



## Department of Health

ANDREW M. CUOMO  
Governor

HOWARD A. ZUCKER, M.D., J.D.  
Acting Commissioner

SALLY DRESLIN, M.S., R.N.  
Executive Deputy Commissioner

April 22, 2015

Ms. Andrea Inman  
Audit Director  
New York State Office of the State Comptroller  
110 State Street, 11<sup>th</sup> Floor  
Albany, New York 12236

Dear Ms. Inman:

Pursuant to the provisions of Section 170 of New York State 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 2013-S-59 entitled, "Improper Payments for Controlled Substances That Exceed Allowed Dispensing Limits."

Please feel free to contact Amy Nickson, Office of Governmental and External Affairs at (518) 474-2011 with any questions.

Sincerely,

Howard A. Zucker, M.D., J.D.  
Acting Commissioner of Health

**Department of Health  
Comments on the  
Office of the State Comptroller's  
Final Audit Report 2013-S-59 entitled  
Improper Payments for Controlled Substances That Exceed  
Allowed Dispensing Limits**

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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) Final Audit Report 2013-S-59 entitled, "Improper Payments for Controlled Substances That Exceed Allowed Dispensing Limits."

**Background:**

New York State is a national leader in its oversight of the Medicaid Program. Through the efforts of the Department and the Office of the Medicaid Inspector General (OMIG), over the last five years, New York State alone accounted for 54.9 percent of the national total of fraud, waste, and abuse recoveries. These results reflect a trend of increased productivity and enforcement. Over the last three calendar years, the administration's Medicaid enforcement efforts have recovered over \$1.73 billion, a 34 percent increase over the prior three-year period.

Under Governor Cuomo's leadership, the Medicaid Redesign Team (MRT) was created in 2011 to lower health care costs and improve quality care for its Medicaid members. Since 2011, Medicaid spending has remained under the Global Spending Cap, while at the same time providing health care coverage to an additional 840,000 fragile and low income New Yorkers. Additionally, Medicaid spending per recipient has decreased to \$7,929 in 2013, consistent with levels from a decade ago.

**Recommendation #1**

Review the 13,705 fee-for-service pharmacy claims totaling \$1,183,601 in improper payments and make recoveries, as appropriate.

**Response #1**

The OMIG will review the claims and supporting documentation, and recover overpayments where appropriate.

**Recommendation #2**

Instruct MCOs to review the 3,323 improper managed care claims and take corrective actions, as necessary.

**Response #2**

The Department reached out to the managed care plans (plans) on October 28, 2014 and instructed them to respond to the issues discovered during the audit. As a result of plan responses, the Department has also requested and received data from the OSC auditors that will provide back-up to the 3,323 plan claims identified by OSC as improper payments. In December 2014, the Department sent out to the eleven affected Managed Care Organizations (MCOs), the

3,323 claims identified by the OSC as improper payments to consider for recovery. The Department will follow up with the eleven MCOs by the end of April 2015. If the Department has determined that the plans have not taken sufficient actions for recovery, additional corrective action will be taken.

### **Recommendation #3**

Implement eMedNY edits to prevent the payment of fee-for-service pharmacy claims for quantities of controlled substances that exceed supply limits allowed by the Act.

### **Response #3**

The Department initiated and formally prioritized fee-for-service evolution project (EP) 1963 on January 8, 2015 that systematically enforces compliance with the supply limits allowed by the New York State Controlled Substances Act. It is anticipated that the edit will be operational by mid-2015. Until such time that the EP is implemented, the OMIG is available to review and make recoveries of overpayments, as appropriate, and as staffing permits.

### **Recommendation #4**

Instruct MCOs to implement similar edit controls to prevent the payment of pharmacy claims for quantities of controlled substances that exceed supply limits allowed by the Act.

### **Response #4**

The Department shared a copy of the OSC's Preliminary Audit Report, a summary of the Medicaid fee-for-service response, and the individual claims identified by the OSC as improper payments with the MCOs. Also included was a directive to review the data and report back to the Department what processes or controls would be implemented. Eleven of the sixteen plans that had claims identified by the OSC reported that they are evaluating additional system edit(s). The Department will follow up with the MCOs by June 2015 to ensure that the plans have taken appropriate actions. Additionally, this communication will include a survey that requests information on the internal controls that have been implemented. If the Department determines that a plan's controls are not sufficient, further follow-up and/or corrective action will be conducted.

### **Recommendation #5**

Formally remind pharmacies of the supply limits on controlled substances.

### **Response #5**

The Department's Division of Program Development and Management, with input from the Bureau of Narcotic Enforcement (BNE), formally reminded pharmacies of supply limits on controlled substances via an August 2014 Medicaid Update. Pharmacy providers were also directly notified by their plans regarding the issue of controlled substance supply limits.

### **Recommendation #6**

Establish consistent guidelines regarding the use of Rx Serial Numbers on pharmacy claims.

**Response #6**

The Department has collaborated with the BNE to establish consistent guidelines regarding the use of the Rx serial number. The August 2014 Medicaid Update contains two articles surrounding these guidelines; "Transmission of the Official Serialized Number is required for all NYS FFS Medicaid Claims" and "Information Regarding Prescriptions for Controlled Substances." The link to the August 2014 Medicaid Update is as follows:

[http://www.health.ny.gov/health\\_care/medicaid/program/update/2014/aug14\\_mu.pdf](http://www.health.ny.gov/health_care/medicaid/program/update/2014/aug14_mu.pdf)