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STATE OF NEW YORK
OFFICE OF THE STATE COMPTROLLER

September 13, 2023

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

Re: Improper Medicaid Payments for
Claims Not in Compliance With
Ordering, Prescribing, Referring, and
Attending Requirements
Report 2023-F-4

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 Payments for Claims Not in Compliance With Ordering, Prescribing, Referring, and Attending Requirements* (Report [2019-S-2](#)).

Background, Scope, and Objective

The Department administers New York's Medicaid program. The Affordable Care Act and implementing federal regulations mandated that state Medicaid agencies require all ordering and referring physicians and other professionals providing services through the Medicaid fee-for-service program to be enrolled as a participating provider and their National Provider Identifier (NPI) to be included on Medicaid claims. Accordingly, beginning January 1, 2014, New York's Medicaid program required that physicians and other health care professionals who order, prescribe, refer, or attend (OPRA) Medicaid services be appropriately screened and enrolled in Medicaid. Through the screening and provider enrollment process, the Department gains a level of assurance over the OPRA provider's validity to provide Medicaid services. It further allows the Department to verify the provider's licensing and other credentials to furnish services.

We issued our initial audit on August 17, 2021. The audit objective was to determine whether the Department paid for claims in violation of federal and State regulations that require an appropriate NPI for OPRA health care providers. The audit covered the period from January 1, 2014 through December 31, 2018. The audit identified system processing weaknesses in eMedNY, the Medicaid claims processing and payment system, which improperly allowed payments for Medicaid claims that did not contain an appropriate NPI in the OPRA fields. We

determined Medicaid made over \$1.5 billion in improper and questionable payments where eMedNY processed claims that did not contain an enrolled or affiliated OPRA NPI as required or where the OPRA NPI was not properly validated by the Department at the time of payment; and \$19.4 million in payments for claims that contained an OPRA NPI that should not be included on Medicaid claims or that should be further reviewed by the Department due to past misconduct.

The objective of our follow-up was to assess the extent of implementation, as of May 12, 2023, of the 12 recommendations included in our initial audit report.

Summary Conclusions and Status of Audit Recommendations

Department officials have made limited progress in addressing the problems we identified in the initial audit report and additional actions are still needed. For example, none of the improper and questionable payments have been reviewed, nor have system controls been enhanced to prevent payment for claims containing excluded or otherwise inappropriate OPRA providers. Furthermore, the Department has not improved controls to prevent improper use of the pharmacy override option and, as a result, we identified another \$11.3 million in improper pharmacy payments since the initial audit. Of the initial report's 12 audit recommendations, one has been implemented, three have been partially implemented, and eight have not yet been implemented.

Follow-Up Observations

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 they 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.

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.

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.

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.

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.

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.

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 the 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.

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.

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 the 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.

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.

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.

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.

Major contributors to this report were Rebecca Chromey, Joe Paduano, Linda Thipvoratrum, and Lindsey Winter.

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,

Christopher Morris
Audit Manager

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

