NEW YORK STATE OF OPPORTUNITY. Department of Health

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January 2, 2023

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

Pursuant to the provisions of Section 170 of New York State Executive Law, I hereby transmit to you a copy of the New York State Department of Health's comments related to the Office of the State Comptroller's final audit report 2020-S-39 entitled, "Medicaid Program: Recovering Managed Care Overpayments for Pharmacy Services on Behalf of Recipients with Third-Party Health Insurance."

Please feel free to contact Mischa Sogut, Assistant Commissioner for Governmental Affairs, with any questions at (518) 473-1124 or mischa.sogut@health.ny.gov.

Sincerely,

Megan E. Baldwin
Acting Executive Deputy Commissioner

Enclosure

cc: M. Sogut

Department of Health Comments on Final Audit Report 2020-S-39 entitled, "Medicaid Program: Recovering Managed Care Overpayments for Pharmacy Services on Behalf of Recipients With Third Party Health Insurance" by the Office of the State Comptroller

The following are the responses from the New York State Department of Health (the Department) to Final Audit Report 2020-S-39 entitled, "Medicaid Program: Recovering Managed Care Overpayments for Pharmacy Services on Behalf of Recipients With Third-Party Health Insurance" by the Office of the State Comptroller (OSC).

Recommendation #1:

Review the $292 million in Medicaid payments for pharmacy services on behalf of recipients with TPHI drug coverage we identified and ensure overpayments are appropriately recovered, prioritizing encounter claims that are approaching the 3-year window for recovery.

Response #1:

The Office of the Medicaid Inspector General (OMIG) and Gainwell fundamentally disagree with the underlying assertions of this recommendation.

State Comptroller's Comment 1 – OMIG's response and continued inaction on this recommendation is irresponsible, consequently resulting in tens of millions of dollars of waste in the Medicaid program at the expense of taxpayers. The audit accurately concluded OMIG and the Department had a hands-off approach toward the third-party liability (TPL) recovery process and, as a result of this inadequate oversight over Gainwell's (previously known as HMS) TPL recovery process, Gainwell did – in fact – systematically exclude certain categories of pharmacy encounter claims from its third-party health insurance (TPHI) carrier billings based on flawed and incomplete rationales that OMIG and the Department should evaluate, such as: $53.2 million related to recipients whose drug coverage was not under a stand-alone PBM policy in eMedNY (this exclusion is contradictory to how fee-for-service (FFS) claims are processed); $39.1 million paid on behalf of Medicaid recipients with Medicare Part D for on-formulary drugs at in-network providers (we also add that the Department makes monthly clawback payments to the federal government for many individuals with this coverage instead of paying individual claims); and $24.4 million in claims containing a generic billing provider identification number (when an alternate field, the National Provider Identifier [NPI], was available for use in billing TPHI carriers).

The existence of TPHI, in and of itself, does not mean that a Medicaid claim is recoverable. There are several reasons that a claim may not be recoverable, for example:

- Medicaid benefits may, and often do, exceed commercial insurance benefits, contributing to instances where the existence of TPHI does not change Medicaid's liability.
- Medicaid would be appropriately billed to cover the remaining services when a claim

includes multiple services and only some of the services are covered by TPHI.

- Gainwell's TPHI edits are thoughtfully developed and rigorously tested to identify claims for recovery, but also eliminate claims that were billed appropriately to Medicaid. Therefore, it is important to recognize that submission of a bill by Gainwell to a TPHI carrier is not the only evidence of an attempt for recovery.
- Confidential claims related to abortion, pregnancy, sexual abuse, etc. are appropriately removed from recovery attempts due to their sensitive nature and to protect the privacy of the members.

Valid TPHI carrier denials do occur as evidenced in the data provided to OSC as part of this audit. When claims pass through all applicable edits in the Gainwell system, there may still be denials taken by the TPHI carrier that are appropriate.

OSC's examples provided during the audit do not provide evidence that a recovery should have been made or that a recovery would have ever occurred. As stated in the General Comments section of our response to the draft report, absence of a denial reason or the existence of billed claims that were not adjudicated by the carrier does not prove that recovery should have or would have occurred, as they may be appropriate Medicaid claims. OSC's assumption that any claim without a recovery represents an error or is evidence of inaction to the detriment of the State is flawed.

State Comptroller's Comment 2 – The audit does not make any assumptions regarding the recoverability of the $292 million in encounter claims that we determined were not billed to TPHI carriers. The audit demonstrated that the current TPL recovery process systematically excluded certain categories of pharmacy encounter claims from TPHI carrier billings based on flawed and incomplete rationales. Further, when provided with a sample of claims during the audit, neither OMIG nor Gainwell could provide an explanation as to why 38 of 47 claims (81%) were not billed to TPHI carriers for potential recovery. Moreover, in some cases when a reason was given (9 of 47 claims, or 19%), we found the reasons were not justified. For example, when claims were excluded from the TPL recovery process due to containing a generic billing provider identification number, we found that an alternate field, the NPI, was available for use in billing TPHI carriers (see pages 8–9 of the report).

The contract between Gainwell and OMIG is structured to provide robust TPHI identification and recovery procedures. The State's and Gainwell's interests are aligned to maximize recoveries of inappropriate payments for the Medicaid program.

Recommendation #2:

Assess the recoverability of pharmacy encounter claims that were billed to TPHI carriers but did not result in a recovery (due to carrier denial or nonresponse) and ensure all necessary follow-up actions are taken to obtain appropriate recoveries.

Response #2:

OMIG and Gainwell perform vigorous follow up activities and reject the audit assertion that follow-up actions on denied claims by Gainwell has been "limited" in scope and likely contributed to "significant waste and lost opportunity for recovery of improper payments."

OMIG, in collaboration with Gainwell, is exploring additional system enhancements to provide greater clarity and detail on TPHI carrier billing follow up activities. Gainwell has already taken steps to further enhance the TPL recovery process in New York for managed care pharmacy services by proactively instituting systems changes needed to have visibility into which claims were excluded and the rationale for exclusion.

State Comptroller's Comment 3 – It is unclear what rigorous follow-up activities are performed by OMIG and Gainwell on pharmacy encounter claims that were billed to TPHI carriers but did not result in a recovery due to carrier denials or non-response. As stated throughout the report, OMIG has provided little oversight over Gainwell's recovery process, including over Gainwell's follow-up activity when TPHI carriers deny claims for reasons that could be rectified but follow-up action by Gainwell to get payment on those denied claims is limited – potentially leaving tens of millions of dollars never recouped. Gainwell also did not have sufficient reports of its follow-up activities available upon request and could not provide information pertaining to: how often it took follow-up actions, what those actions were, and whether those actions were successful. Therefore, it is unclear how officials know whether Gainwell's follow-up activities on carrier denials were appropriate to ensure all available recoveries were made. We are pleased, however, that OMIG is collaborating with Gainwell to make the necessary enhancements to increase oversight of the TPL recovery process.

Recommendation #3:

Assess the TPL recovery process for managed care pharmacy services to identify all factors that led to exclusions from TPHI carrier billings, and ensure corrective actions are taken where appropriate.

Response #3:

OMIG and Gainwell agree that TPL recovery processes, including edits and business rules, should be regularly reviewed. Gainwell and OMIG understand that some claim types are inherently excluded due to confidentiality as well as heightened patient privacy associated with services related to abortions, sexual assault/abuse, and substance abuse treatment. Gainwell has a long-standing, effective process in place to regularly review edits and business rules and update as appropriate. Gainwell will continue to confer with OMIG on updates to claim types necessitating exclusion or to business rules that may require further update and/or modification.

Gainwell has already taken steps to further enhance the TPL recovery process in New York for managed care pharmacy services by proactively instituting systems changes needed to have visibility into which claims were excluded and the rationale for exclusion. OMIG, in collaboration with Gainwell, is exploring additional systems enhancements to provide greater clarity and detail on TPHI carrier billing follow up activities.

Recommendation #4:

Implement ongoing monitoring of the entire TPHI recovery process for managed care pharmacy services to ensure all appropriate recoveries are made within the required time frames, including monitoring of pharmacy encounter claims that are not billed to TPHI carriers and pharmacy encounter claims that are billed to TPHI carriers but do not result in a recovery.

Response #4:

OMIG actively oversees Gainwell activities and has visibility into all aspects of the process and is currently implementing additional enhancements. Specifically, Gainwell and OMIG are developing additional reporting to give OMIG greater insight into the entire TPHI recovery process, including, but not limited to, claim disposition reporting.

Gainwell has also implemented enhancements to its billing processes to allow more granularity into the end-to-end recovery process, including, but not limited to, the ability to report on edits triggered from Gainwell's billing process. This enhancement allows the identification of specific reasons claims that were removed from recovery attempts as well as provides detail for follow-up research to further maximize billings.

State Comptroller's Comment 4 – Our audit concluded OMIG provided inadequate oversight of the TPL recovery process. Therefore, we are pleased that, as a result of the audit, OMIG now recognizes the need for greater oversight of the entire TPHI recovery process and is working with Gainwell to make such improvements.

In addition, the Medicaid program is expected to transition the pharmacy benefit from Managed Care to FFS effective April 1, 2023.

Recommendation #5:

Ensure MCOs are made aware of all eMedNY TPHI policies with drug coverage, and take corrective actions where appropriate.

Response #5:

The Department is assessing the feasibility of system enhancements to ensure MCOs are made aware of all eMedNY TPHI policies with drug coverage on behalf of recipients enrolled through NYSOH.

Recommendation #6:

Engage other stakeholders to assess the feasibility and benefits of increasing the recovery window for initiating Medicaid TPL recoveries beyond the current statutory maximum of 3 years.

Response #6:

OMIG is working with the Department and other agency stakeholders to determine the appropriateness and feasibility of this recommendation.

The following are responses to the State Comptroller's Comments in the final report.

State Comptroller's Comment 1 (page 15):

The Department's Response, that "the OSC assumption that any claim without a recovery represents an error or is evidence of inaction to the detriment of the State is patently false," is

incorrect. The response also reflects OMIG's and the Department's attitude and hands-off approach toward their oversight of HMS' recovery process. The response is ill-conceived and, given the significance of money at stake, is irresponsible to the taxpayers funding Medicaid. OMIG and the Department should not be dismissive but should thoughtfully review the audit's findings and implement the recommendations.

The audit does not make any assumptions regarding the recoverability of the $292 million in encounter claims that we determined were not billed to TPHI carriers. Further, OMIG and the Department make their inflammatory statement, but when provided with a sample of claims, neither OMIG nor HMS could provide an explanation as to why 38 of 47 claims (81%) were not billed to TPHI carriers for potential recovery. Moreover, in some cases when a reason was given (9 of 47 claims, or 19%), we found the reasons were not justified. For example, when claims were excluded from the TPL recovery process due to containing a generic billing provider identification number, we found that an alternate field, the National Provider Identifier (NPI), was available for use in billing TPHI carriers (see pages 8-9 of the report).

The audit concluded that OMIG and the Department provided inadequate oversight over HMS' TPL recovery process and, as a result, HMS excluded certain categories of pharmacy encounter claims from TBHI carrier billings, which should be re-evaluated, such as: $53.2 million related to recipients whose drug coverage was not under a stand-alone PBM policy in eMedNY (this exclusion is contradictory to how FFS claims are processed); $39.1 million paid on behalf of Medicaid recipients with Medicare Part D for on-formulary drugs at in-network providers (we also add that the Department makes monthly clawback payments to the federal government for many individuals with this coverage instead of paying individual claims); and $24.4 million in encounter claims containing a generic billing provider identification number (when an alternate field, the NPI, was available for use in billing TPHI carriers).

State Comptroller's Comment 3 (page 17):

Given the examples provided in State Comptroller's Comment 1, and the circumstances whereby neither OMIG nor the Department review, monitor, or reconcile TPHI recoveries to ensure that all appropriate recoveries are pursued and collected, we strongly encourage OMIG and the Department to implement this recommendation.

State Comptroller's Comment 5 (page 18):

See State Comptroller's Comment 1. Additionally, officials consider the act of passing claims through HMS system edits that eliminate billings HMS believes would likely not result in recovery as an attempt for recovery. However, the audit demonstrated the current TPL recovery process systematically excluded certain categories of pharmacy encounter claims from TPHI carrier billings based on flawed and incomplete rationales.

Response to the State Comptroller's Comments 1, 3, & 5:

The Department, OMIG, and Gainwell all take the important third-party recovery work conducted for the benefit of the NYS Medicaid program very seriously. The prior response stated that the subject claims went through Gainwell's process to determine their appropriateness for billing, even if the specific edit(s) that prevented billing the TPHI carrier was not available to report.

For OSC's example where claims were excluded for a generic provider ID, Gainwell did not receive the NPI associated to that claim for that generic provider ID, and thus could not utilize it for billing. In addition, OSC notes the lack of billing claims on policies that were not stand-alone pharmacy policies; however, many of these are major medical carriers who would either deny or simply not adjudicate a pharmacy claim sent to them.