

# Department of Health

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## Medicaid Program: Improper Fee-for-Service Pharmacy Payments for Recipients With Third-Party Health Insurance

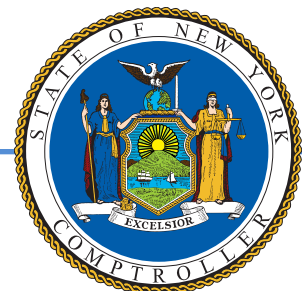
Report 2021-S-20 | May 2023

OFFICE OF THE NEW YORK STATE COMPTROLLER

Thomas P. DiNapoli, State Comptroller

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Division of State Government Accountability



# Audit Highlights

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## Objective

To determine if Medicaid made inappropriate fee-for-service payments to pharmacies on behalf of recipients who had third-party insurance and, if so, whether appropriate recoveries were made. The audit covered the period July 2016 through June 2021.

## About the Program

The Department of Health (Department) administers New York's Medicaid program. Under the fee-for-service (FFS) payment method, the Department makes Medicaid payments directly to health care providers for services rendered to Medicaid recipients. Many recipients have other third-party health insurance (TPHI) for pharmacy services in addition to Medicaid (e.g., employer-based coverage, Medicare Part D). Medicaid is considered the payer of last resort and, as such, FFS pharmacy providers are required to coordinate benefits with the recipient's TPHI prior to billing Medicaid for services. The Office of the Medicaid Inspector General (OMIG) contracts with Gainwell Technologies (Gainwell) to identify and recover Medicaid payments made for services that should have been paid for by a recipient's TPHI. During the audit period, Gainwell's third-party liability recoveries on FFS pharmacy payments totaled almost \$53 million.

## Key Findings

We found the Department and OMIG lacked adequate oversight of Gainwell's recovery process to ensure all available recoveries on FFS pharmacy payments were made. We also found claim processing improvements could be made to prevent TPHI overpayments from occurring. Beginning in 2023, pharmacy services for recipients enrolled in some managed care plans will be covered by FFS; therefore, timely corrective actions in response to the audit are critical to help ensure significant future recoveries. During the audit period:

- Gainwell did not bill TPHI carriers for the recovery of over \$28.8 million in pharmacy claims where Medicaid paid as the primary insurance for recipients who had TPHI coverage. We identified areas for improvement in Gainwell's processes for recovering claims. For example, Gainwell used an incorrect claim field as the basis for excluding pharmacy claims from its recovery process, resulting in \$12.6 million in claims that were improperly excluded. Gainwell acknowledged the error and began billing TPHI carriers. However, because OMIG did not monitor these Gainwell processes, \$5.1 million couldn't be recovered because it was outside the allowed recovery period.
- Third-party insurers denied over \$8.6 million in claims Gainwell submitted for recovery. While the denials were for reasons that could potentially be rectified, Gainwell's follow-up action to get payment on those claims was limited.
- Neither the Department nor OMIG reconciled or monitored Gainwell's recoveries by comparing claims Medicaid paid for recipients with TPHI drug coverage to claims reviewed and recovered by Gainwell. These reviews are important, as shown by the audit whereby we made Gainwell aware of system weaknesses that improperly excluded claims from its recovery process.

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## Key Recommendations

- Review the \$28.8 million in pharmacy payments and ensure overpayments are appropriately recovered, prioritizing claims approaching the time limit for recovery.
- Assess the recoverability of the \$8.6 million in payments for pharmacy claims billed to TPHI carriers that did not result in a recovery (due to carrier denials), and ensure all necessary follow-up actions are taken to obtain appropriate recoveries, prioritizing claims approaching the time limit for recovery.
- Enhance monitoring of the TPHI recovery process for FFS pharmacy claims to ensure the completeness and timeliness of recoveries, including the monitoring of claims that are not billed to TPHI carriers and claims that are billed to TPHI carriers but do not result in a recovery.



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

May 11, 2023

James V. McDonald, M.D., M.P.H.  
Acting Commissioner  
Department of Health  
Corning Tower  
Empire State Plaza  
Albany, NY 12237

Dear Dr. McDonald:

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 Fee-for-Service Pharmacy Payments for Recipients With Third-Party Health Insurance*. 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*

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# Glossary of Terms

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Term	Description	Identifier
Department	Department of Health	<i>Auditee</i>
eMedNY	The Department's Medicaid claims processing and payment system, which also includes information on recipients' TPHI	<i>System</i>
FFS	Fee-for-service	<i>Key Term</i>
Gainwell	Gainwell Technologies	<i>Contractor</i>
MDW	Medicaid Data Warehouse	<i>System</i>
OMIG	Office of the Medicaid Inspector General	<i>Agency</i>
PBM	Pharmacy benefit manager	<i>Key Term</i>
TPHI	Third-party health insurance	<i>Key Term</i>
TPL	Third-party liability	<i>Key term</i>

# Background

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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. The Medicaid program is administered by the Department of Health (Department). For the State fiscal year ended March 31, 2022, New York's Medicaid program had approximately 7.8 million recipients and Medicaid claim costs totaled about \$74.6 billion (comprising \$27.5 billion in fee-for-service health care provider payments and \$47.1 billion in managed care premium payments). The federal government funded about 57.1% of New York's Medicaid claim costs, and the State and the localities (the City of New York and counties) funded the remaining 42.9%.

The Department uses two methods – fee-for-service (FFS) and managed care – to pay for Medicaid services, including pharmacy services (i.e., drugs and related supplies, such as sterile needles). Under FFS, the Department, through its Medicaid claims processing and payment system (eMedNY), pays Medicaid-enrolled pharmacy providers directly for services rendered to Medicaid recipients. When eMedNY processes claims, they are subject to various automated controls (or edits). The purpose of these edits is to determine whether the claims are eligible for reimbursement and whether the amounts claimed for reimbursement are appropriate. Under managed care, the Department pays managed care organizations monthly premiums, which they use to pay providers for health care services rendered to Medicaid recipients enrolled in their plans. Beginning April 1, 2023, pharmacy services for Medicaid recipients enrolled in some managed care plans are expected to be covered under FFS. This change is intended to increase recipient quality of care and reduce waste and abuse.

Many Medicaid recipients have other sources of health care coverage in addition to Medicaid, such as Medicare and commercial health insurance (hereafter collectively referred to as third-party health insurance, or TPHI). Some TPHI carriers (i.e., insurers) use pharmacy benefit managers (PBMs) to manage their pharmacy benefits and process pharmacy claims. Per State regulations, Medicaid is always the payer of last resort. If a Medicaid recipient has TPHI coverage, Medicaid providers are required to coordinate benefits with TPHI carriers in order to exhaust the benefits of the TPHI coverage before billing the Medicaid program. While the Department maintains information on recipients' TPHI in eMedNY, in many instances, this information isn't available in time to prevent Medicaid from being identified as the primary payer.

The Department uses post-payment reviews to identify instances where a TPHI carrier may have been liable for the cost of services provided to a Medicaid recipient. The Office of the Medicaid Inspector General (OMIG) contracts with Gainwell Technologies (Gainwell) to perform these reviews and to pursue recoveries from TPHI carriers. Gainwell's recovery processes are guided by business rules that remove claims Gainwell believes are unlikely to have a successful recovery. Gainwell receives a weekly file of FFS claims from the Department, and runs it through its own system of business rules and edits to remove ineligible claims from the recovery process. Typically, Gainwell submits reimbursement requests to the various TPHI

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carriers for claims that should have been the responsibility of the TPHI carrier and not Medicaid. Per the contract, Gainwell is required to research and, as warranted, resolve the reasons where a TPHI carrier denies a claim – due to, for example, untimely filing, duplicate claim/payment, client not eligible at time of service, no prior authorization, or formulary not on file. Gainwell is also required to submit monthly recovery and operational reports to OMIG.

Under State and federal laws, the Department – or Gainwell, as the third-party liability (TPL) contractor – must initiate the process of recovering payments by billing the TPHI carriers within 3 years of the claim date of service. Once the THPI carrier is billed, the Department (or Gainwell) has up to 6 years from the submission of the claim to enforce its right to recover any amount for which the TPHI carrier is liable.



# Audit Findings and Recommendations

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Comprehensive and well-monitored processes for TPHI-related payments and post-payment reviews and recoveries are critical to ensure that Medicaid is the payer of last resort and that all inappropriate payments are pursued for recovery and collected. We determined that neither the Department nor OMIG provided adequate oversight of, respectively, eMedNY's claim processing and Gainwell's activities to ensure that all FFS pharmacy payments on behalf of Medicaid recipients who also had TPHI drug coverage were identified and adequately pursued for recovery.

We found that, for the period July 2016 through June 2021, Medicaid paid over \$37.4 million as the primary insurance on pharmacy FFS claims where the recipient also had TPHI coverage; however, the improper payments were not recovered. Furthermore, a significant portion of the over \$37.4 million in payments may be unrecoverable because they exceed New York State's 3-year statute of limitations period for TPHI recoveries.

Non-recovery of these improper payments potentially stemmed from deficiencies in Gainwell's process and claims system. Furthermore, Gainwell's recovery processes are guided by business rules that may have improperly excluded recoverable claims. We also found that TPHI carriers often denied claims Gainwell submitted for recovery for reasons that could be rectified, but follow-up actions by Gainwell to obtain payment on those denied claims were limited, and many payments were never recovered.

Data on the claims that Gainwell excludes from recovery is critical for proper monitoring purposes. However, according to Gainwell, its system is set up to track claims that are deemed likely recoverable, and it does not track claims that are excluded. Gainwell, therefore, does not report these claims to OMIG. In response to our preliminary audit report, OMIG stated that it is in the process of revising Gainwell's monthly reporting process, including developing additional reporting to give OMIG greater insight into the entire TPHI recovery process.

According to Department and OMIG officials, TPHI coordination of benefits is a complex process, and there are numerous impediments to successful TPL recoveries, such as erroneous policy information, incomplete billing information, inadequate responses or denials by TPHI carriers, and difficulty in compelling cooperation from insurance carriers for the purposes of coordination of benefits. Officials indicated that Gainwell ran all appropriate FFS pharmacy claims through its internal processes during our audit period, and any pharmacy claims not billed to TPHI carriers or otherwise not recovered were appropriately excluded. While we agree TPHI coordination of benefits and TPL recoveries are complex processes, weaknesses in the Department's and OMIG's oversight of these processes likely contributed to significant lost opportunities for the recovery of improper payments.

## Oversight of Gainwell's Recovery Process

For the audit period, Gainwell provided OMIG with monthly recovery reports detailing the amount recovered each month as well as reports identifying new TPHI policies and coverage periods for recipients. However, Gainwell did not send OMIG other

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monthly operational reports required by the contract, such as project statuses that include potential recovery amounts, carrier denial percentages, or a summary of findings for each TPL recovery project. We also note that Gainwell does not track excluded claims and thus cannot report this data to OMIG. OMIG did not address these issues and never sought this information, which we believe is essential to understanding how the TPHI recovery process functioned. Lacking key pieces of information, OMIG is limited in its ability to properly oversee Gainwell's recovery process, including monitoring the appropriateness of claims excluded from that process and ensuring all appropriate recoveries are pursued and collected. According to OMIG's response to our preliminary report, Gainwell and OMIG are in the process of revising the monthly reporting process to include reports required by the contract as well as additional reporting to give OMIG greater insight into the TPHI recovery process. We encourage OMIG to enforce production of these reports required in the contract and to properly monitor the review and recovery of claims with TPHI coverage where Medicaid was the primary payer.

We also found the Department and OMIG did not provide Gainwell with sufficient FFS pharmacy claim information to aid in Gainwell's recovery process. In June 2020, Gainwell released a large recovery claim file to TPHI carriers that resulted in many denials. According to Gainwell officials, the TPHI carriers notified them that the claim benefits had, in fact, been coordinated by Medicaid providers. Gainwell researched this issue further, and determined that the weekly pharmacy file received from eMedNY didn't contain certain fields that would allow Gainwell to remove claims that had been coordinated at the point of sale and that a TPHI payment didn't take place for a valid patient responsibility reason. Additionally, in response to our preliminary findings, Gainwell stated that, where the TPHI denied a pharmacy provider's claim due to missing information, it is likely that these data elements are not within the Medicaid data the Department sends Gainwell, and Gainwell would therefore receive a similar TPHI denial upon making a recovery attempt. In January 2021, OMIG initiated a system change to include additional fields on the pharmacy claim report to Gainwell, including the other payer reject code, and this project was completed September 2022. We also note that existing system change documentation indicates Gainwell was receiving the field that indicated whether a TPHI paid on the claim but was not using it to identify recovery opportunities. Therefore, it is equally important that OMIG oversee Gainwell's usage of available fields and not just that the fields are provided.

## Claims Improperly Excluded From Recovery

For the period July 2016 through June 2021, we identified 426,466 pharmacy claims, totaling over \$37.4 million, where Medicaid paid as the primary insurance on behalf of 120,969 recipients who, according to eMedNY, had commercial or Medicare TPHI with pharmacy coverage. We found approximately \$28.8 million where the claims may have been improperly excluded from recovery by business rules intended to remove claims from further review and about \$8.6 million where Gainwell did not fully investigate the recoverability of the claims.

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## Claims Not Found in Gainwell's Recovery Files

Our comparison analysis found that Gainwell's recovery files did not account for 367,315 pharmacy claims, totaling over \$28.8 million, where the recipient had TPHI coverage for the date of service. Because Gainwell does not keep track of the claims it excludes from its recovery efforts, we were unable to identify why about \$11.4 million of the over \$28.8 million in claims were not in the recovery files. For the remaining \$17.4 million, we found these claims would have been potentially subject to at least one of Gainwell's excluded recovery edits that were provided to us.

### Gainwell Processing Error

Gainwell officials explained that, as a business rule, they do not review claims with certain reimbursement rates, and when the FFS pharmacy claim files they receive from eMedNY contain the data in the rate code field, these claims are removed. We note that pharmacy claims are not associated with (and do not use) reimbursement rates in eMedNY, and we determined that Gainwell was using the wrong data field as the basis for its recovery decision, incorrectly thinking it was the reimbursement rate. This error resulted in about \$12.6 million (of the \$17.4 million) in pharmacy claims being improperly excluded from the recovery process. Based upon our inquiry, Gainwell evaluated its existing process and confirmed the error, and had begun corrective actions, which in part included rebilling TPHI carriers. Gainwell had billed about 59% of these claims to TPHI carriers and, as of October 12, 2022, \$844,309 had been recovered. However, the remaining 41% (\$5.1 million) will not be able to be billed as it is outside of the 3-year recovery period. Had the Department or OMIG required Gainwell to provide a detailed accounting of claims removed from recovery efforts and actively monitored them, Gainwell's error could have been identified and corrected sooner and the \$5.1 million would have been potentially recoverable.

### Improper and/or Questionable Exclusion Rules

We identified about \$3.9 million (of the \$17.4 million) in claims paid by Medicaid where the recipient had pharmacy coverage through their medical policy rather than a PBM. According to Gainwell officials, the Department and OMIG instructed them to only seek pharmacy TPHI recoveries when there is a stand-alone commercial PBM TPHI policy (i.e., a separate policy for drug coverage) in eMedNY. However, not all TPHI carriers are PBMs, and a recipient can still have pharmacy coverage as part of their TPHI benefit package. By only seeking recovery from TPHIs with a PBM, the Department is omitting additional recovery opportunities.

We also identified 920 claims, totaling \$914,243, that were removed from the recovery process because they contained an excluded diagnosis code. The Department and OMIG instructed Gainwell to remove claims containing certain medical diagnoses of a confidential nature from recovery efforts. We were provided with a list of 1,412 diagnosis codes that generally fell into two broad categories: HIV and pregnancy related. Neither the Department nor OMIG could provide us with written support regarding these diagnosis codes, including when and why

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these diagnosis codes were selected and how often they are reviewed or updated, stating that these business rule decisions predated any of the existing staff involved. However, OMIG officials stated they are not precluded from engaging TPHI carriers or providers to seek recoveries and, as part of its normal FFS audit process, OMIG reviews for TPHI coverage regardless of diagnosis code. The Department and OMIG could pursue recovery on these claims when Gainwell, at the Department's direction, does not. This option notwithstanding, the Department should revisit this "diagnosis code" policy considering the increase in FFS pharmacy claims that will occur after the transition from managed care is complete.

## **Additional Follow-Up Opportunities for Recoveries**

New York State Social Services Law requires TPHI carriers to not deny payment for certain administrative reasons, such as a failure to obtain prior authorization (approval for services prior to payment), and to respond to requests for payment within 60 days. We identified claims from the Gainwell recovery files, totaling over \$8.6 million, that were denied recovery for reasons we determined to be administrative in nature and that, with thorough follow-up action, should be rectified. In response to our preliminary report, Gainwell officials stated their denied claim follow-up efforts include a review and, when appropriate, a rebill to the commercial payers. They added that, despite their follow-up efforts, carriers may re-deny claims or uphold their original decision, and there would still be a population of unrecoverable claims due to incorrect or missing carrier information, non-covered services, and the like. Gainwell officials also cited a lack of an enforcement mechanism within the law to require carriers to remit payment after a denial for these administrative reasons, including lack of prior authorization. For carriers that deny payment for administrative reasons, Medicaid continues to miss out on recoveries it is entitled to. For example, 1,292 claims totaling \$595,332 were denied for lack of prior authorization.

We point out, however, that when TPHI carrier recovery efforts are unsuccessful, OMIG and Gainwell can then seek recoveries directly from providers. However, this is not done for FFS pharmacy claim recoveries due to the high volume of low-dollar claims. Yet, state Medicaid programs can set threshold amounts for recoveries and may accumulate billings until it would be cost-effective to seek reimbursement. When OMIG and Gainwell bill providers directly for recoveries of FFS claims paid through reimbursement rates (i.e., non-pharmacy claims, such as inpatient or clinic claims), they send no more than 600 claims to a single provider directly, and the threshold per claim is a minimum of \$50 and the threshold per provider is a minimum of \$200. If these threshold criteria were applied to the \$8.6 million in pharmacy claims that TPHI carriers denied payment on for administrative reasons, 1,874 pharmacies would have met the threshold for direct billing of recoveries – thus representing an additional opportunity for recovery from providers whose claims contain incorrect or missing carrier information and claims that were denied by TPHI carriers for administrative reasons.

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Medicare will not accept a claim directly from a State Medicaid program and as such, Gainwell, acting as the State's agent, is not able to directly bill Medicare to recover TPHI overpayments (for Part B non-drug pharmacy services, such as sterile needles). Therefore, engaging directly with FFS pharmacy providers would also supply opportunities for recoveries for claims involving Medicare Part B. Gainwell or OMIG could engage with a provider directly and request the provider initiate recovery efforts through Medicare. We identified 76,421 claims totaling about \$1.5 million (out of \$28.8 million) where the recipient had Medicare Part B coverage on the date of service and no recoveries were made. Furthermore, having a process to bill providers directly would highlight pharmacies that frequently submit claims with no TPHI when the recipient has TPHI coverage on the date of service and allow for additional monitoring by the Department and OMIG.

## **eMedNY Edits and Reject Codes**

When health care providers submit claims to the Department's eMedNY system for payment, the claims are subject to edits, which are meant to ensure claim validity and proper payment for services rendered to Medicaid recipients. Specifically, there are eMedNY system edits that are intended to prevent Medicaid from paying as the primary insurer on a claim when the recipient has other commercial insurance or Medicare. We identified several eMedNY system weaknesses, including situations where pharmacy claims are not subject to particular edits, certain TPHI reject codes are not considered invalid, and edits are not in place that force providers to enter information in certain claim fields.

In May 2014, the Department implemented an edit requiring providers who submit claims that indicate the TPHI did not cover the service to also include the reason why the TPHI rejected the claim for payment (reject code). In July 2018, the Department implemented an edit to reject pharmacy claim submissions with invalid reject codes that are not considered acceptable for Medicaid reimbursement (e.g., TPHI denied due to a lack of prior authorization). However, claims where the provider indicates that TPHI does cover the service but TPHI payment wasn't collected are not subject to the invalid reject code edit and, therefore, are not denied for Medicaid payment. The Department should resolve this weakness, as we identified 3,916 such pharmacy claims, totaling \$858,901, from the population of \$28.8 million in claims cited earlier that weren't in Gainwell's recovery files.

We also observed claims where the reject code wasn't considered invalid by the Department but might have been resolvable by the pharmacy before submission to eMedNY. For example, pharmacies should resolve reject codes such as "missing or invalid other payer date," which indicates the pharmacy didn't correctly enter the date they received the TPHI response. The Department should reassess which reject codes should be considered invalid.

As the payer of last resort, Medicaid generally pays the patient responsibility amount, which is the balance that is not covered by TPHI that would otherwise be the financial obligation of the recipient (e.g., coinsurance, copayments). According to the



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Department, when the claim indicates that coverage exists for the service but a TPHI payment wasn't collected, in addition to the reject code, the pharmacy is expected to enter the patient responsibility amount as well as a description of that amount. Generally, Medicaid will pay the lesser of the patient responsibility amount or the Medicaid allowed amount for that service.

In July 2017, the Department implemented an edit to deny claims where no TPHI payment was collected and there is a non-reimbursable patient responsibility amount description (e.g., Sales Tax Amount). However, there is no edit to require providers to enter values in either the patient responsibility amount field or the amount description field, and when these fields are left blank, they are not subject to the non-reimbursable amount description edit. We identified 18,678 claims totaling \$1,501,285 (of the \$28.8 million in claims not in Gainwell's recovery files) where the pharmacy indicated no TPHI payment was collected and there were no values in either the patient responsibility amount field or the amount description field. Therefore, the claims were not subject to the eMedNY edits and are at a higher likelihood of being inappropriate. For example, we identified one claim for an anti-seizure drug that has a Medicaid-allowed amount of \$958.99. According to the pharmacy's supporting documentation, the TPHI paid the provider \$530.77 and there was a remaining patient responsibility amount of \$419.67. Because the claim was improperly submitted with no value in the patient responsibility amount field, Medicaid reimbursed the pharmacy the full Medicaid allowed amount, resulting in an overpayment of \$539.32 (\$958.99 - \$419.67).

With proper monitoring of TPHI claim fields, the Department could implement eMedNY system edits that prevent the types of improper payments that Gainwell attempts to make recoveries on that TPHI carriers deny due to missing claim information, particularly the most common missing fields. There are further opportunities regarding edits – specifically edits that are bypassed if the provider indicates on the claim that no TPHI payment was collected (zero-filled). The Department requires zero-filled practitioner claims to be accompanied by supporting documentation from the TPHI and has initiated a system project to require the same for laboratory claims. However, there is no similar requirement for pharmacy claims, allowing providers to bypass existing system controls.

As a result of our audit, the Department published a Medicaid Update in November 2022 informing providers that, effective November 1, 2022, pharmacy claims indicating that TPHI exists but payment was not collected will be denied if there is also a reject code. The Medicaid Update also reminded providers that they must work with the primary insurance to obtain coverage for the recipient and ensure that Medicaid is the payer of last resort. As the volume of pharmacy claims increases with the 2023 transition of certain pharmacy services from managed care to FFS, so does the value of effective eMedNY system edits. With greater assurance that pharmacy claims for recipients with TPHI are properly submitted, there would be less need for post-payment recovery efforts. The Department should continue working to enhance FFS pharmacy claim system processing.

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## Recommendations

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.
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.
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.
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.
5. Continue communication with providers to help ensure Medicaid FFS pharmacy providers are aware of all eMedNY policies regarding TPHI with drug coverage.
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.
7. Ensure Gainwell implements processes to initiate recovery efforts directly from pharmacies, where appropriate.
8. Periodically determine if the FFS pharmacy claim fields provided to Gainwell are sufficient and being appropriately used by the contractor.

# Audit Scope, Objective, and Methodology

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The objective of our audit was to determine if Medicaid made inappropriate FFS payments to pharmacies on behalf of recipients who had third-party insurance and, if so, whether appropriate recoveries were made. The audit covered the period July 2016 through June 2021.

To accomplish our audit objective and assess relevant internal controls, we interviewed Department, OMIG, and Gainwell officials, and examined the Department's relevant Medicaid policies and procedures as well as applicable federal and State laws, rules, and regulations. Our review focused on Medicaid pharmacy services paid under FFS.

We reviewed pharmacy FFS data and TPHI policy data from the Medicaid Data Warehouse (MDW) and eMedNY, and determined the data was sufficiently reliable for the purpose of this audit. We analyzed the MDW and the eMedNY claims processing system to identify instances where Medicaid was the primary payer for FFS pharmacy claims on behalf of recipients with TPHI. We also reviewed data available from the Centers for Medicare & Medicaid Services to determine the Medicare drug formulary and network statuses relating to pharmacy FFS claims for recipients who had drug coverage under Medicare. We obtained Gainwell's recovery activities relating to FFS pharmacy claims within our audit period. We compared this data to our FFS pharmacy claim population where Medicaid paid as the primary insurance on behalf of recipients who, according to eMedNY, had commercial or Medicare TPHI with pharmacy coverage for the date of service. We removed claims recovered by Gainwell as well as claims that we determined to be appropriate, such as services not covered by the recipient's TPHI. To determine why claims were being paid by eMedNY when there was TPHI on file, we judgmentally sampled 71 claims and requested supporting TPHI documentation from the providers. To determine why the TPL recovery process did not result in billings to TPHI carriers or recoveries of payments on the FFS pharmacy claims identified, we also provided the 71 claims to OMIG and Gainwell for review. The sampled claims included a variety of drugs paid on behalf of recipients with TPHI, but there were no patient responsibility amounts reported to Medicaid. Because our samples were judgmentally selected, the results cannot be projected to the population as a whole. Based on our audit work, we believe that the data obtained was sufficiently reliable for the purposes of this audit.

We shared our methodology and findings with Department and OMIG officials during the audit for their review. We took their comments into consideration and adjusted our analyses as appropriate.



# Statutory Requirements

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## 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 duties do not affect our ability to conduct this independent performance audit of the Department's oversight of Medicaid pharmacy payments on behalf of recipients with TPHI.

## 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 certain actions have been and will be taken to address them. We address certain Department remarks in our State Comptroller's Comments, which are embedded within 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 the Department 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.

# Agency Comments and State Comptroller's Comments

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**KATHY HOCHUL**  
Governor

**Department  
of Health**

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

**MEGAN E. BALDWIN**  
Acting Executive Deputy Commissioner

April 11, 2023

Andrea Inman, Audit Director  
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Albany, New York 12236-0001

Dear Andrea Inman:

Enclosed are the Department of Health's comments on the Office of the State Comptroller's Draft Audit Report 2021-S-20 entitled, "Medicaid Program: Improper Fee-For-Service Pharmacy Payments for Recipients with Third-Party Health Insurance."

Thank you for the opportunity to comment.

Sincerely,

A handwritten signature in blue ink that reads "Megan Baldwin".

Megan E. Baldwin  
Acting Executive Deputy Commissioner

Enclosure

cc: Melissa Fiore  
Amir Bassiri  
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**Department of Health Comments to  
Draft 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**

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The following are the responses from the New York State Department of Health (the Department) to Draft 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).

**General Comments:**

The following comments address specific statements made in the audit report.

**About the Program (page 1):**

*The Office of the Medicaid Inspector General (OMIG) contracts with Gainwell Technologies (Gainwell) to identify and recover Medicaid payments made for services that should have been paid for by a recipient's TPHI.*

**Department Comments:**

OMIG contracts with Health Management Systems, Inc. (a Gainwell Technologies company) (“Gainwell”) to identify and recover Medicaid payments made for services that should have been paid for by a recipient's TPHI.

**Oversight of Gainwell's Recovery Process (page 8-9):**

*For the audit period, Gainwell provided OMIG with monthly recovery reports detailing the amount recovered each month as well as reports identifying new TPHI policies and coverage periods for recipients. However, Gainwell did not send OMIG other monthly operational reports required by the contract, such as project statuses that include potential recovery amounts, carrier denial percentages, or a summary of findings for each TPL recovery project. We also note that Gainwell does not track excluded claims and thus cannot report this data to OMIG. OMIG did not address these issues and never sought this information, which we believe is essential to understanding how the TPHI recovery process functioned. Lacking key pieces of information, OMIG is limited in its ability to properly oversee Gainwell's recovery process, including monitoring the appropriateness of claims excluded from that process, and ensuring all appropriate recoveries are pursued and collected. According to OMIG's response to our preliminary report, Gainwell and OMIG are in the process of revising the monthly reporting process to include reports required by the contract as well as additional reporting to give OMIG greater insight into the TPHI recovery process. We encourage OMIG to enforce production of these reports required in the contract and to properly monitor the review and recovery of claims with TPHI coverage where Medicaid was the primary payer.*

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Department Comment:

OMIG works closely with Gainwell, on a real time basis, to ensure the production of appropriate data and information to evaluate and maximize the TPHI recovery process. OMIG routinely requests, and Gainwell supplies, any supplemental information that is identified as needed. This real time correspondence allows OMIG to effectively monitor Gainwell's recovery process. Gainwell is required to generate and has been submitting a Monthly Recovery/Pre-Payment Insurance Verification (PPIV) Overview Report. This updated reporting requirement is included in the annual, OMIG approved, workplan.

Gainwell provides OMIG with a monthly report of edits 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.

**State Comptroller's Comment** – The monthly and quarterly reports started being produced and provided to OMIG in November 2022 (after the end of our audit scope). We are pleased that, as a result of the audit, OMIG is working with Gainwell to ensure more oversight of the TPHI recovery process.

Oversight of Gainwell's Recovery Process (page 9):

*In January 2021, OMIG initiated a system change to include additional fields on the pharmacy claim report to Gainwell, including the other payer reject code, and this project was completed September 2022. We also note that existing system change documentation indicates Gainwell was receiving the field that indicated whether a TPHI paid on the claim but was not using it to identify recovery opportunities. Therefore, it is equally important that OMIG oversee Gainwell's usage of available fields and not just that the fields are provided.*

Department Comment:

Following the completion of the above-mentioned system change project (EP6820), Gainwell is now utilizing the supplemental data fields in recovery activities. OMIG agrees that data fields, including those related to FFS pharmacy claims, should be periodically reviewed for appropriateness. As such, OMIG will continue to consult with Gainwell regarding the addition of supplementary fields that may increase recovery opportunities.

Claims Improperly Excluded From Recovery (page 9):

*For the period July 2016 through June 2021, we identified 426,466 pharmacy claims, totaling over \$37.4 million, where Medicaid paid as the primary insurance on behalf of 120,969 recipients who, according to eMedNY, had commercial or Medicare TPHI with pharmacy coverage. We found approximately \$28.8 million where the claims may have been improperly excluded from recovery by business rules intended to remove claims from further review, and about \$8.6 million where Gainwell did not fully investigate the recoverability of the claims.*

Department Comment:

As part of Gainwell's standard process, all Medicaid paid claims Gainwell receives are reviewed. When overlapping TPHI is discovered, edits within Gainwell's system eliminate claims

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that would likely not result in a recovery. The absence of a billing attempt does not indicate that a recovery should have or would have occurred. The existence of overlapping TPHI, in and of itself, does not mean a Medicaid claim is recoverable.

Accordingly, the existence of overlapping TPHI does not demonstrate that \$37.4 million is billable, much less recoverable, or that claims may have been improperly excluded or not fully investigated. This number does not take into consideration the intricate processes that are designed to bill only those claims to carriers that are appropriate for reimbursement. For example, Gainwell does not include claims for non-covered services.

**State Comptroller's Comment** – The Department's response is not accurate. We informed the Department and OMIG of our audit methodology, which took into account the various intricacies, such as evaluating non-covered services. Further, throughout the audit report, we demonstrated flaws in the TPL recovery process that contributed to the \$37.4 million, which should be followed up on and corrected.

Claims Not Found in Gainwell's Recovery Files (page 10):

*Our comparison analysis found that Gainwell's recovery files did not account for 367,315 pharmacy claims, totaling over \$28.8 million, where the recipient had TPHI coverage for the date of service. Because Gainwell does not keep track of the claims they exclude from their recovery efforts, we were unable to identify why about \$11.4 million of the over \$28.8 million in claims were not in the recovery files. For the remaining \$17.4 million, we found these claims would have been potentially subject to at least one of Gainwell's excluded recovery edits that were provided to us.*

Department Comment:

Gainwell's system tracks the total number of edits that are triggered by the claims being processed during that cycle, as opposed to tracking what is removed from a cycle at the claim level. In addition, claims that may have been triggered by an edit appropriately preventing it from proceeding to inclusion on a billing, are reprocessed in subsequent cycles to maximize the opportunity to bill in the event an edit changes or the information on a claim may change, thereby allowing the claim to pass through for billing. All claims Gainwell receives are processed through Gainwell's systems and that entire process is the "attempt for recovery". Submitting a bill to a carrier is not the only evidence of an "attempt for recovery".

**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."

Gainwell provides OMIG with a monthly report of edits 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.

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**State Comptroller's Comment** – The monthly and quarterly reports started being produced and provided to OMIG in November 2022 (after the end of our audit scope). We are pleased that, as a result of the audit, OMIG is working with Gainwell to ensure more oversight of the TPHI recovery process.

Gainwell Processing Error (page 10):

*Gainwell officials explained that, as a business rule, they do not review claims with certain reimbursement rates, and when the FFS pharmacy claim files they receive from eMedNY contain the data in the rate code field, these claims are removed. We note that pharmacy claims are not associated with (and do not use) reimbursement rates in eMedNY, and we determined that Gainwell was using the wrong data field as the basis for its recovery decision, incorrectly thinking it was the reimbursement rate. This error resulted in about \$12.6 million (of the \$17.4 million) in pharmacy claims being improperly excluded from the recovery process. Based upon our inquiry, Gainwell evaluated its existing process and confirmed the error, and had begun corrective actions, which in part included rebilling TPHI carriers. Gainwell had billed about 59% of these claims to TPHI carriers and, as of October 12, 2022, \$844,309 had been recovered. However, the remaining 41% (\$5.1 million) will not be able to be billed as it is outside of the 3-year recovery period. Had the Department or OMIG required Gainwell to provide a detailed accounting of claims removed from recovery efforts and actively monitored them, Gainwell's error could have been identified and corrected sooner and the \$5.1 million would have been potentially recoverable.*

Department Comment:

In the FFS source data that Gainwell receives, the pharmacy claims had incorrect data in the rate code field that was being mapped as rate codes. This data was subsequently pulled through during the claim reformatting process. Gainwell has since implemented a mapping change so as not to pull rate codes through on pharmacy claims. FFS pharmacy claims that were previously removed due to a rate code exclusion were re-run through the Gainwell recovery process and any that passed remaining business rules were included in a carrier billing. As OSC noted, as of October 12, 2022, \$844,309 had been recovered by Gainwell due to the mapping update. Since this time, additional claims have adjudicated, and the amount recovered has increased to over \$1.7 million.

**State Comptroller's Comment** – We are pleased Gainwell is reviewing and recovering these claims.

Improper and/or Questionable Exclusion Rules (page 10):

*We identified about \$3.9 million (of the \$17.4 million) in claims paid by Medicaid where the recipient had pharmacy coverage through their medical policy rather than a PBM. According to Gainwell officials, the Department and OMIG instructed them to only seek pharmacy TPHI recoveries when there is a stand-alone commercial PBM TPHI policy (i.e., a separate policy for drug coverage) in eMedNY. However, not all TPHI carriers are PBMs, and a recipient can still have pharmacy coverage as part of their TPHI benefit package. By only seeking recovery from TPHIs with a PBM, the Department is omitting additional recovery opportunities.*

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Department Comment:

While a recipient can have pharmacy coverage as part of their overall TPHI benefit package, submitting a pharmacy claim for recovery purposes to a major medical carrier will not be successful in most instances and will likely lead to carrier abrasion. Additionally, in many instances in eMedNY, a recipient has both a major medical TPHI policy as well as an entirely separate pharmacy TPHI policy under the PBM. A coverage code indicates that the major medical carrier is not to be used for pharmacy claim recovery. For this reason, when a recipient possesses pharmacy coverage, Gainwell loads the coverage as a standalone TPHI policy with a specific coverage code along with the corresponding PBM. For the same reason, Gainwell appropriately only submits a pharmacy claim to a PBM for a pharmacy recovery attempt.

**State Comptroller's Comment** – We remind the Department that our analysis reviewed claims with pharmacy coverage through the recipient's medical policy (when there was no PBM) and only included claims where the medical policy had paid for the drug at some point in our audit scope. Therefore, these claims are likely recoverable.

**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, in and of itself, does not mean a Medicaid claim is recoverable. As part of Gainwell's process, all Medicaid paid claims Gainwell receives are reviewed. When overlapping TPHI is discovered, edits within Gainwell's system appropriately eliminate claims that would likely not result in a recovery. As discussed more fully in the Response #3, OMIG has been and will continue to regularly review these edits with Gainwell. The absence of a billing attempt does not indicate that a recovery should have or would have occurred. 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 recoveries of inappropriate payments for the Medicaid program. As previously noted, Gainwell has proceeded with recovery efforts on those claims that were affected by the rate code issue that prevented prior billings. Follow-up efforts on these claims will continue.

**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.

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**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. Thus, 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.

**State Comptroller's Comment** – The monthly and quarterly reports started being produced and provided to OMIG in November 2022 (after the end of our audit scope). We are pleased that, as a result of the audit, OMIG is working with Gainwell to ensure more oversight of the TPHI recovery process.

**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 understand 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 material aspects of the process and is currently implementing additional enhancements. In addition to generating a Monthly Recovery/PPIV Overview Report, which is included in the annual OMIG-approved workplan, Gainwell 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



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claims where a recovery attempt was made but the claim was subsequently denied by the TPHI carrier.

**State Comptroller's Comment** – We are pleased that OMIG and Gainwell began the process of implementing enhanced reporting processes to allow for better monitoring of the TPL recovery process in response to the audit.

**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 Pharmacy Provider Manual and Information to all Providers documents give explicit details telling pharmacy providers to exhaust all other insurance options prior to billing Medicaid. The determinations from other insurances showing non-payment must be retained as supporting documentation for the claim to Medicaid in case of post payment review. Through the Medicaid Update publication, Pharmacy providers are reminded of billing other insurances prior to billing Medicaid. Another reminder can be sent out in a future publication.

**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:**

A review of claim adjustment reason codes on Pharmacy claims with TPL indicated to ensure the proper Medicaid obligation is made will be requested by the Department to the Fiscal Agent. Corrective actions will be made based on the review. The Department will look into the feasibility of accepting an attachment with prior payor information for pharmacy claims with the zero-fill indicator present.

**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.

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**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.

# Contributors to Report

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