



Department of Health

KATHY HOCHUL
Governor

JAMES V. McDONALD, MD, MPH
Commissioner

JOHANNE E. MORNE, MS
Executive Deputy Commissioner

August 11, 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-40 entitled, "Medicaid Program - Improper Medicaid Payments During Permissible Overlapping Medicaid and Essential Plan Coverage (Follow Up to Report 2022-S-35)."

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-40 entitled,
Medicaid Program - Improper Medicaid Payments During Permissible
Overlapping Medicaid and Essential Plan Coverage (Follow Up to
Report 2022-S-35)**

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-40 entitled, "Medicaid Program - Improper Medicaid Payments During Permissible Overlapping Medicaid and Essential Plan Coverage (Follow Up to Report 2022-S-35)." Included in the Department's response are 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 \$93.7 million (\$83.1 million + \$10.6 million) in improper payments and make recoveries as appropriate.

Status – Not Implemented

Agency Action – The initial audit found DOH improperly paid \$93.7 million in claims during periods of overlapping Medicaid and Essential Plan coverage because DOH did not account for the Essential Plan as a liable third-party health insurance (i.e., primary payer). On behalf of DOH, the Office of the Medicaid Inspector General (OMIG) investigates and recovers improper Medicaid payments. OMIG recovered nearly \$2 million (2%) of the initial audit's findings. However, the recoveries were unrelated to the issues identified in the initial audit. We determined an additional \$36.6 million (39%) of the initial audit findings is no longer recoverable due to audit lookback regulations, and the remaining \$55.1 million had not been reviewed or recovered. OMIG needs to promptly take steps to recover the remaining improper payments before any more overpayments become unrecoverable due to lookback limitations.

Response #1

OMIG has developed an audit process to review the remaining identified inappropriate payments for overlapping coverage of Essential Plan and Medicaid, and OMIG is coordinating with the Department to confirm the improper payments. Pursuant to State regulations, any identified overpayments OMIG pursues for recovery are subject to the provider's right to due process.

Recommendation #2

Recognize the Essential Plan as liable third-party health insurance and ensure proper processing of Medicaid claim payments.

Status – Partially Implemented

Agency Action – The initial audit found DOH never applied payment controls to treat the

Essential Plan as third-party health insurance that would pay for services as a primary payer, despite administering both Medicaid and the Essential Plan and having enrollment information for both programs in its systems. Consequently, Medicaid had been improperly paying for services as the primary payer during periods of authorized overlapping Medicaid and Essential Plan coverage since the inception of the Essential Plan in 2016.

In response to our initial audit, DOH officials deployed a new process in eMedNY in September 2024 to recognize Essential Plan coverage as liable third-party health insurance. However, this process only applies to Essential Plan coverage that has been terminated and not to currently active Essential Plan coverage. As a result, Essential Plan coverage may not be recognized as liable third-party health insurance in certain scenarios, such as when a member's Medicaid coverage is limited and available only under certain circumstances (i.e., it does not qualify as "minimum essential coverage"). In these scenarios, members can be enrolled in both Medicaid and the Essential Plan for extended time periods without the Essential Plan coverage needing to be terminated. We also note that the new process was still undergoing post-implementation validation. To assess the effectiveness of the new eMedNY process, we identified 19,997 members with Essential Plan coverage terminated in December 2024 who also had overlapping Medicaid coverage. We found the Essential Plan coverage was not added to eMedNY as third-party health insurance for 5,953 (or 30%) of the members. DOH officials reviewed these findings and confirmed eMedNY did not correctly recognize all instances where the Essential Plan was a liable third-party health insurance, and stated they will look into ways to improve the process.

Response #2

The Department has applied systematic updates to indicate active Essential Plan coverage as Third-Party Health Insurance where the coverage overlaps with Medicaid coverage prior to Essential Plan coverage ending. Additional review of these updates is being done to identify as many of these overlaps as possible using other data points, in addition to Social Security Number. Reports have also been developed and are being updated to assist in identifying these overlaps from the New York State of Health System.