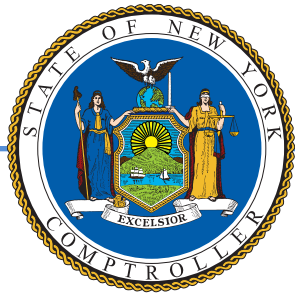
Department of Health

Medicaid Program: Improper Payments of Medicare Buy-In Premiums for Ineligible Recipients

Report 2020-S-35 | November 2021

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

Division of State Government Accountability



Audit Highlights

Objective

To determine if Medicaid made improper Medicare premium payments on behalf of recipients enrolled in the Medicare buy-in program. The audit covered Medicaid payments for individuals enrolled in the Medicare buy-in program for the period from January 1, 2015 through December 31, 2019 and associated Medicare buy-in program credits from January 1, 2015 to November 30, 2020.

About the Program

The Department of Health (Department) administers New York's Medicaid program. Many Medicaid recipients are also enrolled in Medicare. Under the Medicare buy-in program (Buy-in Program), administered by the Centers for Medicare & Medicaid Services (CMS), Medicaid pays Medicare premiums for individuals who meet Buy-in Program eligibility requirements. The State's Local Departments of Social Services (Local Districts) determine eligibility and authorize and process enrollment in the Buy-in Program. In addition, CMS automatically enrolls certain individuals. Medicaid should not pay premiums for Buy-in Program coverage on behalf of individuals who do not have a benefit eligibility period established in the Department's Medicaid claims processing system. For the period January 1, 2015 through December 31, 2019, New York's Medicaid program paid $8 billion in Buy-in Program premiums for 1,025,008 individuals.

Key Findings

We found that the Department needs additional controls to ensure timely Buy-in Program eligibility determinations and to prevent improper premium payments. During our audit scope:

- Medicaid made $31.7 million in improper Medicare premium payments on behalf of 42,586 individuals who did not have a benefit eligibility period established in the Department's Medicaid claims processing system. Medicaid also paid $372,716 in Medicare premiums for 282 individuals identified as deceased. According to CMS, improper premium payments beyond two months for reasons other than death are not recoverable.
- Medicaid paid $23.6 million in premiums for 3,439 individuals who were automatically added to the Buy-in Program by CMS with coverage beginning more than two years retroactively, despite limitations on premium liability beyond two years. The State may be eligible for equitable relief from CMS for its share of $13 million in premiums paid beyond the two years.

Key Recommendations

- Increase oversight of Local Districts to ensure accurate eligibility determinations and timely closure of Buy-in Program cases for ineligible individuals.
- Review the active cases of Buy-in Program coverage for individuals without a benefit eligibility period in eMedNY and remove them from the Buy-in Program, as warranted.
- Follow up with CMS to request payment relief on the 3,439 cases where recipients were added to the Buy-in Program retroactively beyond the two-year limit.
- Review and recover the premiums paid for deceased individuals, as warranted.

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

November 29, 2021

Howard A. Zucker, M.D., J.D.
Commissioner
Department of Heath
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 the 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 Payments of Medicare Buy-in Premiums for Ineligible Recipients*. This audit was performed pursuant to the State Comptroller's authority under 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
Auto-close Codes	Automatic closing codes used in the Welfare Management System that are designed to end Buy-in Program coverage in eMedNY	*Key Term*
Benefit Eligibility Period	A date range in eMedNY that shows the person is eligible for the Buy-in Program only or both Medicaid and the Buy-in Program	*Key Term*
Buy-in Program	Medicare program to assist certain low-income people with paying their out-of-pocket Medicare expenses	*Program*
CIN	Client Identification Number	*Key Term*
CMS	Centers for Medicare & Medicaid Services	*Agency*
CMS Billing File	CMS Buy-in Program transaction file	*Key Term*
Department	Department of Health	*Auditee*
eMedNY	Department's Medicaid claims processing and payment system	*System*
HRA	Human Resources Administration	*Agency*
Local District	Local Department of Social Services	*Agency*
SSA	Social Security Administration	*Agency*
SSI	Supplemental Security Income	*Key Term*
SSN	Social Security number	*Key Term*
Veris	An independent verification service that uses SSA information to identify deceased individuals	*Key Term*
WMS	Welfare Management System	*System*

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 individuals who are economically disadvantaged and/or have special health care needs. The Medicaid program is administered by the State's Department of Health (Department). For the State fiscal year ended March 31, 2021, New York's Medicaid program had approximately 7.3 million recipients and Medicaid claim costs totaled about $68.1 billion. The federal government funded about 56.5% of New York's Medicaid claim costs, and the State and the localities (the City of New York and counties) funded the remaining 43.5%.

Many of the State's Medicaid recipients are also enrolled in Medicare, the federal health care program for people age 65 and older and people under 65 years old with certain disabilities. Medicare has several "parts" for different medical services. For instance, Medicare Part A (hospital insurance) covers inpatient care, and Medicare Part B (medical insurance) covers doctors' services and outpatient care. Medicare often requires recipients to pay certain out-of-pocket costs, such as monthly premiums, annual deductibles, and coinsurance on claims.

The federal government established the Medicare buy-in program (Buy-in Program) to assist certain low-income people with paying their out-of-pocket Medicare expenses. Under the Buy-in Program, administered by the federal Centers for Medicare & Medicaid Services (CMS), Medicaid pays the Medicare premiums of Medicare beneficiaries who meet various eligibility requirements. While the Buy-in Program is processed through the Medicaid program, not all Buy-in Program enrollees are eligible for Medicaid. Medicaid categorizes these individuals as eligible for the Buy-in Program only and not entitled to other Medicaid services. Whether an individual is eligible for the Buy-in Program only or eligible for both the Buy-in Program and Medicaid, the Department's Medicaid claims processing and payment system (eMedNY) tracks every individual and their eligibility (herein referred to as "benefit eligibility period" in eMedNY). Individuals apply for the Buy-in Program through their Local Department of Social Services (Local District). Outside of New York City, the Local Districts include the county offices of social services. Within New York City, the five boroughs comprise one Local District administered by the Human Resources Administration (HRA).

Local Districts determine eligibility and authorize and process enrollment in the Buy-in Program. States submit information to CMS about individuals for whom the state will pay Medicare premiums. In addition, based on information from the Social Security Administration (SSA), CMS automatically enrolls individuals receiving Supplemental Security Income (SSI) benefits who are State residents into the Buy-in Program. Once a month, CMS calculates the State total premium liability based on the enrollment information it has received from the State and SSA and bills the Department. The funds are transferred to CMS electronically via the New York Statewide Financial System. For the period January 1, 2015 through December 31, 2019, New York's Medicaid program paid $8 billion in Buy-in Program premiums on behalf of 1,025,008 individuals.

Local Districts use the State's Welfare Management System (WMS) to process applicant data. When an individual is eligible for the Buy-in Program, Local Districts use WMS to transmit their eligibility and enrollment information to eMedNY. For eligibility verification and benefit-tracking purposes, each individual who applies for benefits under Medicaid or another public assistance program is assigned a Client Identification Number (CIN), a unique identifier.

Audit Findings and Recommendations

Improper Medicare premium payments for Buy-in Program individuals has been a long-standing Medicaid concern. Although the Department has automated processes in eMedNY to help with timely Buy-in Program eligibility determinations, improper premium payments continue and additional controls are needed.

For the period January 1, 2015 to December 31, 2019, Medicaid spent $31.7 million to purchase Medicare coverage for 42,586 individuals who did not have corresponding benefit eligibility periods in eMedNY. During this time, Medicaid also paid $372,716 to purchase Medicare coverage for 282 individuals who were identified as deceased. We determined the improper payments occurred because the Department did not take sufficient steps to ensure Local Districts performed timely Buy-in Program eligibility determinations, as required. While the Buy-in Program allows for recoveries of Medicare premiums back to the month of an individual's date of death, improper premium payments beyond two months (prior to the month in which the State requests termination of Buy-in Program coverage) for reasons other than death are not recoverable. Therefore, it is extremely important to also end Buy-in Program coverage timely to prevent improper Medicaid payments.

We also determined Medicaid paid $23.6 million in Medicare premiums for 3,439 individuals who were automatically added to the Buy-in Program by CMS with a retroactive begin date of more than two years in the past, despite limitations on Medicaid's liability beyond two years. We estimate the State may be eligible for $13 million in equitable relief from CMS for these transactions.

Better communication and coordination of efforts among all stakeholders (the Department, Local Districts, and CMS) is needed to help ensure Medicaid pays Buy-in Program premiums only for eligible recipients. Additionally, better oversight of Local District activities and closer monitoring of the automated system processes would help identify and resolve errors in a timely manner.

Buy-In Premiums for Recipients Without Eligibility

According to Department officials, individuals must have a benefit eligibility period – a date range for which the individual has Medicaid eligibility or Buy-in Program only eligibility – established in eMedNY for the Department to purchase Medicare coverage for them through the Buy-in Program. If an individual does not have a benefit eligibility period established in eMedNY, there is no assurance that the individual is, in fact, eligible for the Buy-in Program. Further, if an individual is no longer eligible, Buy-in Program coverage should be terminated timely in eMedNY. We found Local Districts did not take steps to ensure proper benefit eligibility periods were created in eMedNY for all eligible individuals and Buy-in Program coverage was timely terminated in eMedNY for those who were no longer eligible for the benefit. As a result, Medicaid made improper Medicare premium payments totaling $31.7 million for 42,586 individuals in the Buy-in Program for the period January 1, 2015 through December 31, 2019. We also found that Medicaid paid another $372,716 to purchase Medicare coverage for 282 individuals who were identified as deceased.

We contacted five Local Districts and asked them to review a sample of cases where Medicaid was paying Buy-in Program premiums for individuals without a corresponding benefit eligibility period in eMedNY. Collectively, the Local Districts reviewed 110 individual cases totaling $687,679 in premium payments. Local District officials confirmed Medicaid improperly paid $657,898 in premiums for 103 individuals and cited various explanations, including: issues related to recipients automatically added to the Buy-in Program by CMS, problems with the process used to automatically close Buy-in Program coverage, eMedNY system weaknesses, limitations related to identifying individuals without a benefit eligibility period, and human errors by Local District case workers. According to Local District officials, the remaining seven cases involved recipients having multiple CINs during the time they were enrolled in the Buy-in Program. We confirmed the individuals were eligible for the Buy-in Program (and Medicaid properly paid $29,781 in premiums) under an alternate CIN.

Automatic Buy-In Program Additions by CMS

In the Department's administration of the Buy-in Program, it relies on Local Districts to ensure that every individual for whom Medicaid is paying Medicare premiums is eligible to receive the benefit. When Local Districts determine eligibility and authorize and process enrollment in the Buy-in Program for eligible individuals, they use WMS to establish and maintain recipient cases; this information populates the benefit eligibility period in eMedNY (which shows the person is eligible for the Buy-in Program only or both Medicaid and the Buy-in Program). Generally, Local Districts are responsible for creating Buy-in Program coverage in eMedNY for eligible recipients, which allows for the payment of premiums. Sometimes, this is an automatic process (including data sharing from WMS to eMedNY), and other times Local District workers must manually enter the information into eMedNY. The eMedNY system submits daily transactions to notify CMS of individuals' eligibility for coverage under the State's Buy-in Program. Based on this information provided by the State, CMS processes the Buy-in Program enrollment for these individuals.

This process differs for individuals who receive SSI benefits. SSI recipients are automatically eligible for Medicaid, and CMS automatically adds these individuals to the Buy-in Program without the states having to make a separate request. Frequently, SSI eligibility is determined retroactively, so CMS automatically adds individuals to the Buy-in Program retroactively as well. In addition, SSA regularly communicates with states regarding who is eligible for SSI and Medicare through SSA data systems. The Local Districts receive information from SSA through the automatic data-sharing process within WMS. This automatic process is designed to establish Medicaid eligibility for SSI recipients so Local Districts do not have to make these eligibility determinations manually. However, sometimes this automatic process results in exceptions and WMS does not create Medicaid eligibility records. We found CMS automatically added SSI recipients to the Buy-in Program who did not have corresponding Medicaid eligibility established in WMS and, accordingly, in eMedNY. CMS generally initiates adding these individuals to the Buy-in Program; however, the responsibility for taking action to ensure proper enrollment in the Buy-in Program lies

with the State, and the Department relies on Local Districts to identify exceptions and resolve them manually.

For 33 of the 103 sampled cases, we found Medicaid improperly paid Buy-in Program premiums due to improper automatic additions by CMS. For example, in February 2018, CMS automatically added an individual to the Buy-in Program with a retroactive begin date of September 2016, and Medicaid paid Medicare premium payments of $2,497 for the retroactive coverage. The Local District confirmed the individual was not eligible for the Buy-in Program until January 2018. We calculated a resulting $2,143 in improper premium payments for the period September 2016 through December 2017. According to Local District officials, they did not take action to correct this erroneous transaction because they generally do not review transactions initiated by CMS.

While the Department stated it expected Local Districts to take action to ensure each individual added to the Buy-in Program by CMS had proper benefit eligibility periods in eMedNY, Local Districts were unaware it was their responsibility. In response to our finding, Department officials stated they planned to issue reminders to Local Districts.

Terminations Using Automatic Closing Codes

Typically, when an individual is no longer eligible for Medicaid or for Buy-in Program coverage only, their case is closed in WMS using a code that explains the reason for case closure. Local District case workers are required to simultaneously determine whether the individual is still eligible for the Buy-in Program, and if it is determined the individual is no longer eligible, a separate manual action must be taken in eMedNY to end the Buy-in Program coverage period. If the Buy-in Program coverage is not closed in eMedNY, the premium payments will continue even without an open Medicaid case in WMS.

To assist the Local Districts in Buy-in Program coverage terminations, the Department has a system process to automatically close Buy-in Program coverage in eMedNY when the case is closed in WMS using designated closing codes (e.g., when an individual no longer meets income requirements or they move out of New York State). At the time of our audit, the Department had 157 automatic closing codes designed to end Buy-in Program coverage (auto-close codes) in eMedNY. It is important to use the correct closing code to end a case for an individual with Buy-in Program coverage in WMS to ensure the Buy-in Program coverage is terminated timely. If a WMS case is not closed with one of the auto-close codes, Local District case workers must manually end the Buy-in Program coverage in eMedNY.

We found Local Districts did not make timely Buy-in Program closures in eMedNY for two thirds of the cases we sampled (70 of 103), resulting in improper premium payments. The delays were largely attributed to weaknesses and limitations related to the Department's automatic processes as well as to errors by Local District case workers who made manual determinations in eMedNY.

We found Local Districts did not always know which specific closing codes the Department designated as auto-close codes to end Buy-in Program coverage. As a result, Local Districts closed cases in WMS, both manually and through automatic WMS eligibility determination processes (such as an automatic closure because an individual is no longer a State resident), using closing codes that did not automatically terminate the Buy-in Program coverage in eMedNY. For example, HRA started using closing Code 404 in November 2017 to close cases for individuals who failed to re-apply for Medicaid after their SSI-based Medicaid eligibility ended. After their WMS case was closed, these individuals were no longer eligible for the Buy-in Program. During our audit scope, HRA used this closing code with the intention of ending Medicaid and Buy-in Program coverage for 1,686 individuals. However, the Department never identified Code 404 as an auto-close code and individuals whose coverage should have been terminated remained active in the Buy-in Program for many months. Medicaid made over $2.3 million in improper premium payments for these individuals.

Under the current process, the Department becomes aware of new WMS codes only if WMS officials notify them. We brought this issue to the Department's attention and its officials immediately took action to designate closing Code 404 as an auto-close code. They also stated they planned to start reviewing our findings by September 2021 to identify individuals with active coverage who should be removed from the Buy-in Program. Additionally, Department officials stated they would work with other stakeholders to establish a new information-sharing process with Local Districts and WMS to ensure that, any time a new WMS closing code is introduced, the Department is informed so it can evaluate if the code should be designated as auto-close.

We also found eMedNY did not always end Buy-in Program coverage when cases were closed in WMS using one of the designated auto-close codes. For example, in one case, an individual's case was closed and the person lost eligibility for the Buy-in Program due to being incarcerated. An auto-close code correctly closed the individual's case in WMS in October 2017; however, Buy-in Program eligibility did not automatically close in eMedNY. Medicaid paid $14,636 in monthly premiums for this incarcerated individual during the period covered by our audit. As of April 2021, improper premium payments continued for this individual.

While the eMedNY auto-close system solution was created to assist Local Districts, as designed, it fails to terminate Buy-in Program coverage on time for all cases. The eMedNY auto-close process runs on the 23rd of each month and looks for eligibility transactions from WMS that closed cases using one of the auto-close codes prior to that date. When a recipient's case is closed with an end date after the 23rd of the current month, eMedNY will not auto-close Buy-in Program coverage for this recipient in the current month. Instead, the closing eligibility transaction is written to a file to be processed during the following month's auto-close process. If the end date on the closing eligibility transaction is far in the future or is open-ended (12/31/9999), it will continue to be re-written into the file, preventing Buy-in Program eligibility from being auto-closed, potentially indefinitely. Department officials acknowledged they

accepted the risk of this system limitation, and they did not design a compensatory control to identify and promptly end Buy-in Program coverage in these instances. For example, one recipient's case was closed effective June 23, 2016 in WMS using one of the auto-close codes. The closing eligibility transaction was applied to the future file to be processed the following month. However, the Buy-in Program coverage was not terminated the following month and Medicaid continued to make premium payments. Our review of the historical eligibility transactions for this case determined there was an open-ended transaction written into the future file that likely prevented proper closure of the Buy-in Program coverage. This case was still open at the conclusion of our audit, and improper premium payments totaled $3,944.

In addition to the system weaknesses outlined earlier in this report, human errors by Local District case workers allowed Medicaid to make improper premium payments for individuals who no longer qualified for the Buy-in Program and who were deceased. In another example, a recipient failed to return the required documentation to re-certify for Medicaid, so the Local District case worker closed the case effective April 2004. However, the case worker failed to manually terminate the Buy-in Program coverage in eMedNY, as required, and the Buy-in Program coverage remained active. At the conclusion of our audit, Medicaid was still making premium payments on behalf of this individual, who had not had Medicaid eligibility for 17 years. We calculated improper premium payments of $7,562 during our audit scope for this individual.

Buy-In Program Premium Payments for Deceased Individuals

During the audit scope, Medicaid made $372,716 in improper premium payments to purchase Medicare coverage for 282 individuals identified as deceased by eMedNY and/or an independent verification service. The Buy-in Program allows for retroactive recoveries back to the month of an individual's date of death (even if this date is more than two months in the past). However, Local Districts must properly identify death cases on their transactions to CMS. Medicaid did not receive full recoveries on the premiums paid after death for the 282 cases we identified because Local Districts were either unaware of the death or failed to properly identify a death when terminating Buy-in Program coverage in eMedNY. For example, in June 2018, a Local District became aware of a recipient who died in 2012 and ended this recipient's Medicaid eligibility retroactively to the date of death. However, the Local District did not properly terminate the individual's Buy-in Program coverage in eMedNY. As a result, Medicaid improperly paid $22,992 in Buy-in Program premiums after the individual died. As of April 2021, Medicaid had not received the full credit from CMS for these premiums.

In response to our findings, Department officials agreed to further research the cases we identified and to take steps to ensure any improper payments for deceased individuals are refunded to the State.

Department Role in Identifying and Preventing Improper Premium Payments

The Department is aware Medicaid is at risk of making improper Medicare premium payments for individuals who are not eligible for the Buy-in Program and has taken steps to reduce the amount misspent on premiums. For example, the Department produces a monthly report that identifies individuals whose benefit eligibility period has expired, but for whom Medicaid continues to pay monthly premiums. The Department instructed Local Districts to determine if individuals on this report are still eligible for the Buy-in Program and, if not, to take action to stop the premium payments. However, the report does not identify all individuals who are no longer eligible for the Buy-in Program. For example, it only includes the current benefit eligibility status at the time a premium payment is made. As such, the report will not identify individuals retroactively added to the Buy-in Program for months in which they did not have a benefit eligibility period.

Additionally, to identify individuals without a benefit eligibility period, the report logic searches for the Medicaid CIN in the eMedNY recipient database associated with the Social Security number (SSN) for each individual on the CMS Buy-in Program transaction file (CMS Billing File). If more than one CIN is found for the SSN, the date of birth on the CMS Billing File is matched against the date of birth in eMedNY to select the correct CIN. If the report logic cannot find a CIN with a matching date of birth, it cannot identify the individual for whom Medicaid is making a premium payment.

We determined 8,783 of the 42,586 (21%) individuals we identified with Buy-in Program coverage and no corresponding benefit eligibility period were not identified by the report. As a result, Local Districts did not make timely Buy-in Program eligibility determinations. At the time of our audit, the Department did not have an alternative method to identify individuals who might be receiving Buy-in Program benefits without proper eligibility determination.

While the Buy-in Program allows for recoveries of premiums back to the month of an individual's date of death, there is no provision that allows for recoveries of improper premium payments beyond a two-month period for reasons other than death. Because such recoveries of premium payments are not allowed, it is extremely important to end Buy-in Program coverage periods in eMedNY immediately.

Improper Retroactive Automatic Eligibility Additions

Transaction code 1180 is used to inform the State when CMS automatically adds SSI recipients to the Buy-in Program. These automatic additions can be retroactive to the first month of SSI-based eligibility; however, according to the Department, Medicaid premium liability cannot be greater than two years. Per the CMS Buy-in Program Manual, the State should be reviewing code 1180 transaction addition dates.

According to the Department, the State can request payment relief on retroactive additions of SSI recipients when the retroactivity extends beyond the two-year limit.

When individuals are added to the Buy-in Program more than two years retroactively, the State is at risk of making excessive premium payments. We identified 3,439 individuals who were automatically added to the Buy-in Program by CMS retroactively for more than two years. For the five-year period from January 1, 2015 through December 31, 2019, Medicaid made premium payments totaling $23.6 million for these additions. The State may be eligible for equitable relief from CMS for its share of $13 million in premiums paid beyond the two years. Of note, $694,610 in premiums for 220 of these individuals are also included in the $31.7 million referenced earlier in this report.

Department officials do not review CMS transactions to ensure each period of retroactive Buy-in Program coverage has a corresponding benefit eligibility period in eMedNY; they rely on the Local Districts to conduct these reviews. However, the Department did not issue proper directives to Local Districts. Further, while the information on such transactions is available to the State from the daily file received from CMS, the Department did not identify these transactions. We referred 3,439 transactions identified during the audit to the Department, and Department officials stated they would request payment relief from CMS.

We recognize the Department's efforts to ensure the appropriateness of Medicaid payments under the Buy-in Program; however, better oversight of and communication with Local Districts are needed. Additionally, system weaknesses inhibit the Department's ability to identify and prevent improper payments. Alternative approaches are needed to help resolve cases that cannot be automatically addressed through the system processing.

Recommendations

1. Formally remind Local Districts to ensure all individuals enrolled in the Buy-in Program by CMS (retroactively and non-retroactively) have corresponding benefit eligibility periods in eMedNY.

2. Increase communication with and oversight of Local Districts to ensure timely closure of Buy-in Program cases. Take actions to:

    - Formally remind Local Districts to promptly close ineligible individuals' Buy-in Program coverage in eMedNY.

    - Develop an information-sharing process between all Department stakeholders to ensure knowledge and use of all closing codes that the Department designates as auto-close codes to end Buy-in Program coverage and that, when new closing codes are added or modified within WMS, the Department is notified promptly to evaluate the impact of the code changes on the Buy-in Program and, if appropriate, designate such closing codes as auto-close codes within eMedNY.

- Design and develop compensatory controls for timely identification and resolution of Buy-in Program cases not closed via the auto-close process.
- Prevent improper premium payments for individuals who are currently not identified by the Department's monthly report, including individuals who were retroactively added to the Buy-in Program for months in which they did not have a benefit eligibility period.

3. Review the individuals identified by our audit who have active Buy-in Program coverage but do not have a benefit eligibility period in eMedNY, and promptly remove them from the Buy-in Program, as warranted.

4. Review and recover premiums pertaining to the $372,716 paid for individuals identified as deceased, as warranted.

5. Follow up with CMS to request payment relief on the Department's portion of $13 million pertaining to the 3,439 cases of retroactive automatic additions of eligibility that exceeded the allowed two-year limit for retroactivity. Implement corresponding processes to identify these transactions and request payment relief from CMS going forward.

Audit Scope, Objective, and Methodology

The objective of our audit was to determine if Medicaid made improper Medicare premium payments on behalf of recipients enrolled in the Buy-in Program. The audit covered Medicaid payments for individuals enrolled in the Buy-In Program for the period from January 1, 2015 through December 31, 2019 and associated Buy-in Program credits from January 1, 2015 to November 30, 2020.

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 Local District, WMS, and eMedNY officials to gain an understanding of their processes and procedures for Buy-in Program eligibility, enrollment, and disenrollment. We obtained and reviewed Buy-in Program premium payment data and compared that data with eMedNY eligibility data and determined both data sets were reliable. We factored in any applicable credits that reduced the amount of premium payments paid by Medicaid. We also reviewed the monthly Buy-in Program reports the Department makes available to the Local Districts. We judgmentally selected five Local Districts (Albany, Erie, HRA, Nassau, and Suffolk) for review based on their size and geographic location. We then selected a judgmental sample of 110 cases from these Local Districts based on high-dollar amounts of potential improper premium payments and various scenarios, such as automatic additions by CMS and coverage after death. Because we selected judgmental samples, our results cannot be projected to the population as a whole. We also obtained and reviewed eMedNY system documentation related to the system process to auto-close Buy-in Program cases in eMedNY and the system process that produces the monthly Buy-in Program report the Department shares with the Local Districts. We also used eMedNY and an independent verification service (Veris, which uses SSA information to identify deceased individuals) to identify people who were deceased at the time the Department purchased Medicare coverage for them. We found 268 individuals were identified as deceased in eMedNY, 55 individuals were identified as deceased by Veris, and 41 individuals were identified as deceased by both eMedNY and Veris.

We shared our methodology and findings with Department officials during the audit for their review.

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 could be considered management functions for purposes of evaluating organizational independence under generally accepted government auditing standards. In our professional judgment, these duties do not affect our ability to conduct this independent performance audit of the Department's oversight and administration of the Buy-in 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 the audit recommendations and indicated that certain actions have been and will be taken to address them. Our rejoinders to certain Department comments are included in the report's State Comptroller's Comments, which are embedded in the Department's response.

Within 180 days after 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

KATHY HOCHUL
Governor

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

KRISTIN M. PROUD
Acting Executive Deputy Commissioner

September 6th, 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 2020-S-35 entitled, "Department of Health - Medicaid Program: Improper Payments of Medicare Buy-in Premiums for Ineligible Recipients."

Thank you for the opportunity to comment.

Sincerely,

Theresa Egan
Deputy Commissioner for Administration

Enclosure

cc: Diane Christensen
Frank Walsh
Amir Bassiri
Brett Friedman
Geza Hrazdina
Daniel Duffy
James Dematteo
James Cataldo
Abigail Barker
Jill Montag
Brian Kiernan
Timothy Brown
Amber Rohan
Robert Schmidt
Thomas McCann
Collin Gulczynski
OHIP Audit

Empire State Plaza, Corning Tower, Albany, NY 12237 | health.ny.gov

Department of Health Comments on the Office of the State Comptroller's Draft Audit Report 2020-S-35 entitled, "Medicaid Program: Improper Payments of Medicare Buy-In Premiums for Ineligible Recipients"

The following are the responses from the New York State Department of Health (Department) to Draft Audit Report 2020-S-35 entitled, "Medicaid Program: Improper Payments of Medicare Buy-In Premiums for Ineligible Recipients" by the Office of the State Comptroller (OSC).

General Comments:

Department Role in Identifying and Preventing Improper Premium Payments (page 12):

- *While the Buy-in Program allows for recoveries of premiums back to the month of an individual's date of death, there is no provision that allows for recoveries of improper premium payments beyond a two-month period for reasons other than death. Because such recoveries of premium payments are not allowed, it is extremely important to end Buy-in Program coverage periods in eMedNY immediately*.

OSC's statement is incorrect. Buy-in coverage can be retroactively terminated for four months for reasons other than death. The applicable limitation is two months *prior to* the current month. For example, if the Buy-in is closed on May 23, 2021, retroactive to an effective date of February 28, 2021, the Department would receive credit for March, April, May and June (June's payment is included because the Department would pay that premium in May).

State Comptroller's Comment – Our statement is correct and our understanding is the same as the Department's, as referenced on page 7 of our report: "While the Buy-in Program allows for recoveries of Medicare premiums back to the month of an individual's date of death, improper premium payments beyond two months (prior to the month in which the State requests termination of Buy-in Program coverage) for reasons other than death are not recoverable." The statement referenced in the Department's response is a synopsis of the rule.

Improper Retroactive Automatic Eligibility Additions (pages 12-13):

- *When individuals are added to the Buy-in Program more than two years retroactively, the State is at risk of making excessive premium payments. We identified 3,439 individuals who were automatically added to the Buy-in Program by CMS retroactively for more than two years. For the five-year period from January 1, 2015 through December 31, 2019, Medicaid made premium payments totaling $23.6 million for these additions. The State may be eligible for equitable relief from CMS for its share of $13 million in premiums paid beyond the two years.*

New York State has entered into an agreement with the Federal Government under Section 1634(a) of the Social Security Act to determine Medicaid eligibility for Supplemental Security Income (SSI) recipients and the Centers for Medicare and Medicaid Services (CMS) then auto-accretes SSI eligible individuals to New York's Buy-in program. Because the Department cannot refuse to accrete these individuals, we are obligated to pay the Buy-in for these individuals. This

requirement is what led to the 2009 case of *New York State vs Sebelius* (No. 1:07-CV-1003) in the United States District Court for the Northern District of New York that allows the Department to request equitable relief.

Audit Scope, Objective, and Methodology (page 15):

- *We also used eMedNY and an independent verification service (Veris, which uses SSA information to identify deceased individuals) to identify people who were deceased at the time the Department purchased Medicare coverage for them. We found 268 individuals were identified as deceased in eMedNY, 55 individuals were identified as deceased by Veris, and 41 individuals were identified as deceased by both eMedNY and Veris.*

The Department is in the process of reviewing all the individuals identified as deceased by OSC. Based on the reviews conducted, the Department found several instances in which the date of death cited by OSC is illogical, and not supported by either available electronic data sources or documentation in the consumer's case record.

For instance, the date of death OSC identified for one consumer using only Veris as a source was the same as the consumer's date of birth, which was in the year 1945. Verification from the State Online Query (SOLQ), which receives dates of death from the Social Security Administration (SSA), shows the consumer died in 2020, which is consistent with the death certificate available in the consumer's case record.

For another consumer, OSC cited a date of death in 1960, however, the SOLQ date of death is 2020, which is also consistent with the available documentation in the case record. In many other instances, the date of death OSC cited predated the SOLQ and/or case documentation date of death by one to 15 years. Accordingly, the Department believes that a substantial number of the findings cited by OSC are incorrect.

State Comptroller's Comment – We received death date information from the Department's Medicaid claims processing and payment system (eMedNY) and Veris (which uses SSA death data). In March 2021, five months before we issued the draft audit report, we gave the Department the audit findings pertaining to the individuals whom these sources identified as deceased. We met with the Department in May 2021 and requested information that officials stated they had to confirm or/and refute from eMedNY and Veris. Despite our request, the Department did not provide this information for our consideration.

Our report clearly states that the individuals were identified as deceased by eMedNY (the Department's system) and/or Veris, and since we do not have access to SOLQ, it is important for the Department to review its available information to make a final determination. Lastly, the majority of our findings were based on information in eMedNY; if the Department determines its system has death dates that do not match case records from the Local Districts, the Department needs to take action to correct information in its system.

Recommendation #1:

Formally remind Local Districts to ensure all individuals enrolled in the Buy-in Program by CMS

(retroactively and non-retroactively) have corresponding benefit eligibility periods in eMedNY.

Response #1:

The Department published two General Information System Messages (GIS) to the Local Departments of Social Services (LDSS) in May 2021, which addresses the OSC recommendation. These GIS remind LDSS of the auto-close Medicare Buy-in process (GIS 21 MA/09) and the need to review and take appropriate action on the existing Third-Party Liability (TPL) Buy-in Deletion report TRMP0067 (GIS 21 MA/10). The GIS messages can be found on the DOH website:

https://health.ny.gov/health_care/medicaid/publications/docs/gis/21ma09.pdf

https://health.ny.gov/health_care/medicaid/publications/docs/gis/21ma10.pdf

Two additional GIS are currently in draft status. One reminds LDSS to use the correct closing code for deceased consumers and to verify the automated system closed the Buy-in. The other GIS reminds LDSS to end the Buy-in for consumers transitioning to the NY State of Health at renewal.

State Comptroller's Comment – We commend the Department for taking prompt action to communicate with the Local Districts. We also encourage the Department to issue guidance related to the Local Districts' role in establishing benefit eligibility periods when CMS automatically adds individuals to the Buy-in Program.

Recommendation #2:

Increase communication with and oversight of Local Districts to ensure timely closure of Buy-in Program cases. Take actions to:

- Formally remind Local Districts to promptly close ineligible individuals' Buy-in Program coverage in eMedNY.

- Develop an information-sharing process between all Department stakeholders to ensure knowledge and use of all closing codes that the Department designates as auto-close codes to end Buy-in Program coverage and that when new closing codes are added or modified within WMS, the Department is notified promptly to evaluate the impact of the code changes on the Buy-in Program and, if appropriate, designate such closing codes as auto-close codes within eMedNY;

- Design and develop compensatory controls for timely identification and resolution of Buy-in Program cases not closed via the auto-close process; and

- Prevent improper premium payments for individuals who are currently not identified by the Department's monthly report, including individuals who were retroactively added to the Buy-in Program for months in which they did not have a benefit eligibility period.

Response #2:

The Department reminded LDSS in May 2021 to close ineligible individuals' Buy-in coverage promptly in eMedNY via GIS 21 MA/10.

The Department is scheduled to begin receiving Workload Managements (WLMs) from all LDSS. If a new code is included in the WLM, the Department will then evaluate the code to determine if it is appropriate to end the Buy-in.

If the LDSS caseworker does not use the correct code to auto close the Buy-in, then the case will appear on the LDSS TRMP0067 30-day, 60-day and 90-day deletion reports. The Department staff monitors these reports and sends reminders to LDSS to resolve cases that appear on them. It should be noted the Buy-in should not be closed for all cases that are auto-closed. For instance, an incarcerated consumer whose case is auto-closed should not have their Buy-in closed.

State Comptroller's Comment – While some incarcerated individuals may still be eligible for the Buy-in Program, there are specific auto-close codes for certain incarcerated individuals whose Buy-in Program coverage should be terminated. During the audit, we discussed these specific auto-close codes with the Department, and Department officials agreed these codes should terminate the individual's Buy-in Program coverage when their benefit eligibility period ends.

The Department staff is evaluating the feasibility of improving the Mobius report to ensure all appropriate consumers are identified. However, we note that some individuals are appropriately excluded from the report. Therefore, the Department is balancing the risk of including individuals on the report who should not have their Buy-in closed.

Recommendation #3:

Review the individuals identified by our audit who have active Buy-in Program coverage but do not have a benefit eligibility period in eMedNY and promptly remove them from the Buy-in Program, as warranted.

Response #3:

The Department is reviewing the individuals who do not have Medicaid eligibility in eMedNY and will end their eligibility for Medicare Buy-in as appropriate. The Department cannot remove an individual from coverage without first giving them the legally required notice and then providing the individual an opportunity to respond to that notice.

Recommendation #4:

Review and recover premiums pertaining to the $372,716 paid for individuals identified as deceased, as warranted.

Response #4:

The Department is reviewing each consumer file to verify whether the date of death used by OSC is supported by SOLQ and case record documentation. However, based on the consumer

files reviewed to date, the Department found that SOLQ and case documentation available during the audit disproves the date of death used by OSC in some cases. For example, in the two cases previously mentioned, OSC identified over $10,000 in paid premiums by citing a date of death that is not supported by SOLQ and documentation in the consumer's case record. As appropriate, the Department will take steps to ensure that the net amount (i.e., the premium amount less the Federal share) of any inappropriate claims is refunded to CMS.

State Comptroller's Comment – See State Comptroller's Comment on page 19. Additionally, the Department should recover the net amount of any inappropriate claims from CMS, not refund CMS.

Recommendation #5:

Follow up with CMS to request payment relief on the Department's portion of $13 million pertaining to the 3,439 cases of retroactive automatic additions of eligibility that exceeded the allowed two-year limit for retroactivity. Implement corresponding processes to identify these transactions and request payment relief from CMS going forward.

Response #5:

The Department has requested equitable payment relief from CMS and is currently in the process of following their directive in order to facilitate the recovery process.

Contributors to Report

Executive Team

Andrea C. Miller - *Executive Deputy Comptroller*
Tina Kim - *Deputy Comptroller*
Ken Shulman - *Assistant Comptroller*

Audit Team

Andrea Inman - *Audit Director*
Christopher Morris - *Audit Manager*
Thomas Sunkel, CPA - *Audit Supervisor*
Kate Merrill - *Examiner-in-Charge*
Benjamin Babendreier - *Senior Examiner*
Michael Gouvakis - *Senior Examiner*
Andrea Majot - *Senior Editor*

Contact Information
(518) 474-3271
StateGovernmentAccountability@osc.ny.gov
Office of the New York State Comptroller
Division of State Government Accountability
110 State Street, 11th Floor
Albany, NY 12236

Like us on Facebook at facebook.com/nyscomptroller
Follow us on Twitter @nyscomptroller
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