid for claims in violation of federal and State regulations that require an appropriate NPI for OPRA health care providers. The audit covered the period from January 1, 2014 through December 31, 2018.

To accomplish our objective and assess relevant internal controls, we interviewed officials from the Department and examined the Department's relevant Medicaid policies and procedures as well as applicable federal and State laws, rules, and regulations. We interviewed officials from OMIG, OMH, and OASAS, as well as eMedNY and fiscal agent (General Dynamics Information Technology) officials to gain an understanding of their processes and procedures with regard to Medicaid and OPRA practitioners. We used the MDW and the eMedNY claims processing and payment system to identify instances where the OPRA NPI was not enrolled or was not on the claim as required and calculated questionable and improper Medicaid payments made during the audit period. Due to the large volume of claims meeting this criteria, we judgmentally selected specific claim types to review including clinic, dental, practitioner, eye care, pharmacy, durable medical equipment, referred ambulatory, laboratory, and Medicare crossover claims.

We obtained data from several federal and State databases, and compared this data with the non-enrolled OPRA NPIs in our population to determine if Medicaid paid claims with improper or excluded NPIs, such as NPIs of providers found to have a history of misconduct. We also obtained a download from NYEIS to identify attending practitioner NPIs not transferred to eMedNY.

We tested provider records supporting claims for reimbursement using a judgmental risk-based approach. We sampled 105 claims from two SSHSP providers representing the most recent five claims for 21 recipients with the highest dollar amount in paid claims. We also selected 25 claims for 60 dates of service from a facility provider where the NPI of an OMIG-excluded practitioner was in the referring or attending field. We judgmentally selected these 60 dates of service by choosing the top 20 recipients with the highest total dollar amount in paid claims, and then selected the three most recent dates of service for each recipient. We judgmentally sampled 115 claims from seven pharmacies based on various risk categories including an invalid prescriber NPI, top prescribers per day, highest reimbursed drug names, and highest reimbursed drug names with potential for abuse (controlled substance). The results of our samples can't be projected to the population. We shared our methodology and claim findings with the Department and OMIG during the audit for their review.

We also point out a limitation with our analyses involving practitioner–facility affiliations: as discussed in the Background, facilities are able to delete affiliations from eMedNY, which effectively eliminates any record of the affiliation from the MDW. Identifying deleted practitioner–facility affiliation requires obtaining a download of the audit history table (not available in the MDW) for each facility provider. It was not feasible for us to obtain this information for each facility in our audit, and our analyses, therefore, necessarily present only a partial picture of improper claim payments involving affiliated NPIs.

Statutory Requirements

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.

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. These duties may be considered management functions for purposes of evaluating organizational independence under generally accepted government auditing standards. In our professional judgment, these functions do not affect our ability to conduct independent audits of the Department's oversight of the Medicaid program.

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 generally concurred with most of the audit recommendations and indicated that certain actions have been and will be taken to address them. Our rejoinders to certain misleading Department comments are included in the report's State Comptroller's Comments, which are embedded in the Department's response.

Within 180 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.

NEW YORK STATE OF OPPORTUNITY. 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

May 10th, 2021

Ms. Andrea Inman, Audit Director
Office of the State Comptroller
Division of State Government Accountability
110 State Street – 11th Floor
Albany, NY 12236-0001

Dear Ms. Inman:

Enclosed are the Department of Health's comments on the Office of the State Comptroller's Draft Audit Report 2019-S-2 entitled, "Medicaid Program: Improper Medicaid Payments for Claims Not in Compliance with Ordering, Prescribing, Referring, and Attending Requirements."

Thank you for the opportunity to comment.

Sincerely,

Theresa Egan
Deputy Commissioner for Administration

Enclosure

cc: Diane Christensen
Frank Walsh
Brett Friedman
Geza Hrazdina
Daniel Duffy
James Dematteo
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Department of Health Comments on the Draft 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 (Department) Draft 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, OMH, OASAS, and OMIG are collaborating on the development of a comprehensive strategy, including guidance and corrective actions, for the behavioral health claims identified by OSC. 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 field work, 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 injectingthe 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. Regardless, to make the audit finding clearer, we clarified this statement on page 15 of the report.

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 is currently reviewing the OPRA claims edits presently in place and determining whether any additional OPRA edits can be incorporated for claims where Medicare is the primary payer.

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, in collaboration with OMH, OASAS, and OMIG (and the Office for People With Developmental Disabilities and OCFS, where applicable) will perform a full analysis of all OPRA edits currently being utilized within eMedNY and modify them as necessary to ensure compliance with OPRA requirements, as appropriate. The Department anticipates that this review and eMedNY modification process will be completed by the Fourth Quarter of 2021.

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 will perform a full analysis of all OPRA edits currently being utilized within eMedNY and, in consultation with OMIG, modify them as necessary to ensure compliance with OPRA regulations, including as applied to dental services. The Department anticipates that this review and eMedNY modification process will be completed by the Fourth Quarter of 2021.

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, in consultation with OMIG, 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 to 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 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."

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

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:

Of the $19,387,173, more than $6 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. Pursuant to State regulations, any identified overpayments OMIG pursues for recovery are subject to the provider's right to due process.

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 in mid- to late-2021. The second phase of the portal rollout will include facilities who perform the associations and is anticipated to go live in late 2021 or 2022. 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. However, OMIG will continue its work with the Department to review controls and identify opportunities for enhancements.

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.

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