



## Department of Health

**KATHY HOCHUL**  
Governor

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

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

April 8, 2024

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 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 2022-S-35 entitled, "Medicaid Program: Improper Medicaid Payments During Permissible Overlapping Medicaid and Essential Plan Coverage."

Should you have questions, please contact Mischa Sogut, Assistant Commissioner for Governmental Affairs, at 518-473-1124 or [Mischa.sogut@health.ny.gov](mailto:Mischa.sogut@health.ny.gov).

Sincerely,

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

Enclosure

cc: Mischa Sogut

**Department of Health Comments  
on the Office of the State Comptroller's  
Final Audit Report 2022-S-35 entitled, "Medicaid Program: Improper  
Medicaid Payments During Permissible Overlapping Medicaid and  
Essential Plan Coverage"**

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The following are the Department of Health's (Department) comments in response to the Office of the State Comptroller's (OSC) Final Audit Report 2022-S-35 entitled, "Medicaid Program: Improper Medicaid Payments During Permissible Overlapping Medicaid and Essential Plan Coverage."

**Recommendation #1:**

Review the \$93.7 million (\$83.1 million + \$10.6 million) in improper payments and make recoveries as appropriate.

**Response #1:**

The Office of the Medicaid Inspector General (OMIG) is currently developing an audit process to recover inappropriate payments for overlapping coverage of Essential Plan (EP) and Medicaid. For any OSC findings after March 2020, OMIG will utilize guidance issued by Federal and State entities as to the appropriateness of the claims during the COVID-19 Public Health Emergency. Pursuant to State regulations, any identified overpayments OMIG pursues for recovery are subject to the provider's right to due process.

**Recommendation #2:**

Recognize the Essential Plan as liable third-party health insurance and ensure proper processing of Medicaid claim payments.

**Response #2:**

The Department is in the process of hiring staff to support this function. At the outset, this will be a manual process. The Department created a project within the eMedNY system (Evolution Project 7629) that will move some of this manual process to an automated process.

OMIG is currently developing an audit process to recover inappropriate payments for overlapping coverage of EP and Medicaid, recognizing that EP is a liable third-party health insurance program.