



STATE OF NEW YORK DEPARTMENT OF HEALTH

Corning Tower The Governor Nelson A. Rockefeller Empire State Plaza Albany, New York 12237
www.health.ny.gov

Nirav R. Shah, M.D., M.P.H.
Commissioner

Sue Kelly
Executive Deputy Commissioner

March 28, 2011

Hon. Andrew M. Cuomo
Governor
State of New York
The State Capitol
Albany, New York 12224

Dear Governor Cuomo:

Pursuant to the provisions of Section 170 of the 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 2009-S-46 on "Medicaid Payments for Excessive Dental Services." Please feel free to contact me with any questions at (518) 474-2011.

Sincerely,

Nirav R. Shah, M.D., M.P.H.
Commissioner of Health

Enclosure



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Commissioner

Sue Kelly
Executive Deputy Commissioner

March 28, 2011

Hon. Sheldon Silver
Speaker
New York State Assembly
Legislative Office Building, Room 932
Albany, New York 12248

Dear Assemblyman Silver:

Pursuant to the provisions of Section 170 of the 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 2009-S-46 on "Medicaid Payments for Excessive Dental Services."

If you questions or need further assistance, please contact Mr. James Clancy, Assistant Commissioner, Office of Governmental and External Affairs, at (518) 473-1124.

Sincerely,

Nirav R. Shah, M.D., M.P.H.
Commissioner of Health

Enclosure

cc: Mr. Clancy

2009-S-46 “Medicaid Payments for Excessive Dental Services”

cc: James Sheehan
Jason A. Helgersen
Robert W. Reed
Diane Christensen
Stephen C. Abbott
Jayanth Kumar, D.D.S.
Dennis Wendell
Kara Connelly
Stephen LaCasse
Ronald Farrell
Mary Elwell
Irene Myron
Lynn Oliver

**Department of Health
Comments on the
Office of the State Comptroller's
Final Audit Report 2009-S-46 on
“Medicaid Payments for Excessive Dental Services”**

The following are the Department of Health’s (Department) comments in response to the Office of the State Comptroller’s (OSC) final audit report 2009-S-46 on “Medicaid Payments for Excessive Dental Services.”

Recommendation #1:

Modify the eMedNY edits for periodic oral evaluations, cleanings, and fluoride treatments, paid on a fee-for-service basis, to allow payment for these services only once in a six month period, consistent with the provisions of the Dental Manual.

Response #1:

While the Dental Manual provides for preventive services twice per year (every 180 days), the Department has set the frequency edits at 150 days to allow latitude for scheduling appointments and to avoid restricting essential preventive services such as examinations, cleanings and fluoride treatments. Prevention is more beneficial and cost effective than treating the resultant disease, as confirmed by both the Centers for Medicare and Medicaid Services and the Academic Pediatric Association. The current edit settings are professionally sound and appropriate, while strict adherence to the 180 days frequency would act as a barrier to the delivery of essential preventive dental services.

Recommendation #2:

Either modify the Medicaid Dispensing Validation System or establish a comparable mechanism to enable providers to determine whether recipients have met their service limits before services are performed and billed.

Recommendation #3:

Activate eMedNY edit controls to limit services by recipient (rather than provider).

Responses #2 and #3:

While the Dispensing Validation System (DVS) is utilized by providers to obtain prior authorizations for certain procedures, the Department believes that modifying and utilizing DVS to prior authorize preventive dental services would create an administrative burden for providers and possibly act as a deterrent to necessary preventative care. In addition, the Department has considered the recommendation to activate edit controls to limit services by recipient rather than provider. However, several of the overpayments identified by OSC are the result of beneficiaries switching dentists during the five-year audit period. Under the Medicaid fee-for-service rules,

the beneficiary has the right to choose and switch providers, and when limited in occurrence, this is neither abusive nor excessive. Further, the new dentist currently has no way of knowing whether the beneficiary might have exceeded the limits due to services provided by another dentist. Auto-denying claims in circumstances beyond a provider's control would have a negative impact on the available network of participating dentists. Therefore, a system to allow providers access to beneficiaries' treatment history prior to service would need to be developed and implemented. The Department will explore the feasibility of a system development project to convert or modify a subsystem other than DVS, such as ePACES, for the purpose of creating a claims history inquiry function that could be utilized by providers to determine if service limits have been met. Until such time, the Department will maintain the current mechanisms for monitoring and addressing excessive utilization of dental services.

Recommendation #4:

Establish edits for rate-based claims for dental procedures to ensure providers are paid only at the limits set forth in the Dental Manual.

Response #4:

The Department will evaluate establishing edits for rate-based claims for dental procedures, taking into consideration the potential impact on access to essential preventative services.

Recommendation #5:

Review the overpayments we identified and recover the excessive amounts paid, as appropriate. As priorities and resources permit, follow up on claim payments for excessive services to determine if certain providers have abused the Medicaid program. Take actions with such providers, as appropriate.

Response #5:

The Department will review the data provided by OSC on a case-by-case basis and any suspected abusive behavior by beneficiaries or providers will be referred to the OMIG for follow-up. The OMIG will also review the overpayments identified by OSC and pursue appropriate recoveries as priorities and resources permit. It is relevant to note, however, that OSC's overpayment calculation does not reflect current edit settings which potentially allow for a third examination, cleaning and fluoride treatment (children only) annually. In addition, the fee-for-service overpayments identified by OSC include payments for 9,150 clients of the Office for People with Developmental Disabilities (OPDD; formerly OMRDD). The Department questions whether these claims should have been included in the OSC review, as the dental needs of this population may not be representative of a mainstream population. Applying the present edit settings and eliminating the claims for the OPDD clients reduces the \$14 million in overpayments estimated by the OSC by 90 percent.

Recommendation #6

Make a formal assessment of the level of the fees paid by New York's Medicaid program for routine dental services. Compare New York's fees with the fees paid in other states and determine if adjustments are justified to achieve savings by lowering fees for certain procedures, such as evaluations and cleanings.

Response #6

The Department will evaluate the levels of fees for routine dental services in context to the New York State Medicaid Program, beneficiary needs and appropriate access to dental care. While lower fees may achieve savings, they can also be a barrier to access by negatively affecting provider participation, thereby violating State and Federal requirements. In fact, this was the premise of a dental lawsuit against the New York State Medicaid Program in 2000. Such concerns must be considered when determining reimbursement levels and when comparing reimbursement levels to that of other states.

Copies of Final Report 2009-S-46 with a personalized transmittal letter were sent to the following:

Hon. Andrew M. Cuomo
The Governor of the State of New York
The State Capitol
Albany, NY 12224

Hon. Thomas K. Duane
Ranking Member, Committee on Health
New York State Senate
Legislative Office Building, Room 430
Albany, NY 12247

Hon. Sheldon Silver
Speaker of the Assembly
New York State Assembly
Legislative Office Bldg., Room 932
Albany, NY 12248

Mr. Howard B. Glaser
Director of State Operations
Office of Governor Andrew M. Cuomo
Executive Chamber
Albany, NY 12224

Hon. John L. Sampson
Minority Conference Leader
New York State Senate
Legislative Office Building, Room 409
Albany, NY 12247

Hon. Herman D. Farrell, Jr.
Chairman, Ways & Means Committee
New York State Assembly
Legislative Office Bldg., Room 923
Albany, NY 12248

Hon. Ron Canestrari
Assembly Majority Leader
New York State Assembly
Legislative Office Building, Room 926
Albany, NY 12248

Hon. Louis R. Tobacco
Ranking Member, Assembly Committee on Health
New York State Assembly
Legislative Office Building, Room 907
Albany, NY 12248

Hon. Dean G. Skelos
Majority Conference Leader
New York State Senate
Legislative Office Bldg., Room 907
Albany, NY 12247

Robert L. Megna,
Director of the Budget
The State Capitol, Room 113
Albany, NY 12224

Hon. Brian M. Kolb
Assembly Minority Leader
New York State Assembly
Legislative Office Building, Room 431
Albany, NY 12248

Hon. Thomas P. DiNapoli, Comptroller
Comptroller
NYS Office of the State Comptroller
110 State Street
Albany, NY 12236

Hon. Kemp Hannon
Chair, Committee on Health
New York State Senate
Legislative Office Building, Room 408
Albany, NY 12247

Hon. John A. DeFrancisco
Chair, Senate Finance Committee
New York State Senate
State Capitol Building, Room 416
Albany, NY 12247

Hon. Richard N. Gottfried
Chairman, Committee on Health
New York State Assembly
Legislative Office Building, Room 822
Albany, NY 12248

Hon. Liz Krueger
Ranking Member, Senate Finance Committee
New York State Senate
Legislative Office Building, Room 913
Albany, NY 12247

Mr. Jerry Barber
Assistant Comptroller
New York State Office of the State Comptroller
Division of State Government Accountability
110 State Street, 11th Floor
Albany, NY 12236

Mr. James Introne
Deputy Secretary for Health and Director of Healthcare Redesign
Office of Governor Andrew M. Cuomo
State Capitol
Albany, NY 12224

Copies of Final Report 2009-S-46 with a personalized transmittal letter were sent to the following:

Hon. James P. Hayes
Ranking Member, Assembly Ways & Means Committee
New York State Assembly
State Capitol, Room 444
Albany, NY 12247

Hon. Robert J. Duffy
Lieutenant Governor
Office of Governor Andrew M. Cuomo
Executive Chamber
Albany, NY 12224