Department of Health and Human Services

OFFICE OF INSPECTOR GENERAL

NEW YORK'S CLAIMS FOR MEDICAID NURSING HOME TRANSITION AND DIVERSION WAIVER PROGRAM SERVICES GENERALLY COMPLIED WITH FEDERAL AND STATE REQUIREMENTS BUT HAD REIMBURSEMENT ERRORS THAT RESULTED IN A MINIMAL AMOUNT OF OVERPAYMENTS

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

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Deputy Inspector General
for Audit Services

July 2019
A-02-17-01005

Office of Inspector General

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Report in Brief
Date: July 2019
Report No. A-02-17-01005

U.S. DEPARTMENT OF HEALTH & HUMAN SERVICES
OFFICE OF INSPECTOR GENERAL

New York's Claims for Medicaid Nursing Home Transition and Diversion Waiver Program Services Generally Complied With Federal and State Requirements but Had Reimbursement Errors That Resulted in a Minimal Amount of Overpayments

Why OIG Did This Review

During a prior review, we determined that New York claimed Medicaid reimbursement for home and community-based services (HCBS) under a Medicaid waiver program that did not comply with Federal requirements.

New York's Nursing Home Transition and Diversion (NHTD) is an HCBS waiver program. Our objective was to determine whether New York claimed Medicaid reimbursement for NHTD waiver program services in accordance with certain Federal and State requirements.

How OIG Did This Review

Our review covered New York's claims for Medicaid reimbursement for HCBS provided under the NHTD waiver program during calendar years 2014 through 2016 (audit period) for 79,166 beneficiary-months totaling nearly $215 million (Federal share). We reviewed a stratified random sample of 100 beneficiary-months.

What OIG Found

During 33 of 100 sampled beneficiary-months, New York improperly claimed Medicaid reimbursement for some NHTD waiver program services. Specifically, during 31 beneficiary-months, service notes for NHTD waiver program services did not support units billed and, during 2 beneficiary-months, services were performed by individuals whose qualifications were not documented. Although one-third of sampled beneficiary months contained an error, we believe the magnitude of the errors and the financial impact are minimal. As a result, New York was generally compliant with the Federal and State requirements. New York officials stated that the claims for unallowable services occurred, in part, because of high staff turnover or inadequate training at the service providers.

On the basis of our sample results, we estimated that New York improperly claimed at least $466,614 in Federal Medicaid reimbursement for services that did not comply with certain Federal and State requirements.

Additionally, we found instances in which New York's *NHTD Waiver Program Manual*, made available to providers on its website, did not reflect current requirements.

What OIG Recommends and New York's Comments

We recommend that New York 1) refund $466,614 to the Federal Government, 2) update its NHTD Waiver Program Manual to reflect current waiver requirements, and 3) ensure providers properly train personnel to appropriately claim Medicaid reimbursement for NHTD waiver program services.

In written comments on our draft report, the State agency did not indicate concurrence or non-concurrence with our first recommendation, generally agreed with our second and third recommendations, and described corrective actions it had taken or planned to take to address the recommendations. Regarding our recommended financial disallowance, New York stated that it is performing audits in the NHTD waiver program area. New York also stated that it plans to update its *NHTD Waiver Program Manual* in 2019. Additionally, New York will conduct an audit of all relevant program resources posted on its websites and remove outdated information.

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INTRODUCTION

WHY WE DID THIS REVIEW

During a prior Office of Inspector General (OIG) review, we determined that the New York State Department of Health (State agency) claimed Medicaid reimbursement for home and community-based services (HCBS) under a Medicaid waiver program that did not comply with Federal requirements.[1]

OBJECTIVE

Our objective was to determine whether the State agency claimed Medicaid reimbursement for Nursing Home Transition and Diversion (NHTD) waiver program services in accordance with certain Federal and State requirements.

BACKGROUND

The 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 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 Federal requirements.

Home and Community-Based Services Waivers

Section 1915(c) of the Social Security Act (the Act) authorizes HCBS waiver programs. A State's HCBS waiver program must be approved by CMS and allows a State to claim Federal reimbursement for services not usually covered by Medicaid.

New York's Nursing Home Transition and Diversion Waiver Program

In New York, the State agency administers the Medicaid program, including services provided under its NHTD waiver program (an HCBS waiver program). The State agency administers the NHTD waiver program through contractual agreements with Regional Resource Development Centers (RRDCs). RRDCs employ Regional Resource Development Specialists and Nurse Evaluators that serve specific counties throughout the State.

[1] *Some of New York's Claims for Medicaid Long-Term Home Health Care Program Waiver Services were Unallowable* (A-02-13-01030), issued April 7, 2016.

The NHTD waiver program uses Medicaid funding to provide supports and services (such as independent living skills training and wellness counseling) to assist seniors and individuals with disabilities toward successful inclusion in the community. Beneficiaries that choose to participate in the program may come from a nursing facility or other institution, or they may choose to participate to prevent institutionalization.

For details on Federal and State requirements related to New York's NHTD waiver program, see Appendix B.

HOW WE CONDUCTED THIS REVIEW

Our review covered the State agency's claims for Medicaid reimbursement for HCBS provided under its NHTD waiver program during calendar years (CYs) 2014 through 2016 (audit period). During this period, the State agency claimed approximately $428 million ($215 million Federal share) for NHTD waiver program services provided during 79,166 beneficiary-months. Of these claims, we reviewed a stratified random sample of 100 beneficiary-months. A beneficiary-month is defined as all NHTD waiver program services for a beneficiary for 1 month.

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

FINDINGS

The State agency's claims for NHTD waiver program services generally complied with Federal and State requirements. Of the 100 beneficiary-months in our sample, the State agency properly claimed Medicaid reimbursement for all NHTD waiver program services during 67 beneficiary-months. However, the State agency claimed reimbursement for some unallowable NHTD waiver program services during the remaining 33 beneficiary-months.[2] Specifically, during 31 beneficiary-months, service notes for NHTD waiver program services did not support units billed and, during 2 beneficiary-months, services were performed by individuals whose qualifications were not documented.

[2] Although one-third of sampled beneficiary months contained an error, we believe the magnitude of the errors and the financial impact are minimal. As a result, New York was generally compliant with the Federal and State requirements.

According to State agency officials, the claims for unallowable services occurred, in part, because of high staff turnover or inadequate training at the service providers.

On the basis of our sample results, we estimated that the State agency improperly claimed at least $466,614 in Federal Medicaid reimbursement for NHTD waiver program services that did not comply with certain Federal and State requirements.[3]

We also found instances in which the State agency's *NHTD Waiver Program Manual*, made available to providers on its website, did not reflect current requirements.

PROVIDER DOCUMENTATION DID NOT SUPPORT SERVICE UNITS BILLED

States must have agreements with Medicaid providers under which providers agree to keep such records as necessary to fully disclose the extent of the services provided to individuals receiving assistance under a State plan (section 1902(a)(27) of the Act). In addition, Federal cost principles require providers to maintain documentation of services provided.[4] Additionally, costs must be adequately documented to be allowable under Federal Awards (45 CFR 75.403(g)).

During 31 sampled beneficiary-months, the State agency claimed reimbursement for service units billed that exceeded the service units documented. For example, during 1 beneficiary-month, service notes supported 14 hours of services; however, the provider claimed 24 hours of service. Therefore, we determined that 10 hours of services were unallowable.

PROVIDER QUALIFICATIONS NOT DOCUMENTED

HCBS must meet Federal standards concerning health and welfare assurance (42 CFR § 440.180(a)(2)). Those standards include assuring that individuals furnishing HCBS meet State licensure standards or certification requirements (42 CFR § 441.302(a)(2)). In New York, home health aides must be certified by an approved Home Health Aide Training Program and listed on the State's Home Care Registry (10 New York Codes, Rules and Regulations (NYCRR) § 700.2(b)(9)).

[3] To be conservative, we recommend recovery of overpayments at the lower limit of a two-sided 90-percent confidence interval. Lower limits calculated in this manner are designed to be less than the actual overpayment total 95 percent of the time.

[4] Specifically, costs must be adequately documented to be allowable under Federal awards (2 CFR § 225, App. A § C.1.j (Office of Management and Budget (OMB) Circular A-87, *Cost Principles for State, Local, and Tribal Governments*)). During our audit period, OMB consolidated and streamlined its guidance regarding all entities that receive and administer Federal awards. The consolidated guidance is now located at 2 CFR part 200. Expenditures are allowable only to the extent that, when a claim is filed, there is adequate supporting documentation in readily reviewable form to assure that all applicable Federal requirements have been met (section 2497.1 of CMS's *State Medicaid Manual*).

During 2 beneficiary-months, the State agency claimed reimbursement for some services performed by a home health aide whose qualifications were not documented by the associated provider.

STATE MANUAL OUTDATED

During our review, we determined that the State agency's *NHTD Waiver Program Manual*, dated April 2008 and available on its website, is outdated. For example, the manual states that, to be eligible for the NHTD waiver program, a beneficiary must be assessed to need a "nursing home" level-of-care, as determined by an assessment tool that the State agency replaced in 2014.[5] In its HCBS waiver agreement, the State agency stated that it implemented the assessment tool it began using in 2014. However, its *NHTD Waiver Program Manual* has not been updated to reflect the use of this new assessment tool. Additionally, the *NHTD Waiver Program Manual* states that beneficiary service plans must be updated/revised at least every 6 months. However, in a CMS-approved amendment to its HCBS waiver agreement, the State agency revised this requirement to at least once annually.

RECOMMENDATIONS

We recommend that the New York State Department of Health:

- refund $466,614 to the Federal Government,
- update its *NHTD Waiver Program Manual* to reflect current waiver requirements, and
- ensure providers properly train personnel to appropriately claim Medicaid reimbursement for NHTD waiver program services.

OTHER MATTERS: INDIVIDUAL SERVICE REPORTS NOT SUBMITTED TIMELY

A service plan of care (care plan) is developed for each beneficiary that participates in the NHTD waiver program (42 CFR §441.301(b)(1)(i)). The State agency does not claim Federal Medicaid reimbursement for waiver program services furnished prior to the development of the care plan or for services not included in the care plan. Individual service reports (ISRs) describe providers' activities during the past 6 months and the beneficiary's future goals. ISRs are used as part of the development of the beneficiary's revised care plan. The State agency's *NHTD Waiver Program Manual* states that ISRs must be submitted by providers to the beneficiary's service coordinator at least 6 weeks prior to the end of each care plan period.

[5] Specifically, the State agency implemented an assessment tool known as the Uniform Assessment System for New York (UAS–NY). The tool provides a comprehensive assessment system within eight Medicaid home and community-based long-term care services and programs, including the NHTD waiver program.

For 18 sampled beneficiary-months, providers did not timely submit ISRs to the service coordinator. On average, the associated ISR for 17 beneficiary-months was dated 3.74 weeks prior to the end of the beneficiary's care plan period and, for 1 other beneficiary-month, the ISR was not dated by the provider. The timely submission of ISRs is imperative to assure that the care plan is developed comprehensively and to avoid any delay in the provision of services. Any delay may result in a beneficiary being unable to access needed services and may result in their inability to be maintained safely in the community.

STATE AGENCY COMMENTS

In written comments on our draft report, the State agency did not indicate concurrence or non-concurrence with our first recommendation, generally agreed with our second and third recommendations, and described actions it had taken or planned to take to address the recommendations. Specifically, regarding our recommended financial disallowance, the State agency indicated that its Office of the Medicaid Inspector General is performing audits in the NHTD waiver program area and pursuing recovery of any inappropriate payments. The State agency also stated that it plans to update its *NHTD Waiver Program Manual* in 2019. Additionally, the State agency will conduct an audit of all relevant program resources posted on its websites and remove outdated information. Finally, on an ongoing basis, the State agency indicated that RRDCs will continue to advise providers of upcoming training dates and review program-specific issues at routine provider meetings.

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

APPENDIX A: AUDIT SCOPE AND METHODOLOGY

SCOPE

Our review covered the State agency's claims for Medicaid reimbursement for HCBS provided under its NHTD waiver program during CYs 2014 through 2016 (audit period). During this period, the State agency claimed $428,451,441 ($214,665,907 Federal share) for NHTD waiver program services provided during 79,166 beneficiary-months. Of these claims, we reviewed a stratified random sample of 100 beneficiary-months. A beneficiary-month is defined as all NHTD waiver services for a beneficiary for 1 month.

The scope of our audit did not require us to perform a medical review or an evaluation of the medical necessity for NHTD waiver program services claimed for reimbursement. We did not assess the State agency's overall internal control structure. Rather, we limited our review of internal controls to those applicable to our objective. We reviewed the providers' and the RRDCs internal controls for documenting NHTD waiver program services billed and claimed for reimbursement. We did not assess the appropriateness of HCBS payment rates.

We performed fieldwork at the State agency's nine contracted RRDCs throughout New York.

METHODOLOGY

To accomplish our objective, we:

- reviewed applicable Federal and State requirements;
- met with State agency officials to discuss the State agency's administration and monitoring of the NHTD waiver program;
- obtained from New York State's Medicaid Management Information System (MMIS) a sampling frame of 79,166 beneficiary-months with NHTD waiver program services for which the State agency claimed reimbursement totaling approximately $428 million ($215 million Federal share) during our audit period;
- reconciled the NHTD waiver services that the State agency claimed for Federal reimbursement on the Form CMS-64, *Quarterly Medicaid Statement of Expenditures for the Medical Assistance Program*, to the sampling frame of all payments for NHTD waiver services obtained from New York's MMIS for our audit period;
- selected a stratified random sample of 100 beneficiary-months and for each beneficiary-month:
    - determined whether the beneficiary was assessed to be eligible for the NHTD waiver program,

- determined whether personnel met qualifications to perform the services they performed,

- determined whether services were provided in accordance with an approved care plan, and

- determined whether documentation supported services billed;

- estimated the total improper Federal Medicaid reimbursement amount claimed for unallowable NHTD waiver services in the sampling frame of 79,166 beneficiary-months; and

- discussed the results of the review with State agency officials.

See Appendix C for the details of our statistical sampling methodology and Appendix D for our sample results and estimates.

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 B: FEDERAL AND STATE REQUIREMENTS RELATED TO NURSING HOME TRANSITION AND DIVERSION WAIVER PROGRAM SERVICES

FEDERAL REQUIREMENTS

Section 1915(c) of the Act and Federal regulations (42 CFR § 441.301(b)(1)(iii)) provide that HCBS may be provided only to beneficiaries who have been determined would, in the absence of such services, require the Medicaid covered level of care provided in a hospital, nursing facility, or intermediate care facility for seniors and persons with physical disabilities.

States must have agreements with Medicaid providers under which providers agree to keep records that fully disclose the extent of the services provided to individuals receiving assistance under a State plan (the Act § 1902(a)(27)). In addition, costs must be adequately documented to be allowable under Federal awards (2 CFR § 225, App. A § C.1.j).

Regulations at 42 CFR § 441.302(a) require that the State Medicaid agency assures that necessary safeguards have been taken to protect the health and welfare of persons receiving services under the waiver. These safeguards include adequate standards for all types of providers that provide services under the waiver and assurance that the standards of any State licensure or certification requirements are met for services or for individuals furnishing services that are provided under the waiver.

CMS 's *State Medicaid Manual* (§ 2497.1) states that Federal financial participation is available only for allowable actual expenditures made on behalf of eligible recipients for covered services rendered by certified providers.

STATE REQUIREMENTS

Home health aides shall have successfully completed a basic training program in home health aide services or an equivalent exam approved by the State agency and possess written evidence of such completion (NYCRR § 700.2(b)(9)).

Waiver service providers are required to submit ISRs to the participant's service coordinator at least 6 weeks prior to the end of each service plan period. The required ISRs describes provider's activities during the past 6 months and the participant's future goals. ISRs are used as part of the development of a beneficiary's revised service plan (New York's *NHTD Medicaid Waiver Program Manual 2008)*.

APPENDIX C: STATISTICAL SAMPLING METHODOLOGY

TARGET POPULATION

The population consisted of beneficiary-months of service provided under New York's NHTD waiver program for which the State agency received Medicaid reimbursement during CYs 2014 through 2016. A beneficiary-month is defined as all NHTD waiver program services for one beneficiary for 1 month.

SAMPLING FRAME

The sampling frame was an Access file containing 79,166 beneficiary-months for services totaling $428,451,441 ($214,665,907 Federal share) for which the State agency received Medicaid reimbursement for NHTD waiver program services provided during CYs 2014 through 2016. We extracted the data for the beneficiary-months from the New York MMIS.

SAMPLE UNIT

The sample unit was one beneficiary-month.

SAMPLE DESIGN

We used a stratified random sample to review Medicaid payments made to the State agency on behalf of beneficiaries who were enrolled in the New York NHTD waiver program. To accomplish this, we separated the sampling frame into three strata as follows:

- Stratum 1: beneficiary-months with payments for NHTD services totaling $3,000 or less—51,113 beneficiary-months totaling $84,457,007 ($42,381,046 Federal share).

- Stratum 2: beneficiary-months with payments for NHTD services totaling greater than $3,000 and less than $7,000—16,642 beneficiary-months totaling $156,655,084 ($78,497,044 Federal share).

- Stratum 3: beneficiary-months with payments for NHTD services totaling $7,000 or greater—11,411 beneficiary-months totaling $187,339,350 ($93,787,817 Federal share).

SAMPLE SIZE

We selected a sample of 100 beneficiary-months:

- 34 beneficiary-months from stratum 1,
- 33 beneficiary-months from stratum 2, and
- 33 beneficiary-months from stratum 3.

SOURCE OF THE RANDOM NUMBERS

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

METHOD FOR SELECTING SAMPLE ITEMS

We consecutively numbered the beneficiary-months within strata 1, 2, and 3. After generating the random numbers for each of the strata, we selected the corresponding frame items.

ESTIMATION METHODOLOGY

We used the OAS statistical software to estimate the total amount of improper Medicaid payments for which the State agency claimed reimbursement for unallowable NHTD waiver program services at the lower limit of the 90-percent confidence interval. We also used the software to calculate the corresponding point estimate and upper limit of the 90-percent confidence interval.

APPENDIX D: SAMPLE RESULTS AND ESTIMATES

Sample Details and Results

Stratum	Beneficiary-Months in Frame	Value of Frame (Federal Share)	Sample Size	Value of Sample (Federal Share)	Number of Beneficiary-Months with Unallowable Services	Value of Unallowable Services (Federal Share)
1	51,113	$42,381,046	34	$20,857	3	$114
2	16,642	78,497,044	33	165,976	17	7,374
3	11,411	93,787,817	33	267,004	13	8,540
Total	**79,166**	**$214,665,907**	**100**	**$453,837**	**33**	**$16,028**

Estimated Value of Unallowable Claims for NHTD Services
(Limits Calculated for a 90-Percent Confidence Interval)

Point estimate	$6,843,194
Lower limit	$466,614
Upper limit	$13,219,774

APPENDIX E: STATE AGENCY COMMENTS

NEW YORK STATE OF OPPORTUNITY. Department of Health

ANDREW M. CUOMO
Governor

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

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

May 29, 2019

Ms. Brenda Tierney
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-02-17-01005**

Dear Ms. Tierney:

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-02-17-01005 entitled, "New York's Claims for Medicaid Nursing Home Transition and Diversion Waiver Program Services Generally Complied With Federal and State Requirements but had Reimbursement Errors That Resulted in a Minimal Amount of Overpayments."

Thank you for the opportunity to comment.

Sincerely,

Sally Dreslin

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

Enclosure

cc: Marybeth Hefner
Diane Christensen
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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-02-17-01005 entitled, "New York's Claims for Medicaid Nursing Home Transition and Diversion Waiver Program Services Generally Complied With Federal and State Requirements but had Reimbursement Errors That Resulted in a Minimal Amount of Overpayments"

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-02-17-01005 entitled, "New York's Claims for Medicaid Nursing Home Transition and Diversion Waiver Program Services Generally Complied With Federal and State Requirements but had Reimbursement Errors That Resulted in a Minimal Amount of Overpayments."

Recommendation #1:

Refund $466,614 to the Federal Government.

Response #1

The Office of the Medicaid Inspector General is performing audits in this area and pursuing recovery of any payment determined to be inappropriate.

Recommendation #2:

Update its *NHTD Waiver Program Manual* to reflect current waiver requirements.

Response #2:

The Department recognizes that the Nursing Home Transition and Diversion (NHTD) Waiver Program Manual requires revision. The 1915(c) waiver application effective July 1, 2018, reflected a number of protocol changes that warrant the revision of the Program Manual. The Department anticipates that an updated manual will be available Summer 2019. Additionally, the Department will conduct an audit of all relevant resources posted on Department websites and outdated information will be removed. Once all information is publicly available, providers and stakeholders will be notified of pertinent websites via Listserv notices.

The revised Program Manual will update required provider qualifications as established in the July 2018 approved 1915(c) waiver application, as well as required documentation of services provided.

It should be noted that the Program Manual is not the only resource available to inform providers and stakeholders of programmatic changes. The Regional Resource Development Centers (RRDCs) meet with providers at least eight times per year and offer guidance regarding program changes and updates. Additionally, the Department provides guidance via emails, webinars and Electronic Medicaid of New York (eMedNY) Listserv notices about program changes.

Recommendation #3:

Ensure providers properly train personnel to appropriately claim Medicaid reimbursement for NHTD waiver program services.

Response #3:

The eMedNY system provides numerous resources to providers to assist the provider community in understanding and complying with the New York State Medicaid requirements and expectations for billing and submitting claims. This information includes but is not limited to: General Professional Billing Guidelines, Provider Manuals, Provider Training, Medicaid Updates, in-person and on-line training opportunities.

Additionally, the revised Program Manual will include additional billing information to clarify issues identified in this audit report. On an ongoing basis, the RRDCs will continue to advise and reinforce with providers notice of upcoming training dates and will continue to review program specific issues at routine provider meetings.