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STATE OF NEW YORK
OFFICE OF THE STATE COMPTROLLER

January 6, 2026

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

Re: Improper Payments for Drugs Without
a Federal Drug Rebate Agreement
Report 2025-F-20

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 (DOH) to implement the recommendations contained in our initial audit report, *Medicaid Program – Improper Payments for Drugs Without a Federal Drug Rebate Agreement* (Report [2022-S-40](#)).

Background, Scope, and Objective

DOH administers New York's Medicaid program. The Medicaid Drug Rebate Program helps to offset the costs of most covered outpatient drugs dispensed to Medicaid patients. The Medicaid Drug Rebate Program requires drug manufacturers to enter into a National Drug Rebate Agreement (NDRA) with the Department of Health and Human Services in exchange for state Medicaid coverage of most of the manufacturer's drugs. Manufacturers then pay states rebates on those drugs for which Medicaid payments were made.

Covered outpatient drugs include prescription drugs, some over-the-counter (OTC) drugs, certain compound drug ingredients, and physician-administered drugs. DOH uses two methods to pay for drugs dispensed to Medicaid recipients: fee-for-service (FFS) and managed care. Under the FFS method, DOH pays providers directly for each covered service received by a Medicaid recipient. Under Medicaid managed care, DOH pays managed care organizations (MCOs) a monthly capitation payment for each Medicaid recipient enrolled in their plans. MCOs then arrange for the provision of health care services, including outpatient drugs, and reimburse providers for those services. MCOs are required to submit encounter claim data to DOH detailing each service or drug provided.

The State fiscal year 2021–22 New York State budget established that, beginning on April 1, 2023, all Medicaid mainstream managed care plan, Health and Recovery plan, and HIV-Special Needs plan members are required to receive prescription drugs, OTC drugs, and compound drugs through FFS. Prior to this, managed care recipients received their prescription

drug benefit through managed care. This change does not apply to physician-administered drugs, which continue to be paid through MCOs for managed care enrollees.

The objective of our initial audit, issued on February 23, 2024, was to determine whether Medicaid inappropriately paid for drugs from manufacturers that did not enter into an NDRA. The audit covered the period from January 2017 through March 2023. The audit found DOH lacked adequate oversight of Medicaid managed care payments for drugs, which led to improper MCO payments for drugs from manufacturers without an NDRA at the time of service. Additionally, we found flaws in DOH's managed care capitation rate adjustment methodology intended to offset improper managed care payments for drugs from manufacturers without an NDRA. These flaws resulted in a significant number of encounter claims not being included in the capitation rate adjustments. Accordingly, we identified nearly \$50.3 million in improper MCO payments for drugs from manufacturers without NDRA at the time of service that were not included in the rate adjustments.

The objective of our follow-up was to assess the extent of implementation, as of September 29, 2025, of the four recommendations included in our initial audit report.

Summary Conclusions and Status of Audit Recommendations

DOH officials made some progress in addressing the problems we identified in the initial audit report, but additional actions are still needed. For example, DOH included physician-administered drug encounter claims for drugs from manufacturers without an NDRA in the capitation rate adjustment for the 2023–24 and 2024–25 State fiscal years, which could account for as much as \$3.3 million of the \$50.3 million in improper payments we identified. However, most of the encounter claims for drugs identified in the initial audit had not been recovered. Of the initial report's four audit recommendations, one was implemented, one was partially implemented, and two were not implemented.

Follow-Up Observations

Recommendation 1

Review the \$50.3 million in managed care encounter claims for prescription drugs, OTC drugs, physician-administered drugs, and compound drug ingredients from manufacturers without an NDRA, and determine the appropriate course of action to maximize recoveries.

Status – Partially Implemented

Agency Action – DOH included physician-administered drugs in rate adjustments for the 2023–24 and 2024–25 State fiscal years, which could account for nearly \$3.3 million in improper payments for physician-administered drugs we identified. Additionally, Office of the Medicaid Inspector General (OMIG) officials stated that the NYS Attorney General's Medicaid Fraud Control Unit recovered over \$9 million in overpayments for drugs that were not subject to an NDRA as of the service date (April 2018 through March 2023). However, because the review was completed by another agency, OMIG officials did not have the supporting documentation to substantiate the recovery. Additionally, less than 1% of the \$50.3 million had actually been recovered through provider voids or was considered unrecoverable because it was identified in other OMIG audits. We note OMIG may have already lost the opportunity to recover over \$36 million of the payments due to regulatory lookback provisions. We encourage DOH and OMIG to take prompt action on the payments we identified to prevent further loss of recoveries.

Recommendation 2

Review the capitation rate adjustment process to ensure all applicable encounter claims for prescription drugs, OTC drugs, and compound drug ingredients from manufacturers without an NDRA are incorporated.

Status – Not Implemented

Agency Action – In State fiscal year 2019–20, DOH began adjusting the managed care capitation rates to offset improper encounter claim payments for prescription drugs, OTC drugs, and compound drug ingredients from manufacturers without an NDRA. However, the initial audit identified flaws in the methodology used to select encounters for the rate adjustment. At the time of our follow-up, DOH had not made any changes to its capitation rate adjustment process to correct these flaws.

Recommendation 3

Include physician-administered drug encounter claims for drugs from manufacturers without an NDRA in the capitation rate adjustments.

Status – Implemented

Agency Action – Since our initial audit, DOH added a capitation rate adjustment for physician-administered drugs from manufacturers without an NDRA for the 2023–24 and 2024–25 State fiscal years.

Recommendation 4

Continue adjusting capitation rates for encounter claims for drugs from manufacturers without NDRA for all service dates prior to the effective date of the requirement for Medicaid recipients to receive prescription drugs through FFS (April 1, 2023).

Status – Not Implemented

Agency Action – According to DOH officials, DOH did not include adjustments to the managed care capitation rate for encounter claims for drugs from manufacturers without an NDRA for the 2023–24 and 2024–25 State fiscal years due to the transition of pharmacy coverage from managed care to FFS. However, the managed care rate calculations are based on encounter claim data from 2 years earlier (e.g., State fiscal year 2023–24 rates were completed using encounter claims data from 2021). As a result, improper payments for drugs from manufacturers without NDRA with service dates in 2021 and 2022 have not been recovered through the rate adjustment process.

Major contributors to this report were Vicki Wilkins, Emily Proulx, and Joyce Ebikhumi.

DOH officials are requested, but not required, to provide information about any actions planned to address the unresolved issues discussed in this follow-up within 30 days of the report's issuance. We thank the management and staff of DOH for the courtesies and cooperation extended to our auditors during this follow-up.

Sincerely,

Thomas Sunkel
Audit Manager

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