



Department of Health

ANDREW M. CUOMO
Governor

HOWARD A. ZUCKER, M.D., J.D.
Commissioner

SALLY DRESLIN, M.S., R.N.
Executive Deputy Commissioner

October 14, 2016

Ms. 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 Ms. Inman:

Enclosed are the Department of Health's comments on the Office of the State Comptroller's Follow-Up Audit Report 2016-F-6 entitled, "Improper Payments for Controlled Substances That Exceed Allowed Dispensing Limits." (2013-S-59)

Thank you for the opportunity to comment.

Sincerely,

A handwritten signature in black ink that reads "Sally Dreslin".

Sally Dreslin, M.S., R.N.
Executive Deputy Commissioner

Enclosure

cc: Michael J. Nazarko
Jason A. Helgerson
Dennis Rosen
James Dematteo
James Cataldo
Ronald Farrell
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**Department of Health
Comments on the
Office of the State Comptroller's
Follow-Up Audit Report 2016-F-6 entitled,
Improper Payments for Controlled Substances That Exceed Allowed
Dispensing Limits (Report 2013-S-59)**

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 2016-F-6 entitled, "Improper Payments for Controlled Substances That Exceed Allowed Dispensing Limits." (Report 2013-S-59)

Background

New York State (NYS) is a national leader in its oversight of the Medicaid Program. The Office of the Medicaid Inspector General (OMIG) conducts on-going audits of the Medicaid program and managed care plans. The Department and OMIG will continue to focus on achieving improvements to the Medicaid program and aggressively fighting fraud, waste and abuse.

Under Governor Cuomo's leadership, the Medicaid Redesign Team (MRT) was created in 2011 to lower health care costs and improve quality of care for its Medicaid members. Since 2011, Medicaid spending has remained under the Global Spending Cap, while at the same time providing health care coverage to an additional 1,405,500 fragile and low income New Yorkers. Additionally, Medicaid spending per recipient decreased to \$7,868 in 2014, consistent with levels from a decade ago.

Recommendation #1

Review the 13,705 fee-for-service pharmacy claims totaling \$1,183,601 in improper payments and make recoveries, as appropriate.

Status – Partially Implemented

Agency Action – The Office of the Medicaid Inspector General (OMIG) investigates and recovers improper Medicaid payments on behalf of the Department. OMIG officials informed us they reviewed the pharmacy claims we identified and initiated audits to begin the recovery of overpayments made to providers. As of August 8, 2016, OMIG completed seven audits that requested the repayment of \$71,150 in overpayments. According to OMIG officials, \$49,600 in overpayments has been recovered.

In addition, as of August 1, 2016, approximately \$311,000 in potential overpayments may no longer be recoverable under federal look-back rules that prohibit the Department from recovering a payment more than six years after the date the corresponding claim was filed. To avoid further loss of recoverable overpayments, we encourage OMIG to place an appropriate priority on the remaining overpayments that are still recoverable.

Response #1

OMIG analyzed the claims, and reviewed the remaining 1,800 providers. Based on the results of the review and analysis, OMIG initiated 76 audits, and 13 audits have been finalized, recovering \$ 49,800.

Recommendation #2

Instruct MCOs to review the 3,323 improper managed care claims and take corrective actions, as necessary.

Status – Implemented

Agency Action – The Department instructed the MCOs to review the improper managed care claims we identified. The MCOs indicated that they reviewed or planned to review the claims and would take corrective actions. In particular, certain MCOs indicated they were implementing controls to prevent payment of the improper claims identified by our report, and many had notified their network pharmacy providers of the supply limits required by the Act.

Response #2

The Department confirms our agreement with this report.

Recommendation #3

Implement eMedNY edits to prevent the payment of fee-for-service pharmacy claims for quantities of controlled substances that exceed supply limits allowed by the Act.

Status – Implemented

Agency Action – In August 2015, the Department implemented eMedNY edit 2193. The edit prevents the payment of fee-for-service pharmacy claims for quantities of controlled substances that exceed the supply limits allowed by the Act. From August 27, 2015 through July 31, 2016, 10,449 pharmacy claims totaling approximately \$3.3 million were denied payment by the new edit.

Response #3

The Department confirms our agreement with this report.

Recommendation #4

Instruct MCOs to implement similar edit controls to prevent the payment of pharmacy claims for quantities of controlled substances that exceed supply limits allowed by the Act.

Status – Implemented

Agency Action – As mentioned previously, the Department instructed the MCOs to review the improper managed care claims identified by our audit (see Recommendation 2, Agency Action). The Department also corresponded with the MCOs about implementing system changes to prevent the payment of pharmacy claims for quantities of controlled substances that exceed supply limits allowed by the Act. Most MCOs indicated they would implement system edits to prevent the payment of these claims. Other MCOs informed the Department they were not going to implement system edits due to low claim volume; instead, they would implement other controls to monitor controlled substance claims for compliance.

Response #4

The Department confirms our agreement with this report.

Recommendation #5

Formally remind pharmacies of the supply limits on controlled substances.

Status – Implemented

Agency Action – In the August 2014 edition of Medicaid Update (the Department's official publication for Medicaid providers), the Department reminded pharmacies of the supply limits on controlled substances.

Response #5

The Department confirms our agreement with this report.

Recommendation #6

Establish consistent guidelines regarding the use of Rx Serial Numbers on pharmacy claims.

Status – Implemented

Agency Action – In our initial audit, we determined the Department provided conflicting guidelines on how Rx Serial Numbers for certain prescriptions for controlled substances should be reported to the Department. For instance, Department guidelines instructed pharmacies to enter a series of "E's" on claims for faxed prescriptions in lieu of the Rx Serial Number from the official State prescription form. However, this conflicted with the New York Codes, Rules and Regulations, which requires (with certain exceptions) that claims for faxed prescriptions contain the Rx Serial Number.

Since the initial audit, in the August 2014 edition of Medicaid Update, the Department instructed pharmacies on how to correctly report the Rx Serial Number for prescriptions that are not ordered using the official New York State prescription form, including telephone, fax, electronic, and other types of prescriptions.

Response #6

The Department confirms our agreement with this report.