



Department of Health

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April 11, 2024

Andrea Inman
Audit Director
Office of the State Comptroller
Division of State Government Accountability
110 State Street – 11th Floor
Albany, New York 12236-0001

Dear Andrea Inman:

Enclosed are the Department of Health's comments on the Office of the State Comptroller's Follow-Up Audit Report, 2023-F-27 entitled, "Medicaid Program: Recovering Managed Care Overpayments for Pharmacy Services on Behalf of Recipients With Third-Party Health Insurance" (Report 2020-S-39).

Thank you for the opportunity to comment.

Sincerely,

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

Enclosure

cc: Frank Walsh
Amir Bassiri
Jacqueline McGovern
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Brian Kiernan
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**Department of Health Comments on the
Office of the State Comptroller's
Follow-Up Audit Report 2023-F-27 entitled,
"Medicaid Program: Recovering Managed Care Overpayments for
Pharmacy 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) Follow-Up Audit Report 2023-F-27 entitled, "Medicaid Program: Recovering Managed Care Overpayments for Pharmacy Services on Behalf of Recipients With Third-Party Health Insurance" (Report 2020-S-39). 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 \$292 million in Medicaid payments for pharmacy services on behalf of recipients with third-party health insurance drug coverage we identified and ensure overpayments are appropriately recovered, prioritizing encounter claims that are approaching the 3-year window for recovery.

Status – Partially Implemented

Agency Action – OMIG is responsible for investigating and recovering improper Medicaid payments on behalf of the Department and contracts with HMS for third-party liability recoveries. The initial audit identified various areas in the third-party liability recovery process that could be improved. For example, we found that certain claims with generic billing provider identification numbers had been excluded from recovery attempts; however, there was an alternative field, the biller's National Provider Identifier, which could have been used to bill third-party health insurance carriers for recovery. As a result of our initial audit, OMIG and HMS determined claims should not be excluded from recovery attempts solely due to a generic provider identification number. OMIG/HMS have since recovered \$7.3 million on pharmacy encounter claims and nearly \$2.3 million for non-pharmacy encounter claims that contained generic billing provider identification numbers. However, of the recovered amount, only \$424,670 (less than 1% of the \$292 million) was related to the pharmacy encounter claims identified in our initial report. This is likely due to the improvements to the recovery process not being implemented until 2023 and the State statutory limit of 3 years from the date of service to initiate recovery from third-party health insurance carriers.

Response #1:

OMIG has recovered \$582,924 of the OSC-identified overpayments. Additionally, there are 996 claims totaling \$262,682 that are already included in other OMIG audit universes. There are 1,923,659 claims totaling \$144,209,579 which are no longer recoverable due to the statute of limitations.

The existence of overlapping third-party health insurance, including Medicare coverage, in and of itself, does not mean a Medicaid claim is recoverable. As part of the standard process used by HMS, all Medicaid encounters/paid claims received by HMS are reviewed. When overlapping third-party health insurance is discovered, edits within HMS' 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 HMS' 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 HMS and OMIG is structured to provide robust third-party health insurance identification and recovery procedures. The State's and HMS' interests are aligned to maximize the identification and recovery of inappropriate payments for the Medicaid program.

Recommendation #2:

Assess the recoverability of pharmacy encounter claims that were billed to third-party health insurance carriers but did not result in a recovery (due to carrier denial or non-response) and ensure all necessary follow-up actions are taken to obtain appropriate recoveries.

Status – Not Implemented

Agency Action – The initial audit found that third-party health insurance carriers denied pharmacy encounter claim payments totaling \$120.9 million for administrative reasons or other reason codes that may be rectifiable. OMIG officials stated that HMS performs vigorous follow-up activities on denied billings; however, they were not able to provide us with documentation of such follow-up activities. Additionally, Department officials were unable to provide evidence of any follow-up activity by the Department to ensure carriers fully cooperated with third-party liability recovery attempts. According to OMIG, HMS was exploring additional system enhancements to provide greater detail on follow-up activities.

According to HMS, there is no enforcement mechanism within State regulations to compel full carrier cooperation. Under State and federal laws, the Department – or HMS, as its third-party liability contractor – has up to 6 years from the submission of a claim to enforce its right to recover any amount for which the third-party health insurance carrier is liable. We encourage the Department and OMIG to assess the recoverability of the encounter claims that were billed to third-party health insurance carriers but did not result in a recovery and ensure necessary follow-up actions are taken to obtain appropriate recoveries.

Response #2:

HMS has already taken steps to further enhance the third-party liability (TPL) recovery process in New York for managed care pharmacy services by proactively instituting systems changes needed to have visibility into which claims were excluded and the rationale for exclusion. As part of HMS' efforts, each denial reason code is reviewed to ensure that claims are re-billed to the commercial payers, where appropriate. Additionally, HMS' follow up efforts go beyond rebilling claims. For example, HMS holds meetings with carriers to discuss submitted claim elements, root cause analysis, HIPAA standard transaction processing, and third-party health insurance source data eligibility gaps. HMS also engages with providers to obtain necessary information to supply to the carriers such as medical records. However, despite this follow up, carriers may 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.

OMIG in collaboration with HMS will explore additional systems enhancements to provide greater clarity and detail on third-party health insurance carrier billing follow up activities.

Recommendation #3:

Assess the third-party liability recovery process for managed care pharmacy services to identify all factors that led to exclusions from third-party health insurance carrier billings, and ensure corrective actions are taken where appropriate.

Status – Partially Implemented

Agency Action – The initial audit identified various areas of the third-party liability recovery process that could be improved. HMS and OMIG took steps to correct one deficiency with the recovery process and, consequently, recovered \$9.6 million related to encounter claims containing generic billing provider IDs (as discussed in Recommendation 1). Of this amount, \$7.3 million was related to pharmacy encounter claims, while the remaining \$2.3 million was related to other claim types. OMIG officials also stated that HMS consulted with OMIG on business rule adjustments and claim selection logic that may benefit from updating or removal; however, no other examples of corrective actions regarding the recovery of pharmacy encounter claims were provided.

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, HMS 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 HMS on updates to claim types necessitating exclusion, or to business rules that may require further update and/or modification.

Recommendation #4:

Implement ongoing monitoring of the entire third-party health insurance recovery process for managed care pharmacy services to ensure all appropriate recoveries are made within the required time frames, including monitoring of pharmacy encounter claims that are not billed to third-party health insurance carriers and pharmacy encounter claims that are billed to third-party health insurance carriers but do not result in a recovery.

Status – Partially Implemented

Agency Action – The initial audit found the Department and OMIG provided inadequate oversight of the third-party liability recovery process. OMIG officials stated that they meet with HMS regularly to discuss various issues regarding HMS' third-party liability recovery activities. As a result of our audit, OMIG has worked with HMS to develop additional reporting to gain greater insight into the third-party liability recovery process. Beginning in November 2022, HMS

provides OMIG monthly reports of claims that were excluded from recovery attempts and quarterly reports of carrier denial reasons to provide greater transparency into HMS' process. However, OMIG was unable to provide us with specific information on its review and use of the HMS reports. Thorough monitoring steps should be implemented by the Department and OMIG to ensure all appropriate third-party recoveries are made.

Response #4:

OMIG actively oversees HMS 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 HMS approved workplan, HMS also produces two additional 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. HMS also provides OMIG with a quarterly report of claims where a recovery attempt was made but the claim was subsequently denied by the third-party health insurance carrier. In addition, OMIG will be issuing draft and final audit reports to non-compliant providers.

Recommendation #5:

Ensure MCOs are made aware of all eMedNY third-party health insurance policies with drug coverage, and take corrective actions where appropriate.

Status – Not Implemented

Agency Action – The initial audit found that not all third-party health insurance recipient coverage listed in eMedNY was sent to MCOs. In April 2023, the Department implemented the NYRx program, which transitioned Medicaid pharmacy benefits for many managed care recipients from managed care to fee-for-service. As a result, it is now the responsibility of pharmacies, rather than MCOs, to verify active third-party health insurance coverage. Additionally, claims now go through eMedNY rather than the MCOs' internal claims processing and payment systems. The Department did not take any steps to address this recommendation from the time of the initial audit to the implementation of the NYRx program in April 2023.

Response #5:

As of April 1, 2023 all Medicaid members enrolled in Mainstream Managed Care receive their prescription drugs through the NYRx, the Medicaid Pharmacy Program. NYRx allows NYS to pay pharmacies directly for the drugs and supplies of Medicaid members. As stated above, claim processing and remittance is completed through eMedNY. When pharmacy providers bill for drugs and supplies through eMedNY, all other insurance information is available to them when they verify the member's Medicaid eligibility.

Recommendation #6:

Engage other stakeholders to assess the feasibility and benefits of increasing the recovery window for initiating Medicaid third-party liability recoveries beyond the current statutory maximum of 3 years.

Status – Not Implemented

Agency Action – New York State Social Services Law sets the period for Medicaid to initiate third-party liability recoveries at 3 years from the date of service – the minimum period required by the Social Security Act; the Centers for Medicare & Medicaid Services has advised that states are allowed to establish longer time frames. The initial audit identified a significant amount of pharmacy payments where recoveries were not initiated within the 3-year recovery window and could no longer be recovered. OMIG officials stated they are working with the Department and other agency stakeholders to determine the appropriateness and feasibility of increasing the recovery window beyond 3 years; however, officials were unable to provide evidence of these discussions. We encourage the Department to evaluate the feasibility and benefits of increasing the recovery window to address this recommendation.

Response #6:

OMIG is working with the Department and other agency stakeholders to evaluate the appropriateness and feasibility of this recommendation.