Department of Health and Human Services

OFFICE OF INSPECTOR GENERAL

NEW YORK STATE IMPROPERLY CLAIMED MEDICAID REIMBURSEMENT FOR CONTINUOUS 24-HOUR PERSONAL CARE CLAIMS IN ULSTER COUNTY

Inquiries about this report may be addressed to the Office of Public Affairs at Public.Affairs@oig.hhs.gov.

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Office of Inspector General

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EXECUTIVE SUMMARY

New York State claimed $6.3 million in unallowable Federal Medicaid reimbursement over 4 years for continuous 24-hour personal care services provided to beneficiaries in Ulster County.

WHY WE DID THIS REVIEW

In October 2011, the Federal Government reached a settlement with the City of New York for $70 million related to certain claims for Medicaid personal care services for beneficiaries residing in New York City. Specifically, these claims did not comply with requirements related to the authorization and reauthorization of continuous 24-hour care. On the basis of the Federal Government's findings, we audited similar claims for Medicaid beneficiaries residing *outside* New York City and identified that claims submitted on behalf of Ulster County, New York, were potentially at high risk for billing errors because, according to Ulster County Department of Social Services officials, no independent medical review had been performed. Prior Office of Inspector General reviews have consistently identified Medicaid personal care services as vulnerable to waste, fraud, and abuse.

The objective of this review was to determine whether New York State claims for Federal Medicaid reimbursement for continuous 24-hour personal care services provided to beneficiaries residing in Ulster County complied with Federal and State requirements.

BACKGROUND

Personal care services provide assistance to the elderly, people with disabilities, and individuals with chronic or temporary conditions so that they can remain in their homes and communities. These nonmedical services include supporting activities related to daily living, including bathing, dressing, light housework, money management, meal preparation, and transportation.

In New York State, the Department of Health (State agency) administers the Medicaid program. Each county in the State is considered its own local social services district, except the five counties that make up New York City, which are considered a single district. In Ulster County, the Ulster County Department of Social Services is the local social services district (the district). Although the State agency has overall responsibility for the Medicaid program, local districts are responsible for authorizing and arranging personal care services and monitoring the program.

Personal care services must be authorized/reauthorized prior to the initiation of services. As part of the authorization/reauthorization process, the State agency requires a physician, physician's assistant, or nurse practitioner (medical professional) to complete the order for personal care services within 30 calendar days after conducting a medical examination of the Medicaid beneficiary. Further, a registered nurse must prepare a nursing assessment based on a review of the applicable physician's order. A social assessment must also be prepared as part of the authorization/reauthorization process. For continuous 24-hour personal care services, an independent medical review must be completed for each authorization and reauthorization period

by the local professional director, a physician designated by the local professional director, or a physician under contract with the local social services department.

HOW WE CONDUCTED THIS REVIEW

For calendar years 2008 through 2011, the State agency claimed Federal Medicaid reimbursement totaling approximately $12.6 million ($6.3 million Federal share) for 25,797 high-dollar continuous 24-hour personal care services claims provided to beneficiaries residing in Ulster County. (High-dollar claims included services for beneficiaries with total Medicaid paid amounts greater than $10,000.) We reviewed a simple random sample of 30 of these claims.

WHAT WE FOUND

The State agency's claims for Federal Medicaid reimbursement for high-dollar continuous 24-hour personal care services provided to beneficiaries in Ulster County, totaling $6,276,189, did not comply with Federal and State requirements. This occurred because (1) the district did not comply with requirements for assessing and approving continuous 24-hour personal care services and (2) the State agency did not adequately monitor the district's administration of the Ulster County personal care services program.

WHAT WE RECOMMEND

We recommend that the State agency:

- refund $6,276,189 to the Federal Government and

- improve its monitoring of the district to ensure the district's compliance with Federal and State requirements related to continuous 24-hour personal care services.

STATE AGENCY COMMENTS AND OUR RESPONSE

In written comments on our draft report, the State agency did not indicate concurrence or nonconcurrence with our first recommendation (financial disallowance) and generally agreed with our second recommendation.

The State agency stated that its Office of the Medicaid Inspector General (OMIG) will review documentation related to our findings and determine whether a refund is appropriate. In addition, the State agency stated that it should not be penalized for four of the nine claims we found to be in error for lacking a nursing assessment because a nursing assessment was provided. The State agency also indicated that it agreed that social assessments must be completed as part of a comprehensive package and stated that it addressed this subject by issuing policies and guidance materials to social services districts that articulate how the program must be administered. Finally, the State agency indicated that OMIG has been conducting audits of personal care services providers.

After reviewing the State agency's comments, we maintain that our findings and recommendations are valid. A nursing assessment prepared by a registered nurse and based on a review of the applicable physician's order must be prepared for each authorization and reauthorization period. The nursing assessment for each of the four claims referenced in the State agency's comments was prepared after the service date. Further, for each of these claims, no independent medical review was completed for the authorization or reauthorization period applicable to the service date.

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INTRODUCTION

WHY WE DID THIS REVIEW

In October 2011, the Federal Government reached a settlement with the City of New York for $70 million related to certain claims for Medicaid personal care services for beneficiaries residing in New York City. Specifically, these claims did not comply with requirements related to the authorization and reauthorization of continuous 24-hour care. On the basis of the Federal Government's findings, we audited similar claims for Medicaid beneficiaries residing *outside* New York City[1] and identified that claims submitted on behalf of Ulster County, New York, were potentially at high risk for billing errors because, according to Ulster County Department of Social Services officials, no independent medical review had been performed. Prior Office of Inspector General (OIG) reviews have consistently identified Medicaid personal care services as vulnerable to waste, fraud, and abuse. Appendix A contains a list of related OIG reports on Medicaid personal care services.

OBJECTIVE

Our objective was to determine whether New York State claims for Federal Medicaid reimbursement for continuous 24-hour personal care services provided to beneficiaries residing in Ulster County complied with Federal and State requirements.

BACKGROUND

Medicaid Program

The Medicaid program provides medical assistance to low-income individuals and individuals with disabilities. The Federal and State Governments jointly fund and administer the Medicaid program. At the Federal level, the Centers for Medicare & Medicaid Services (CMS) administers the Medicaid program. Each State administers its Medicaid program in accordance with a CMS-approved State plan. Although the State has considerable flexibility in designing and operating its Medicaid program, it must comply with applicable Federal requirements.

In New York State, the Department of Health (State agency) administers the Medicaid program. Each county in the State is considered its own local social services district, except the five counties that make up New York City, which are considered a single district. Although the State agency has overall responsibility for the Medicaid program, the local districts are responsible for authorizing and arranging personal care services and monitoring the program.

New York's Medicaid Personal Care Program

Personal care services provide assistance to the elderly, people with disabilities, and individuals with chronic or temporary conditions so that they can remain in their homes and communities. These nonmedical services include assistance with personal hygiene, dressing and feeding, nutritional and environmental support functions, and other health-related tasks. Under its

[1] We are separately reviewing these claims.

Medicaid State plan, the State agency offers continuous 24-hour personal care services, which it defines as "the provision of uninterrupted care, by more than one person, for a patient who, because of his/her medical condition and disabilities, requires total assistance with toileting and/or walking and/or transferring and/or feeding at unscheduled times during the day and night."[2]

Ulster County Department of Social Services

In Ulster County, the Ulster County Department of Social Services is the local social services district (the district) and administers the Ulster County personal care services program. Specifically, the district is responsible for authorizing and reauthorizing personal care services[3] and ensuring that an independent medical review is performed for all continuous 24-hour personal care cases.

Federal and State Requirements Related to Continuous 24-Hour Personal Care Services

Federal regulations require Medicaid personal care services to be authorized by a physician in accordance with a treatment plan or (at the option of the State) with a service plan approved by the State. Services must be provided by a qualified individual who is not a member of the beneficiary's family.

Office of Management and Budget (OMB) Circular A-87, *Cost Principles for State, Local, and Indian Tribal Governments* (2 CFR part 225), establishes principles and standards for determining allowable costs incurred by State and local governments under Federal awards.[4] To be allowable, costs must be authorized or not prohibited by State or local laws or regulations (2 CFR part 225, App. A, C.1.c).

Personal care services must be authorized/reauthorized prior to the initiation of services. As part of the authorization/reauthorization process, the State agency requires a physician, physician's assistant, or nurse practitioner (medical professional) to complete the order for personal care services within 30 calendar days after conducting a medical examination of the Medicaid beneficiary. Further, a registered nurse must prepare a nursing assessment based on a review of the applicable physician's order. A social assessment must also be prepared as part of the authorization/reauthorization process. For continuous 24-hour personal care services, an independent medical review must be completed for each authorization and reauthorization period by the local professional director, a physician designated by the local professional director, or a physician under contract with the local social services department.

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[2] Effective December 30, 2011, after our audit period, the State agency replaced the term "continuous 24-hour personal care services" in State regulations at 18 NYCRR § 505.14(a)(3) with "continuous personal care services." The new language applies to individuals who require personal care services for more than 16 hours per day at times that cannot be predicted.

[3] During our audit period, a district nurse performed nursing and social assessments and coordinated with beneficiaries' physicians to obtain physician's orders.

[4] The circular was relocated to 2 CFR part 230. After our audit period, OMB consolidated and streamlined its guidance, which is now located at 2 CFR part 200.

For details on Federal and State requirements related to continuous 24-hour personal care services, see Appendix B.

HOW WE CONDUCTED THIS REVIEW

For calendar years 2008 through 2011, the State agency claimed Federal Medicaid reimbursement totaling approximately $12.6 million ($6.3 million Federal share) for 25,797 high-dollar continuous 24-hour personal care services provided to beneficiaries residing in Ulster County.[5] We reviewed a simple random sample of 30 of these claims.

We conducted this 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.

Appendix C contains the details of our audit scope and methodology, and Appendix D contains the details of our statistical sampling methodology.

FINDINGS

The State agency's claims for Federal Medicaid reimbursement for high-dollar continuous 24-hour personal care services provided to beneficiaries in Ulster County, totaling $6,276,189, did not comply with Federal and State requirements. Specifically, all 30 claims in our sample did not comply with 1 or more of these requirements. The table below summarizes the deficiencies noted and the number of claims that contained each type of deficiency.

Table: Summary of Deficiencies in Sampled Claims

Type of Deficiency	Number of Unallowable Claims[a]
No independent medical review	30
No nursing assessment	9
No social assessment	7
Physician's order not completed within 30 days of medical examination	6
No physician's order	3

[a] The total exceeds 30 because 14 claims contained more than 1 deficiency.

[5] High-dollar claims included services for beneficiaries with total Medicaid paid amounts greater than $10,000.

These deficiencies occurred because (1) the district did not comply with requirements for assessing and approving continuous 24-hour personal care services and (2) the State agency did not adequately monitor the district's administration of the Ulster County personal care services program.

NO INDEPENDENT MEDICAL REVIEW

State regulations require independent medical review to be completed for each authorization and reauthorization period for continuous 24-hour personal care services.[6]

For all 30 sampled claims, no independent medical review was completed for the authorization or reauthorization period applicable to the service date. District officials stated that they were aware that such reviews were required; however, they stated that, owing to various reasons, these reviews were not performed during our audit period.[7] As of June 24, 2014 (the date of our exit conference with the State agency), these reviews still had not been performed.

In 2009, the State agency conducted a monitoring visit of the Ulster County personal care services program to determine compliance with applicable State regulations and policies. The resulting monitoring visit report, dated September 11, 2009, noted that the district did not identify a local professional director whose responsibility was to review and make final determinations regarding the provision of continuous 24-hour personal care services. However, the State agency did not list this finding among those deficiencies that required a written corrective action plan by the district.

NO NURSING ASSESSMENT

A nursing assessment prepared by a registered nurse and based on a review of the applicable physician's order must be prepared for each authorization and reauthorization period.[8]

For 9 of the 30 sampled claims, the district did not provide a nursing assessment completed before the service date and after the applicable physician's order. For four of the nine claims, the nursing assessment was prepared after the service date. For two others, the nursing assessment was prepared before the applicable physician's order. For the remaining three claims, the district did not provide an applicable nursing assessment.

NO SOCIAL ASSESSMENT

A social assessment must be completed for each authorization and reauthorization period.[9]

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[6] 18 NYCRR §§ 505.14(b)(4)(i) and (b)(5)(ix).

[7] District officials stated that a former district commissioner did not think independent medical review was a priority and that no physician was willing to accept the position because of the compensation offered by the district.

[8] 18 NYCRR §§ 505.14(b)(2)(iii), (b)(5)(ix) and (b)(3)(iii)(b).

[9] 18 NYCRR §§ 505.14(b)(2)(ii) and (b)(5)(ix). Regulations further state that the social assessment must be completed by professional staff of the local district and include a discussion with the beneficiary to determine perception of their circumstances and preferences.

For 7 of the 30 sampled claims, the district did not provide us with an applicable social assessment completed before the service date. For three of the seven claims, the applicable social assessment was completed after the service date. For the remaining four claims, the district did not provide a social assessment.

PHYSICIAN'S ORDER NOT COMPLETED WITHIN 30 DAYS OF MEDICAL EXAMINATION

A medical professional is required to complete the physician's orders for personal care services within 30 calendar days after conducting a medical examination of the beneficiary.[10]

For 6 of the 30 sampled claims, a medical professional did not complete the physician's order within 30 calendar days of the beneficiary's medical examination.[11]

NO PHYSICIAN'S ORDER

Personal care services must be authorized by a physician for each authorization and reauthorization period.[12]

For 3 of the 30 sampled claims, a physician's order for personal care services was not completed before the service date. For two of the three claims, the applicable physician's order was completed after the service date. For the remaining claim, there was no evidence that the applicable physician's order was completed.

CONCLUSION

These deficiencies occurred because (1) the district did not comply with requirements for assessing and approving continuous 24-hour personal care services and (2) the State agency did not adequately monitor the district's administration of the Ulster County personal care services program. On the basis of our sample results, we concluded that the State agency improperly claimed $6,276,189 in Federal Medicaid reimbursement for high-dollar continuous 24-hour personal care services that did not comply with Federal and State requirements.

[10] 18 NYCRR §§ 505.14(b)(3)(i)(a)(1) and (b)(5)(ix).

[11] To be conservative, we questioned a claim only when a medical professional had not completed the physician's order within 60 calendar days after the beneficiary's medical examination.

[12] 18 NYCRR §§ 505.14(b)(2)(i) and (b)(5)(ix).

RECOMMENDATIONS

We recommend that the State agency:

- refund $6,276,189 to the Federal Government and

- improve its monitoring of the district to ensure the district's compliance with Federal and State requirements related to continuous 24-hour personal care services.

STATE AGENCY COMMENTS

In written comments on our draft report, the State agency did not indicate concurrence or nonconcurrence with our first recommendation (financial disallowance) and generally agreed with our second recommendation.

The State agency stated that its Office of the Medicaid Inspector General (OMIG) will review documentation related to our findings and determine whether a refund is appropriate. In addition, the State agency stated that it should not be penalized for four of the nine claims we found to be in error for lacking a nursing assessment because a nursing assessment was provided. The State agency also indicated that it agreed that social assessments must be completed as part of a comprehensive package and stated that it addressed this subject by issuing policies and guidance materials to social services districts that articulate how the program must be administered. Finally, the State agency indicated that OMIG has been conducting audits of personal care services providers.

The State agency's comments appear in their entirety as Appendix E.

OFFICE OF INSPECTOR GENERAL RESPONSE

After reviewing the State agency's comments, we maintain that our findings and recommendations are valid. A nursing assessment prepared by a registered nurse and based on a review of the applicable physician's order must be prepared for each authorization and reauthorization period. The nursing assessment for each of the four claims referenced in the State agency's comments was prepared after the service date. Further, for each of these claims, no independent medical review was completed for the authorization or reauthorization period applicable to the service date.

APPENDIX A: RELATED OFFICE OF INSPECTOR GENERAL REPORTS

Report Title	Report Number	Date Issued
Maryland Improperly Claimed Personal Care Services Provided Under Its Medicaid Home and Community-Based Services Waiver for Older Adults	A-03-11-00201	4/11/2013
Missouri Claimed Federal Reimbursement for Unallowable Personal Care Services Claims Submitted by The Whole Person, Incorporated	A-07-11-03170	3/6/2013
Personal Care Services: Trends, Vulnerabilities, and Recommendations for Improvement	OIG-12-12-01	11/15/2012
West Virginia Improperly Claimed Some Personal Care Services Under Its Medicaid State Plan	A-03-11-00204	10/3/2012
New Jersey Did Not Always Claim Federal Medicaid Reimbursement for Personal Care Services Made by Bayada Nurses, Inc., in Accordance With Federal and State Requirements	A-02-10-01001	9/24/2012
Missouri Claimed Federal Reimbursement for Unallowable Personal Care Services Claims	A-07-11-03171	9/24/2012
Review of New Mexico Medicaid Personal Care Services Provided by Clovis Homecare, Inc.	A-06-09-00117	6/15/2012
Review of Medicaid Personal Care Services Claims Made by Providers in New York State	A-02-08-01005	10/13/2010
Review of Medicaid Personal Care Services Claims Made by Providers in New York City	A-02-07-01054	6/8/2009

APPENDIX B: FEDERAL AND STATE REQUIREMENTS RELATED TO CONTINUOUS 24-HOUR PERSONAL CARE SERVICES

FEDERAL REQUIREMENTS

Section 1905(a)(24) of the Social Security Act authorizes personal care services under the Medicaid State plan. Federal regulations (42 CFR § 440.167) define personal care services as services furnished to an individual who is not an inpatient or resident of a hospital, nursing facility, intermediate care facility for the mentally retarded, or institution for mental disease that are (1) authorized for the individual by a physician in accordance with a plan of treatment or (at the option of the State) otherwise authorized for the individual in accordance with a service plan approved by the State; (2) provided by an individual who is qualified to provide such services and who is not a member of the individual's family; and (3) furnished in a home, or at the State's option, in another location.

OMB Circular A-87, *Cost Principles for State, Local, and Indian Tribal Governments* (2 CFR part 225) establishes principles and standards for determining allowable costs incurred by State and local governments under Federal awards. To be allowable, costs must be authorized or not prohibited by State or local laws or regulations (2 CFR part 225, App. A, C.1.c).

STATE REQUIREMENTS

State regulations (18 New York Compilation of Codes, Rules and Regulations (NYCRR) §§ 505.14(b)(4)(i) and (b)(5)(ix)) specify that all continuous 24-hour personal care services must receive an independent medical review with each authorization and reauthorization period. The independent medical review should be completed by the local professional director, a physician designated by the local professional director, or a physician under contract with the local social services department. Each independent medical review should include a review of the physician's order, the social assessment, and the nursing assessment. Also, there should be evidence in the medical records/case records that indicates that the patient requires total assistance with toileting, walking, transferring and/or feeding.

State regulations (18 NYCRR §§ 505.14(b)(2)(iii), (b)(5)(ix), and (b)(3)(iii)(b)) specify that the nursing assessment shall be completed for each authorization and reauthorization period by a nurse from the certified home health agency, or a nurse employed by the local social services department, or a nurse employed by a voluntary or proprietary agency under contract with the local social services department. The nursing assessment must include a review and interpretation of the physician's order.

State regulations (18 NYCRR §§ 505.14(b)(2)(i) and (b)(5)(ix)) specify that personal care services are required to be authorized by a physician for each authorization period.

State regulations (18 NYCRR §§ 505.14(b)(3)(i)(a) and (b)(5)(ix)) specify that the physician's order form must be completed by a physician licensed in accordance with article 131 of the Education Law, a physician's assistant or a specialist's assistant registered in accordance with

article 131-B of the Education Law, or a nurse practitioner certified in accordance with article 139 of the Education Law.

State regulations (18 NYCRR §§ 505.14(b)(3)(i)(a)(1), (b)(3)(i)(b), and (b)(5)(ix)) specify that such medical professional must complete the physician's order form within 30 calendar days after he or she conducts a medical examination of the patient, and the physician's order form must be forwarded to a social services district. A physician must sign the physician's order form and certify that the patient can be cared for at home and that the information provided in the physician's order form accurately describes the patient's medical condition and regimens, including any medication regimens, and the patient's need for assistance with personal care services tasks, at the time of the medical examination.

State regulations (18 NYCRR §§ 505.14(b)(2)(ii), (b)(3)(ii) and (b)(5)(ix)) specify that the social assessment shall be completed by professional staff of the local social services department on forms approved by the State Department of Social Services. The social assessment shall include a discussion with the patient to determine perception of his/her circumstances and preferences. The social assessment shall include an evaluation of the potential contribution of informal caregivers, such as family and friends, to the patient's care, and shall consider all of the following: (1) number and kind of informal caregivers available to the patient, (2) ability and motivation of informal caregivers to assist in care, (3) extent of informal caregivers' potential involvement, (4) availability of informal caregivers for future assistance, and (5) acceptability to the patient of the informal caregivers' involvement in his/her care. The social assessment shall be completed on a timely basis and shall be current.

APPENDIX C: AUDIT SCOPE AND METHODOLOGY

SCOPE

Our review covered 25,797 high-dollar continuous 24-hour personal care claim lines, totaling $12,552,379 ($6,276,189 Federal share), for beneficiaries residing in Ulster County for the period January 1, 2008, through December 31, 2011. (In this report, we refer to these lines as claims.)

During our audit, we did not review the overall internal control structure of the State agency, the district, or the Medicaid program. Rather, we reviewed only the internal controls that pertained directly to our objective.

We performed fieldwork at the State agency's office in Albany, New York; the Medicaid Management Information System (MMIS) fiscal agent in Rensselaer, New York; and at the district's offices in Kingston, New York.

METHODOLOGY

To accomplish our objective, we:

- reviewed applicable Federal and State requirements;
- held discussions with State agency and district officials to gain an understanding of the continuous 24-hour personal care services program;
- ran computer programming applications at the MMIS fiscal agent[13] that identified a sampling frame of 25,797 high-dollar continuous 24-hour personal care services claims, totaling $12,552,379 ($6,276,189 Federal share), for beneficiaries residing in Ulster County;[14]
- selected a simple random sample of 30 claims from the sampling frame of 25,797 claims to confirm that the claims did not comply with Federal and State requirements for Federal Medicaid reimbursement;
- obtained beneficiary case files from the district and reviewed the documentation supporting each of the 30 claims; and
- discussed our results with State agency officials.

[13] The State agency uses the MMIS, a computerized payment and information reporting system, to process and pay Medicaid claims and has contracted with Computer Sciences Corporation to be its MMIS fiscal agent.

[14] High-dollar claims included services for beneficiaries with total Medicaid paid amounts greater than $10,000.

We conducted this 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.

APPENDIX D: STATISTICAL SAMPLING METHODOLOGY

POPULATION

The population was Medicaid continuous 24-hour personal care services claim lines (claims) submitted for beneficiaries residing in Ulster County, for which Medicaid paid more than $10,000 per beneficiary during our January 1, 2008, through December 31, 2011, audit period.

SAMPLING FRAME

The sampling frame was a computer file containing 25,797 claims for continuous 24-hour personal care services for beneficiaries with more than $10,000 Medicaid paid who resided in Ulster County. The total Medicaid reimbursement for the 25,797 claims was $12,552,379 ($6,276,189 Federal share). The Medicaid claims were extracted from the claims' files maintained at the State's MMIS fiscal agent.

SAMPLE UNIT

The sample unit was a 24-hour personal care service on a Federal Medicaid claim.

SAMPLE DESIGN

We used a discovery sample to evaluate the population.

SAMPLE SIZE

We selected a sample of 30 claims.

SOURCE OF RANDOM NUMBERS

We generated the random numbers with the Office of Inspector General, Office of Audit Services (OAS), statistical software.

METHOD FOR SELECTING SAMPLE ITEMS

We consecutively numbered the 25,797 claims. After generating 30 random numbers, we selected the corresponding frame items.

DISCOVERY SAMPLING METHODOLOGY

Because all 30 sample items were determined to be unallowable, we have audit evidence to support the disallowance of all sample units that comprise the sampling frame.

APPENDIX E: STATE AGENCY COMMENTS

ANDREW M. CUOMO
Governor

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

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

January 16, 2015

Mr. James P. Edert
Regional Inspector General for Audit Services
Department of Health and Human Services - Region II
Jacob Javitz Federal Building
26 Federal Plaza
New York, New York 10278

Ref. No: A-02-14-01003

Dear Mr. Edert:

Enclosed are the New York State Department of Health's comments on the United States Department of Health and Human Services, Office of Inspector General's Draft Audit Report A-02-14-01003 entitled, "New York State Improperly Claimed Medicaid Reimbursement for Continuous 24-Hour Personal Care Claims in Ulster County."

Thank you for the opportunity to comment.

Sincerely,

Sally Dreslin

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

Enclosure

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New York State Department of Health
Comments on the
Department of Health and Human Services
Office of Inspector General
Draft Audit Report A-02-14-01003 entitled
"New York State Improperly Claimed Medicaid Reimbursement for Continuous 24-Hour Personal Care Claims in Ulster County"

The following are the New York State Department of Health's (Department) comments in response to the Department of Health and Human Services, Office of Inspector General (OIG) Draft Audit Report A-02-14-01003 entitled, "New York State Improperly Claimed Medicaid Reimbursement for Continuous 24-Hour Personal Care Claims in Ulster County."

General Comments

New York State's (NYS) Personal Care Services Program (PCSP) was established in 1973 and is one of the oldest and largest in the country. Regulations were developed when the program largely served elderly women living alone who had some informal supports and who had occasional need for assistance with the activities of daily living. As a result of federal initiatives and incentives to rebalance states' long term care systems, individuals formerly cared for in institutional settings are now served in their homes and community. Today's PCSP population includes mentally and physically disabled children and younger adults and elderly with co-morbidities whose health and safety are dependent upon the availability of personal care services. NYS has long been nationally recognized as a leader in the development of innovative long term care programs and services which allow individuals to remain in their homes and communities.

NYS continues to successfully implement the transition of individuals in need of community based long term care services for more than 120 days to a managed long term care (MLTC) service model. The transition is close to statewide as of December 22, 2014 with remaining counties scheduled to transition to mandatory status in early 2015. The transition began with the PCSP and has extended to the Consumer Directed Personal Assistance Program (CDPAP), Certified Home Health Services, Private Duty Nursing and the Long Term Home Health Care Program.

To better understand member's experiences as they transition from fee-for-service (FFS) to MLTC, New York's Enrollment Broker, New York Medicaid Choice, conducts a post enrollment Outreach survey with questions specifically designed to measure the rate at which consumers are able to maintain their relationship with their personal care aide or home attendant; consistently over 86 percent of consumers polled expressed satisfaction with the transition and the consistence services. The Department has also developed policies and procedures during the transition to assure the integrity of the home care services provided to all consumers.

The MLTC program meets the budget neutrality requirement. Projected expenditures for both population groups served by the programs, Adults Ages 18-64 Duals and Adult Ages 65+ Duals are lower than they would have been without the Partnership MLTC Program. MLTC Adult Ages 18-64 Expenditures: For MLTC Adults Ages 18-64 Duals, expenditures without the waiver would have been 2.1 percent greater than the waiver. For the one year period Federal Fiscal Year (FFY) 2011-2012 through FFY 2012-2013, the waiver has yielded $25.7 million in projected savings.

A link to the Medicaid Redesign Team (which includes PCSP reforms) and the reports linked to the success of the transition of the personal care services program, as well as other community based FFS programs, is as follows:

http://www.health.ny.gov/health_care/medicaid/redesign/docs/interim_eval_report.pdf

Recommendation #1

Refund $6,276,189 to the Federal Government.

Response #1

The Office of the Medicaid Inspector General (OMIG) requested and received the documentation for review from the OIG. After complete review of that documentation, the OMIG will determine if a refund is appropriate.

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Recommendation #2:

Improve its monitoring of the district to ensure the district's compliance with Federal and State requirements related to continuous 24-hour personal care services.

Response #2

The OMIG is currently conducting these types of audits as part of its normal auditing and monitoring activities of personal care providers.

Additionally, the Department has issued many policies and guidance materials since the audit period occurred in an effort to reinforce compliance with 24-hour cases. Attachment A lists examples of PCSP and/or CDPAP materials shared with districts by subject matter and date.

Conclusion

The Department concludes the following:

1. Of the 30 sampled claims, 4 out of 9 claims that included nursing assessments were prepared after the service date. However, a nursing assessment was included and these cases should not be penalized.

2. The draft report states that some records had a nursing assessment, but no social assessment. The personal care regulations require that social assessments be completed as part of a comprehensive assessment. The Department is committed to continuing to educate the districts on compliance with Federal and State requirements, including the need for social assessment.

3. Since the implementation of the Mainstream Managed Care and MLTC mandatory transition from FFS, there are approximately 250 personal care cases in Ulster County left. As the Department's oversight process includes on-site visits or individual calls/conference calls to assist district staff with questions or to bring clarity to a specific policy change, in Ulster County, the impact is minimal.

STATE MASTER POLICY LIST **ATTACHMENT A**

Policy Name	Policy Link	Effective Start Date
Personal Care Services:		
CDPAP	https://www.emedny.org/Provider Manuals/CDPAP/PDFS/CDPAP_Policy_Manual.pdf	12/22/2011
CDPAP Documents	http://www.health.ny.gov/health_care/medicaid/publications/docs/gis/10oltc-005.pdf	08/25/2010
CDPAP Scope and Procedures	http://www.health.ny.gov/health_care/medicaid/publications/docs/adm/11adm-6.pdf	09/12/2011
Attachment 1	http://www.health.ny.gov/health_care/medicaid/publications/docs/adm/11adm-6att1.pdf	09/12/2011
Attachment 2	http://www.health.ny.gov/health_care/medicaid/publications/docs/adm/11adm-6att2.pdf	09/12/2011
Attachment 3	http://www.health.ny.gov/health_care/medicaid/publications/docs/adm/11adm-6att3.pdf	09/12/2011
Attachment 4	http://www.health.ny.gov/health_care/medicaid/publications/docs/adm/11adm-6att4.pdf	09/12/2011
Attachment 5	http://www.health.ny.gov/health_care/medicaid/publications/docs/adm/11adm-6att5.pdf	09/12/2011
Changes to Personal Care Services Program and CDPAP Regulations Resulting from MRT #4652	http://health.state.nyenet/docs/2012adm/12adm1.pdf	04/09/2012
GIS 10 LTC 005 – CDPAP Documents	http://www.health.ny.gov/health_care/medicaid/publications/docs/gis/10oltc-005.pdf	08/25/2010
NYS UB04 Billing Guidelines – CDPAP	https://www.emedny.org/ProviderManuels/PersonalCare/PDFS/PersonalCare_Billing_Guidelines_UB04.pdf	01/04/2012
11LTC004 – CDPAP Services Provided Out of State	http://www.health.ny.gov/health_care/medicid/publications/docs/gis/11oltc004.pdf	04/13/2011
11LTC007 – New State Law Requiring Automatic Change to No More than 8 Hours Per Week of Nutritional and Environmental Support Functions (Level 1) For Personal Care and CDPAP Consumers Who Are Authorized to Receive Only Nutritional and Environmental Support Functions	http://www.health.ny.gov/health_care/medicaid/publications/docs/gis/11oltc007.pdf	06/03/2011
Attachment 1	http://www.health.ny.gov/health_care/medicaid/publications/docs/gis/11oltc007att1.pdf	06/03/2011
Attachment 2	http://www.health.ny.gov/health_care/medicaid/publications/docs/gis/11oltc007att2.pdf	06/03/2011
Personal Home Care Manual Policy Guidelines	https://www.emedny.org/ProviderManuals/PersonalCare/PDFS/PersonalCareManual-Policy.pdf	2005
Availability of 24-Hour Split-Shift Personal Care Services	http://www.health.ny.gov/health_care/medicaid/publications/docs/gis/12ma026.pdf	10/03/2012
GIS 06 MA/027 – Personal Care Services Contracts	http://www.health.ny.gov/health_care/medicaid/publications/docs/gis/06ma027.pdf	
Notification of District Interest to Contract for the Provision Of Personal Care	http://www.health.state.nyenet/docs/ldss/ltc/b3b1.pdf	
2011 OLCM – 1 – Personal Care Services Program Assessment Protocols	http://www.health.ny.gov/health_care/medicaid/publications/docs/olcm/oltclcm-1.pdf	08/25/2011
Attachment 1	http://www.health.ny.gov/health_care/medicaid/publications/docs/olcm/oltclcm-1att1.pdf	08/25/2011
Attachment 2	http://www.health.ny.gov/health_care/medicaid/publications/docs/olcm/oltclcm-1att2.pdf	08/25/2011
09OLTC005 – District Authorization of Personal Care Services Program (PCSP) and CDPAP Services for Traumatic Brain Injury (TBI) Waiver Participants	http://www.health.ny.gov/health_care/medicaid/publications/docs/gis/09oltc005.pdf	04/29/2009