NEW YORK STATE | Department of Health

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June 6, 2025

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

Dear Andrea Inman:

Pursuant to the provisions of Section 170 of New York State Executive Law, I hereby transmit to you a copy of the New York State Department of Health's comments related to the Office of the State Comptroller's final audit report 2022-S-31 entitled, "Medicaid Program: Provider Compliance With the Electronic Visit Verification Program."

Please feel free to contact the Office of Governmental and External Affairs at (518) 473-1124 with any questions.

Sincerely,

Johanne E Morne

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

Enclosures

cc: Alyssa DeRosa
Melissa Fiore
DOH Audit

Department of Health Comments on the Office of the State Comptroller's Final Audit Report 2022-S-31 entitled, "Medicaid Program: Provider Compliance With the Electronic Visit Verification Program"

The following are the Department of Health's (Department) comments in response to the Office of the State Comptroller's (OSC) Final Audit Report 2022-S-31 entitled, "Medicaid Program: Provider Compliance With the Electronic Visit Verification Program." Included in the Department's response is the Office of the Medicaid Inspector General's (OMIG) replies to applicable recommendations. OMIG conducts and coordinates the investigation, detection, audit, and review of Medicaid providers and recipients to ensure they are complying with the laws and regulations.

General Comments:

Electronic Visit Verification (EVV) uses technology to verify home and community-based service visits in real-time, including the date, location, type of service, individual(s) providing and receiving services, and the duration of service(s). It also validates hours worked by caregivers. The caregiver completes the Electronic Visit Verification by entering all the required information while at the recipient's home or community-based service visit using a mobile application on their smart phone or tablet, a fixed object (called a fob) placed in the home where services are provided, or a landline phone.

OSC's audit included the following Electronic Visit Verification services Medicaid recipients may receive in their homes:

- Personal Care Services, which include services such as housekeeping, meal preparation, bathing, toileting, and personal hygiene starting **January 1, 2021**.
- Home Health Services, which may include nursing care, speech, physical and occupational therapists, home health aide services, and personal care services starting **January 1, 2023.**

OSC focused their audit on Electronic Visit Verification data entered by caregivers for personal care services and home health services from the very beginning of each program, January 1, 2021 and January 1, 2023, respectively. It is also important to note that the Electronic Visit Verification was implemented during the COVID-19 pandemic.

As a general point, the Department notes that with the implementation of the Statewide Fiscal Intermediary for the Consumer Directed Personal Assistance Program (CDPAP), the Department will have direct oversight of the single statewide contractor for CDPAP, facilitating increased access to information and improved compliance with EVV requirements.

OSC Use of A Judgmental Sample

OSC used a judgmental sample to select which payments they would review, which means the auditors selected the payments based on their professional judgement, opinion, and knowledge. As a result, the selected sample may be more likely to include substantive findings than a random sample would have been. Because OSC auditors used a judgmental sample, any OSC findings or conclusions are not representative of the entire population.

State Comptroller's Comment – DOH is incorrect. The audit findings, totaling over $14.5 billion, were based on an analysis of *all* payments, as described throughout the report. Our single judgmental sample selected providers to interview—not payments for review.

Audit Recommendation Responses:

Recommendation #1

Review the $14.5 billion and $97.6 million in PC and HHC paid services, respectively, with no matching EVV records and take appropriate steps to ensure services are properly supported with EVV data.

Response #1

Data analysis performed by OMIG included matching additional Electronic Visit Verification documentation, reviewing claims data that does not meet Electronic Visit Verification requirements or were supported by Electronic Visit Verification submissions, and determined, as detailed below, that more than $2.6 billion should be excluded from the OSC-identified payments.

Reason	Amount
Paid service has matching EVV submission in the crosswalk table.	$1,989,928,625
PCS codes under HCBS Children's Respite Program need to have modifier 96 indicating it's a claim that meets the three mandatory conditions which make it an EVV applicable HCBS Children's Respite Waiver claim.	$279,494,716
HCBS Program is not an EVV applicable program based on required combination codes.	$276,472,757
PDN codes S9123, S9124, T1002, T1003 are not required to submit EVV.	$42,305,811
Paid service does not have EVV specific modifiers in any of the four modifier fields for EVV applicable rate/procedure codes.	$39,428,756
Claims that have already been recovered.	$17,366,894
OSC-identified unmatched claims that have $0 in Claim Transaction	$1,461,223
Claim does not appear in Claim Trans	$570,851
TOTAL	**$2,647,029,633**

State Comptroller's Comment – The numbers in the audit report are accurate. We captured the available EVV data at a significantly earlier period than this response and DOH acknowledged OMIG's analysis included additional EVV submissions. This corresponded to nearly $2 billion of OMIG's analysis. Regarding the remainder of OMIG's analysis, DOH indicated in its response to Recommendation 5 that it was reviewing and updating the applicability of billing codes for reporting EVV. Therefore, OMIG should apply the results of that review to its analysis of the audit findings before prematurely concluding anything should be excluded. We also remind officials that DOH generally agreed with the procedure/rate codes and modifiers in our findings population.

We are pleased DOH and OMIG are taking actions to address the audit findings and improve provider compliance.

The Department and OMIG have been working in collaboration to improve provider compliance, and meet monthly to discuss Electronic Visit Verification compliance, including analysis of

aggregator data. As this is a new requirement, OMIG has been issuing compliance letters to identified providers who appear to be non-compliant to address barriers and facilitate compliance. Since December 2023, OMIG has issued a total of 738 letters, 106 of which were issued in January 2025. The responses to the letters are being addressed by the Department, who performs outreach and education to the providers to increase compliance and understanding of the Electronic Visit Verification program and requirements. Currently, the Department is actively working with 292 providers on issues and providing solutions to many of the providers. Issues addressed by the Department include providers submitting claims under their Medicaid Management Information System ID number when the Electronic Visit Verification data uses their National Provider Identifier Number, or providers assuming their Electronic Visit Verification vendor is submitting data on their behalf. The Department is developing regulations to outline Electronic Visit Verification program requirements which will inform program integrity activities, as well as working to improve our Frequently Asked Questions and issue Medicaid Updates to inform providers of ways to improve their compliance percentage. These strategies have already reduced the number of noncompliant Electronic Visit Verification records for Personal Care and Home Health Care services and claims by as much as 15%.

The Department is also in the beginning stages of creating reports for Electronic Visit Verification applicable programs to assist with compliance. The reports will provide programs with a high-level overview of the programs' claims, Electronic Visit Verification transactions, and compliance percentage and will be issued quarterly to the programs. The dashboard will also provide some insight on individual providers that may need extra support in submitting Electronic Visit Verification data.

OMIG continues to analyze the OSC-identified universe of paid claims, in addition to what was completed for the data table above, to assess the OSC findings. The Department and OMIG will continue to evaluate and update Electronic Visit Verification requirements, where appropriate, to improve service delivery, the oversight of Medicaid payments and the implementation of these requirements by the provider community. The absence of Electronic Visit Verification data alone may not indicate that the underlying claim was inappropriate and that a recovery should be made.

Recommendation #2

Establish an EVV compliance program that will allow for the denial of improper claims and recoupment of improper payments.

Response #2

The Department and OMIG have been working in collaboration to improve provider compliance and meet monthly to discuss the status of provider compliance and new initiatives to enhance compliance. OMIG began issuing letters to providers that are not in full compliance in December 2023 and has issued a total of 738 letters, 106 of which were issued in January 2025. The Department is subsequently working with these providers to identify and help rectify issues. Currently, the Department is actively working with 292 providers on a variety of issues and provided solutions to many of the problems. The Department is also

working to improve our Frequently Asked Questions and issue Medicaid Updates to inform providers of ways to improve their compliance percentage. These strategies have already reduced the number of noncompliant Electronic Visit Verification records for Personal Care and Home Health Care services and claims by as much as 15%.

The Department also is in the beginning stages of creating reports for Electronic Visit Verification applicable programs to assist with compliance. The reports will provide programs with a high-level overview of the programs' claims, Electronic Visit Verification transactions, and compliance percentage and will be issued quarterly to the programs. The dashboard will also provide some insight on individual providers that may need extra support in submitting Electronic Visit Verification data.

Additionally, the Department is in the process of drafting regulations to ensure Electronic Visit Verification data is submitted to the State's data aggregator on a real-time basis after the service is rendered and before the claim is billed. Claims without matching Electronic Visit Verification data will be pended. Failure of a provider or Fiscal Intermediary to cure a pended claim will result in a denial and non-payment.

Recommendation #3

Verify the residence status of live-in caregivers for assurance that they are exempt from the EVV requirement.

Response #3

The Department intends to include requirements regarding live-in caregivers as part of our forthcoming regulations. The regulations will require that providers and fiscal intermediaries ensure, prior to service delivery and at least every six months that, the caregiver has the same permanent place of residence as the care recipient.

The Department will work with providers and fiscal intermediaries to confirm and verify the status of the caregiver. The Department plans to review the documentation maintained by providers and Fiscal Intermediaries that supports the live-in caregivers' status. Based on the initial outcomes, the Department will research other solutions, such as attestations and adding live-in status verification as part of their compliance program.

Finally, with the implementation of the Statewide Fiscal Intermediary for the Consumer Directed Personal Assistance Program the Department will have direct oversight of the single statewide contractor facilitating increased access to information and improved compliance.

Recommendation #4

Review the 8 million EVV records identified in the EVV History Table that were not in the EVV Crosswalk Table, identify the reason(s) EVV records do not transfer to the EVV Crosswalk Table, take remediation steps, and match the 8 million EVV records to paid claims, if possible.

Response #4

The Department has reviewed the eight million Electronic Visit Verification records that were not included in the Electronic Visit Verification Crosswalk Table and identified that the population were primarily transactions with procedure code T1019 without a modifier code. The Department is actively engaged in efforts to improve the Electronic Visit Verification match rate, led by the Division of Data Services and Analytics in collaboration with key stakeholders. The Department will conduct further analysis to assess the appropriate corrective measures to improve Electronic Visit Verification record matching.

State Comptroller's Comment – While DOH mentioned a plan to improve the EVV match rate, the response does not address that EVV records identified in the EVV History Table were not transferred to the EVV Crosswalk Table for potential matching.

Recommendation #5

Update the EVV Manual and procedure standards with all allowed combinations of procedure and modifier codes.

Response #5

The Department is currently working with the Electronic Visit Verification applicable programs to confirm all Electronic Visit Verification applicable billing codes and will update the applicable codes list as needed.

Also, the Electronic Visit Verification Transaction History table contains raw Electronic Visit Verification data submitted to the aggregator that have not yet been subjected to the Electronic Visit Verification eligibility edits. As long as the Electronic Visit Verification records contain the minimum requirements, they will be accepted into the Aggregator and stored on the Electronic Visit Verification Transaction History table. Electronic Visit Verification records do not need to be Electronic Visit Verification applicable to be accepted and stored in the Electronic Visit Verification table. Accepted Electronic Visit Verification records are copied into the Electronic Visit Verification Crosswalk table as long as at least one Electronic Visit Verification-applicable code or combination exists on the record. An Electronic Visit Verification-applicable procedure code or procedure code and modifier combination is not nullified by the presence of additional modifiers on the claim.

The Department reran the OSC report "Records in the EVV History Table" using the OSC methodology. When reviewing the procedure/modifier code combinations not listed in the Electronic Visit Verification manual, the Department found that the number increased from 125 to 181 unique combinations. The total number of Electronic Visit Verification records in the Electronic Visit Verification Transaction History table also increased from 185.4 million to 190.8 million. However, the number of Electronic Visit Verification records with procedure/modifier codes that did not match the Electronic Visit Verification manual significantly decreased from 33 million to 12.5 million. The Department reviewed those records and determined that the majority (12.2 million) of those Electronic Visit Verification records fell into six distinct combinations. The largest of the code/modifier combination was T1019 no modifier (8.45 million records), which is

not an appropriate billing code. The remaining records (3.75 million records) were not valid billing codes according to their program documentation (PCA I, PCA II, and CDPA), however, due to the Electronic Visit Verification Crosswalk table logic, those records would still have copied into the Electronic Visit Verification Crosswalk table.

State Comptroller's Comment – We commend DOH for accepting this recommendation and reviewing and updating the applicability of billing codes for reporting EVV. Furthermore, officials should apply the results of that review to any analysis discussed in this response and ensure their system logic includes all appropriate codes.

Recommendation #6

Improve oversight of providers' compliance with EVV requirements, including but not limited to ensuring service locations and services dates are accurate.

Response #6

The Department is drafting a Medicaid Update article and updating the Electronic Visit Verification Frequently Asked Questions to remind provider of their obligations to ensure that Electronic Visit Verification data and claims data match and that service locations are accurate.

Also, due to New York State being a provider choice state, we are unable to require use of landlines and/or fixed object devices. However, with the implementation of the Statewide Fiscal Intermediary and the Department's direct oversight of a single statewide contractor, all Consumer Directed Personal Assistance Program services will be required to gather GPS information resulting in improved oversight of service locations. This will allow for better oversight on service locations for the majority of the Electronic Visit Verification applicable claims.

State Comptroller's Comment – Our report mentioned the use of landlines and/or fixed object devices as options for collecting service location data, which are both detailed in the EVV Manual. While DOH does not require any specific tool for capturing service location data, we encourage DOH to take substantive steps to ensure all service location data is appropriately captured and submitted by providers as part of the EVV data, especially for those services outside of the Consumer Directed Personal Assistance Program.

Recommendation #7

Improve controls in the Aggregator to validate both format and accuracy of EVV fields, such as service date.

Response #7

The Department has enhanced system data validation requirements built into the aggregator. The Department is actively engaged in efforts to improve and or develop Electronic Visit Verification controls. The Department will continue to monitor and work with its contractor to

focus on identifying and addressing system barriers to Electronic Visit Verification compliance, enhancing data validation processes, and ensuring that providers submit Electronic Visit Verification records that are in alignment with and meet the Cures Act standards.

Recommendation #8

Monitor EVV submission error message logs and take corrective actions as necessary to reduce the volume of rejected EVV records.

Response #8

The Department is in the process of implementing error message logs and will review and provide outreach to stakeholders as needed.

Recommendation #9

Develop and implement procedures to utilize all EVV reports as a monitoring tool for EVV compliance, including identifying variances between the number of EVV records accepted by the Aggregator and the volume of claims from providers.

Response #9

The Department plans to incorporate monitoring of the Electronic Visit Verification reports into its compliance program to help ensure providers and Fiscal Intermediaries are submitting Electronic Visit Verification data and verifying claims. The Department will work with providers, Fiscal Intermediaries, managed care organizations, and Local Departments of Social Services to resolve Electronic Visit Verification compliance issues.

Variances between the number of claims and the number of Electronic Visit Verification records in the Aggregator may occur due to providers and Fiscal Intermediaries using different provider identification numbers when submitting their claims and their Electronic Visit Verification data. For example, providers and Fiscal Intermediaries submit claims under their Medicaid Management Information System Identification Number, but the Electronic Visit Verification data is submitted under their National Provider Identification Number. To help remedy this situation, the Department is reviewing where this has occurred and is providing outreach and education to providers and Fiscal Intermediaries to remind them to use the same identification number for both claims and Electronic Visit Verification to provide the Department better matching outcomes. The Department will also update the Frequently Asked Questions to provide additional clarification regarding identification numbers and data submission.

Additionally, once implemented, the Unique Identifier for home care service workers and personal care aides required by statute (and referenced in Response #14 below) will assist in the identification of issues involving providers, Fiscal Intermediaries, and caregivers. As is standard practice, if the Department identifies potential fraud, waste, or abuse in the course of its monitoring activities, referrals will be made to OMIG for review and appropriate actions. OMIG will also utilize data and reports from the Department to support its own program integrity initiatives, including investigations and audits.

Recommendation #10

Develop controls to identify manual adjustments made to EVV records before they are initially sent to the Aggregator.

Response #10

The Department recognizes the importance of improving the oversight of manual adjustments made to Electronic Visit Verification records prior to submission. The Department will work with its contractor and stakeholders to pursue changes to the Aggregator for enabling identification of Electronic Visit Verification records that were manually adjusted before they are initially sent to the Aggregator. The Department will explore opportunities to strengthen controls in areas where appropriate.

Recommendation #11

Improve controls to identify and prevent payment of PC and HHC services that do not meet the 8-minute minimum requirement for payment. Review the $11.6 million in corresponding payments and ensure recoveries are made, as appropriate.

Response #11

The Department will review controls currently in place to detect and flag these instances for review. Additionally, once implemented, the Unique Identifier for home care service workers and personal care aides required by statute (and referenced in Response #14 below), will assist in the identification of issues involving providers, Fiscal Intermediaries, and caregivers.

OMIG performed analysis on the OSC-identified payments and determined that 42,232 ($9.6 million) of the 54,833 ($11.6 million) claims, had additional Electronic Visit Verification service submission that met the 8-minute requirement, and are considered paid appropriately.

State Comptroller's Comment – As noted in State Comptroller's Comment 2, the numbers in the audit report are accurate. We captured the available EVV data at a significantly earlier period than this response and DOH acknowledged OMIG's analysis included additional EVV documentation.

Recommendation #12

Improve controls to identify and prevent payment of PC and HHC services claimed during hospital stays. Review the $9.7 million in corresponding payments and ensure recoveries are made, as appropriate.

Response #12

The Department will work with OMIG to identify any improper payments for home care services that occurred when a recipient was hospitalized, and recoup payments where appropriate. This type of incorrect billing is currently monitored through existing controls and is not an Electronic Visit Verification related procedure.

OMIG's analysis determined that more than $1 million should not be included in the OSC-identified payments due to the following reasons:

Reason	Amount
The OSC-identified inpatient claim or encounter shows $0 paid:	$610,734
The home health service start date was before the first inpatient start date:	$362,389
The latest transaction on the home health encounter shows $0 paid:	$121,714
TOTAL	**$1,094,837**

State Comptroller's Comment – Regarding the "$0 paid" claims, DOH's response was provided after our audit period ended and any updated claim information would not reflect the claim payment information used at the time of the audit. Also, our analysis only considered home health services when the services were claimed at the same time the Medicaid recipient was hospitalized.

OMIG is auditing Medicaid Managed Care Organizations to identify and recover payments made for Personal Care and Home Health Care services during inpatient and skilled nursing facility stays and will be initiating the same review of fee-for-service claims later in 2025. To date, OMIG has finalized 25 audits with findings of more than $1.6 million and recoveries of more than $850,000.

Recommendation #13

Review the $339,372 in payments for services provided by multiple caregivers to a single recipient with same-day overlapping time frames and ensure recoveries are made, as appropriate.

Response #13

Records with overlapping time spans will be reviewed by the Department for appropriateness. Records that are determined to be inaccurate will be referred to OMIG for overpayment recoupment or other necessary action, if appropriate. OMIG will perform its own extraction of data from the Medicaid Data Warehouse to confirm the accuracy of the claims detail for use in future OMIG audit activities.

Additionally, once implemented, the Unique Identifier for home care service workers and personal care aides required by statute (and referenced in Response #14 below), will assist in the identification of issues involving providers and Fiscal Intermediaries.

Recommendation #14

Improve controls and monitoring of the EVV program that will help offset the lack of required VO pre-claim reviews.

Response #14

While the law previously required OMIG and the Department to jointly develop a list of Verification Organizations, the law did not explicitly state that OMIG was required to send providers and Fiscal Intermediaries notification that they met the Verification Organizations requirement. It should be noted that it is the responsibility of the Medicaid provider to determine if they met or continued to meet the requirements set forth in statute.

State Comptroller's Comment – OMIG is mistaken. DOH's EVV Manual states, "Only providers who receive notification from OMIG are required to have their services verified by a VO." The EVV Manual further states OMIG will notify providers by "certified letter." There are many requirements that providers must follow, and DOH and OMIG have a responsibility to ensure providers comply.

There was an overlap in roles between the Verification Organizations and Electronic Visit Verification which caused confusion in the provider community. Verification Organizations and Electronic Visit Verification were created to facilitate verification of certain home care services provided to Medicaid members. The Verification Organizations requirement only applied to providers and Fiscal Intermediaries reimbursed $15 million or more in Medicaid and/or Medicaid Managed Care funded services and applied to qualifying personal care and home health care services. However, the federally required Electronic Visit Verification program is a more robust system which allows the comparison of all Medicaid home care claims in NYS.

One of the initial goals of the Verification Organizations program was to compare conflicting services, captured by their verification system, to Medicaid and Managed Care billed services. Unfortunately, the enrollment of multiple Verification Organizations created silos of data and information. Key data points were not available in the Verification Organizations portals (like Medicaid Management Information System Identification Numbers for recipients, providers, and Fiscal Intermediaries). Verification Organizations often listed recipients and providers and Fiscal Intermediaries only by name. The data was not standardized across portals for comparison, such as for identifying and comparing caregivers. It was challenging to compare providers' and Fiscal Intermediaries' Electronic Visit Verification data amongst each individual Verification Organizations enrolled vendor, and there was not enough identifying elements to accurately compare to rendered services. Therefore, upon statewide conversion to Electronic Visit Verification requirements, the decision was made to repeal the authorization of Verification Organizations.

The statewide Electronic Visit Verification system created by the Department collects all required Electronic Visit Verification data in one area with standardized file formats. This includes collecting key data elements such as recipient Medicaid Management Information System Identification Numbers for recipients, providers, and Fiscal Intermediaries. The statewide Electronic Visit Verification system collected data is stored in the Medicaid Data Warehouse, which in partnership with the standardized format and key data elements, provides the capability for comparison to claims data to identify potential fraud, waste, and abuse.

The statewide Electronic Visit Verification system is also prepared to include the Unique Identifier, once implemented, for home care service workers and personal care assistants. The inclusion of the Unique Identifier on Electronic Visit Verification submissions and claims will

allow OMIG to perform more enhanced reviews. The Unique Identifier will allow for pre-payment reviews by OMIG and the Managed Care Plans. The Unique Identifier would allow staff to perform data analysis using the following criteria to identify outliers:

- the total hours worked per caregiver,
- the number of agencies or Fiscal Intermediaries submitting billing for that caregiver,
- the location of services,
- the eligibility status of a caregiver,
- the number of recipients per caregiver, and ultimately,
- uncovering unusual or impossible billing patterns.

Upon the implementation of the Unique Identifier, OMIG would commence pre-payment reviews to identify conflicts (i.e., the same caregiver being listed on claims for overlapping timeframes or same time/different location, missing identifier, etc.), which would give the provider and Fiscal Intermediary the opportunity to correct and resubmit the claim.

The Department's implementation of the statewide Electronic Visit Verification system and the addition of the Unique Identifier have greater capabilities to realize the intended goal of the Verification Organizations program.