



New York State Department of Health

Monitoring of Medicaid Payments for Nursing Home Bed Reserve Days

Report 2010-S-21



Thomas P. DiNapoli

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State of New York Office of the State Comptroller

Division of State Government Accountability

December 9, 2010

Richard F. Daines, M.D.
Commissioner
Department of Health
Corning Office Building
Empire State Plaza
Albany, New York 12237

Dear Dr. Daines:

The Office of the State Comptroller is committed to helping State agencies, public authorities and local government agencies manage government resources efficiently and effectively and, by so doing, providing accountability for tax dollars spent to support government operations. The Comptroller oversees the fiscal affairs of State agencies, public authorities and local government agencies, as well as their compliance with relevant statutes and their observance of good business practices. This fiscal oversight is accomplished, in part, through our audits, which identify opportunities for improving operations. Audits can also identify strategies for reducing costs and strengthening controls that are intended to safeguard assets.

Following is a report of our audit of *Monitoring of Medicaid Payments for Nursing Home Bed Reserve Days*. This audit was performed pursuant to the State Comptroller's authority under Article V, Section 1 of the State Constitution and Article II, Section 8 of the State Finance Law.

This audit's results and recommendations are resources for you to use in effectively managing your operations and in meeting the expectations of taxpayers. If you have any questions about this report, please feel free to contact us.

Respectfully submitted,

*Office of the State Comptroller
Division of State Government Accountability*

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State of New York Office of the State Comptroller

EXECUTIVE SUMMARY

Audit Objectives

The objectives of our audit were to determine if nursing home claims submitted to Medicaid for hospital bed reserve days were appropriate, and if not, to what extent did nursing home claims exceed the bed reserve day limits and were Medicaid overpayments made.

Audit Results – Summary

If a Medicaid-eligible nursing home patient needs to be temporarily hospitalized, Medicaid will often pay the nursing home to reserve a bed for a limited number of days pending the patient's return. Our analysis of payment data from the Department's eMedNY system indicated that, for the five years ended March 31, 2010, Medicaid had paid \$28 million for bed reserve claims that exceeded the 20-day limit then in effect. We audited the claims filed by two nursing homes, which accounted for over 60 percent (\$17.6 million) of these payments and found the facilities had been systematically miscoding claims for days that should have been billed as standard care because the patients were no longer hospitalized. Because the reimbursement rates were the same for standard and reserve care during the period of our audit, we determined that no significant overpayments occurred.

More importantly however, our audit showed that the controls built into the eMedNY system would not prevent payments for bed reserve days beyond the statutory limits. Furthermore, although three different arms of the Department (the Office of Long Term Care, the Bureau of eMedNY and the Office of the Medicaid Inspector General) have the ability to monitor these payments for potential irregularity, none were actively doing so. As a result, not only was eMedNY vulnerable to pay excessive claims for bed reserve days, but the claims data that management uses to monitor and make decisions about nursing home capacity and usage was inaccurate and unreliable.

The statutes governing reimbursement for bed reserve claims were amended in June 2010 and currently place even greater importance on the components of the Department's internal control system that deal with controlling, monitoring and accurately accounting for these payments. Under the new rules, bed reserve claims are now limited to 14 days per year for each patient, as compared to the prior limitation of 20 days for each hospitalization. Further, nursing homes are now paid a reduced rate for these reserved beds. As a result, although

the billing errors we identified did not result in overpayments under the old law, inaccurate payments will likely occur if these errors are not corrected and controls are not strengthened.

We concluded the Department needs to take proactive steps to remind nursing homes of the proper methods for coding bed reserve claims and needs to better coordinate the monitoring and oversight activities of its various component units. Our report contains three recommendations to strengthen the oversight of bed reserve claims and improve the accuracy of eMedNY data. In their response to our draft report, Department officials generally agreed with our recommendations and indicated that certain steps are planned or have been taken to address them.

This report, dated December 9, 2010, 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

Office of the State Comptroller
Division of State Government Accountability
110 State Street, 11th Floor
Albany, New York 12236

Introduction

Background

The Department of Health (Department) administers the New York State Medicaid program, including the processing of Medicaid claims for payments to skilled nursing facilities (nursing homes). The Department's eMedNY computer system processes Medicaid claims submitted by providers for services rendered to Medicaid eligible recipients, issues payments to reimburse the providers for their claims, and generates various reports for program management's informational needs. The Department and the Office of the Medicaid Inspector General (OMIG) monitor payments to providers, including nursing homes, to ensure their propriety and to recover overpayments as they are identified.

When a Medicaid supported nursing home resident is required to leave their nursing home bed for inpatient hospital care, the nursing home is required to keep the bed available (or reserved) until the resident is ready to return, for a maximum of 20 days. If the nursing home has 95 percent or more of its beds filled, Medicaid will pay the nursing home for up to 20 days at the nursing home's standard per diem Medicaid rate to reserve the bed. These payments are called bed reserve days. During such periods, Medicaid costs increase because Medicaid pays the nursing home to reserve the patient's bed and also pays the hospital for inpatient costs.

Prior to recent changes in law, New York State Medicaid allowed for payments of up to 20 bed reserve days per inpatient hospital stay for a Medicaid supported nursing home resident. For the five years ended March 31, 2010, Medicaid paid nursing homes for 526,982 bed reserve claims at a total cost of over \$457 million. During our audit period, the reimbursement rates for standard nursing home care days and bed reserve days were the same, as determined for each nursing home.

In June 2010, legislation revised both the maximum number of days that a bed can be reserved and the payment rate for those reserve days. Specifically, the legislation provides that claims for bed reserve days are now limited to 14 days annually per Medicaid eligible adult patient, and such claims will be paid at 95 percent of a nursing home's standard per diem Medicaid rate. Further, Department officials expect these changes to generate significant cost savings in the Medicaid program.

**Audit
Scope and
Methodology**

The objectives of our audit were to determine if nursing home claims submitted to Medicaid for hospital bed reserve days were appropriate, and if not, to determine the extent to which nursing home claims exceeded the bed reserve day limits and whether Medicaid overpayments were made.

We excluded intermediate care facilities and residential treatment facilities from our audit scope. Our audit covered the period April 1, 2005 through March 31, 2010.

To accomplish our audit objectives, we interviewed officials from the Department and various nursing homes. We reviewed applicable sections of Federal and State laws and regulations, and examined the Department’s Medicaid policies and procedures. We analyzed eMedNY claim data and obtained supporting records from nursing homes.

We conducted our performance audit in accordance with generally accepted government auditing standards. Those standards require that we plan and perform the audit to obtain sufficient, appropriate evidence to provide a reasonable basis for our findings and conclusions based on our audit objectives. We believe that the evidence obtained provides a reasonable basis for our findings and conclusions based on our audit objectives.

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 whom 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 formal comment. We considered the Department’s comments in preparing this report and have included them in their entirety at the end of it. In their response, Department officials generally agreed with our recommendations and indicated that certain steps are planned or

have been taken to address them. Our rejoinders to the Department's response are included in our State Comptroller's Comments.

Within 90 days of the final release of this report, as required by Section 170 of the Executive Law, the Commissioner of Health 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 why.

Contributors to the Report

Major contributors to this report included Steve Sossei, Gail Gorski, Mary Roylance, Sally Perry, and Brian Mason.

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Audit Findings and Recommendations

Miscoded Claims Prior to the amendments of June 2010, Medicaid allowed a nursing home to be paid for up to 20 bed reserve days per inpatient hospital stay for a Medicaid supported resident. Our analysis of the Medicaid payments for bed reserve days for the five-year period ended March 31, 2010, disclosed that Medicaid paid nursing homes for 2,256 episodes¹ (totaling about \$28 million) that exceeded the 20-day limit. A majority of the payments (\$17.6 million of the \$28 million) related to claims submitted by only two nursing homes. One nursing home accounted for 59 percent of the \$28 million in payments, while the other accounted for another 4 percent of the total.

Due to the concentrated pattern of payments and the large number of payments that exceeded the 20-day limit at these two nursing homes, we reviewed the edits in the eMedNY claims processing system to determine why this occurred. We found that the eMedNY system does not have edits that pend or deny bed reserve day claims which exceed the 20-day limit. The system does have an edit designed to detect billings by a nursing home for bed reserve days that exceed 15 consecutive days. However, that edit is set to pay the claims and not to pend or deny them. Thus, controls were not functioning in the eMedNY system to pend or deny claims that exceeded the 20-day limit. More significantly, we determined that neither the Department's Office of Long Term Care (OLTC) nor the Office of the Medicaid Inspector General (OMIG) were aware of this eMedNY system edit, nor were they aware of its ineffectiveness.

To determine why so many claims over the 20-day limit were being submitted (and paid), we reviewed all of the 329 episodes submitted by the two nursing homes that exceeded the 20-day limit. We found that only 93 of the 329 episodes were in fact a bed reserve day claim with a corresponding inpatient hospital claim. Consequently, for 236 (329 - 93) of the episodes, the patients appeared not to have been hospitalized, and the claims submitted as bed reserve days were in fact standard care days. We contacted the two nursing homes to determine if their claims were correct or miscoded, and if they were miscoded, why. After researching the matter, officials from both homes discovered that claims for certain Medicaid patients were miscoded as bed reserve days. In fact, officials at the larger home discovered they had routinely miscoded Medicaid claims for bed reserve days since 1997, due to a billing software error. The nursing homes did not detect the miscoded bed reserve claims

¹ An "episode" is a block of consecutive days where a nursing home coded one or more claims as bed reserve days for a hospital stay.

because they received the expected payments from Medicaid. Further, the miscoded claims did not result in any overpayments to these two nursing homes since the rates paid for both standard care and bed reserve days were the same.

Although the financial impact of the miscoded claims for bed reserve days was not significant for the five-year period we examined, the fact that so many claims were miscoded and processed by the system for years is an indication of the lack of monitoring by the Department. The Department issues formal policies and procedures that nursing homes must follow when submitting claims to Medicaid, including when bed reserve claims are appropriate. We found the Department did not adequately monitor eMedNY processing to provide reasonable assurance that these policies were followed. The Department's OLTC and Bureau of eMedNY and the OMIG are jointly responsible for monitoring compliance with these policies and procedures. However, we concluded that none of these entities actively monitored payments to nursing homes for claims for bed reserve days which exceeded the 20-day limit.

OLTC officials confirmed to us that they do not actively review nursing homes' claim activity. The OMIG reviews claim payments to various Medicaid providers, including nursing homes, to ensure compliance with applicable Medicaid program guidance. However, the OMIG's reviews of claims for bed reserve days were based primarily on the dollar amounts of claims and compliance with the 95 percent of capacity requirement, rather than the 20-day limit. Monitoring conducted by the Bureau of eMedNY is generally at the summary (and not transactional) level, including reviews of total claim payments and unusual processing totals in the weekly Medicaid payment cycles.

Because of the gap in monitoring of bed reserve payments, there was a risk that nursing homes could submit claims for excessive bed reserve days and receive payments without being questioned. The need for improvement in the monitoring of bed reserve day payments is more important with the recent legislative changes for the 2010-2011 year. As a result of the amendments of June 2010, bed reserve day payments are now limited to no more than 14 days per year for adult Medicaid recipients, and the bed reserve day payment is limited to only 95 percent of the nursing home's standard per diem Medicaid rate. However, at the time our audit fieldwork concluded, neither eMedNY nor the Department's other controls would prevent payment in excess of 14 days or prevent payment at the full per diem rate on bed reserve claims.

In response to the legislative changes, OLTC officials began discussions with the Bureau of eMedNY about developing system controls to ensure

compliance with the new limit and new rates. Further, in response to our preliminary audit observations, Department officials generally agreed with our conclusions and recommendations. At their request, we provided officials with lists of nursing homes that miscoded claims for bed reserve days, nursing homes whose bed reserve claims might have exceeded the 20-day limit, and actual overpayments for bed reserves. Department staff will use this information to follow-up with providers and ensure that their billing practices are correct.

- Recommendations**
1. Formally remind all nursing home providers to ensure that claims for standard nursing home per diems and bed reserve days for a hospital stay are coded correctly. If it is determined that such claims are not coded correctly, formally notify providers promptly.
 2. Develop and implement controls within the eMedNY system to prevent payments of claims for bed reserve days in excess of the prescribed limit.
 3. Ensure that the monitoring activities performed by the Department's various components are coordinated sufficiently to establish appropriate accountability over claims for bed reserve days.

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Agency Comments



STATE OF NEW YORK DEPARTMENT OF HEALTH

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

Richard F. Daines, M.D.
Commissioner

James W. Clyne, Jr.
Executive Deputy Commissioner

November 18, 2010

Brian E. Mason, Audit Manager
Office of the State Comptroller
Division of State Government Accountability
110 State Street – 11th Floor
Albany, New York 12236

Dear Mr. Mason:

Enclosed are the New York State Department of Health's comments on the Office of the State Comptroller's draft audit report 2010-S-21 on "Monitoring of Medicaid Payments for Nursing Home Bed Reserve Days."

Thank you for the opportunity to comment.

Sincerely,

James W. Clyne, Jr.
Executive Deputy Commissioner

Enclosure

cc: James Sheehan
Robert W. Reed
Mark L. Kissinger
Donna Frescatore
Diane Christensen
Dennis Wendell
Stephen Abbott
Stephen LaCasse
Ron Farrell
Mary Elwell
Irene Myron
Lynn Oliver

Department of Health
Comments on the Office of the State Comptroller's
Draft Audit Report 2010-S-21
on Monitoring of Medicaid Payments for
Nursing Home Bed Reserve Days

The following are the Department of Health's (Department) comments in response to the Office of the State Comptroller's (OSC) draft audit report 2010-S-21 on "Monitoring of Medicaid Payments for Nursing Home Bed Reserve Days."

General Comments:

The report includes discussion of the Office of the Medicaid Inspector General's (OMIG) oversight of bed reserve claims and, in particular, OMIG's ability to monitor these claims. According to the report, the OSC audit team conducted this performance audit in accordance with generally accepted government auditing standards. Those standards require that the audit team plan and perform the audit to obtain sufficient, appropriate evidence to provide a reasonable basis for the team's findings and conclusions based on the audit objectives. In accordance with generally accepted standards of audit field work, the auditor must also obtain a sufficient understanding of the entity and its environment.

Based on statements in the report regarding OMIG's oversight ability as it relates to monitoring Medicaid claims, the OMIG is concerned that the OSC audit team did not obtain the sufficient amount of evidence appropriate to provide a reasonable basis for several statements in the report.

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Comment
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The report states that while OMIG reviews claim payments to various Medicaid providers, including nursing homes, to ensure compliance with applicable Medicaid program guidance, the OMIG's review of claims for bed reserve days generally focus on compliance with the 95 percent capacity requirement rather than the 20-day limit. The OMIG respectfully disagrees with this statement. OMIG conducts post-payment audits of bed reserve claims. In selecting providers for these audits, the OMIG identifies potential auditees based on a combination of any of the following four items: (1) a high vacancy percentage based on submitted cost report information; (2) a high amount of Medicaid payments; (3) a high amount of episodes that maximized the 20-day allowable bed reserve billing; and/or (4) prior audit findings. During the course of every OMIG bed-hold audit, every bed-hold episode is reviewed for its propriety. OMIG looks at whether the facility was at the required vacancy level to qualify for a reserved bed payment, whether the facility was paid the proper rate on multi-unit facilities, whether the resident was expected to return to the facility within 15 days of his/her transfer to a hospital and whether payment for the bed-hold episode was for more days than allowed. Whenever an episode is identified that improperly exceeds 20 days of billing, the OMIG identifies and recovers those improper payments that result from the excessive billings. The OMIG also charges interest to the provider on any of these improper payments retroactively to the date of the payment.

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Comment
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Comment
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The report also states that OMIG monitors payments to providers, including nursing homes, to ensure their propriety and to recover overpayments as they are identified. While OMIG has the ability to pend claims for a specific provider when that provider's billing practices indicate

* See State Comptroller's Comments, page 21.

possible fraudulent and wasteful practices, its ability to globally monitor payments, in particular nursing home claims, is limited. The monitoring activity of claims at OMIG is conducted by staff members in the Division of Technology and Business Automation. This is a separate division apart from the Division of Medicaid Audit. In addition to pending claims in particular instances, OMIG staff members from this division routinely monitor edit settings and verify downgrades in edit settings have been properly authorized. The staff members within this division who perform these activities are best suited to discuss OMIG's oversight activity as it relates to claim monitoring and edit monitoring and coordination with the Department of both activities. OMIG understands that staff members in this division were not formally contacted and questioned during the course of this audit.

* Comment 4

The OMIG respectfully submits these concerns to OSC for consideration and is available to answer any questions or provide additional information as needed.

Recommendation #1:

Formally remind all nursing home providers to ensure that claims for standard nursing home per diems and bed reserve days for a hospital stay are coded correctly. If it is determined that such claims are not coded correctly, formally notify providers promptly.

Response #1:

Upon enactment of Chapter 109 of the Laws of 2010 and the resulting changes regarding reserved bed day reimbursement to residential health care facilities, the Department, in consultation with the OMIG, issued two "Dear Administrator" letters informing nursing home providers of the statutory changes related to nursing home reserve bed days and the Department's efforts to implement those changes. These letters, issued July 19, 2010 and August 13, 2010, encouraged nursing home providers to review their bed reservation policies in an effort to ensure compliance with the new statutory requirements and to ensure the protection of each resident's rights. The Department responded to several questions regarding the impact of Chapter 109 on reserved bed day reimbursement, and made this information publically available in an attachment to the letters.

As nursing home providers implement the reserved bed day policy changes, the Department is committed to ensuring they correctly administer the programmatic requirements associated with reserved bed day payment through the surveillance process under state and federal statute.

Recommendation #2:

Develop and implement controls within the eMedNY system to prevent payments of claims for bed reserve days in excess of the prescribed limit.

* See State Comptroller's Comments, page 21.

Response #2:

The Department agrees and has initiated work on eMedNY evolution project EP1530/1530A to ensure that claims submitted are eligible for reimbursement under the new reserved bed day policy.

Recommendation #3:

Ensure that the monitoring activities performed by the Department's various components are coordinated sufficiently to establish appropriate accountability over claims for bed reserve days.

Response #3:

The Department and OMIG agree and will work cooperatively to ensure that monitoring activities are coordinated sufficiently to establish appropriate accountability over claims for bed reserve days. The Department will additionally continue to provide programmatic-related oversight and monitoring of the requirements related to bed reservation to ensure the health and safety of New York State nursing home residents at the time of survey of the facility, and OMIG will continue to perform post-payment reviews of bed reserve claims.

State Comptroller's Comments

1. During the course of the audit, we had multiple meetings and discussions with Department and OMIG officials to discuss audit-related matters in detail. In addition, we conducted in depth analysis and testing of pertinent data relating to nursing home claim payments for bed reserve days. We also provided officials with written preliminary audit findings (including detailed listings of the transactions in question) and held an exit conference with Department and OMIG officials to resolve any outstanding issues. Consequently, we remain confident that the statements in our report are supported by sufficient amounts of evidence to provide a reasonable basis for our conclusions.
2. According to data provided to us by OMIG Division of Audit staff, the dollar amounts of claims and compliance with the 95 percent of capacity requirement were the primary factors used to identify nursing homes for audit. In the course of nursing home audits, Division staff reviewed bed reserve claims in excess of 20 days. However, such claims were rarely the basis for initiating an audit, and consequently, the OMIG had not audited certain providers with bed reserve claims that exceeded the 20-day limit. We have also revised our report to reflect this matter more accurately.
3. We do not dispute the actions taken by the OMIG when an episode is identified that exceeds the 20-day limit for a bed reserve claim. However, as our report concludes, the Department and the OMIG were limited in their ability to identify nursing homes at risk of excessive claims for bed reserve days because considerable amounts of such claims were miscoded. As noted on pages 13-14 of our report, a nursing home submitted nearly \$17.6 million in miscoded bed reserve day claims during our audit period because of a coding error (which existed for 13 years) in its billing system. However, neither the Department nor the OMIG adequately identified and addressed this matter with the provider.
4. Officials from the OMIG's Division of Audit attended the audit's opening conference, discussion of preliminary audit findings, and closing conference. In addition, we met with Division of Audit officials at their office on April 26 and May 20, 2010 to discuss in detail the procedures they used to identify and examine nursing homes at higher risk of improper claims for bed reserve days. At no time did Division of Audit officials refer us to OMIG's Division of Technology and Business Automation (DTBA) or otherwise provide us with information compelling us to meet with DTBA staff. Moreover, as acknowledged in the Department's response, OMIG's ability to globally monitor payments, particularly nursing home claims, is limited. Consequently, the Department was unable to provide any specific details of DTBA monitoring activities, pertaining to bed reserve days, which cause us to change our audit conclusions and recommendations.