
**Thomas P. DiNapoli
COMPTROLLER**



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**OFFICE OF THE
NEW YORK STATE COMPTROLLER**

**DIVISION OF STATE
GOVERNMENT ACCOUNTABILITY**

DEPARTMENT OF HEALTH

**MEDICAID PAYMENTS
FOR HUMAN
IMMUNODEFICIENCY
VIRUS (HIV) DRUG
RESISTANCE TESTING**

Report 2007-S-137

AUDIT OBJECTIVES

The objectives of our audit were to determine whether Medicaid providers billed for Human Immunodeficiency Virus drug resistance tests in accordance with Department of Health regulations and whether overpayments were made for such services during the five years ended December 31, 2007.

AUDIT RESULTS - SUMMARY

Human Immunodeficiency Virus (HIV) drug resistance testing is used to establish more effective treatment plans for HIV infected patients who become resistant to medications used to treat the virus. HIV drug resistance testing is a covered service up to a maximum of three tests per recipient per year.

For our five year audit period, we identified more than \$1.27 million in inappropriate Medicaid payments for HIV drug resistance tests. Our review of Medicaid claims data showed drug resistance tests were billed by providers more frequently than allowed.

The overpayments occurred because providers did not comply with Department of Health guidelines and eMedNY - the claims payment and information reporting system for Medicaid - lacks the controls necessary to detect and prevent these overpayments. Our report contains three recommendations to recover overpayments and improve controls to prevent payments for HIV drug resistance tests that do not comply with Department of Health regulations.

This report dated September 8, 2008, is available on our website at: <http://www.osc.state.ny.us>. Add or update your mailing list address by contacting us at: (518) 474-3271 or
Office of the State Comptroller
Division of State Government Accountability
110 State Street, 11th Floor
Albany, NY 12236

BACKGROUND

The Department of Health (Department) administers the Medicaid program. Medicaid provides medical assistance to recipients with Human Immunodeficiency Virus (HIV) and Acquired Immunodeficiency Syndrome (AIDS), a more advanced stage of the HIV disease. As of December 2005, the Department reported 112,308 known cases of HIV and AIDS in New York State. HIV is characterized by high replication, typically with billions of HIV particles produced daily. Further, the virus has a high mutation rate, which often results in the production of new strains that might be resistant to one or more antiretroviral drugs (the medications used to treat the virus).

Drug resistance tests help determine an individual's resistance to antiretroviral drugs in order to establish more effective treatment plans. Two types of drug resistance tests are available to HIV-infected persons: genotypic and phenotypic tests. Beginning October 1, 2002, genotypic and phenotypic resistance tests were no longer included in the benefit package of Managed Care Plans; they are now separately reimbursable by Medicaid on a fee-for-service basis. Since January 1, 2003, Medicaid has paid approximately \$22.5 million for HIV drug resistance tests.

AUDIT FINDINGS AND RECOMMENDATIONS

Tests in Excess of the Allowed Maximum

As outlined in the New York State Medicaid Laboratory Procedure Codes Manual, HIV drug resistance testing is a covered service, when clinically indicated, up to a maximum of three genotypic and phenotypic tests (in any combination) per recipient per year. Laboratories, designated AIDS centers, residential health care facilities and ordering practitioners were reminded of the payment policies applicable to laboratory billings for HIV drug resistance testing in the September 2002 and December 2002 editions of *Medicaid Update*, the Department's official publication for Medicaid providers.

For our five year audit period, we found that providers did not always follow Department guidelines when billing Medicaid for HIV drug resistance tests. During this period, Medicaid paid more than \$1.27 million to laboratories for genotypic and phenotypic tests in excess of Department limitations. We analyzed the \$1.27 million in excessive billings and determined that providers billed more than the allowed number of tests because the eMedNY system edit does not function as intended.

The regulations allow providers to bill up to three drug resistance tests per recipient per year. More specifically, the limitation of three applies to any combination of genotypic and phenotypic drug resistance testing. The eMedNY edit, however, is currently designed to deny a claim if a provider bills more than three of the same drug resistance test within 365 days. The edit fails to detect and prevent payment for combinations of drug resistance tests that exceed the three tests per year limit as Department policy dictates.

For instance, within a one year period the edit would not allow a provider to be reimbursed for more than three genotypic tests; a claim for a fourth genotypic test would be denied. However, the edit would not prevent a provider from being reimbursed for three genotypic tests, three phenotypic tests and three virtual phenotypic tests, or nine tests in one year. During our review, we observed the most tests billed over a one-year period by a provider for one recipient were twelve different genotypic and phenotypic tests. The edit does not consider different drug resistance tests in its count of three tests per year per recipient. Therefore, the edit does not limit the number of tests imposed by the regulations.

Our review of requisition forms and test result reports supporting excessive billings for HIV drug resistance tests confirmed instances of inappropriate billing. These results and the claim detail supporting the \$1.27 million in excessive billings were shared with the Department and referred to the New York State Office of the Medicaid Inspector General. As a result, the Office of the Medicaid Inspector General will review the identified payments and pursue appropriate recoveries. We further recommend that the eMedNY frequency edit be corrected and providers be reminded of the HIV drug resistance test billing requirements and limitations.

Recommendations

1. Review the \$1.27 million in payments we identified and recover inappropriate payments.
2. Implement the appropriate combination edit to the eMedNY system to prevent overpayments from occurring.

3. Remind providers of the appropriate way to bill Medicaid for HIV drug resistance tests.

AUDIT SCOPE AND METHODOLOGY

We conducted our performance audit in accordance with generally accepted government auditing standards. We audited the Department's administration of Medicaid payments for HIV drug resistance testing for the period January 1, 2003 through December 31, 2007.

To accomplish our objectives we met with Department and New York State Office of the Medicaid Inspector General representatives to gain an understanding of the policies and controls surrounding the appropriateness of payments for HIV drug resistance tests. We examined the Department's relevant policies and procedures. We extracted questionable claims from eMedNY and verified the accuracy of such payments through a review of documentation (requisition forms and test result reports) supporting Medicaid payments for HIV drug resistance tests for a random sample of 100 recipients.

In addition to being the State Auditor, the Comptroller performs certain other constitutionally and statutorily mandated duties as the chief fiscal officer of New York State. These include operating the State's accounting system; preparing the State's financial statements; and approving State contracts, refunds, and other payments. In addition, the Comptroller appoints members to certain boards, commissions, and public authorities, some of who have minority voting rights. These duties may be considered management functions for purposes of

evaluating organizational independence under generally accepted government auditing standards. In our opinion, these functions do not affect our ability to conduct independent audits of program performance.

AUTHORITY

The audit was performed 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.

REPORTING REQUIREMENTS

We provided a draft copy of this report to Department officials for their review and comment. Department officials generally agreed with our recommendations and indicated actions planned or taken to implement them. We considered their comments in preparing this report. A complete copy of the Department's response is included as Appendix A.

Within 90 days of the final release of this report, as required by Section 170 of the Executive Law, the Commissioner of the Department shall report to the Governor, the State Comptroller, and the leaders of the Legislature and fiscal committees, advising what steps were taken to implement the recommendations contained herein, and where recommendations were not implemented, the reasons therefor.

CONTRIBUTORS TO THE REPORT

Major contributors to this report include Steven Sossei, Sheila Emminger, Andrea Inman, Christopher Morris, Ekaterina Merrill and Kelly Evers Engel.

APPENDIX A - AUDITEE RESPONSE



Corning Tower The Governor Nelson A. Rockefeller Empire State Plaza Albany, New York 12237

Richard F. Daines, M.D.
Commissioner

Wendy E. Saunders
Chief of Staff

June 27, 2008

Sheila A. Emminger, Audit Manager
Office of the State Comptroller
Division of State Services
State Audit Bureau
110 State Street, 11th Floor
Albany, New York 12236

Dear Ms. Emminger:

Enclosed are the Department of Health's comments on the Office of the State Comptroller's draft audit report 2007-S-137 on "Medicaid Payments for Human Immunodeficiency Virus (HIV) Drug Resistance Testing."

Thank you for the opportunity to comment.

Sincerely,

Wendy E. Saunders
Chief of Staff

Enclosure

cc: Stephen Abbott
Deborah Bachrach
Humberto Cruz
Ira Feldman
Randall Griffin
Gail Kerker
Sandra Pettinato
Robert W. Reed
Philip Seward
James Sheehan

**Department of Health
Comments on the
Office of the State Comptroller's
Draft Audit Report 2007-S-137 on
"Medicaid Payments for Human Immunodeficiency Virus
(HIV) Drug Resistance Testing"**

The following are the Department of Health's (Department) comments in response to Office of the State Comptroller (OSC) draft audit report 2007-S-137 on "Medicaid Payments for Human Immunodeficiency Virus (HIV) Drug Resistance Testing".

Recommendation #1:

Review the \$1.27 million in payments we identified and recover inappropriate payments.

Response #1:

The Department will collaborate with the Office of the Medicaid Inspector General (OMIG) on the issues identified in the report, following which the OMIG will review the claims and pursue recoveries where appropriate. As part of this effort, the Department has initiated review of the current standard of care for HIV drug resistance testing, including implications of the FDA's March 2003 approval of the HIV drug Fuzeon. Availability of this drug may necessitate four HIV drug resistance tests rather than three, which would reduce the \$1.27 million in potential overpayments identified by the audit.

Recommendation #2:

Implement the appropriate combination edit to the eMedNY system to prevent overpayments from occurring.

Response #2:

The Department agrees and will initiate modification of the existing eMedNY combination edit to deny claims whenever more than three (or potentially four, based on the above-noted standard of care review) of any combination of HIV drug resistance tests are billed for the same individual within a 365 day period.

Recommendation #3:

Remind providers of the appropriate way to bill Medicaid for HIV drug resistance tests.

Response #3:

The Department agrees and will include an article reminding providers of the appropriate way to bill for HIV drug resistance tests in an upcoming edition of its monthly Medicaid Update provider publication.