

**NEW YORK**  
*state department of*  
**HEALTH**

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

Sue Kelly  
Executive Deputy Commissioner

October 11, 2013

Andrea Inman, Audit Manager  
Office of the State Comptroller  
Division of State Government Accountability  
110 State Street, 11<sup>th</sup> Floor  
Albany, New York 12236

Dear Ms. Inman:

Enclosed are the Department of Health's comments on the Office of the State Comptroller's Follow-Up Report 2013-F-11 on Department actions relative to the recommendations contained in earlier OSC Report 2010-S-17 entitled, "Under Reporting of Net Available Monthly Income For Nursing Home Residents Causes Medicaid Overpayments."

Thank you for the opportunity to comment.

Sincerely,



Sue Kelly  
Executive Deputy Commissioner

Enclosure

cc: Jason A. Helgersen  
James C. Cox  
Michael Nazarko  
Robert Loftus  
Joan Kewley  
Lori Conway  
Ron Farrell  
Brian Kiernan  
Elizabeth Misa  
OHIP Audit BML

**Department of Health  
Comments on the  
Office of the State Comptroller's  
Follow-Up Audit Report 2013-F-11 Entitled,  
Under Reporting of Net Available Monthly Income for Nursing  
Home Residents Causes Medicaid Overpayments**

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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 2013-F-11 entitled, "Under Reporting of Net Available Monthly Income (NAMI) for Nursing Home Residents Causes Medicaid Overpayments" (2010-S-17).

The Department of Health (the Department) is pleased that all recommendations from this Follow-Up Audit have either been addressed and implemented or are in the process of being implemented, as noted in our responses below.

In addition, it is important to note the following facts:

- Under this administration, the Medicaid cost curve has been bent, resulting in an estimated statewide savings of \$4.6 billion in 2012 alone. This is the first time Medicaid spending has decreased in New York since the program's creation.
- Recent New York State Department of Health data show that prior to implementation of Medicaid Redesign Team (MRT) initiatives, total Medicaid spending for all categories of service was on track to rise exponentially, but the new strategies under MRT have bent the cost curve and resulted in estimated savings of \$3.2 billion in New York City alone and more than \$4 billion statewide.
- Under Governor Cuomo's leadership, Medicaid costs are decreasing, and the quality of the program is receiving high marks. A recent study by the National Committee for Quality Assurance (NCQA) analyzed New York State's Medicaid health care plans against 76 different quality measures and found that when it comes to offering the right type of care for costly health factors like diabetes, childhood obesity, smoking cessation and follow-up care for the mentally ill, New York is a national leader, second only to Massachusetts. In addition, the New York State Department of Health 2012 Managed Long Term Care (MLTC) Report found that the overall functional ability of 90 percent of MLTC enrollees has remained stable or improved, 85 percent of MLTC plan members rated their health plan as "good" or "excellent", and 91 percent would recommend their plan to a friend.

**Recommendation #1:**

Design and implement controls in the Medicaid claims processing systems to properly apply residents' NAMIs towards the cost of their nursing home care.

*(Recommendation #1 continued)*

Status – Not Implemented

Agency Action - The Department did not design and implement controls that would properly apply NAMI towards the cost of nursing home care. When processing monthly nursing home claims, eMedNY automatically reduces payments to nursing homes by the amount of Medicaid recipients' NAMI. However, eMedNY does not deduct NAMI from a claim when a nursing home does not bill for the first day of the month. During our initial audit, the typical daily Medicaid rate for nursing home care was about \$200 per resident, while the amount of the NAMI retained by the nursing home was about \$1,000 per resident when the home did not bill for the first day of the month. Thus, nursing homes could generate material amounts of additional net income by not claiming the first of the month. Whenever eMedNY processed such claims, substantial overpayments resulted. Our initial audit identified \$34.5 million in Medicaid overpayments due to this processing deficiency. Until the proper controls are in place, there is significant risk that certain nursing homes will forego billing for the first day of the month to preclude the deduction of NAMI from their claims.

**Response #1:**

The Department has initiated an Evolution Project (EP1840) to design and implement controls in eMedNY to properly apply residents' Net Available Monthly Income (NAMI) amounts towards the cost of their nursing home care. Specifically, the first claim that a nursing home submits in a month, regardless if the first of the month is present on the claim, will result in the NAMI being applied. In addition, an auto adjustment process is being adapted to reprocess a nursing home claim when the NAMI amount is updated or added to the system with a retroactive effective date. These changes are scheduled to be promoted and implemented on December 19, 2013.

**Recommendation #2:**

Analyze the instances of under-applied NAMI and the overpayments identified by our audit. Recover overpayments as appropriate.

Status – Implemented

Agency Action – The Office of the Medicaid Inspector General (OMIG) investigates and recovers improper Medicaid payments on behalf of the Department. With a consultant's assistance, OMIG analyzed the instances of under-applied NAMI. The consultant visited the nursing homes that received overpayments, inspected their records, and identified additional instances of under-applied NAMI. At the time of our follow-up, OMIG's consultant had recovered \$30 million in overpayments and expected to recover additional overpayments totaling about \$16 million.

**Response #2:**

The Department agrees the recommendation has been implemented.

**Recommendation #3:**

Examine the overpayments resulting from untimely posting of NAMI as identified in this report and make recovery where appropriate.

Status – Implemented

Agency Action – As noted previously, OMIG and their consultant analyzed the overpayments we identified and made recoveries where appropriate.

**Response #3:**

The Department agrees the recommendation has been implemented.

**Recommendation #4:**

Enhance Department oversight through such techniques as data analysis to identify and assist localities that may not be posting NAMI timely to eMedNY.

Status – Not Implemented

Agency Action – The Department did not develop new techniques such as data analysis to identify and assist localities that may not be posting NAMI timely to eMedNY.

**Response #4:**

In response to the recent audit findings, the Department will issue a reminder notification in November 2013 to local districts reiterating the importance of posting NAMI changes timely in order to avoid Medicaid overpayments. This reminder notification is a follow-up to the GIS 11 MA/029, "OSC Audit - Reminder of Correct Procedures for NAMI Adjustments," which was issued in December 2011. The notification will also advise districts of the Department's intent to conduct a review of chronic care case records to evaluate whether correct policy is applied when a change in income is reported.

The Office of the State Comptroller recommends that the Department enhance oversight over local districts that may not be posting NAMI changes timely to eMedNY, through such techniques as data analysis. However, since it is necessary to establish when a change in income is received by the local Department of Social services (LDSS) in order to determine whether such change was posted to eMedNY timely, the Department must review the case records within each local department of social services agency. Through review of the case record, the Department is able to determine the date on which the change in income is received by the LDSS and compare this information to the date the income change is posted to the principal provider subsystem. The Office of Health Insurance Programs conducts reviews on cases maintained by local districts. In order to identify local districts that may be posting NAMI changes untimely, the Department will increase the number of chronic care cases to include twenty-five cases with active coverage for nursing home care for the specific purpose of determining whether the LDSS is posting NAMI changes timely, in addition to the chronic care cases that are currently included in these case reviews. If it is determined that a district is not applying correct policy when a change in income is reported, technical assistance training will be provided.

**Recommendation #5:**

Advise localities to review resident's NAMI at time intervals sufficient enough to avoid overpayments that cannot be recovered.

Status – Implemented

Agency Action – In December 2012, the Department issued a general Information system message (GIS 11MA/0029: OSC Audit Reminder of Correct Procedures for NAMI Adjustments) to remind localities to adhere to correct procedures when updating a nursing home resident's NAMI. In particular, the Department informed localities of our audit and called attention to the potential consequences of untimely NAMI updates – including overpayments that cannot be recovered. During our initial audit, we identified numerous instances of untimely NAMI updates. Some updates were a year or more late. Hence, eMedNY did not automatically make the appropriate NAMI reductions for certain nursing home claims. This caused \$7.5 million in overpayments, some of which might not be recoverable because federal regulations preclude the retroactive recovery of NAMI funding beyond six months.

**Response #5:**

The Department agrees the recommendation has been implemented.