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OFFICE OF THE STATE COMPTROLLER

December 4, 2024

James V. McDonald, M.D., M.P.H.
Commissioner
Department of Health
Corning Tower
Empire State Plaza
Albany, NY 12237

Re: Excessive Payments for Durable Medical Equipment Rentals
Report 2024-F-18

Dear Dr. McDonald:

Pursuant to the State Comptroller's authority as set forth in Article V, Section 1 of the State Constitution and Article II, Section 8 of the State Finance Law, we have followed up on the actions taken by officials of the Department of Health to implement the recommendations contained in our initial audit report, *Medicaid Program: Excessive Payments for Durable Medical Equipment Rentals* (Report 2021-S-36).

Background, Scope, and Objective

The Medicaid program, which served approximately 9.1 million recipients during the State fiscal year ended March 31, 2024, is administered by the Department of Health (DOH). DOH uses two methods to pay for Medicaid services: fee-for-service (FFS) and managed care. Under the FFS method, DOH pays health care providers directly (through eMedNY, its claims processing and payment system) for services rendered to Medicaid recipients. Under the managed care method, DOH pays managed care organizations (MCOs) a monthly premium for each enrolled Medicaid recipient and, in turn, the MCOs arrange for the provision of health care services and reimburse providers for those services.

Medicaid recipients receive necessary durable medical equipment (DME) as a benefit of the Medicaid program. Certain medical devices and equipment are available to recipients on a monthly rental basis. Under both FFS and managed care, there are typically limits (or caps) on the number of monthly rental payments—many items have 10-month caps. In accordance with Medicaid regulations, when the monthly rental payment limit is reached but the item is still needed, it is generally considered purchased for the recipient and no additional rental payments are made (because the purchase price of the DME has generally been met). In contrast, oxygen equipment—a type of DME—is allowed as a continuous (i.e., uncapped) rental and is not purchasable under Medicaid. Therefore, under Medicaid's current reimbursement policy, there is generally no limit on the number of rental payments made for oxygen equipment under both FFS and managed care. By comparison, under Medicare—a federal health insurance program for people age 65 and older and for those under age 65 with certain disabilities—oxygen

equipment rentals are subject to a 36-month rental limit (if needed, replacement equipment is provided after 60 months).

The objective of our initial audit, issued on April 12, 2023, was to determine whether Medicaid MCOs inappropriately paid for DME beyond allowed rental limits, and whether the Medicaid program could achieve cost savings by implementation of a rental cap on oxygen equipment. The audit covered the period from July 2016 to December 2021 for non-oxygen-related DME rentals and September 2018 to December 2021 for oxygen-related DME rentals. We found about $1.5 million in overpayments and $503,619 in questionable payments. We also estimated potential cost avoidance for the Medicaid program of $8.6 million if DOH had adopted a similar policy to Medicare's 36-month cap on oxygen equipment rental payments.

The objective of our follow-up was to assess the extent of implementation, as of October 28, 2024, of the seven recommendations included in our initial audit report.

Summary Conclusions and Status of Audit Recommendations

DOH made little progress addressing the issues we identified in our initial audit report. For example, DOH had not formally determined whether it is efficient and appropriate to require a cap on the number of rental payments for oxygen equipment under managed care or FFS. In addition, the lack of prompt action taken by officials to review DME rental overpayments and questionable payments identified in the initial audit has resulted in payments totaling $427,027 ($2,127 + $288,508 + $136,392) that are now unrecoverable due to the statutory limit, and at least $231,487 that will become unrecoverable within the next year if officials do not review the claims and make appropriate recoveries. Of the initial report's seven audit recommendations, one was partially implemented and six were not implemented.

Follow-Up Observations

Recommendation 1

Formally determine whether it is efficient and appropriate under managed care to require a cap on the number of rental payments for oxygen-related equipment. If deemed appropriate, work with stakeholders to implement policy changes.

Status – Not Implemented

Agency Action – The initial audit found DOH could not support whether paying for oxygen equipment without a cap on the number of months of rental payments complied with Medicaid regulations, which require the total rental payments not exceed the actual purchase price of the item. The audit reviewed Medicaid, Medicare, and MCOs' rental policies related to oxygen equipment and identified costs that would be avoided if the Medicaid program adopted a policy similar to Medicare and one Medicaid MCO's 36-month cap on rental payments. In total, the audit identified $7.3 million in managed care rental payments for stationary and portable oxygen equipment that exceeded the 36-month payment cap that Medicare and the MCO uses.

Our follow-up found DOH had not formally determined whether it is efficient and appropriate under managed care to require a cap on the number of rental payments for oxygen equipment. DOH did not take any action to assess the efficiency and appropriateness of a capped payment structure in managed care and did not indicate it

sought input from the Medicaid MCO that already has implemented a 36-month rental payment cap. In addition, DOH officials stated they do not have the ability to determine the efficiency and appropriateness of MCO policies and have no role in what policies MCOs implement for oxygen equipment outside of sharing Medicaid's FFS guidelines. We note that DOH is, in fact, responsible for overseeing MCOs and ensuring MCOs comply with established Medicaid standards.

Since the initial audit's scope period ended in December 2021, we identified an additional potential cost avoidance totaling over $6.1 million on encounter claims for oxygen equipment rentals from January 2022 through June 2024 had the Medicaid program adopted the 36-month cap on rental payments. DOH should take the necessary steps to formally evaluate the efficiency and appropriateness of the current oxygen equipment payment structure.

Recommendation 2

Formally re-evaluate the existing policies for paying FFS DME rental claims for oxygen-related equipment, including an evaluation of the appropriateness of the uncapped continuous rental policy and the Medicaid reimbursement fees. If deemed appropriate, implement policy and claims processing changes.

Status – Partially Implemented

Agency Action – While DOH has not completed a formal re-evaluation of its existing FFS policies for payments of oxygen equipment rental claims, it has taken some initial steps. DOH officials stated they gathered input from two representatives—one from a regional association of medical equipment providers, the other from a national association of medical equipment providers and manufacturers—and were told a capped payment structure for oxygen equipment likely would not be sustainable. DOH stated any new payment structure would also need to account for equipment maintenance, provider staff hours, and general oxygen service support. In addition, DOH officials stated they have added this issue to their monthly meetings for an ongoing internal project regarding reimbursement policies.

The initial audit identified a potential cost avoidance totaling $1.3 million in FFS oxygen equipment rental claims had DOH officials adopted a capped payment structure similar to Medicare's. Since the initial audit, we identified an additional potential cost avoidance totaling $772,213 on FFS claims for oxygen equipment rentals from January 2022 through June 2024 had the Medicaid program adopted the 36-month cap on rental payments. We encourage DOH to formally re-evaluate the current uncapped oxygen equipment payment structure. Such a review should include additional actions such as a cost-analysis comparing the current payment structure to a capped payment structure, and seeking information from the Medicaid MCO that had already implemented a capped payment structure for oxygen equipment.

Recommendation 3

Follow up with the MCO that made payments in excess of its policy limits on oxygen equipment to ensure that the $200,657 is reviewed and recovered, as appropriate.

Status – Not Implemented

Agency Action – The initial audit identified one MCO that made $200,657 in overpayments for oxygen equipment rentals where claims exceeded the MCO's 36-month payment cap, and some claims were paid without proper authorization. The Office of the Medicaid Inspector General (OMIG) investigates and recovers improper Medicaid payments on behalf of DOH, such as the excess oxygen equipment rental payments identified by the initial audit. In addition, New York State statute allows OMIG to audit providers' claims and recover overpayments up to 6 years from the date when the services or supplies were furnished or billed, whichever is later.

At the time of our follow-up, six oxygen equipment claims totaling $481 (of the $200,657) were voided and 19 claims totaling $2,127 were unrecoverable because of the 6-year statutory limit. The remaining $198,049 (99%) of overpayments made by the MCO still needed to be resolved. OMIG stated it was working with DOH staff to review the claims. Nonetheless, we encourage OMIG to also work with the MCO to promptly review and make recoveries on the remaining $198,049 to avoid additional losses due to the 6-year statutory limit.

Recommendation 4

Review the $1.3 million in overpayments identified for DME rental claims and ensure recoveries are made, as appropriate.

Status – Not Implemented

Agency Action – The initial audit reviewed five MCOs and found they did not comply with their own policies for DME rentals of non-oxygen equipment, resulting in overpayments totaling $1.3 million. Of the $1.3 million, $22,467 was voided by the time of our follow-up and $288,508 became unrecoverable because of the 6-year statutory limit. There was still $973,337 remaining for review and recovery; however, $231,487 of this amount will reach the statutory recovery limit and become unrecoverable over the next year. OMIG stated it was working with DOH staff to review the overpayments. Nonetheless, OMIG should also take prompt action and work with the MCOs to review the encounter claims and make appropriate recoveries to avoid additional unrecoverable payments.

Recommendation 5

Monitor MCOs' DME rental claims for overpayments, including a review of the $503,619 identified, and take appropriate corrective steps, including ensuring recoveries are made.

Status – Not Implemented

Agency Action – The initial audit reviewed five MCOs' DME rental policies and found four of the five MCOs' rental limits (e.g., 10-month caps for most items) were similar to that of DOH's FFS limits. Accordingly, the initial audit then analyzed the DME encounter claims of the remaining MCOs (other than the five MCOs that were contacted) and, because their rental limits were unknown, compared their encounter claims with DOH's FFS

rental limits to identify questionable payments in excess of typical rental limits. The audit identified $503,619 in questionable payments when the FFS rental limits and certain other conditions were applied.

At the time of our follow-up, nine claims totaling $412 had been voided and $136,392 was unrecoverable because of the 6-year statutory limit. The remaining $366,815 had not been addressed. OMIG stated it was working with DOH staff to review the claims. We encourage OMIG to promptly take the appropriate steps to review and recover any overpayments and monitor the MCOs' DME rental claims for future overpayments.

Recommendation 6

Advise MCOs to evaluate the feasibility of developing controls to identify and prevent the types of DME rental overpayments identified by the audit, and take steps to ensure corresponding corrective actions are implemented.

Status – Not Implemented

Agency Action – The initial audit cited control weaknesses in MCOs' claims processing systems and billing procedures, which resulted in DME rental overpayments. In addition, the audit found neither DOH nor OMIG monitored whether the MCOs appropriately paid for DME. During our follow-up, DOH officials stated they plan to draft written directives to advise MCOs to study the feasibility of developing controls to identify and prevent overpayments for DME. However, until these directives are issued by DOH and preventive controls are implemented by the MCOs, the Medicaid program remains at risk for continued overpayments of DME rental encounter claims.

Recommendation 7

Formally determine the appropriateness of certain MCOs' policies that allow payments for a new rental period whenever there is a 60-day gap in rental payments or a change in provider. If deemed inappropriate, work with stakeholders to implement policy changes.

Status – Not Implemented

Agency Action – Medicaid regulations for DME state the total accumulated monthly rental charges may not exceed the actual purchase price of the item. The initial audit identified four MCOs with criteria in their DME rental policies that differed significantly from DOH's FFS policies. Specifically, the MCOs' policies allowed a new rental period to begin when there was either a gap in service, such as a period of 60 days without any rental payments, or a change in the DME provider.

At the time of our follow-up, DOH had not taken any action to determine the appropriateness of the MCOs' DME rental policies. DOH officials responded that they do not have the ability to determine the appropriateness of MCO policies and have no role in what policies MCOs implement for oxygen equipment. We note that DOH is, in fact, responsible for overseeing MCOs and ensuring MCOs comply with established Medicaid standards. We encourage DOH to formally determine the appropriateness of these policies.

Major contributors to this report were Sam Carnicelli, Nareen Jarrett, and Fiorella Seminario.

DOH officials are requested, but not required, to provide information about any actions planned to address the unresolved issues discussed in this follow-up within 30 days of the report's issuance. We thank the management and staff of DOH for the courtesies and cooperation extended to our auditors during this follow-up.

Sincerely,

Mark Breunig
Audit Manager

cc: Melissa Fiore, Department of Health
Frank T. Walsh, Jr., Office of the Medicaid Inspector General