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STATE OF NEW YORK  
OFFICE OF THE STATE COMPTROLLER

September 2, 2020

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

Re: Improper Medicaid Payments for  
Recipients Diagnosed With Severe  
Malnutrition  
Report 2020-F-9

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, *Improper Medicaid Payments for Recipients Diagnosed With Severe Malnutrition* (Report [2017-S-85](#)).

**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.

Malnutrition can result from the treatment of another condition, inadequate treatment or neglect, or general deterioration of an individual's health. Once malnutrition is identified, a hospital must use the appropriate International Classification of Diseases (ICD) code on its claim to reflect the diagnosis. Generally, as the severity of the malnutrition diagnosis increases, Medicaid's payment to the hospital will increase. Medicaid will only pay for medical care and services that are medically necessary, whose necessity is evident from documentation in the patient's medical record, and that meet existing standards of professional practice.

We issued our initial audit report on April 8, 2019. The audit objective was to determine whether Medicaid made overpayments to hospitals that improperly billed All Patient Refined-Diagnosis Related Group inpatient claims containing a severe malnutrition diagnosis. The audit covered the period from January 1, 2013 through December 31, 2017. For this five-year period, Medicaid paid about \$521 million for 28,997 inpatient claims that included a severe malnutrition diagnosis, of which we sampled 135 claims from four hospitals and identified 44 claims (33

percent), totaling \$416,237 in overpayments when medical records did not appear to support a severe malnutrition diagnosis. By the end of our fieldwork, one hospital resubmitted its claim removing the severe malnutrition diagnosis. This resulted in a \$4,538 in savings. We provided the remaining \$411,699 in claim data to the Office of the Medicaid Inspector General (OMIG) for review and recovery.

The objective of our follow-up was to assess the extent of implementation, as of August 25, 2020, of the two 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, OMIG has not taken action to review the Medicaid overpayments and make any recoveries. Of the initial report's two audit recommendations, one was implemented and one was not implemented.

### **Follow-Up Observations**

#### **Recommendation 1**

*Review the remaining \$411,699 (\$416,237 - \$4,538) in overpayments and make recoveries, as appropriate.*

Status – Not Implemented

Agency Action – OMIG investigates and recovers improper Medicaid payments on behalf of the Department. From the issuance of the audit report on April 8, 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 all hospitals to:*

- *Ensure clinical assessments for severe malnutrition meet existing standards of professional practice;*
- *Only bill for severe malnutrition that meets accurate clinical assessments and Medicaid billing rules; and*
- *Properly document severe malnutrition in a patient's medical record.*

Status – Implemented

Agency Action – In the May 2019 edition of the *Medicaid Update* (the Department's official publication for Medicaid providers), providers were reminded to make certain that the level of malnutrition – e.g., mild, moderate, or severe – is accurately reflected in the "ICD-10" diagnosis code reported on the inpatient claim; the medical record includes a proper clinical assessment that supports the member's diagnosis; and proper documentation of a diagnosis of malnutrition and level of malnutrition is included in the patient's medical record and is subject to audit.

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