



Department of Health

KATHY HOCHUL
Governor

MARY T. BASSETT, M.D., M.P.H.
Commissioner

KRISTIN M. PROUD
Acting Executive Deputy Commissioner

October 14, 2022

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

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-61 entitled, "Medicaid Program: Improper Medicaid Managed Care Payments for Durable Medical Equipment, Prosthetics, Orthotics, and Supplies on Behalf of Recipients in Nursing Homes."

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

Sincerely,

Kristin M. Proud
Acting Executive Deputy Commissioner

Enclosure

cc: Mischa Sogut

**Department of Health Comments to
Final Audit Report 2020-S-61 entitled, “Medicaid Program: Improper
Medicaid Managed Care Payments for Durable Medical Equipment,
Prosthetics, Orthotics, and Supplies on Behalf of Recipients in
Nursing Homes” 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-61 entitled, “Medicaid Program: Improper Medicaid Managed Care Payments for Durable Medical Equipment, Prosthetics, Orthotics, and Supplies on Behalf of Recipients in Nursing Homes” by the Office of the State Comptroller (OSC).

Recommendation #1:

Review the \$9.6 million in payments for durable medical equipment, prosthetics, orthotics, and supplies (DMEPOS) claims and recover as appropriate, beginning with the \$77,356 in sampled claims that managed care organizations (MCOs) agreed were overpaid.

Response #1:

The Office of the Medicaid Inspector General is conducting additional research into program, contract, and policy guidance regarding these DMEPOS findings. MCOs have the ability to enter into their own specific contracts with each of their skilled nursing facilities (SNF). These contracts can vary between MCOs and SNFs and may not have the same components as fee for service (FFS) rates. In some contracts DMEPOS is not included as part of the SNF rate, therefore it would be appropriate for any DMEPOS services to be billed separately.

Recommendation #2:

Remind DMEPOS providers to confirm recipients' locations prior to dispensing DMEPOS and, if a recipient is in a nursing home, to ensure the items are not included in the facility's rate before billing MCOs.

Response #2:

The Department is identifying the best mechanism to remind DMEPOS providers to confirm, prior to billing MCOs, the member's location and, if a member is in a nursing home, to ensure the DMEPOS item is not included in the facility's rate.

Recommendation #3:

Advise MCOs to evaluate the feasibility of developing controls to prevent these types of overpayments and take steps to ensure corresponding corrective actions are implemented.

Response #3:

The Department has asked MCOs to evaluate the feasibility of developing controls, to the extent such are not in place already, to prevent DMEPOS overpayments for services obtained by members residing in the nursing facilities and to ensure corresponding corrective actions are implemented.

Recommendation #4:

Monitor DMEPOS claims paid by MCOs to ensure payments are in compliance with policies, rules, and regulations for DMEPOS provided to individuals residing in nursing homes, and provide guidance as appropriate.

Response #4:

The Department issues monthly capitation payments to MCOs inclusive of all covered benefits and services, including DMEPOS, unless the DMEPOS is custom ordered in which case the payment would be made FFS. It is the MCO's responsibility to implement appropriate controls and recoup payment that may have been made erroneously to the nursing home outside of the nursing home rate agreed to.