

THOMAS P. DiNAPOLI
STATE COMPTROLLER



110 STATE STREET
ALBANY, NEW YORK 12236

STATE OF NEW YORK
OFFICE OF THE STATE COMPTROLLER

June 21, 2023

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

Re: Improper Medicaid Managed Care
Payments for Durable Medical
Equipment, Prosthetics, Orthotics, and
Supplies on Behalf of Recipients in
Nursing Homes
Report 2023-F-12

Dear Dr. McDonald:

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 have followed up on the actions taken by officials of the Department of Health (Department) to implement the recommendations contained in our audit report, *Improper Medicaid Managed Care Payments for Durable Medical Equipment, Prosthetics, Orthotics, and Supplies on Behalf of Recipients in Nursing Homes* (Report [2020-S-61](#)).

Background, Scope, and Objective

The Department administers New York's Medicaid program. Many of the State's Medicaid recipients receive their services through managed care, whereby the Department pays managed care organizations (MCOs) a monthly premium for each enrolled recipient and, in turn, the MCOs arrange for the provision of health care services, including necessary durable medical equipment, prosthetics, orthotics, and supplies (DMEPOS). Durable medical equipment encompasses devices and equipment that can withstand repeated use (e.g., wheelchairs) for the treatment of a specific medical condition. A prosthetic device replaces a missing body part, while an orthotic device supports a weak or deformed body part. Medical supplies are disposable items for medical use such as gauze and wipes. Medicaid nursing home reimbursement rates generally include the cost of most DMEPOS, and separate payments are not to be made for DMEPOS when the cost of these items is included in the rate. Moreover, it is the dispensing provider's responsibility to verify with the recipient's nursing home whether the DMEPOS is included in the facility's Medicaid rate.

We issued our initial audit report on April 19, 2022. The audit objective was to determine whether Medicaid MCOs inappropriately paid for DMEPOS while recipients were residing in nursing homes. The audit covered the period from January 2016 to December 2020. The audit

found the Department had not established sufficient controls to ensure Medicaid did not make payments for DMEPOS items that were already covered under the daily all-inclusive rate paid to nursing homes. The 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 rates.

The objective of our follow-up was to assess the extent of implementation, as of May 19, 2023, of the four recommendations included in our initial audit report.

Summary Conclusions and Status of Audit Recommendations

Department officials have made some progress in addressing the problems we identified in the initial audit report; however, additional actions are needed. In particular, the Office of the Medicaid Inspector General (OMIG) needs to review and recover, as appropriate, the \$9.6 million in DMEPOS claims identified. Additionally, the Department should take steps to monitor DMEPOS claims and ensure MCOs implement controls to prevent improper payments. Of the initial report's four audit recommendations, one has been implemented, one has been partially implemented, and two have not yet been implemented.

Follow-Up Observations

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 recipients' 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.

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 MCOs. In addition, the Department issued a Medicaid Update in May 2023 that covered the same information and is available for DMEPOS providers.

Recommendation 3

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

Status – Partially Implemented

Agency Action – The initial audit found that MCOs 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.

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.

Major contributors to this report were Thomas Sunkel, Francesca Greaney, and Edward Reynoso.

We would appreciate your response to this report within 30 days, indicating any actions planned to address the unresolved issues discussed in this report. We thank the management and staff of the Department for the courtesies and cooperation extended to our auditors during this follow-up.

Sincerely,

Mark Breunig
Audit Manager

cc: Melissa Fiore, Department of Health
Frank Walsh, Jr., Office of the Medicaid Inspector General