



Department of Health

KATHY HOCHUL
Governor

JAMES V. McDONALD, MD, MPH
Commissioner

JOHANNE E. MORNE, MS
Executive Deputy Commissioner

August 25, 2025

Christopher Morris, Audit Director
Office of the State Comptroller
Division of State Government Accountability
110 State Street – 11th Floor
Albany, NY 12236-0001

Dear Christopher Morris:

Enclosed are the Department of Health's comments on the Office of the State Comptroller's Follow-Up Audit Report, 2024-F-25 entitled, "Medicaid Program – Improper Fee-for-Service Pharmacy Payments for Recipients With Third-Party Health Insurance (Report 2021-S-20)."

Thank you for the opportunity to comment.

Sincerely,

A handwritten signature in blue ink that reads "Johanne E. Morne".

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

Enclosure

cc: Frank Walsh
Amir Bassiri
Jacqueline McGovern
Amber Gentile
Brian Kiernan
Timothy Brown
James Dematteo
James Cataldo
Michael Atwood
Melissa Fiore
OHIP Audit
DOH Audit

**Department of Health Comments on the
Office of the State Comptroller's
Follow-Up Audit Report 2024-F-25 entitled,
Medicaid Program – Improper Fee-for-Service Pharmacy
Payments for Recipients With Third-Party Health Insurance**

The following are the Department of Health's (Department) comments in response to the Office of the State Comptroller's (OSC) Follow-Up Audit Report 2024-F-25 entitled, "Medicaid Program – Improper Fee-for-Service Pharmacy Payments for Recipients With Third-Party Health Insurance (Report 2021-S-20)." 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.

Audit Recommendation Responses:

Recommendation #1

Review the \$28.8 million in Medicaid payments for pharmacy services on behalf of recipients with TPHI drug coverage and ensure overpayments are appropriately recovered, prioritizing FFS claims that are approaching the 3-year window for recovery.

Status – Not Implemented

Agency Action – Our initial audit found Gainwell did not bill TPHI carriers for the recovery of over \$28.8 million in pharmacy claims where Medicaid paid as the primary insurance for recipients who had TPHI coverage. Because Gainwell did not keep track of the claims it excluded from its recovery efforts, the initial audit was unable to identify why about \$11.4 million of the over \$28.8 million in claims were not in the recovery files. For the remaining \$17.4 million, we found these claims would have been potentially subject to at least one of Gainwell's edits that excluded claims from recovery. For example, we found \$12.6 million (of the \$17.4 million) was improperly excluded from the recovery process because Gainwell used an incorrect data field as the basis for its recovery decision.

We shared the details of our findings with OMIG at the conclusion of our initial audit. Although OMIG officials stated they provided Gainwell with the details of our findings for review and recovery, only \$44,798 (0.16% of the \$28.8 million) of the claims we identified were recovered by the time of our follow-up. Under State and federal laws, Gainwell, as the State's third-party liability (TPL) contractor, must initiate the process of recovering payments by billing the TPHI carriers within 3 years of the claim date of service. Once the TPHI carrier is billed, Gainwell has up to 6 years from the submission of the claim to enforce the right to recover any amount for which the TPHI carrier is liable. Since the claims we identified were initially excluded from the recovery process, and the 3-year window to initiate recoveries has passed, OMIG has now likely lost the opportunity to enforce recovery of the claims we identified.

Response #1

OMIG now contracts with Health Management Systems (HMS) to identify and recover Medicaid payments made for services that should have been paid for by a recipient's TPHI.

The existence of overlapping Third-Party Health Insurance, including Medicare coverage, in and of itself, does not mean a Medicaid claim is recoverable. As part of HMS' standard process, all Medicaid encounters/paid claims HMS receives are reviewed. When overlapping Third-Party Health Insurance is discovered, edits within HMS' system identify claims where a recovery may

not be appropriate. The absence of a billing attempt does not indicate that a recovery should have or would have occurred. Additionally, claims reviewed as part of HMS' standard process but for which no recovery is made will be resubmitted in future cycles in the event a change is made that allows a claim to become billable. The contract between HMS and OMIG is structured to provide robust Third-Party Health Insurance identification and recovery procedures. The State's and HMS' interests are aligned to maximize the identification and recovery of inappropriate payments for the Medicaid program.

Recommendation #2

Assess the recoverability of the \$8.6 million in Medicaid payments for pharmacy claims that were billed to TPHI carriers but did not result in a recovery (due to carrier denials), and ensure all necessary follow-up actions are taken to obtain appropriate recoveries, prioritizing the claims that are approaching the 6-year window for recovery.

Status – Not Implemented

Agency Action – The initial audit identified 59,151 claims from the Gainwell recovery file, totaling \$8.6 million, which were denied recovery for reasons we determined to be administrative in nature (TPHI carriers are not allowed to deny payment for certain administrative reasons) and, with thorough follow-up action, should be rectified. OMIG officials stated they provided Gainwell with the details of our findings for review and recovery. However, only \$72,982 (less than 1% of the \$8.6 million) in additional TPHI recoveries were made by the time of our follow-up. OMIG was unable to provide any evidence that the initial audit findings were assessed for recoverability or that all necessary follow-up actions were taken to obtain appropriate recoveries. We encourage OMIG to expedite a review of claims from our audit findings that have not yet passed the 6-year window for recovery.

Response #2

As part of HMS' denial follow up efforts, each denial reason code is reviewed to ensure that claims are re-billed to the commercial payers, where appropriate. Additionally, HMS' follow up efforts go beyond rebilling claims. For example, HMS holds meetings with carriers to discuss submitted claim elements, root cause analysis, Health Insurance Portability and Accountability Act standard transaction processing, and Third-Party Health Insurance source data eligibility gaps. HMS also engages with providers to obtain necessary information to supply to the carriers such as medical records. However, despite this follow up, carriers may re-deny claims or uphold their original adjudication decision. The presence of a denial does not indicate that follow up activity was not performed. Additionally, there would still be a population of claims that remain unrecoverable due to missing or incorrect carrier information, non-covered services, etc.

Recommendation #3

Assess the TPL recovery process for FFS pharmacy services to identify all factors that led to exclusions from TPHI carrier billings, and ensure corrective actions are taken where appropriate.

Status – Not Implemented

Agency Action – The initial audit found Gainwell improperly excluded certain claims from TPHI carrier billings. For example, \$12.6 million in claims were improperly excluded from the recovery process because Gainwell used an incorrect data field as the basis for its recovery decision. In response to our initial audit, OMIG agreed that the TPL recovery process, including Gainwell's edits and business rules, should be regularly reviewed. OMIG also agreed to confer with Gainwell on updates to claim types necessitating exclusion or to business rules that may require further update and/or modification.

At the time of our follow-up, OMIG officials stated that they were not aware of any updates or modifications to the exclusion rules related to pharmacy claims since the initial audit. However, OMIG was unable to provide any evidence demonstrating that an assessment of the recovery process was done.

Response #3

OMIG agrees that third-party liability recovery processes, including edits and business rules, should be regularly reviewed, and understand that some claim types are inherently excluded due to confidentiality as well as heightened patient privacy. HMS has a long-standing, effective process in place to regularly review edits and business rules and update as appropriate. OMIG continues to confer with HMS on updates to claim types necessitating exclusion or to business rules that may require further update and/or modification. HMS has also taken corrective action on the pharmacy claims that were prevented from billing by the rate code edit previously noted and this issue is fully resolved.

Recommendation #4

Perform sufficient and ongoing monitoring of the TPHI recovery process for FFS pharmacy claims to ensure the completeness and timeliness of recoveries, including obtaining and reviewing all required reports per the contract, and monitoring FFS pharmacy claims that are not billed to TPHI carriers and FFS pharmacy claims that are billed to TPHI carriers but do not result in a recovery.

Status – Partially Implemented

Agency Action – The initial audit found DOH and OMIG provided inadequate oversight of the TPL recovery process. For example, Gainwell did not send OMIG certain monthly reports required by the contract, such as project statuses that include potential recovery amounts, carrier denial percentages, or a summary of findings for each TPL recovery project. Additionally, we found Gainwell's recovery processes were guided by certain business rules that improperly excluded recoverable claims, and, since Gainwell did not track excluded claims, it did not report them to OMIG.

OMIG is now obtaining all reports required by the contract. Further, OMIG obtains two additional reports: a monthly report of claims excluded from recovery attempts and the reasoning behind the exclusion, and a quarterly report of claims where a recovery attempt was made but the claim was subsequently denied by the TPHI carrier. Although OMIG officials stated that the reports are reviewed prior to regularly scheduled monthly meetings with Gainwell, they were unable to provide any evidence to show how their review was used to ensure the completeness and timeliness of Gainwell recoveries.

Response #4

OMIG actively oversees HMS activities, has visibility into all aspects of the process and is currently implementing additional enhancements. In addition to generating a Monthly Recovery/Pre-Payment Insurance Verification Overview Report, which is included in the annual OMIG-approved workplan, HMS also produces two additional reports which provide greater transparency into the third-party liability process. The first is a monthly report of claims that were excluded from recovery attempts and the reasoning behind the exclusion. HMS also provides OMIG with a quarterly report of claims where a recovery attempt was made but the claim was subsequently denied by the Third-Party Health Insurance carrier.

Recommendation #5

Continue communication with providers to help ensure Medicaid FFS pharmacy providers are aware of all eMedNY policies regarding TPHI with drug coverage.

Status – Implemented

Agency Action – Following our initial audit, DOH published two Medicaid Updates (DOH's official publication for Medicaid providers) relating to Medicaid FFS pharmacy services and TPHI drug coverage. Medicaid Updates published in May 2023 and May 2024 remind pharmacy providers that Medicaid is the payer of last resort, and of the data fields required on claim submissions.

Response #5

The Department confirms agreement with this recommendation status.

Recommendation #6

Strengthen eMedNY TPHI claims processing controls to address the edit weaknesses identified in the audit report, and require pharmacies to provide supporting documentation from the TPHI when submitting zero-filled pharmacy claims.

Status – Partially Implemented

Agency Action – The initial audit determined that claims where the provider indicated TPHI covered the service but TPHI payment wasn't collected were not subject to DOH's invalid reject code edit in eMedNY. Although DOH added codes to the edit since our initial audit, the codes do not apply to claims where the provider indicated that TPHI covered the service but no payment was collected. According to DOH officials, updates will be made to address this issue in a future system change.

As the payer of last resort, Medicaid generally pays the patient responsibility amount, which is the balance that is not covered by TPHI that would otherwise be the financial obligation of the recipient (e.g., coinsurance, copayments). Our initial audit found DOH had implemented an edit to deny claims where no TPHI payment was collected and there was a non-reimbursable patient responsibility amount description (e.g., sales tax amount). However, there was no edit to require providers to enter values in either the patient responsibility amount field or the amount description field, and when these fields were left blank, they were not subject to the non-

reimbursable amount description edit. According to DOH officials, an edit enhancement was made in May 2023 to address this weakness. However, we found the edit was only triggered on claims indicating commercial insurance coverage, and it did not apply to claims where Medicare or Medicare Advantage coverage was indicated. As such, DOH should make further system enhancements to help ensure all pharmacy claims with TPHI are paid appropriately.

Additionally, although DOH required certain zero-filled claims (claims indicating that no TPHI was collected) to be accompanied by supporting documentation from the TPHI, the same requirement did not apply to pharmacy claims at the time of our initial audit. According to DOH officials, a system project estimated to be implemented in July 2025 would allow all providers to submit attachments to claims electronically. Upon completion of the project, DOH should require zero-filled pharmacy claims to be accompanied by supporting documentation.

Response #6

DOH implemented an edit enhancement in May of 2023 to address this issue. DOH began an additional project earlier this year to address continuing issues specific to Medicare which, once completed, will further address OSC concerns.

Recommendation #7

Ensure Gainwell implements processes to initiate recovery efforts directly from pharmacies, where appropriate.

Status – Not Implemented

Agency Action – Gainwell can seek recoveries directly from pharmacy providers when TPHI carrier recoveries are unsuccessful. However, our initial audit determined Gainwell did not recover directly from pharmacy providers due to the high volume of low-dollar claims. State Medicaid programs can set threshold amounts for recoveries and may accumulate billings until it would be cost-effective to seek reimbursement directly from providers. Our initial audit found that, had existing threshold criteria that Gainwell used for direct billing of other claim types been applied to the \$8.6 million in pharmacy payments that TPHI carriers denied, 1,874 pharmacies would have met the threshold for direct billing of recoveries. In addition, Medicare (as a TPHI) will not accept a claim directly from a state Medicaid program. As such, had Gainwell engaged directly with pharmacy providers, it would have had the opportunity for recoveries of pharmacy claims involving Medicare Part B, including the 76,421 claims totaling about \$1.5 million (of \$28.8 million) identified in our initial audit.

At the time of our follow-up, Gainwell had not implemented a process to initiate recoveries directly from pharmacy providers.

Response #7

HMS utilizes an established provider review process in accordance with OMIG billing and recovery guidelines. Additionally, OMIG's standard pharmacy audit process includes reviewing third-party health insurance coverage for FFS claims.

Recommendation #8

Periodically determine if the FFS pharmacy claim fields provided to Gainwell are sufficient and being appropriately used by the contractor.

Status – Not Implemented

Agency Action – OMIG has not conducted any reviews of the FFS pharmacy claim fields provided to Gainwell since our initial audit.

Response #8

In coordination with HMS, OMIG is in the process of developing an enhanced process for review of fee-for-service pharmacy claims with the goal of increasing recovery opportunities.