



Department of Health

KATHY HOCHUL
Governor

JAMES V. McDONALD, M.D., M.P.H.
Commissioner

JOHANNE E. MORNE, M.S.
Acting Executive Deputy Commissioner

November 9, 2023

Andrea Inman
Audit Director
Division of State Government Accountability
NYS Office of the State Comptroller
110 State Street, 11th Floor
Albany, New York 12236
ainman@osc.ny.gov

Dear Andrea 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 2021-S-20 entitled, "Medicaid Program: Improper Fee-for-Service Pharmacy Payments for Recipients With Third-Party Health Insurance."

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

Sincerely,

Johanne E. Morne, M.S.
Acting Executive Deputy Commissioner

Enclosure

cc: Mischa Sogut

Department of Health Comments to Final Audit Report 2021-S-20 entitled, “Medicaid Program: Improper Fee-for-Service Pharmacy Payments for 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 2021-S-20 entitled, “Medicaid Program: Improper Fee-for-Service Pharmacy Payments for Recipients With Third-Party Health Insurance” by the Office of the State Comptroller (OSC).

Recommendation #1:

Review the \$28.8 million in Medicaid payments for pharmacy services on behalf of recipients with TPHI drug coverage and ensure overpayments are appropriately recovered, prioritizing FFS claims that are approaching the 3-year window for recovery.

Response #1:

The existence of overlapping TPHI, including Medicare Coverage, in and of itself, does not mean a Medicaid claim is recoverable. As part of Gainwell’s standard process, all Medicaid encounters/paid claims Gainwell receives are reviewed. When overlapping TPHI is discovered, edits within Gainwell’s system identify claims where a recovery may not be appropriate. The absence of a billing attempt does not indicate that a recovery should have or would have occurred. Additionally, claims reviewed as part of Gainwell’s standard process but for which no recovery is made will be resubmitted in future cycles in the event a change is made that allows a claim to become billable. The contract between Gainwell and OMIG is structured to provide robust TPHI identification and recovery procedures. The Department’s and Gainwell’s interests are aligned to maximize the identification and recovery of inappropriate payments for the Medicaid program.

State Comptroller’s Comment – As demonstrated throughout our audit report, the TPL recovery process systematically improperly excluded certain claims from TPHI carrier billings. Officials need to make changes that allow them to thoroughly oversee this process, including looking into the flaws in Gainwell's processes that the audit identified, and not simply consider the act of passing claims through Gainwell's process as an "attempt for recovery." We are pleased the Department is making efforts to review and recover claims identified in the audit report.

Recommendation #2:

Assess the recoverability of the \$8.6 million in Medicaid payments for pharmacy claims that were billed to TPHI carriers but did not result in a recovery (due to carrier denials), and ensure all necessary follow-up actions are taken to obtain appropriate recoveries, prioritizing the claims that are approaching the 6-year window for recovery.

Response #2:

As part of Gainwell’s denial follow up efforts, each denial reason code is reviewed to ensure that claims are re-billed to the commercial payers, where appropriate. Additionally, Gainwell’s follow

up efforts go beyond rebilling claims. For example, Gainwell holds meetings with carriers to discuss submitted claim elements, root cause analysis, the Health Insurance Portability and Accountability Act standard transaction processing, and TPHI source data eligibility gaps. Gainwell also engages with providers to obtain necessary information to supply to the carriers such as medical records. However, despite this follow up, carriers may re-deny claims or uphold their original adjudication decision. The presence of a denial does not indicate that follow up activity was not performed. Furthermore, there would still be a population of claims that remain unrecoverable due to missing or incorrect carrier information, non-covered services, etc.

Recommendation #3:

Assess the TPL recovery process for FFS 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 agrees that TPL recovery processes, including edits and business rules, should be regularly reviewed, and understands that some claim types are inherently excluded due to confidentiality as well as heightened patient privacy. Gainwell has a long-standing, effective process in place to regularly review edits and business rules and update as appropriate. OMIG will continue to confer with Gainwell on updates to claim types necessitating exclusion or to business rules that may require further update and/or modification. Gainwell has also taken corrective action on the pharmacy claims that were prevented from billing by the rate code edit previously noted and this issue is fully resolved.

Recommendation #4:

Perform sufficient and ongoing monitoring of the TPHI recovery process for FFS pharmacy claims to ensure the completeness and timeliness of recoveries, including obtaining and reviewing all required reports per the contract, and monitoring FFS pharmacy claims that are not billed to TPHI carriers and FFS pharmacy claims that are billed to TPHI carriers but do not result in a recovery.

Response #4:

OMIG actively oversees Gainwell activities, has visibility into all aspects of the process, and is currently implementing additional enhancements. In addition to generating a Monthly Recovery/Pre-Payment Verification Overview Report, which is included in the annual OMIG-approved workplan, Gainwell also produces two additional reports which provide greater transparency into the TPL process. The first is a monthly report of claims that were excluded from recovery attempts and the reasoning behind the exclusion. Gainwell also provides OMIG with a quarterly report of claims where a recovery attempt was made but the claim was subsequently denied by the TPHI carrier.

Recommendation #5:

Continue communication with providers to help ensure Medicaid FFS pharmacy providers are aware of all eMedNY policies regarding TPHI with drug coverage.

Response #5:

The Department uses the eMedNY website to communicate with providers. The *Information for All Providers – General Policy* document contains a section entitled, “Duties of the Provider”, which has information and a link to the Medicaid Update. The Medicaid Update is another resource used to keep in frequent communication with providers. Since October 2020, the Department has published seven articles dedicated to TPHI including a November 2021 article specific to pharmacy providers. Providers are responsible for checking their Provider Manual monthly to ensure they are current with the latest policy information. This includes the “Information for All Providers” section, which contains general Medicaid policy, general billing, inquiry, and TPHI. The Department will continue to remind pharmacy providers to bill all other insurances prior to billing Medicaid.

Recommendation #6:

Strengthen eMedNY TPHI claims processing controls to address the edit weaknesses identified in the audit report, and require pharmacies to provide supporting documentation from the TPHI when submitting zero-filled pharmacy claims.

Response #6:

The Department previously strengthened edits for the submission of denied TPHI claims by adding additional National Council for Prescription Drug Programs reject codes, effective November 16, 2022. A separate project to address TPHI claims with Other Coverage Code “4” was submitted July 20, 2022.

The Department is reviewing existing edits to determine if the disposition needs to be changed to address OSC’s recommendations or if new edits need to be created. Providers are required to maintain supporting documentation for a Medicaid payment for six years from the date of payment. This includes an Explanation of Benefits (EOB) from a third-party insurance. The Department can explore if the third-party EOB can be included with the submission of the Medicaid claim.

Recommendation #7:

Ensure Gainwell implements processes to initiate recovery efforts directly from pharmacies, where appropriate.

Response #7:

While Gainwell does have an established provider review process, per established billing and recovery guidelines from OMIG, Gainwell only includes rate-based claims such as inpatient and clinic services on these reviews. OMIG’s normal pharmacy audit process includes reviewing for TPHI coverage for FFS claims.

Recommendation #8:

Periodically determine if the FFS pharmacy claim fields provided to Gainwell are sufficient and being appropriately used by the contractor.

Response #8:

OMIG and Gainwell agree that data fields, including those related to FFS pharmacy claims, should be periodically reviewed for appropriateness. As such, Gainwell will continue to consult with OMIG regarding the addition of supplementary fields that will increase recovery opportunities.