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September 15, 2020

Howard A. Zucker, M.D., J.D.
Commissioner
Department of Health
Corning Tower
Empire State Plaza
Albany, NY 12237

Re: Medicaid Overpayments for Inpatient
Care Involving Mechanical Ventilation
Services
Report 2020-F-10

Dear Dr. Zucker:

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 audit report, *Medicaid Overpayments for Inpatient Care Involving Mechanical Ventilation Services* (Report [2018-S-45](#)).

Background, Scope, and Objective

The Department of Health (Department) administers the Medicaid program in New York State. Medicaid claims are processed and paid by an automated system called eMedNY. When eMedNY processes claims, the claims are subject to various automated controls, which determine whether the claims are eligible for reimbursement and if the amounts claimed for reimbursement are appropriate.

Mechanical ventilation is the use of a device to inflate and deflate a patient's lungs. Mechanical ventilation provides the force needed to deliver air to the lungs in a patient whose ability to breathe is diminished or lost. Hospitals use International Classification of Diseases (ICD) procedure codes on their claims to report mechanical ventilation services. When hospitals use a specific ICD procedure code to report that a patient received 96 consecutive hours or more (i.e., four days or more) of mechanical ventilation, it causes higher Medicaid payments.

We issued our initial audit report on May 16, 2019. The audit objective was to determine whether Medicaid overpayments were made to hospitals for mechanical ventilation services reported on APR-DRG (All Patient Refined Diagnosis Related Groups) inpatient claims. The audit covered the period from January 1, 2014 through December 31, 2018. For this five-year period, Medicaid paid over \$522 million for 4,874 fee-for-service inpatient claims that included an ICD procedure code for 96 consecutive hours or more of mechanical ventilation services. The audit identified \$975,795 in overpayments on 32 inpatient claims that contained an ICD procedure code for 96 consecutive hours or more of mechanical ventilation services, as follows:

- A review of eMedNY claim data revealed \$616,458 in overpayments on 12 claims where there was less than four days between the mechanical ventilation start date and the hospital discharge date, and \$272,686 in overpayments on 14 claims where there was less than four days between the hospital admission and discharge.
- A review of medical records for a sample of claims billed by two hospitals revealed \$86,651 in overpayments on six claims where the records showed less than 96 hours of mechanical ventilation services.

We determined hospitals billed incorrect mechanical ventilation ICD procedure codes, and eMedNY did not have controls to identify and flag claims where it was unlikely the patient received 96 or more consecutive hours of mechanical ventilation services.

The objective of our follow-up was to assess the extent of implementation, as of August 25, 2020, of the three recommendations included in our initial audit report.

Summary Conclusions and Status of Audit Recommendations

Department officials made some progress in addressing the problems we identified in the initial audit report; however, additional action is needed. In particular, no recoveries have been made on the Medicaid overpayments identified by the audit. Of the initial report's three audit recommendations, two were implemented and one was not implemented.

Follow-Up Observations

Recommendation 1

Review the \$975,795 in overpayments we identified and make recoveries, as appropriate.

Status – Not Implemented

Agency Action – The Office of the Medicaid Inspector General (OMIG) investigates and recovers improper Medicaid payments on behalf of the Department. During the initial audit, we provided OMIG with a file containing the details of the \$975,795 in Medicaid overpayments. From the issuance of the audit report on May 16, 2019 to the Executive's Declaration of a Disaster in the State of New York on March 7, 2020, OMIG vetted the claims that our audit identified, but did not yet take action to review the overpayments and make recoveries. Since then, according to OMIG officials, "due to the COVID-19 pandemic, OMIG has not yet requested the medical documentation from these hospitals, as it would impose an additional burden on those providers."

Recommendation 2

Formally remind hospitals to use the ICD procedure code that represents the duration of time the patient received mechanical ventilation services.

Status – Implemented

Agency Action – In the July 2019 edition of the Medicaid Update (the Department's official publication for Medicaid providers), providers were reminded "to make certain the ICD-10 procedure code reported on a claim for mechanical ventilation represents the actual number of continuous hours the member received mechanical ventilation. A clinical assessment that supports the member's diagnosis, the requirements for mechanical

ventilation, and the actual number of continuous hours the member received mechanical ventilation must be included in the member's medical record and may be subject to review and audit."

Recommendation 3

Establish payment controls that validate the duration of mechanical ventilation services that hospitals claim.

Status – Implemented

Agency Action – The Department contracted with Island Peer Review Organization (IPRO) to review Medicaid fee-for-service hospital inpatient claims for mechanical ventilation to ensure that these services were accurately coded and reflect the services provided to the member. According to Department officials, IPRO reviewed inpatient claims from October 2015 to May 2019 (excluding the claims we identified in the initial audit) that had ICD procedure codes for 96 hours or more of mechanical ventilation services, but had lengths of stay that were less than 96 hours. At the time of our follow-up review, IPRO acted upon correcting four claims. Note: While we credit the Department for taking steps to implement the recommendation, we also encourage the Department to assess the eMedNY system limitations identified by the audit, specifically, eMedNY's lack of controls to identify and flag claims where it is unlikely the patient received 96 or more consecutive hours of mechanical ventilation services, and consider improvements where appropriate.

Major contributors to this report were Gail Gorski, Joe Paduano, and Justine Maloy.

We would appreciate your response to this report within 30 days, indicating any actions planned to address the unresolved issues discussed in this report. We thank the management and staff of the Department for the courtesies and cooperation extended to our auditors during this review.

Very truly yours,

Warren Fitzgerald
Audit Manager

cc: Mr. Robert Schmidt, Department of Health
Ms. Erin Ives, Acting Medicaid Inspector General