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OFFICE OF THE STATE COMPTROLLER

January 31, 2024

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

Re: Medicaid Program: Recovering  
Managed Care Overpayments for  
Pharmacy Services on Behalf of  
Recipients With Third-Party Health  
Insurance  
Report 2023-F-27

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 initial audit report, *Medicaid Program: Recovering Managed Care Overpayments for Pharmacy Services on Behalf of Recipients With Third-Party Health Insurance* (Report [2020-S-39](#)).

**Background, Scope, and Objective**

The Department uses two methods to pay for pharmacy services: fee-for-service and managed care. Under the fee-for-service method, the Department, through its Medicaid claims processing and payment system (eMedNY), pays pharmacy providers directly for each drug dispensed to a Medicaid recipient. Under the managed care method, the Department pays managed care organizations (MCOs) a monthly premium for each enrolled Medicaid recipient and the MCOs arrange for the provision of health care services and reimburse providers for those services. MCOs are required to submit encounter claim data to the Department detailing each service and drug provided.

Many Medicaid recipients have other sources of health care coverage in addition to Medicaid, such as Medicare and commercial health insurance (hereafter referred to as third-party health insurance). Per federal law and State regulations, Medicaid is always the payer of last resort. If a Medicaid recipient has third-party health insurance coverage, Medicaid providers and MCOs are required to coordinate benefits in order to exhaust the benefits of the third-party health insurance coverage before billing the Medicaid program.

The Department utilizes post-payment reviews to identify instances where a third-party health insurance carrier may be liable for the payment of services that were initially

paid by Medicaid. The Office of the Medicaid Inspector General (OMIG) contracts with Health Management Systems, Inc. (HMS, a Gainwell Technologies company) to perform these third-party liability reviews and to pursue recoveries from third-party health insurance carriers. According to Department and OMIG officials, third-party health insurance coordination of benefits is a complex process, and there are numerous impediments to successful third-party liability recoveries.

We issued our initial audit report on July 13, 2022. The audit objective was to determine whether Medicaid overpayments for pharmacy services on behalf of managed care recipients who had third-party health insurance were appropriately recovered. The audit covered the period from October 2015 through May 2020. The audit determined that the Department and OMIG lacked adequate oversight of the third-party liability recovery process. HMS had not billed third-party health insurance carriers for the recovery of about \$292 million in pharmacy encounter claims that MCOs paid as the primary insurance for recipients who, according to eMedNY, had third-party health insurance drug coverage. Additionally, carriers often denied claims HMS submitted for recovery for reasons that could be rectified, but follow-up actions by HMS to get payment on those claims were limited, and many payments, potentially tens of millions of dollars, were never recouped. Neither the Department nor OMIG performed reviews, reconciliations, or other monitoring of HMS' recoveries by comparing the claims MCOs paid on behalf of recipients with third-party health insurance drug coverage to the claims HMS reviewed and recovered. Lastly, OMIG and HMS were unable to determine why payments for selected pharmacy services we provided them for review were not recovered.

The objective of our follow-up was to assess the extent of implementation, as of December 12, 2023, of the six 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, but additional actions are still needed. Although some recoveries have been made, the Department and OMIG have not taken action on most of the Medicaid managed care pharmacy payments identified in the initial report. OMIG and HMS have taken some corrective steps to improve the third-party recovery process, which has resulted in additional recoveries to the State, and have taken steps to improve transparency into HMS' processes and results. Finally, the Department and OMIG have not worked with other stakeholders to determine the feasibility of increasing the recovery window for initiating third-party liability recoveries beyond the current statutory maximum of 3 years. Of the initial report's six audit recommendations, three have been partially implemented and three have not been implemented.

### **Follow-Up Observations**

#### **Recommendation 1**

*Review the \$292 million in Medicaid payments for pharmacy services on behalf of recipients with third-party health insurance drug coverage we identified and ensure overpayments are appropriately recovered, prioritizing encounter claims that are approaching the 3-year window for recovery.*

Status – Partially Implemented

Agency Action – OMIG is responsible for investigating and recovering improper Medicaid payments on behalf of the Department and contracts with HMS for third-party liability recoveries. The initial audit identified various areas in the third-party liability recovery process that could be improved. For example, we found that certain claims with generic billing provider identification numbers had been excluded from recovery attempts; however, there was an alternative field, the biller’s National Provider Identifier, which could have been used to bill third-party health insurance carriers for recovery. As a result of our initial audit, OMIG and HMS determined claims should not be excluded from recovery attempts solely due to a generic provider identification number. OMIG/HMS have since recovered over \$7.3 million on pharmacy encounter claims and nearly \$2.3 million for non-pharmacy encounter claims that contained generic billing provider identification numbers. However, of the recovered amount, only \$424,670 (less than 1% of the \$292 million) was related to the pharmacy encounter claims identified in our initial report. This is likely due to the improvements to the recovery process not being implemented until 2023 and the State statutory limit of 3 years from the date of service to initiate recovery from third-party health insurance carriers.

**Recommendation 2**

*Assess the recoverability of pharmacy encounter claims that were billed to third-party health insurance carriers but did not result in a recovery (due to carrier denial or non-response) and ensure all necessary follow-up actions are taken to obtain appropriate recoveries.*

Status – Not Implemented

Agency Action – The initial audit found that third-party health insurance carriers denied pharmacy encounter claim payments totaling \$120.9 million for administrative reasons or other reason codes that may be rectifiable. OMIG officials stated that HMS performs vigorous follow-up activities on denied billings; however, they were not able to provide us with documentation of such follow-up activities. Additionally, Department officials were unable to provide evidence of any follow-up activity by the Department to ensure carriers fully cooperated with third-party liability recovery attempts. According to OMIG, HMS was exploring additional system enhancements to provide greater detail on follow-up activities.

According to HMS, there is no enforcement mechanism within State regulations to compel full carrier cooperation. Under State and federal laws, the Department – or HMS, as its third-party liability contractor – has up to 6 years from the submission of a claim to enforce its right to recover any amount for which the third-party health insurance carrier is liable. We encourage the Department and OMIG to assess the recoverability of the encounter claims that were billed to third-party health insurance carriers but did not result in a recovery and ensure necessary follow-up actions are taken to obtain appropriate recoveries.

**Recommendation 3**

*Assess the third-party liability recovery process for managed care pharmacy services to identify all factors that led to exclusions from third-party health insurance carrier billings, and ensure corrective actions are taken where appropriate.*

Status – Partially Implemented

Agency Action – The initial audit identified various areas of the third-party liability recovery process that could be improved. HMS and OMIG took steps to correct one deficiency with the recovery process and, consequently, recovered \$9.6 million related to encounter claims containing generic billing provider IDs (as discussed in Recommendation 1). Of this amount, \$7.3 million was related to pharmacy encounter claims, while the remaining \$2.3 million was related to other claim types. OMIG officials also stated that HMS consulted with OMIG on business rule adjustments and claim selection logic that may benefit from updating or removal; however, no other examples of corrective actions regarding the recovery of pharmacy encounter claims were provided.

#### **Recommendation 4**

*Implement ongoing monitoring of the entire third-party health insurance recovery process for managed care pharmacy services to ensure all appropriate recoveries are made within the required time frames, including monitoring of pharmacy encounter claims that are not billed to third-party health insurance carriers and pharmacy encounter claims that are billed to third-party health insurance carriers but do not result in a recovery.*

Status – Partially Implemented

Agency Action – The initial audit found the Department and OMIG provided inadequate oversight of the third-party liability recovery process. OMIG officials stated that they meet with HMS regularly to discuss various issues regarding HMS' third-party liability recovery activities. As a result of our audit, OMIG has worked with HMS to develop additional reporting to gain greater insight into the third-party liability recovery process. Beginning in November 2022, HMS provides OMIG monthly reports of claims that were excluded from recovery attempts and quarterly reports of carrier denial reasons to provide greater transparency into HMS' process. However, OMIG was unable to provide us with specific information on its review and use of the HMS reports. Thorough monitoring steps should be implemented by the Department and OMIG to ensure all appropriate third-party recoveries are made.

#### **Recommendation 5**

*Ensure MCOs are made aware of all eMedNY third-party health insurance policies with drug coverage, and take corrective actions where appropriate.*

Status – Not Implemented

Agency Action – The initial audit found that not all third-party health insurance recipient coverage listed in eMedNY was sent to MCOs. In April 2023, the Department implemented the NYRx program, which transitioned Medicaid pharmacy benefits for many managed care recipients from managed care to fee-for-service. As a result, it is now the responsibility of pharmacies, rather than MCOs, to verify active third-party health insurance coverage. Additionally, claims now go through eMedNY rather than the MCOs' internal claims processing and payment systems. The Department did not take any steps to address this recommendation from the time of the initial audit to the implementation of the NYRx program in April 2023.

### **Recommendation 6**

*Engage other stakeholders to assess the feasibility and benefits of increasing the recovery window for initiating Medicaid third-party liability recoveries beyond the current statutory maximum of 3 years.*

Status – Not Implemented

Agency Action – New York State Social Services Law sets the period for Medicaid to initiate third-party liability recoveries at 3 years from the date of service – the minimum period required by the Social Security Act; the Centers for Medicare & Medicaid Services has advised that states are allowed to establish longer time frames. The initial audit identified a significant amount of pharmacy payments where recoveries were not initiated within the 3-year recovery window and could no longer be recovered. OMIG officials stated they are working with the Department and other agency stakeholders to determine the appropriateness and feasibility of increasing the recovery window beyond 3 years; however, officials were unable to provide evidence of these discussions. We encourage the Department to evaluate the feasibility and benefits of increasing the recovery window to address this recommendation.

Major contributors to this report were Kate Merrill and Kimberly Geary.

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