



Department of Health

KATHY HOCHUL
Governor

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

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

October 13, 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

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-36 entitled, "Medicaid Program: Excessive Payments for Durable Medical Equipment Rentals."

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

Sincerely,

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

Enclosure

cc: Mischa Sogut

Department of Health Comments to Final Audit Report 2021-S-36 entitled, “Medicaid Program: Excessive Payments for Durable Medical Equipment Rentals” 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-36 entitled, “Medicaid Program: Excessive Payments for Durable Medical Equipment Rentals” by the Office of the State Comptroller (OSC).

Recommendation #1:

Formally determine whether it is efficient and appropriate under managed care to require a cap on the number of rental payments for oxygen-related equipment. If deemed appropriate, work with stakeholders to implement policy changes.

Response #1:

While the Department does use Medicare policies as guidance for establishing state Medicaid policy, there is no state or federal mandate that requires the Department to adopt federal policy. Medicaid services a different mix of medical acuity, age range and service needs compared to the largely geriatric population serviced by Medicare. The Department has determined that the current reimbursement for oxygen services meets the needs of Medicaid members but will re-review the Medicare policy for any changes that would potentially provide cost saving measures while maintaining the same level of oxygen services for Medicaid members.

If the conclusions from the re-review result in a change in the Medicaid FFS reimbursement methodology, the Department will consider whether to seek authority to direct Medicaid managed care plans to adopt such a methodology.

Recommendation #2:

Formally re-evaluate the existing policies for paying FFS DME rental claims for oxygen-related equipment, including an evaluation of the appropriateness of the uncapped continuous rental policy and the Medicaid reimbursement fees. If deemed appropriate, implement policy and claims processing changes.

Response #2:

The Department has begun its comparison of Medicare policies for efficiencies and potential costs savings. Initial comparison of Medicare oxygen rental pricing to Medicaid reimbursement shows comparable structures for most services. Any differences in reimbursement would come after month 36 and be included in the next part of the Department’s analysis. The Department will take into consideration potential cost savings opportunities while maintaining the life-sustaining support of oxygen therapy that Medicaid members rely upon under the current fee schedule.

Recommendation #3:

Follow up with the MCO that made payments in excess of its policy limits on oxygen equipment to ensure that the \$200,657 is reviewed and recovered, as appropriate.

Response #3:

The Office of the Medicaid Inspector General (OMIG) is currently developing a process to follow up with the MCO to address the potential overpayments identified by OSC. OMIG's audit process accounts for the fact that providers are authorized by regulation to adjust or void any claims or encounters up to two years after submission to NYS Medicaid. Thus, OMIG's analysis will include those OSC-identified overpayments not already adjusted or recovered, to ensure the data used by OSC is complete and to confirm the accuracy of the claims detail for use in OMIG audit activities. MCOs have the ability to enter into their own specific contracts with each of their providers. These contracts can vary and may not have the same components as FFS rates. Depending on these contracts, the OSC identified overpayments may have been appropriately paid to the provider. Pursuant to State regulations, any identified overpayments OMIG pursues for recovery are subject to the provider's right to due process.

Recommendation #4:

Review the \$1.3 million in overpayments identified for DME rental claims and ensure recoveries are made, as appropriate.

Response #4:

OMIG is currently developing a process to follow up with the MCOs to address the potential overpayments identified by OSC. OMIG's audit process accounts for the fact that providers are authorized by regulation to adjust or void any claims or encounters up to two years after submission to NYS Medicaid. Thus, OMIG's analysis will include those OSC-identified overpayments not already adjusted or recovered, to ensure the data used by OSC is complete and to confirm the accuracy of the claims detail for use in OMIG audit activities. MCOs have the ability to enter into their own specific contracts with each of their providers. These contracts can vary and may not have the same components as FFS rates. Depending on these contracts, the OSC identified overpayments may have been appropriately paid to the provider. Pursuant to State regulations, any identified overpayments OMIG pursues for recovery are subject to the provider's right to due process.

Recommendation #5:

Monitor MCOs' DME rental claims for overpayments, including a review of the \$503,619 identified, and take appropriate corrective steps, including ensuring recoveries are made.

Response #5:

OMIG is currently developing a process to follow up with the MCOs to address the potential overpayments identified by OSC. OMIG's audit process accounts for the fact that providers are authorized by regulation to adjust or void any claims or encounters up to two years after submission to NYS Medicaid. Thus, OMIG's analysis will include those OSC-identified overpayments not already adjusted or recovered, to ensure the data used by OSC is complete and to confirm the accuracy of the claims detail for use in OMIG audit activities. MCOs have the ability to enter into their own specific contracts with each of their providers. These contracts can vary and may not have the same components as FFS rates. Depending on these contracts, the OSC identified overpayments may have been appropriately paid to the provider. Pursuant to

State regulations, any identified overpayments OMIG pursues for recovery are subject to the provider's right to due process.

Recommendation #6:

Advise MCOs to evaluate the feasibility of developing controls to identify and prevent the types of DME rental overpayments identified by the audit, and take steps to ensure corresponding corrective actions are implemented.

Response #6:

The Department will advise MCOs to evaluate the feasibility of developing controls to identify and prevent overpayments.

Recommendation #7:

Formally determine the appropriateness of certain MCOs' policies that allow payments for a new rental period whenever there is a 60-day gap in rental payments or a change in provider. If deemed inappropriate, work with stakeholders to implement policy changes.

Response #7:

In order to implement this recommendation, the Department will need to contract with a vendor with subject matter expertise in the topic area to formally review and determine the appropriateness of certain MCOs DME payment policies for new rental periods whenever there is a gap in rental payments or a change in provider.

State Comptroller's Comment (Page 16):

As stated in the audit report on page 7, similar to Medicaid, Medicare's monthly rental payments for stationary and portable oxygen equipment cover not only the oxygen equipment but also oxygen accessories and services such as tubing or a mouthpiece, oxygen contents, oxygen machine maintenance, oxygen machine servicing, and oxygen machine repairs. Furthermore, after 36 months of rental payments are made, Medicare suppliers are required to maintain the oxygen equipment (in good working order) and furnish the equipment and any necessary supplies and accessories for an additional 24 months at no extra cost.

Response to State Comptroller's Comment:

The State Comptroller's Comment is not entirely correct. According to the Medicare DME Suppliers Manual, providers may bill for maintenance of equipment every 6 months, as well as monthly oxygen supplies through months 36 to 60. At month 61, the member can decide if replacement (thus starting a new 36-month rental period) or continuation of monthly content and periodic maintenance is needed. The comment from the State Comptroller implies that after 36 months, there is no additional reimbursement from Medicare, which is inaccurate.