



# Department of Health

**KATHY HOCHUL**  
Governor

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

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

November 16, 2023

Andrea Inman, Audit Director  
Office of the State Comptroller  
Division of State Government Accountability  
110 State Street – 11<sup>th</sup> 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-4 entitled, "Improper Medicaid Payments for Claims Not in Compliance with Ordering, Prescribing, Referring, and Attending Requirements."

Thank you for the opportunity to comment.

Sincerely,

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

Enclosure

cc: Amir Bassiri  
Jacqueline McGovern  
Andrea Martin  
James Dematteo  
James Cataldo  
Amber Rohan  
Brian Kiernan  
Timothy Brown  
Michael Atwood  
Melissa Fiore  
OHIP Audit  
DOH Audit

**Department of Health Comments to  
Follow-Up Audit Report 2023-F-4 entitled,  
“Improper Medicaid Payments for Claims Not in Compliance With  
Ordering, Prescribing, Referring, and Attending Requirements”  
(Report 2019-S-2) 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-4 entitled, “Improper Medicaid Payments for Claims Not in Compliance With Ordering, Prescribing, Referring, and Attending Requirements” by the Office of the State Comptroller (OSC).

**Recommendation #1:**

*Review the \$1,483,787,367 in payments to providers for Medicaid claims that did not meet federal and State OPRA regulations, and determine an appropriate course of action, including determining if any recoveries should be made.*

Status – Not Implemented

Agency Action – Our initial audit found over \$1.4 billion in Medicaid payments where eMedNY processed claims that did not meet federal and State OPRA regulations, such as claims that did not contain an enrolled or affiliated OPRA NPI, as required. In response to our initial audit, Department officials stated there were collaborating with the Office of the Medicaid Inspector General (OMIG) on the development of a comprehensive strategy to develop guidance on corrective actions to identify improper payments and make recoveries. However, at the time of our follow-up, the Department and OMIG were unable to provide evidence that any claims had been reviewed or recovered.

**Response #1:**

OMIG has recovered \$680,604 of the OSC-identified overpayments. Additionally, there are 300,862 claims that are already included in other OMIG audit universes. Pursuant to State regulations, any identified overpayments OMIG pursues for recovery are subject to the provider’s right to due process.

OASAS reviewed the OASAS Certified providers and claims in question. OASAS also met with the providers with the most substantial claims in question to discuss corrective action. OASAS updated OPRA guidance and sent out the updates to all providers on April 15, 2021: [Medicaid Ordering/Prescribing/Referring/Attending \(OPRA\) Guidance](#). Letters were also issued to any identified providers regarding corrective action.

**Recommendation #2:**

*Improve system controls over clinic and practitioner claims as well as claims submitted through the Medicare crossover system to ensure that these claims are paid in accordance with federal and State OPRA regulations.*

Status – Partially Implemented

Agency Action – Our initial audit found eMedNY system controls used to verify that OPRA NPIs were reported, as required, did not always prevent improper payments or were intentionally circumvented by the Department. For example, certain eMedNY system edits (payment

controls) deny claims that do not contain the required NPI of an enrolled referring provider. However, Medicare crossover claims (claims that involve Medicare coordination of benefits) bypass these edits despite federal requirements that claims for dual-eligibles (Medicaid recipients who also have Medicare coverage) contain an enrolled referring provider.

The Department established the “Interagency OPRA Remediation Initiative” to identify and resolve Medicaid OPRA billing issues identified by the initial audit. The initiative was to perform a full analysis on all OPRA edits currently in place and provide training and communication updates to the provider community. However, this project was on hold at the time of our follow-up. According to Department officials, the initiative has identified the business rules necessary for the implementation of eMedNY system changes to satisfy federal and State Medicaid OPRA provider requirements for clinic, practitioner, and Medicare crossover claims, but the project requires a significant increase in resources to support the ongoing maintenance. Due to these resource constraints, it is unknown whether the Department will be able to support the proposed processes.

**Response #2:**

The Department continues to evaluate how a project that establishes system controls necessary to satisfy OPRA provider requirements can proceed, given the complexity of the project and resource limitations.

**Recommendation #3:**

*Improve system controls to prevent issuance of prior approvals for dental services that do not contain an enrolled servicing dentist NPI as required by Department policies.*

Status – Partially Implemented

Agency Action – Our initial audit found eMedNY system weaknesses that allowed payments for dental services that were authorized by the Department on prior approvals that did not contain an enrolled servicing NPI, as required. A system change project was initiated and an edit was developed to correct this weakness. However, the edit has not been activated. According to Department officials, it was decided system edits would only be activated when they were finished for all program areas as part of a larger OPRA system edit project. We encourage the Department to revisit this decision and to implement completed system changes to address this recommendation.

**Response #3:**

The Department considers this recommendation implemented. An edit was activated on August 25, 2023 specific to dental to prevent payment of dental claims that do not have the servicing provider NPI on the claim.

**Recommendation #4:**

*Formally remind providers to include the NPI of enrolled referring and attending providers on Medicaid claims in accordance with federal and State regulations.*

Status – Not Implemented

Agency Action – As mentioned in the Agency Action for Recommendation 2, the Department has identified the business rules necessary for the implementation of eMedNY system changes to satisfy OPRA requirements. However, since these system changes have not yet been implemented, the Department has not formally reminded providers to include the NPI of enrolled referring and attending providers on Medicaid claims. The Department stated that it will issue additional guidance to all providers on completing referring and attending provider fields once all edits have been enabled. We encourage the Department to expedite a reminder to providers to comply with federal and State requirements.

**Response #4:**

OASAS updated OPRA guidance and the billing manual and emailed the guidance to OASAS providers on October 28, 2020 as a reminder to review and comply. OASAS sent out the updated guidance to all OASAS Certified providers again on April 15, 2021: [Medicaid Ordering/Prescribing/Referring/Attending \(OPRA\) Guidance](#).

The Department continues to evaluate how a project that establishes system controls necessary to satisfy OPRA provider requirements can proceed given the complexity of the project and resource limitations. Once the project has been completed, the Department will issue guidance.

**Recommendation #5:**

*Review the payments totaling \$57,376,791 to pharmacies for Medicaid claims that did not meet federal and State OPRA regulations and determine an appropriate course of action, including determining if any recoveries should be made.*

Status – Not Implemented

Agency Action – Our initial audit identified \$17,346,603 in improper payments for pharmacy claims containing a prescribing NPI of a licensed professional who was not enrolled as a Medicaid provider on the date of service; \$9,960,823 in questionable payments where the prescribing field appeared to contain the NPI of a student; and \$30,069,35 in questionable payments for claims where the prescribing field contained unknown NPIs. In response to our follow-up, Department officials stated this recommendation was no longer applicable and cited New York State Education Law and federal regulations allowing for residents, interns, and foreign physicians participating in training programs to prescribe without being enrolled in the Medicaid program. However, as we previously discussed with Department officials, we already considered these allowances in our initial audit. The Department did not review the payments referred to in this recommendation, and we encourage the Department to take immediate action to review these improper and questionable claims.

**Response #5:**

OMIG has recovered \$41,166 of the OSC-identified overpayments. Additionally, there are 17,083 claims that are already included in other OMIG audit universes. Pursuant to State regulations, any identified overpayments OMIG pursues for recovery are subject to the provider's right to due process.

OSC utilized the National Plan and Provider Enumeration System (NPPES) registry to validate whether the provider was a student for the claims in question. The NPPES registry has limitations, it is updated by the provider, and it does not contain historical information.

Residents, interns, and foreign physicians are also registered with their corresponding institution and are issued state permits. In addition, new students enter programs at hospitals on a yearly basis. This is a fluent process that is always changing. Therefore, all sources should be utilized to verify their status.

**State Comptroller's Comment** - As discussed on page 21 of our initial report, we agree with the Department that the self-reported information in NPPES comes with "accuracy" caveats. However, these same risks apply to the Department's pharmacy override option – lacking verifiable student data, there is no assurance that pharmacies are applying the override as the Department intended. If the Department has additional sources to identify student prescribers, it should use them to review the appropriateness of the claims we identified.

**Recommendation #6:**

*Improve system controls to prevent payment of pharmacy claims where the prescribing NPIs are for out-of-state licensed practitioners not enrolled in Medicaid to ensure these claims are paid in accordance with federal and State OPRA regulations.*

Status – Not Implemented

Agency Action – During the initial audit, the Department implemented eMedNY system edit 00218, which denies pharmacy claims that do not contain the NPI of an enrolled provider in the prescribing field. The Department also issued override guidance to be used for exceptions, such as for students and out-of-state licensed prescribers. However, out-of-state licensed prescribers must enroll in Medicaid in certain circumstances, such as for instances of care that exceed a 180-day period. Our initial audit identified pharmacy claims billed with the override option in excess of this allowance that contained an unenrolled out-of-state prescriber.

The Department has not made improvements to system controls related to this recommendation. We analyzed pharmacy claims containing an out-of-state prescribing NPI for the period May 2019 through March 2023, and found instances where the override was improperly used. We provided an example to Department officials for review, and they confirmed the out-of-state prescriber should have been enrolled in Medicaid. We encourage the Department to improve system controls to ensure pharmacy claims are paid properly.

**Response #6:**

After the initial audit, the Department was working on a larger solution for OPRA edits Department-wide. Given the complexity of the project and resource limitations this project was put on hold. The Department is researching what additional editing could be added to systematically validate the out-of-state provider exception criteria.

**Recommendation #7:**

*Improve monitoring over the pharmacy override usage to ensure claims are paid in accordance with federal and State OPRA regulations.*

Status – Not Implemented

Agency Action – The Department has not improved monitoring over the use of the override option. For the period May 2019 through March 2023, we identified \$11.3 million in payments for pharmacy claims billed using this pharmacy override, but where the prescriber was not a student and was not enrolled in Medicaid, as required. We provided two examples of prescribers who were licensed in New York State but not enrolled in Medicaid to the Department, and Department officials confirmed the prescribers should have been enrolled. We encourage the Department to improve monitoring to ensure the pharmacy override option is used appropriately to prevent improper Medicaid payments.

**Response #7:**

The Department monitors pharmacy claims and conducts targeted outreach when providers not enrolled in the program are identified. Prior to Pharmacy Benefit Transition, the Department worked with Managed Care Organizations (MCO) to conduct outreach and encourage enrollment for non-enrolled providers. Post Pharmacy Benefit Transition, the Department continues to enroll and outreach to providers that are eligible to enroll. The Department continues to work with Provider Enrollment to prioritize providers as needed. Enrollment of non-enrolled providers has increased. Since the original audit was published, NYRx as well as the MCOs have done numerous list-serv emails, faxes, calls, and Provider updates on this topic stressing the importance of enrollment and proper uses of override allowances, as recognized by the Centers for Medicare and Medicaid Services.

**Recommendation #8:**

*Review the 739 NPIs on 226,650 claims totaling \$19,387,173 for individuals who, according to regulations, should not be on Medicaid claims or who should be further reviewed by the Department due to past misconduct, and determine if any recoveries should be made.*

Status – Not Implemented

Agency Action – OMIG investigates and recovers improper Medicaid payments on behalf of the Department. In response to the initial audit, OMIG officials stated that more than \$6 million of the \$19,387,173 was beyond the 6-year lookback restriction for audit and recovery, and that they were performing data analysis on the remaining OSC-identified overpayments not already adjusted or recovered. However, at the time of our follow-up, OMIG had not recovered any of the claim payments, and stated that more than \$15 million (77%) was now beyond the 6-year lookback restriction for audit and recovery. We encourage OMIG to take prompt action on the remaining findings to prevent any further loss of recoveries.

**Response #8:**

OMIG has recovered \$24,638 of the OSC-identified overpayments. Additionally, there are 190,104 claims that are already included in other OMIG audit universes. Pursuant to State regulations, any identified overpayments OMIG pursues for recovery are subject to the provider's right to due process.

**Recommendation #9:**

Review the 2,891 NPIs associated with active attending practitioner-facility affiliations that were excluded, deactivated, invalid, inappropriately affiliated to a facility, or associated with an incorrect license, and enhance system controls to ensure that non-enrolled attending practitioner-facility affiliations are in accordance with federal and State regulations.

Status – Partially Implemented

Agency Action – In December 2021, the Department initiated the Provider Enrollment Portal, which enables facilities to affiliate attending practitioners and attest to completing the appropriate screening measures prior to affiliating. According to Department officials, the portal will have appropriate controls in place to identify inappropriate affiliations, as well as excluded, deactivated, invalidly credentialed, and incorrect or inactive licenses, and will prevent transaction processing when these situations are identified. However, the full implementation of the portal has been significantly delayed and isn't anticipated until late 2024. As a result, the Department is looking into the feasibility of initiating a project that would allow staff to view which facilities a non-enrolled practitioner is affiliated with and take action on the practitioner's facility affiliation when appropriate.

Department officials also stated that they reviewed the 2,891 NPIs we identified, but they have no reasonable way to correct these files without the portal functionality or the ability to view practitioner affiliations. We encourage the Department to expedite the development of corrective measures to address the inappropriate attending practitioner-facility affiliations we identified and prevent future inappropriate affiliations.

**Response #9:**

The Department added language to the facilities' affiliation function on eMedNY that emphasizes it is the responsibility of a facility to ensure that affiliated practitioners are actively enrolled in NYS Medicaid and are not excluded from participation in a federal or State health care program. As recommended, the Department will explore options for expediting the development of corrective measures that address the inappropriate attending practitioner-facility affiliations that were identified and prevent future inappropriate affiliations.

**Recommendation #10:**

*Formally remind providers to report accurate information during the attending practitioner-facility affiliation process and remind providers of their responsibility to appropriately screen affiliated attending practitioners.*

Status – Implemented

Agency Action – In the December 2021 edition of the Medicaid Update (the Department's official publication for Medicaid providers), providers were reminded to enter accurate information into eMedNY during the practitioner-facility affiliation process. Providers were also reminded of their responsibility to appropriately screen affiliated OPRA practitioners to ensure practitioners are actively enrolled in the Medicaid program and are not excluded from participation in a federal or State health care program.

**Response #10:**

The Department confirms agreement with this recommendation status.

**Recommendation #11:**

Enhance data entry and system controls to ensure OMIG-excluded practitioners are properly recorded in eMedNY.

Status – Not Implemented

Agency Action – In November 2021, a system change was initiated to replace the manual updates of the Medicaid Exclusion list with an automated process by eMedNY in order to remove the potential for human error and ensure data accuracy. This system change was placed on hold due to an estimated cost the Department deemed higher than the return on investment. OMIG officials stated there would still be a manual component even with the establishment of an automated process. As stated in our report and noted in eMedNY system change documentation, the manual process of updating the eMedNY provider sanction table leaves room for error. As a result, if the excluded practitioner’s NPI is not updated accurately to the provider sanction table, established eMedNY system edits will not prevent inappropriate claim payments for services provided by those individuals.

**Response #11:**

Data entry and system controls currently exist. OMIG has a process in place to confirm that eMedNY is updated accurately, in order to prevent claims from being paid when a provider was excluded.

**Recommendation #12:**

*Enhance system controls to identify claims containing an excluded, sanctioned, or otherwise inappropriate NPI in an OPRA field and prevent improper payments.*

Status – Not Implemented

Agency Action – At the time of our follow-up, the Department had not taken action to enhance system controls to identify claims containing an excluded, sanctioned, or otherwise inappropriate NPI in an OPRA field and prevent improper payments.

**Response #12:**

With the delay of the provider enrollment portal and the system controls that will exist within, the Department will explore options for identifying claims containing excluded, sanctioned, or otherwise inappropriate NPIs in the OPRA field to prevent improper payments.