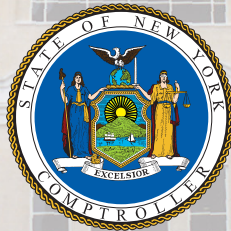




New York State Department of Health

Medicaid Overpayments for Out-of-State Ambulatory Surgery Services

Report 2009-S-29



Thomas P. DiNapoli

Table of Contents

	Page
Authority Letter	5
Executive Summary	7
Introduction.....	9
Background	9
Audit Scope and Methodology	10
Authority.....	10
Reporting Requirements.....	11
Contributors to the Report	11
Audit Findings and Recommendations.....	13
Overpayments to Out-of-State Providers	13
Recommendations	14
Agency Comments	15

State of New York Office of the State Comptroller

Division of State Government Accountability

May 3, 2010

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

Dear Dr. Daines:

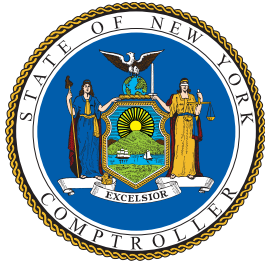
The Office of the State Comptroller is committed to helping State agencies, public authorities and local government agencies manage government resources efficiently and effectively and, by so doing, providing accountability for tax dollars spent to support government operations. The Comptroller oversees 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 the Department of Health, entitled *Medicaid Overpayments for Out-of-State Ambulatory Surgery Services*. 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*



State of New York Office of the State Comptroller

EXECUTIVE SUMMARY

Audit Objective

Our objective was to determine whether the Department of Health was appropriately paying out-of-state providers for ambulatory surgery services to New York State Medicaid recipients.

Audit Results - Summary

The New York State Medicaid program has not been appropriately paying out-of-state providers for their ambulatory surgery services to New York State Medicaid recipients. In fact, the Department of Health (Department) has been making millions of dollars of New York State Medicaid overpayments to out-of-state providers of such services for some time. In total, our audit identified \$12.2 million of actual and potential New York State Medicaid overpayments to such out-of-state providers serving Medicaid recipients from selected counties during our audit period of April 16, 2004 through June 30, 2009.

The overpayments happened because Department management failed to establish the correct payment rates on its eMedNY claims processing system and failed to provide for alternative manual claims review procedures to prevent the overpayments. In fact, we found that the Department's eMedNY System paid out-of-state provider Medicaid claims for ambulatory services as submitted even though the claims were priced much higher than the Department would have permitted for in-state providers of the same services.

Department officials agreed that out-of-state providers were paid incorrectly, and, during the course of the audit, officials implemented a new payment methodology to ensure that out-of-state providers are paid appropriate rates equal to the rates paid to New York State providers.

Our report makes two recommendations to the Department regarding these matters. We recommend that the Department make recoveries based on the audited results and that the Department further examine potentially overpaid out-of-state provider claims for ambulatory surgery services and make recoveries where appropriate.

This report, dated May 3, 2010, is available on our website at <http://www.osc.state.ny.us>.

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Office of the State Comptroller

Division of State Government Accountability

110 State Street, 11th Floor

Albany, NY 12236

Introduction

Background

Medical providers perform ambulatory surgery services on an outpatient basis with the patient returning home the same day as the surgery. Also, according to NYCRR Title 10, Section 755, ambulatory surgery services are done in an operating room on anesthetized patients and do not include outpatient surgical procedures which can be done in a private physician's office or outpatient treatment room. A colonoscopy with a biopsy is an example of an ambulatory surgery service.

New York State Medicaid recipients may obtain ambulatory surgery services from out-of-state providers. According to NYCRR Title 18, Section 527.1, such out-of-state providers should be reimbursed using rates applicable to New York State providers of similar services if the providers are within the usual medical marketing area of the community where the patient resides. According to the State Medical Handbook, the medical directors of New York State county Departments of Social Services are responsible for identifying the out-of-state providers that would qualify as within the medical marketing area (and therefore customarily used by recipients within their district). The applicable reimbursement rates were found in the Department of Health's (Department's) *Products of Ambulatory Surgery* list for New York State providers. Out-of-state providers, not within the usual medical marketing area of the community where the patient resides, were to be reimbursed for charges as billed.

Out-of-state providers of ambulatory surgery services to New York Medicaid recipients must submit their claims to the Department for processing and payment by the Department's eMedNY System. During the period April 16, 2004 through June 30, 2009, the eMedNY System processed 10,905 claims to pay out-of-state providers \$20.7 million for ambulatory surgery services for New York Medicaid recipients. The following table summarizes by state, the Medicaid payments made for out-of-state ambulatory surgery services.

State	Number of Claims	Amount Paid
Vermont	5,992	\$13,401,860
New Jersey	653	\$ 2,554,779
Massachusetts	2,425	\$ 1,761,140
Connecticut	801	\$ 1,680,943
Pennsylvania	774	\$ 551,705
All Other States	260	\$ 738,816
Totals	10,905	\$20,689,243

**Audit
Scope and
Methodology**

We audited to determine whether the Department was appropriately paying out-of-state providers for ambulatory surgery services to New York State Medicaid recipients for the period April 16, 2004 through June 30, 2009.

To accomplish our objective, we contacted Department of Social Services officials at Clinton, Columbia, Dutchess, Essex, Franklin, Orange, Rockland, St. Lawrence, Washington, and Westchester Counties. Based on these contacts, we identified the out-of-state health services providers customarily used by Medicaid recipients from these counties. These providers accounted for \$14.3 million of the total \$20.7 million that the eMedNY system paid to out-of-state providers for ambulatory surgery services (rate code 2877, Ambulatory Surgery - Hospital Based) delivered to New York State recipients for the period April 16, 2004 through June 30, 2009. For the period September 15, 2008 through March 31, 2009, we reviewed 340 claims (totaling \$1,764,719) paid to out-of-state providers who were identified by the ten counties as within the usual medical marketing areas of their Medicaid recipients. For the 132 (of the 340 claims) which equaled \$5,000 or more, we reviewed supporting out-of-state provider documentation. We also compared the payment amounts of the 340 claims to the rate schedules applicable to New York State providers per the State's *Products of Ambulatory Surgery* list.

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 (some of whom have minority voting rights) to certain boards, commissions and public authorities. These duties may be considered management functions for purposes of evaluating organizational independence under generally accepted government auditing standards. In our opinion, these management 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. Department officials generally concurred with our recommendations and indicated the steps that have been and are being taken to implement them.

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 therefor.

Contributors to the Report

Major contributors to this report include Andrea Inman, Amanda Strait, Mark Breunig, Judith McEleney, Constance Walker, Steven Sossei, and Brian Mason.

Audit Findings and Recommendations

Overpayments to Out-of-State Providers

For the period September 15, 2008 through March 31, 2009, we identified 340 payments made to out-of-state providers within usual medical marketing areas (per the counties we contacted) for ambulatory surgery services rendered to New York State Medicaid patients. The out-of state providers were paid \$1,764,719 for these 340 claims. However, when we examined these claims and related documentation, we found that 334 (98 percent) were overpaid, and six claims were underpaid. This resulted in net overpayments totaling \$1,513,329. We concluded that these claims were overpaid because even though they were for services obtained within the usual medical marketing areas, they were not processed or paid using the required (equivalent) New York State pricing schedules. Instead, the Department and the eMedNY System processed and paid these claims at rates up to 100 percent of whatever amount was submitted by the out-of-state providers.

For example, one of the claims we examined was for a colonoscopy with a biopsy. The eMedNY System paid the out-of-state provider \$6,294 for this claim, but a New York State provider in the same usual medical marketing area as the recipient would only have been paid \$453 for this service according to the *Products of Ambulatory Surgery* list. Thus, the Department overpaid the out-of-state provider \$5,841 in this instance.

Most of the overpayments (\$1,396,739) we identified went to providers in Vermont. Another \$110,420 went to a provider in Connecticut, and the remainder (\$6,170) went to a provider in Massachusetts.

The following table illustrates the overpayments by New York State counties where the Medicaid patients resided.

County	Amount of Overpayments
Clinton	\$491,479
St. Lawrence	\$380,895
Franklin	\$334,497
Essex	\$141,150
All Others	\$165,308
Totals	\$1,513,329

We did not examine in detail the remaining 4,800 out-of-state claim payments, made during our audit period, to the out-of-state providers identified by the ten selected counties. The out-of-state providers were paid approximately \$12.5 million for these claims. However, we conclude that these claims are at high risk for potential overpayment amounts in the same proportion (86 percent) as we found for the 340 claims we examined in detail. We reach this conclusion because the 4,800 claims have the same characteristics as the 340 claims that we did test and found were overpaid. Accordingly, we estimate that about \$10.7 million of potential New York State Medicaid overpayments to these out-of-state providers may exist for the audit period.

The actual and potential overpayments could have been prevented if Department management had properly programmed the eMedNY System to apply the correct payment criteria to out-of-state ambulatory surgery claims. In addition, the overpayments may have been prevented if the Department performed manual reviews of such claims as an alternative to or in concert with automated controls. According to Department officials, a unit of staff was once available to perform such manual reviews, but the unit was disbanded about 15 years ago. Since that time, the Department has not been manually reviewing the out-of-state claims for ambulatory surgery services. Consequently, the claims were all being paid as submitted by the providers, thus raising the strong possibility that many more millions of New York State Medicaid dollars have been wasted through overpayment to out-of-state providers.

In response to our findings, Department officials report that effective July 1, 2009, reimbursement rates paid to all out-of-state providers will now be based on New York's new Ambulatory Patient Groups payment system. This will result in payments to out-of-state providers being equal to those of New York State providers.

- Recommendations**
1. Recover the \$1,513,329 in overpayments to out-of-state providers for the claims that we reviewed and re-priced from the ten counties we contacted during our audit.
 2. For the remaining claim payments (to out-of-state providers) that we did not review and re-price, formally assess those payments and identify any overpayments. As appropriate take actions to recover overpayments.

Agency Comments



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

March 9, 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 2009-S-29 on "Medicaid Payments for Out-of-State Ambulatory Surgery Services."

Thank you for the opportunity to comment.

Sincerely,

James W. Clyne, Jr.
Executive Deputy Commissioner

Enclosure

cc: James Sheehan
Robert W. Reed
Donna Frescatore
Diane Christensen
Nicholas Meister
Stephen Abbott
Ron Farrell
Mary Elwell
Irene Myron
Lynn Oliver

**Department of Health
Comments on the
Office of the State Comptroller's
Draft Audit Report 2009-S-29 on
"Medicaid Payments for
Out-of-State Ambulatory Surgery Services"**

The following are the Department of Health's (Department) comments in response to the Office of the State Comptroller's (OSC) draft audit report 2009-S-29 on "Medicaid Payments for Out-of-State Ambulatory Surgery Services", including a general comment followed by responses to the specific recommendations contained in the report.

General Comment:

The OSC findings address overpayments that resulted from differences in the amounts reimbursed out-of-state providers versus those reimbursed in-state providers, through June 30, 2009. It is important to reiterate the information at the end of the Audit Findings section of the OSC report where it is acknowledged that effective July 1, 2009, the Department reimburses out-of-state providers based on the New York State Ambulatory Grouper ("APG") payment system and that this results in payments to out-of-state providers equaling those to in-state providers.

Recommendation #1:

Recover the \$1,513,329 in overpayments to out-of-state providers for the claims that we reviewed and re-priced from the ten counties we contacted during our audit.

Recommendation #2:

For the remaining claim payments (to out-of-state providers) that we did not review and re-price, formally assess those payments and identify any overpayments. As appropriate take actions to recover overpayments.

Responses #1 and #2:

Prior to the start of the OSC audit, the Office of the Medicaid Inspector General (OMIG) had already initiated audits of out-of-state ambulatory surgery provider payments. Three reviews, encompassing payments totaling \$14,682,270 for three border states, have been completed with \$8,964,889 in findings as follows:

- For Vermont, restitution requested \$7,131,062 (Final issued and appeal filed)
- For Connecticut, restitution requested \$785,476 (Final issued)
- For New Jersey, restitution requested \$1,048,351 (Draft issued)

The OMIG is evaluating the potential for additional recoveries.