



Department of Health

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Governor

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

MEGAN E. BALDWIN
Acting Executive Deputy Commissioner

July 21, 2023

Andrea Inman, Audit Director
Office of the State Comptroller
Division of State Government Accountability
110 State Street – 11th Floor
Albany, New York 12236-0001

Dear Andrea Inman:

Enclosed are the Department of Health's comments on the Office of the State Comptroller's Follow-Up Audit Report, 2023-F-12 entitled, "Improper Medicaid Managed Care Payments for Durable Medical Equipment, Prosthetics, Orthotics, and Supplies on Behalf of Recipients in Nursing Homes."

Thank you for the opportunity to comment.

Sincerely,

Megan E. Baldwin
Acting Executive Deputy Commissioner

Enclosure

cc: Amir Bassiri
Jacqueline McGovern
Andrea Martin
James Dematteo
James Cataldo
Amber Rohan
Brian Kiernan
Timothy Brown
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**Department of Health Comments to
Follow-Up Audit Report 2023-F-12 entitled,
“Improper Medicaid Managed Care Payments for Durable Medical
Equipment, Prosthetics, Orthotics, and Supplies on Behalf of
Recipients in Nursing Homes” (Report 2020-S-61) by the Office of the
State Comptroller**

The following are the responses from the New York State Department of Health (the Department) to Follow-Up Audit Report 2023-F-12 entitled, “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 DMEPOS claims and recover as appropriate, beginning with the \$77,356 in sampled claims that MCOs agreed were overpaid.

Status – Not Implemented

Agency Action – The initial audit identified \$9.6 million in potential MCO overpayments for DMEPOS items that likely should have been provided by nursing homes as part of the daily all-inclusive rate paid to those facilities. OMIG investigates and recovers improper Medicaid payments on behalf of the Department. As such, it has a role in recovering inappropriate Medicaid payments for DMEPOS claims paid during recipient’s stays in nursing homes whose all-inclusive rates already included these items. OMIG did not recover any of the \$9.6 million – including the \$77,356 in claims that MCOs agreed were overpaid. We note OMIG may have already lost the opportunity to recover over \$2 million of the payments for calendar year 2016 and the first quarter of 2017 due to federal look-back provisions. In response to our follow-up, OMIG officials indicated MCOs voided \$40,457 (less than 1%) of the \$9.6 million, and OMIG plans to review DMEPOS claims on behalf of recipients in nursing homes and take action as appropriate. We encourage the Department and OMIG to take prompt action on the improper payments we identified to prevent further loss of recoveries.

Response #1:

The Office of the Medicaid Inspector General (OMIG) 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), and a single SNF could have multiple contracts with different MCOs. These contracts can vary between MCOs and SNFs and may not have the same components as fee-for-service 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. OMIG has requested copies of these contracts, as it is necessary to have this documentation to determine the appropriateness of the OSC-identified overpayments for recovery. Pursuant to State regulations, any identified overpayments OMIG pursues for recovery are subject to the provider’s right to due process.

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.

Status – Implemented

Agency Action – The initial audit found DMEPOS providers submitted claims that improperly reported recipients' homes as the service location, which prevented payment systems from denying claims while recipients resided in nursing homes. In April 2023, the Department sent an email reminding MCOs of the Medicaid policy for DMEPOS for recipients residing in nursing homes. This communication included providers' responsibility to correctly identify a recipient's location before submitting DMEPOS claims to ensure the items are not included in a facility's rate before billing MCO's. In addition, the Department issued a Medicaid Update in May 2023 that covered the same information and is available for DMEPOS providers.

Response #2:

The Department confirms agreement with the status of this recommendation.

Recommendation #3:

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

Status – Partially Implemented

Agency Action – The initial audit found that MCO's agreed with the sampled DMEPOS overpayments identified (\$77,356) and indicated these claims were being reviewed to identify the causes of incorrect payments, and that the MCOs would consider implementing additional review protocols. In April 2023, the Department sent an email advising MCOs of their responsibility to monitor DMEPOS claims and ensure controls are in place. However, the Department had not yet taken steps to ensure corresponding corrective actions were implemented. In response to our follow-up, Department officials stated there are subcontracts in place for each MCO and nursing home, and the Department plans to conduct "Focused Surveys" of two to three nursing home contracts from each MCO that will include evaluating plan policies and controls. We encourage the Department to work with MCOs to implement corrective actions to prevent future improper payments.

Response #3:

The Department will review OMIG's findings and conduct the focused surveys within six months.

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.

Status – Not Implemented

Agency Action – The initial audit found that neither the Department nor OMIG monitored whether Medicaid MCOs appropriately paid for DMEPOS on behalf of recipients residing in nursing homes where all-inclusive rates included such items. According to Department officials,

it is the MCOs' responsibility to implement appropriate controls and ensure claims are submitted accurately. Further, subcontracts between each MCO and nursing home pass the responsibility to the MCO to ensure there are no duplicate payments or overpayments; therefore, the Department does not currently monitor MCO DMEPOS claims. However, the Department is still responsible for ensuring MCOs comply with established Medicaid standards. In response to our follow-up, the Department plans to perform "Focused Surveys" of two or three nursing home contracts from each of the MCOs in 2023 that will include evaluating plan policies and controls.

Response #4:

The Department will review OMIG's findings and determine within six months whether a focused survey will need to be done in addition to the surveys discussed in response #3.