



## Department of Health

**KATHY HOCHUL**  
Governor

**JAMES V. McDONALD, M.D., M.P.H.**  
Commissioner

**JOHANNE E. MORNE, M.S.**  
Executive Deputy Commissioner

April 16, 2024

Honorable Thomas P. DiNapoli  
Comptroller  
NYS Office of the State Comptroller  
110 State Street  
Albany, New York 12236  
[contactus@osc.ny.gov](mailto:contactus@osc.ny.gov)

Dear Comptroller DiNapoli:

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 2021-S-24 entitled, "Medicaid Program: Recovering Managed Care Payments for Inpatient Services on Behalf of Recipients With Third-Party Health Insurance."

Should you have questions, please feel free to contact Mischa Sogut, Assistant Commissioner for Governmental Affairs, at (518) 473-1124 or [mischa.sogut@health.ny.gov](mailto:mischa.sogut@health.ny.gov).

Sincerely,

Johanne E. Morne, M.S.  
Executive Deputy Commissioner

Enclosure

cc: Mischa Sogut

**Department of Health Comments  
on the Office of the State Comptroller's  
Final Audit Report 2021-S-24 entitled, "Medicaid Program: Recovering  
Managed Care Payments for Inpatient Services on Behalf of  
Recipients With Third-Party Health Insurance"**

---

The following are the Department of Health's (Department) comments in response to the Office of the State Comptroller's (OSC) Final Audit Report 2021-S-24 entitled, "Medicaid Program: Recovering Managed Care Payments for Inpatient Services on Behalf of Recipients With Third-Party Health Insurance." 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.

**Recommendation #1:**

Review the \$52.2 million in Medicaid payments for inpatient services on behalf of recipients with TPHI inpatient coverage and ensure TPHI carriers are billed and provider reviews are initiated, as appropriate, so overpayments are recovered, prioritizing encounter claims that are approaching the end of the recovery window.

**Response #1:**

The existence of overlapping TPHI, including Medicare coverage, in and of itself, does not mean a Medicaid claim is recoverable. As part of the standard process used by Health Management Systems, Inc. (a Gainwell Technologies company [Gainwell]), all Medicaid encounters/paid claims Gainwell receives are reviewed. When overlapping TPHI is discovered, edits within Gainwell's system identify claims where a recovery may not be appropriate. The absence of a billing attempt does not indicate that a recovery should have or would have occurred. Additionally, claims reviewed as part of Gainwell's standard process but for which no recovery is made will be resubmitted in future cycles in the event a change is made that allows a claim to become billable. The contract between Gainwell and OMIG is structured to provide robust TPHI identification and recovery procedures. The State's and Gainwell's interests are aligned to maximize the identification and recovery of inappropriate payments for the Medicaid program.

**State Comptroller's Comment** – The audit demonstrated that the Department and OMIG lacked adequate oversight of the third-party liability (TPL) recovery process and had not ensured that all available recoveries had been made. For example, ineffective use of Medicare coverage data resulted in missed opportunities to recover significant overpayments. Examples were provided that showed inpatient encounter claims for recipients with valid Medicare coverage on file in eMedNY, yet Gainwell officials indicated that Medicare could not be confirmed and, therefore, recovery actions were not taken. If the Department and OMIG do not implement recommendations contained in this audit report and work with the contractor to correct the deficiencies, it is likely that millions of dollars will continue to be wasted.

**Recommendation #2:**

Assess the recoverability of the \$41.4 million (\$39.3 million + \$2.1 million) in Medicaid payments

for inpatient services that were billed to TPHI carriers or were part of provider reviews that did not result in a recovery (due to carrier/provider non-response or carrier denials), and ensure all necessary follow-up actions are taken to obtain appropriate recoveries, prioritizing claims that are approaching the end of the recovery window.

**Response #2:**

As part of Gainwell’s denial follow up efforts, each denial reason code is reviewed to ensure that claims are re-billed to the commercial payers, where appropriate. Additionally, Gainwell’s follow up efforts go beyond rebilling claims. For example, Gainwell holds meetings with carriers to discuss submitted claim elements, root cause analysis, HIPAA standard transaction processing, and TPHI source data eligibility gaps. Gainwell also engages with providers to obtain necessary information to supply to the carriers such as medical records. However, despite this follow up, carriers may re-deny claims or uphold their original adjudication decision. The presence of a denial does not indicate that follow up activity was not performed. Additionally, there would still be a population of claims that remain unrecoverable due to missing or incorrect carrier information, non-covered services, etc. However, as OSC stated in its report, OMIG will be issuing draft and final audit reports to non-compliant providers.

**State Comptroller’s Comment** – As stated in the report in the “Additional Follow-Up Opportunities for Recoveries” section, New York State Social Services Law requires third-party health insurance (TPHI) carriers to not deny payment for certain administrative reasons, such as a failure to obtain prior authorization, and to respond to requests for payment within 60 days. Furthermore, in addition to the \$2.1 million in claims denied by TPHI carriers due to administrative or other potentially rectifiable reasons, this section of the report identifies \$39.3 million in inpatient encounter claims with service dates ranging from 2017 to 2021 where the status of recovery was “open” or “flagged for recycle,” meaning TPHI carriers or providers had not responded to Gainwell’s recovery attempts. Further, \$15.4 million (of the \$39.3 million) in claims have remained in this unresolved status for over 2 years. The Department and OMIG need to start providing adequate oversight to ensure that all appropriate recoveries are made and that TPHI carriers and providers are responding as required.

**Recommendation #3:**

Assess the TPL recovery process for managed care inpatient services to identify all factors that led to exclusions from TPHI carrier billings and provider reviews, and ensure corrective actions are taken where appropriate.

**Response #3:**

OMIG agrees that TPL recovery processes, including edits and business rules, should be regularly reviewed, and understand that some claim types are inherently excluded due to confidentiality as well as heightened patient privacy. To that end, Gainwell has a long-standing, effective process in place to regularly review edits and business rules and update as appropriate. OMIG will continue to confer with Gainwell on updates to claim types necessitating exclusion, or to business rules that may require further update and/or modification.

**State Comptroller’s Comment** – We are pleased that OMIG agrees that the TPL recovery processes should be regularly reviewed. We encourage Department and OMIG officials to confer with Gainwell—with the depth of detail necessary—to identify all factors that led to the exclusions

from TPHI carrier billings and provider reviews. We note that this should include a Department and OMIG review of Gainwell's use of Medicare enrollment data files and Gainwell's Medicare coverage identification process to ensure appropriate recoveries are made for recipients with Medicare TPHI. As mentioned in the report, \$33.8 million in claims where the recipient had Medicare TPHI coverage for the date of service were not included in Gainwell's recovery attempts as Gainwell was not always able to identify or confirm Medicare coverage.

**Recommendation #4:**

Ensure MCOs are aware of recipients' TPHI with inpatient coverage per eMedNY and take corrective actions where appropriate.

**Response #4:**

The Department is reviewing this recommendation to determine the appropriate course of action.

**Recommendation #5:**

Ensure MCOs are not inappropriately excluding inpatient encounter claims from coordination of benefits or TPL recovery efforts, and follow-up with the MCO that inappropriately removed behavioral health inpatient services from its recovery efforts to ensure corrections were made.

**Response #5:**

The Department has issued technical guidance on how plans should be submitting Coordination of Benefits (COB), whether it is for professional or institutional encounter/claims. The Department evaluates plan compliance through the encounter data quality metrics program which aims to make sure that encounters are submitted timely, accurately, and complete according to the Model Contract. This includes evaluating dollars submitted when there is a COB with both Medicare and Medicaid.

Effective January 1, 2022, the Department issued encounter submission guidance (Attachment 1) for COB when there is Medicare and Medicaid cost sharing that was applicable to the Encounter Intake System, which ceased to operate in May 2023. A presentation reflecting the current COB guidance for the new encounter system, the Original Source Data Submitter system, is also attached (Attachment 2).

**State Comptroller's Comment** – We appreciate the Department issuing guidance on how MCOs should report TPL information on encounter claims. However, this recommendation intends to ensure that the Department enforces the requirement for MCOs to engage in TPL recoveries, as the audit identified certain MCOs were excluding inpatient services and/or behavioral health inpatient services from their TPL recovery efforts.

**Recommendation #6:**

Reassess the exclusion of all claims with the 1,412 medical diagnosis codes of a confidential nature from TPL recovery efforts and identify solutions that would allow these claims to be recovered without the risk of disclosure.

**Response #6:**

The Department has determined that there are circumstances for which a third-party recovery should not be pursued by OMIG because these include confidential services that may put the Medicaid member at risk of harm. When a third-party recovery is pursued by OMIG, the third-party payer is required to send an explanation of benefits/remittance to the member's household. Services provided are identified, in part, by the member's diagnosis code reported on the Medicaid claim. The emotional or physical health, safety and/or confidentiality of the Medicaid member may be jeopardized if an individual in the household other than the member gains access to the explanation of benefits/remittance. The Department has reviewed the list of confidential diagnosis codes and removed any that would not cause potential harm to a member.

**Recommendation #7:**

Determine whether inpatient encounter claims excluded from TPL recovery efforts due to the COVID-19 public health emergency will be billed to carriers in order to maximize recoveries before the recovery window closes.

**Response #7:**

For any OSC findings after March 2020, OMIG will utilize guidance issued by Federal and State entities as to the appropriateness of the claims during the COVID-19 Public Health Emergency.

**Recommendation #8:**

Continue to implement and develop Department and OMIG processes to assist Gainwell with TPL recovery efforts to ensure appropriate recoveries are made for inpatient encounter claims where: providers are not responsive to Gainwell's provider reviews (particularly regarding claims that should be paid by original Medicare); TPHI carriers are not responsive to attempted billings; and TPHI carriers deny attempted billings for administrative reasons or other reasons that may be rectifiable.

**Response #8:**

OMIG actively oversees Gainwell activities, has visibility into all aspects of the process and is currently implementing additional enhancements. In addition to generating a Monthly Recovery/Pre-Payment Insurance Verification Overview Report, which is included in the Gainwell approved workplan, Gainwell also produces two reports which provide greater transparency into the TPL process. The first is a monthly report of claims that were excluded from recovery attempts and the reason for the exclusion. The second is a quarterly report of claims where a recovery attempt was made but the claim was subsequently denied by the TPHI carrier. In addition, OMIG will be issuing draft and final audit reports to non-compliant providers.