February 8, 2012

TO: Marilyn Tavenner
Acting Administrator
Centers for Medicare & Medicaid Services

FROM: /Gloria L. Jarmon/
Deputy Inspector General for Audit Services

SUBJECT: Review of Medicaid Payments for Nonemergency Medical Transportation Services Claims Submitted by Providers in New York State (A-02-09-01024)

Attached, for your information, is an advance copy of our final report on Medicaid payments for nonemergency medical transportation services claims submitted by providers in New York State. We will issue this report to the New York State Department of Health within 5 business days.

If you have any questions or comments about this report, please do not hesitate to call me, or your staff may contact Brian P. Ritchie, Assistant Inspector General for the Centers for Medicare & Medicaid Audits, at (410) 786-7104 or through email at Brian.Ritchie@oig.hhs.gov or James P. Edert, Regional Inspector General for Audit Services, Region II, at (212) 264-4620 or through email at James.Edert@oig.hhs.gov. Please refer to report number A-02-09-01024.

Attachment

DEPARTMENT OF HEALTH & HUMAN SERVICES

Office of Inspector General
Office of Audit Services

Region II
Jacob Javits Federal Building
26 Federal Plaza, Room 3900
New York, NY 10278

February 13, 2012

Report Number: A-02-09-01024

Nirav R. Shah, M.D., M.P.H.
Commissioner
New York State Department of Health
14th Floor, Corning Tower
Empire State Plaza
Albany, NY 12237

Dear Dr. Shah:

Enclosed is the U.S. Department of Health and Human Services (HHS), Office of Inspector General (OIG), final report entitled *Review of Medicaid Payments for Nonemergency Medical Transportation Services Claims Submitted by Providers in New York State*. We will forward a copy of this report to the HHS action official noted on the following page for review and any action deemed necessary.

The HHS action official will make final determination as to actions taken on all matters reported. We request that you respond to this official within 30 days from the date of this letter. Your response should present any comments or additional information that you believe may have a bearing on the final determination.

Section 8L of the Inspector General Act, 5 U.S.C. App., requires that OIG post its publicly available reports on the OIG Web site. Accordingly, this report will be posted at http://oig.hhs.gov.

If you have any questions or comments about this report, please do not hesitate to call me, or contact Jennifer Webb, Audit Manager, at (212) 264-8875 or through email at Jennifer.Webb@oig.hhs.gov. Please refer to report number A-02-09-01024 in all correspondence.

Sincerely,

/James P. Edert/
Regional Inspector General
for Audit Services

Enclosure

Direct Reply to HHS Action Official:

Ms. Jackie Garner
Consortium Administrator
Consortium for Medicaid and Children's Health Operations
Centers for Medicare & Medicaid Services
233 North Michigan Avenue, Suite 600
Chicago, IL 60601

Department of Health and Human Services

OFFICE OF INSPECTOR GENERAL

REVIEW OF MEDICAID PAYMENTS FOR NONEMERGENCY MEDICAL TRANSPORTATION SERVICES CLAIMS SUBMITTED BY PROVIDERS IN NEW YORK STATE

Daniel R. Levinson
Inspector General

February 2012
A-02-09-01024

Office of Inspector General

http://oig.hhs.gov

The mission of the Office of Inspector General (OIG), as mandated by Public Law 95-452, as amended, is to protect the integrity of the Department of Health and Human Services (HHS) programs, as well as the health and welfare of beneficiaries served by those programs. This statutory mission is carried out through a nationwide network of audits, investigations, and inspections conducted by the following operating components:

Office of Audit Services

The Office of Audit Services (OAS) provides auditing services for HHS, either by conducting audits with its own audit resources or by overseeing audit work done by others. Audits examine the performance of HHS programs and/or its grantees and contractors in carrying out their respective responsibilities and are intended to provide independent assessments of HHS programs and operations. These assessments help reduce waste, abuse, and mismanagement and promote economy and efficiency throughout HHS.

Office of Evaluation and Inspections

The Office of Evaluation and Inspections (OEI) conducts national evaluations to provide HHS, Congress, and the public with timely, useful, and reliable information on significant issues. These evaluations focus on preventing fraud, waste, or abuse and promoting economy, efficiency, and effectiveness of departmental programs. To promote impact, OEI reports also present practical recommendations for improving program operations.

Office of Investigations

The Office of Investigations (OI) conducts criminal, civil, and administrative investigations of fraud and misconduct related to HHS programs, operations, and beneficiaries. With investigators working in all 50 States and the District of Columbia, OI utilizes its resources by actively coordinating with the Department of Justice and other Federal, State, and local law enforcement authorities. The investigative efforts of OI often lead to criminal convictions, administrative sanctions, and/or civil monetary penalties.

Office of Counsel to the Inspector General

The Office of Counsel to the Inspector General (OCIG) provides general legal services to OIG, rendering advice and opinions on HHS programs and operations and providing all legal support for OIG's internal operations. OCIG represents OIG in all civil and administrative fraud and abuse cases involving HHS programs, including False Claims Act, program exclusion, and civil monetary penalty cases. In connection with these cases, OCIG also negotiates and monitors corporate integrity agreements. OCIG renders advisory opinions, issues compliance program guidance, publishes fraud alerts, and provides other guidance to the health care industry concerning the anti-kickback statute and other OIG enforcement authorities.

Notices

THIS REPORT IS AVAILABLE TO THE PUBLIC

at http://oig.hhs.gov

Section 8L of the Inspector General Act, 5 U.S.C. App., requires that OIG post its publicly available reports on the OIG Web site.

OFFICE OF AUDIT SERVICES FINDINGS AND OPINIONS

The designation of financial or management practices as questionable, a recommendation for the disallowance of costs incurred or claimed, and any other conclusions and recommendations in this report represent the findings and opinions of OAS. Authorized officials of the HHS operating divisions will make final determination on these matters.

EXECUTIVE SUMMARY

BACKGROUND

Pursuant to Title XIX of the Social Security Act, 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 applicable Federal requirements.

In New York State, the Department of Health (DOH) administers the Medicaid program and oversees compliance with Federal and State requirements. Within DOH, the Office of Medicaid Management administers the Medicaid program, including the nonemergency medical transportation (NEMT) program. Each of the State's local social services offices is responsible for authorizing NEMT services, ensuring that the services are necessary to the obtaining of medical care, and monitoring the NEMT program.

Pursuant to 42 CFR § 431.53, States are required to ensure necessary transportation for Medicaid beneficiaries to and from providers. Pursuant to State regulations, (1) NEMT services may be delivered through the use of an ambulance, ambulette, taxicab, or livery service; (2) prior authorization must be obtained; (3) a medical practitioner's order justifying the beneficiary's use of NEMT services must be documented in the beneficiary's medical record; and (4) a transportation provider must notify the New York Department of Motor Vehicles within 10 days of the date on which an ambulette driver commences employment.

This review excluded NEMT service claims submitted by 196 providers in New York City, which we audited separately.

OBJECTIVE

Our objective was to determine whether DOH claimed Federal Medicaid reimbursement for NEMT services claims submitted by transportation providers in New York State in accordance with certain Federal and State requirements.

SUMMARY OF FINDINGS

For our audit period (April 1, 2005, through March 31, 2006), DOH claimed Federal Medicaid reimbursement for some NEMT services submitted by transportation providers in New York State that did not comply with certain Federal and State requirements. Of the 100 NEMT claims in our random sample, DOH properly claimed Medicaid reimbursement for 57 claims. However, for the 43 remaining claims, DOH claimed Medicaid reimbursement for services that were not allowable or were potentially unallowable. Specifically, 40 claims contained services that did not comply with certain Federal and State requirements, and for 3 claims, we could not

determine whether services complied with Federal and State regulations. Of the 40 noncompliant claims, 11 contained more than 1 deficiency:

- For 22 claims, the transportation provider could not adequately document NEMT services to support the claim.

- For 10 claims, the medical practitioner could not provide documentation to support that the beneficiary received Medicaid-eligible medical services on the date of transport.

- For seven claims, the beneficiary's medical record did not indicate the condition justifying the practitioner's order for ambulette services.

- For seven claims, the request for prior authorization was not supported in DOH's files, the beneficiary's medical record, or the transportation provider's files by an order from a medical practitioner.

- For five claims, the transportation provider did not report the ambulette driver who provided the NEMT service to the Department of Motor Vehicles within 10 days of commencement of employment.

For three claims, we could not determine compliance with Federal and State Medicaid reimbursement requirements because we were unable to locate the transportation provider or medical practitioner.

The claims for unallowable and potentially unallowable services were made because (1) DOH's policies and procedures for overseeing the Medicaid program did not adequately ensure that providers complied with Federal and State requirements for ordering, documenting, and claiming NEMT services and (2) the New York State social services districts' quality assurance mechanism did not adequately ensure that NEMT services were properly provided.

Based on our sample results, we estimate that DOH improperly claimed $13,473,577 in Federal Medicaid reimbursement for 723,237 NEMT claims during the period April 1, 2005, through March 31, 2006.

RECOMMENDATIONS

We recommend that DOH:

- refund $13,473,577 to the Federal Government;

- strengthen its policies and procedures to ensure that providers comply with Federal and State requirements for ordering, documenting, and claiming NEMT services; and

- require the New York State social services districts to strengthen their quality assurance mechanism to ensure that NEMT services are properly provided.

DEPARTMENT OF HEALTH COMMENTS AND OFFICE OF INSPECTOR GENERAL RESPONSE

In written comments on our draft report, DOH partially agreed with our first recommendation (financial disallowance) and agreed with our remaining recommendations. Specifically, DOH disagreed with our interpretation of certain State requirements related to prior authorization of NEMT services and with our findings related to 14 sampled claims. After reviewing DOH's comments and conducting additional interviews with medical providers, we revised our findings and modified our statistical estimates accordingly. DOH's comments appear in their entirety as Appendix D.

TABLE OF CONTENTS

APPENDIXES

INTRODUCTION

BACKGROUND

Medicaid Program

Pursuant to Title XIX of the Social Security Act (the Act), 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 (DOH) administers the Medicaid program and oversees compliance with Federal and State requirements. Within DOH, the Office of Medicaid Management administers the Medicaid program, including the nonemergency medical transportation (NEMT) program.

Federal regulations (42 CFR § 431.53) require States to ensure necessary transportation for Medicaid beneficiaries to and from providers.[1] Pursuant to 42 CFR § 440.170, transportation includes expenses for transportation and other related travel expenses (e.g., NEMT) determined to be necessary by the State Medicaid agency to secure medical examinations and treatment for a beneficiary. In addition, pursuant to section 1902(a)(27) of the Act, a State plan must require that providers of services maintain records to fully disclose the extent of services provided to Medicaid beneficiaries.

New York State's Nonemergency Medical Transportation Program

New York State's Medicaid State plan and Title 18 § 505.10 of the New York Compilation of Codes, Rules, & Regulations (NYCRR) describe DOH's policies concerning NEMT services for Medicaid beneficiaries. In addition, DOH issues guidance to its local social services district offices,[2] transportation providers, and medical practitioners regarding its policies and procedures for ordering, documenting, and claiming NEMT services. DOH uses the Medicaid Management Information System (MMIS), a computerized payment and information reporting system, to process and pay Medicaid claims, including NEMT claims.

Pursuant to State regulations (18 NYCRR § 505.10(a)), payment for NEMT services requires prior authorization. DOH grants prior authorization when it determines that a specific mode of transportation is necessary for a beneficiary to obtain medical services (18 NYCRR

[1] States are required to describe their methods for meeting this requirement in their Medicaid State plans.

[2] In New York State, each county is considered its own social services district, except the five counties that make up New York City, which are considered a single district.

§ 505.10(b)(17)).[3] In addition, the regulations require that the ordering practitioner note in the beneficiary's medical record the condition that justifies the practitioner's ordering ambulette[4] or nonemergency ambulance services (18 NYCRR § 505.10 (c)(4)).

Pursuant to State regulations (18 NYCRR §§ 505.10(e)(6) and 505.10(b)(21)), transportation providers must be lawfully authorized to provide transportation services and may use an ambulance, ambulette, taxicab, van, or livery service to provide NEMT services related to Medicaid-eligible medical services. Each mode of transportation (i.e., level of service) is reimbursed at a different rate. In addition, pursuant to section 509-d(4) of Article 19-A of the New York Vehicle and Traffic Law, a transportation provider must notify the New York Department of Motor Vehicles within 10 days of the date on which an ambulette driver commences employment with the transportation provider.

State regulations (18 NYCRR § 504.3) require all providers to prepare and maintain records of services provided, including all records necessary to disclose the nature and extent of services provided and all information regarding claims submitted for payment. In addition, the regulations require providers to submit claims only for services that were actually furnished and medically necessary or otherwise authorized under the State's Social Services Law.

Pursuant to section 365-h of the New York Social Services Law, each of the State's local social services offices is responsible for authorizing NEMT services and ensuring that the services are necessary to the obtaining of medical care. In addition, local social services offices are required to maintain a "quality assurance mechanism" to ensure that NEMT services are provided in accordance with State regulations.

OBJECTIVE, SCOPE, AND METHODOLOGY

Objective

Our objective was to determine whether DOH claimed Federal Medicaid reimbursement for NEMT services claims submitted by transportation providers in New York State in accordance with certain Federal and State requirements.

[3] For ambulance services, a request for prior authorization must be supported by the order of a practitioner who is the beneficiary's attending physician, physician's assistant, or nurse practitioner. For ambulette services, a request for prior authorization must be supported by the order of a practitioner who is the beneficiary's attending physician, physician's assistant, nurse practitioner, dentist, optometrist, podiatrist, or other medical practitioner.

[4] An ambulette is a special-purpose vehicle designed and equipped to carry individuals in wheelchairs or stretchers, or that has the ability to carry disabled individuals. Ambulette service involves providing the beneficiary with personal assistance. Pursuant to 18 NYCRR § 505.10(c)(2), ambulette transportation may be ordered if the beneficiary is wheelchair bound; needs to be transported in a recumbent position; has a disabling condition that prevents the beneficiary from using a taxi, livery service, bus, or private vehicle; or will be receiving radiation, dialysis, or chemotherapy resulting in a disabling physical condition after treatment.

Scope

Our review covered 2,277,713 claims for NEMT services, totaling $97,489,723 ($48,750,864 Federal share), submitted by 413 transportation providers in New York State for the period April 1, 2005, through March 31, 2006. Our audit population did not include claims for NEMT services submitted by 196 transportation providers in New York City, which we audited separately.[5]

We did not assess the overall internal control structure of DOH or the Medicaid program. Rather, we limited our review of internal controls to those applicable to the objective of our audit. In addition, the scope of our audit did not require us to review the medical necessity of the transportation services.

We conducted fieldwork at DOH's offices in Albany, New York; the State MMIS fiscal agent in Rensselaer, New York; and at 65 transportation providers, 91 medical practitioners, and 18 local social services district offices throughout New York State.

Methodology

To accomplish our objective, we:

- reviewed applicable Federal and State laws and regulations;

- held discussions with CMS and DOH officials to gain an understanding of the NEMT program;

- held discussions with New York State social services officials to gain an understanding of the districts' policies and procedures related to their administration of the NEMT program;

- ran computer programming applications at the MMIS fiscal agent that identified a sampling frame of 2,277,713 NEMT services claims,[6] totaling $97,489,723 ($48,750,864 Federal share), made by 413 transportation providers;[7]

[5] *Review of Medicaid Payments for Nonemergency Medical Transportation Services Claims Submitted by Providers in New York City* (A-02-08-01017).

[6] Providers can submit an NEMT claim for a one-way trip to/from a Medicaid-covered medical service, a roundtrip, or a multileg trip. Additionally, providers can submit an NEMT claim for various other add-on services (e.g., mileage, drugstore stop/extra stop, attendant, etc.)

[7] We used providers' correspondence addresses and county codes on the MMIS to identify those located outside of New York City. The sampling frame did not include NEMT claims submitted by two transportation providers that were under criminal investigation.

- selected a simple random sample of 100 claims[8] from the sampling frame of 2,277,713 claims and, for each of these 100 claims:

    - interviewed the ordering practitioner and office staff, if available,[9] and reviewed the practitioner's documentation to determine whether the beneficiary's medical record noted the condition that justified the practitioner's ordering NEMT services;

    - interviewed the transportation provider, if available,[10] and reviewed the transportation provider's documentation supporting the claim for NEMT services;

    - reviewed documentation maintained by the medical practitioner to whom the beneficiary was transported to determine whether the beneficiary received Medicaid-eligible medical services on the date of transport;

    - reviewed documentation maintained by DOH supporting the ordering practitioner's request for prior authorization for NEMT services;

    - reviewed New York Department of Transportation records to determine whether the transportation provider was authorized to provide transportation services and the vehicle(s) used for the service(s) was inspected; and

    - reviewed New York Department of Motor Vehicles records to determine whether the ambulette driver(s) was properly licensed and reported within 10 days of commencing employment with the transportation provider; and

- estimated the unallowable Federal Medicaid reimbursement in the population of 2,277,713 NEMT claims.

Appendix A contains the details of our sample design and methodology. Appendix B contains 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 objective.

[8] Our random sample comprised NEMT services claimed for ambulette (59 claims), taxicab (23 claims), van or similar method for day treatment center visit (14 claims), nonemergency ambulance (3 claims), and livery (1 claim).

[9] For various reasons (e.g., relocation, out of business), we were able to interview only 91 of the 97 practitioners related to our sampled claims.

[10] For various reasons (e.g., out of business), we were able to interview only 60 of the 65 transportation providers related to our sampled claims.

FINDINGS AND RECOMMENDATIONS

DOH claimed Federal Medicaid reimbursement for some NEMT services submitted by transportation providers in New York State that did not comply with certain Federal and State requirements. Of the 100 NEMT claims in our random sample, DOH properly claimed Medicaid reimbursement for 57 claims. However, for the 43 remaining claims, DOH claimed Medicaid reimbursement for services that were not allowable or were potentially unallowable. Specifically, 40 claims contained services that did not comply with certain Federal and State requirements, and for 3 claims, we could not determine whether services complied with Federal and State regulations.

Of the 40 noncompliant claims, 11 contained more than 1 deficiency:

- For 22 claims, the transportation provider could not adequately document NEMT services to support the claim.

- For 10 claims, the medical practitioner could not provide documentation to support that the beneficiary received Medicaid-eligible medical services on the date of transport.

- For seven claims, the beneficiary's medical record did not indicate the condition justifying the practitioner's order for ambulette services.

- For seven claims, the request for prior authorization was not supported in DOH's files, the beneficiary's medical record, or the transportation provider's files by an order from a medical practitioner.

- For five claims, the transportation provider did not report the ambulette driver who provided the NEMT service to the Department of Motor Vehicles within 10 days of commencement of employment.

For three claims, we could not determine compliance with Federal and State Medicaid reimbursement requirements because we were unable to locate the transportation provider or medical practitioner.

Appendix C contains a summary of deficiencies, if any, identified for each sampled claim.

The claims for unallowable and potentially unallowable services were made because (1) DOH's policies and procedures for overseeing the Medicaid program did not adequately ensure that providers complied with Federal and State requirements for ordering, documenting, and claiming NEMT services and (2) the New York State social services districts' quality assurance mechanism did not adequately ensure that NEMT services were properly provided.

Based on our sample results, we estimate that DOH improperly claimed $13,473,577 in Federal Medicaid reimbursement for 723,237 NEMT claims during the period April 1, 2005, through March 31, 2006.

UNALLOWABLE CLAIMS

Transportation Claim Not Adequately Documented

Section 1902(a)(27) of the Act requires that a State plan "provide for agreements with every person or institution providing services under which such person or institution agrees (A) to keep such records as are necessary to fully disclose the extent of the services provided to individuals receiving assistance under the State plan, and (B) to furnish the State agency or the Secretary with such information … as the State agency or the Secretary may from time to time request."

Pursuant to 18 NYCRR § 505.10(e)(8), if an ambulette is used to provide an NEMT service, the transportation provider must maintain documentation for the service. Specifically, providers must document (1) the beneficiary's name and Medicaid identification number, (2) the origination of the trip, (3) the destination of the trip, (4) the date and time of service, and (5) the name of the driver transporting the beneficiary.[11]

For 22 of the 100 claims in our sample, transportation providers could not adequately document NEMT services for which an ambulette was used to transport the beneficiary. Specifically, for 16 sample claims, the transportation provider could not provide documentation related to the NEMT service, and for 6 other claims, the transportation provider could not document the name of the driver who transported the beneficiary.

No Medicaid-Eligible Medical Services

Pursuant to 18 NYCRR § 505.10(a), an NEMT service is eligible for Medicaid payment when the transportation service is essential for the beneficiary to obtain necessary medical care and services that may be paid for under the Medicaid program.

For 10 of the 100 claims in our sample, the medical practitioner to whom the beneficiary was transported could not document that the beneficiary received Medicaid-eligible services on the date of the NEMT service.

Condition Justifying Order for Ambulette Services Not Noted in Medical Record

Pursuant to 18 NYCRR § 505.10(c)(2), ambulette transportation may be ordered if the recipient needs to be transported in a recumbent position; is wheelchair bound; has a disabling condition that requires the use of a walker or crutches; has any other disabling condition that requires the personal assistance provided by an ambulette service; or requires radiation therapy or dialysis treatment and cannot use a taxicab, livery service, or public transportation. In addition, pursuant to 18 NYCRR § 505.10(c)(4), the ordering practitioner must note in the beneficiary's medical record the condition that justifies the practitioner's ordering ambulette services.

[11] DOH reiterated these requirements to Medicaid providers in its June 2003 (Volume 18, Number 6) issue of *New York State Medicaid Update*, the State Medicaid program's official newsletter.

For 7 of the 100 claims in our sample, the ordering practitioner did not note the condition justifying the order for ambulette services in the beneficiary's medical record. Further, in interviews, the ordering practitioner could not indicate the condition justifying the order.

No Medical Practitioner's Order for Transportation Services

Pursuant to 18 NYCRR § 505.10(d)(4), requests for prior authorization for NEMT services for which an ambulette will be used to transport the beneficiary must be supported by an order from the beneficiary's attending physician, physician's assistant, nurse practitioner, dentist, optometrist, podiatrist, or other approved medical practitioner.

For 7 of the 100 claims in our sample, the request for prior authorization was not supported by an order from an approved medical practitioner. Specifically, for these seven claims, the local social services district, the transportation provider, or the ordering physician could not provide a medical practitioner's order for the related NEMT service.

Driver Not Reported Timely to the Department of Motor Vehicles

Pursuant to 18 NYCRR § 505.10(e)(6)(ii), ambulette services and their drivers must comply with all the requirements of the Department of Transportation and the Department of Motor Vehicles. Section 509-d(4) of Article 19-A of the New York Vehicle and Traffic Law requires transportation providers to notify the Department of Motor Vehicles within 10 days of the date on which an ambulette driver commences employment. Pursuant to Department of Motor Vehicles regulations (15 NYCRR §§ 6.3(c)(10) and 6.3(d)), transportation providers must submit an Article 19-A Bus Driver Application to the Department of Motor Vehicles for each new driver. The Department of Motor Vehicles uses the information on the application to conduct a criminal and driving history review of the driver.[12]

For 5 of the 100 claims in our sample, NEMT services were provided by ambulette drivers who had not been reported within 10 days of commencing employment to the Department of Motor Vehicles by the transportation provider as of the date of the sampled ambulette service. For two of these claims, as of April 28, 2011, the transportation provider still had not reported the driver to the Department of Motor Vehicles.[13]

POTENTIALLY UNALLOWABLE CLAIMS

We could not determine whether three claims complied with certain Federal and State requirements because we could not locate the transportation provider or medical practitioner associated with these claims.

[12] If the Department of Motor Vehicles finds a disqualifying conviction and/or potentially disqualifying traffic violation, it may determine the driver to be unqualified and, therefore, not eligible to drive an ambulette.

[13] For one of the claims, the driver did not possess a valid commercial driver's license. For the other claim, the driver had not completed the State's driver certification program.

CAUSES OF UNALLOWABLE AND POTENTIALLY UNALLOWABLE CLAIMS

The claims for unallowable and potentially unallowable services were made because (1) DOH's policies and procedures for overseeing the Medicaid program did not adequately ensure that providers complied with Federal and State requirements for ordering, documenting, and claiming NEMT services and (2) the New York State social services districts' quality assurance mechanism did not adequately ensure that NEMT services were properly provided.

RECOMMENDATIONS

We recommend that the State agency:

- refund $13,473,577 to the Federal Government;
- strengthen its policies and procedures to ensure that providers comply with Federal and State requirements for ordering, documenting, and claiming NEMT services; and
- require the New York State social services districts to strengthen their quality assurance mechanism to ensure that NEMT services are properly provided.

DEPARTMENT OF HEALTH COMMENTS AND OFFICE OF INSPECTOR GENERAL RESPONSE

In written comments on our draft report, DOH partially agreed with our first recommendation (financial disallowance) and agreed with our remaining recommendations. Specifically, DOH disagreed with our interpretation of certain State requirements related to prior authorization of NEMT services and with our findings related to 14 sampled claims.

After reviewing DOH's comments and conducting additional interviews with medical providers, we revised our findings and modified our statistical estimates accordingly. DOH's comments appear in their entirety as Appendix D.

No Medical Practitioner's Order for Transportation Services

Department of Health Comments

DOH stated that it appeared we disallowed eight claims because we "were unable to locate paper documentation confirming written practitioners' orders for the transportation services." DOH stated that State regulations on requests for prior authorization (18 NYCRR § 505.10(d)(4)) "do not specifically require the maintenance of a unique written order to support each request" [emphasis in original]. DOH stated that it meets this regulatory requirement through safeguards built into its prior authorization process. Specifically, DOH stated that this process ensures that only the requests of appropriate medical practitioners are approved because all requests for prior authorization "must include the medical practitioner's [identification] number and require the approval of a prior authorization official …." DOH further stated that its eMedNY system will

not accept a request for prior authorization without a system-verified medical practitioner's identification number.

Office of Inspector General Response

Requests for prior authorization for NEMT services must be supported by a practitioner's order (18 NYCRR § 505.10(d)(4)). We did not consider only a practitioner's written order as supporting documentation of an order for NEMT services. Rather, we accepted as supporting documentation a request for prior approval signed by the medical practitioner and/or notes in the beneficiary's medical records indicating that a practitioner ordered NEMT services. The MMIS alone could not confirm that there was a practitioner's order. Rather, the MMIS could confirm only that the practitioner's identification number was valid. Therefore, we did not consider the mere presence of a medical practitioner's identification number in the MMIS to be supporting documentation of a medical practitioner's order.

For seven of the eight sampled claims, DOH could not provide a request for prior approval signed by a physician. Further, documentation to support a practitioner's order could not be found in records at the transportation provider, the medical practitioner whose identification number was entered in DOH's MMIS, or the medical provider to whom the beneficiary was transported. For one claim (number 88), based on additional information provided by DOH, we were able to obtain documentation of a practitioner's order for the NEMT service and have revised our estimates of unallowable payments accordingly.[14] We maintain that our findings regarding the seven remaining claims are valid.

Inadequate Documentation

Department of Health Comments

DOH stated that it appeared we disallowed one claim (number 51) because the transportation provider did not specifically document the number of miles traveled. DOH stated that State regulations (18 NYCRR § 505(e)(8)) require providers to document the origin and destination of each trip, not the number of miles traveled. DOH stated that the transportation providers associated with three other claims (numbers 1, 17, and 56) are no longer in business and that the claims should be set aside for resolution between DOH and CMS.

Office of Inspector General Response

We did not question claim number 51 because the transportation provider did not document the number of miles traveled. Rather, we questioned the claim because the transportation provider did not document the name of the driver who provided the NEMT service. For the three claims for which the transportation provider was no longer in business (numbers 1, 17, and 56), we obtained claim information from other sources (e.g., former officials or, if the company was sold,

[14] In another section of its response, DOH noted that the beneficiary associated with claim number 88 visited two service providers on the same day. Based on this information, we were able to obtain documentation from a service provider that we had not been informed of by the transportation provider.

current owners). After reviewing DOH's comments, we maintain that our findings regarding these four claims are valid.

No Medicaid-Eligible Medical Services

Department of Health Comments

For six sampled claims (numbers 24, 69, 75, 79, 88, and 100), DOH stated that medical services were provided to the associated Medicaid beneficiary on the date of the NEMT service and provided specific claim information.

Office of Inspector General Response

Based on DOH's comments, we interviewed the medical practitioners related to the six sampled claims. For two claims (numbers 24 and 88), we verified that Medicaid-eligible services were provided to the beneficiary on the date of the NEMT service, and we have revised our findings and modified our statistical estimates. For the four remaining claims (numbers 69, 75, 79, and 100), the medical practitioner to whom the beneficiary was allegedly transported could not document that the beneficiary received Medicaid-eligible services on the date of the NEMT service. Accordingly, for these four claims, we maintain that our findings are valid.

Condition Justifying Order for Ambulette Services Not Noted in Medical Record

Department of Health Comments

For six sampled claims (numbers 41, 51, 53, 57, 68, and 69), DOH stated that "the need for ambulette service was self-evident" and did not require justification to be documented.

Office of Inspector General Comments

Pursuant to 18 NYCRR 505.10(c)(4), the ordering practitioner must note in the beneficiary's medical record the condition that justifies the practitioner's ordering ambulette services. Based on DOH's comments on three sampled claims (numbers 41, 51, and 53), we obtained documentation of the condition justifying the practitioner's order for ambulette services. However, the three claims contained multiple deficiencies. Therefore, although we revised the number of deficiencies in this category, we did not modify our statistical estimates. For two other claims (numbers 57 and 69), the ordering practitioners stated that they did not have a record of the condition justifying the need for the mode of transportation, and for the remaining claim (number 68), the practitioner's orders indicated the need for taxicab or livery service, not the costlier ambulette service. Therefore, we maintain that our findings in this area are valid.

APPENDIXES

APPENDIX A: SAMPLE DESIGN AND METHODOLOGY

POPULATION

The population consisted of all Medicaid paid claims for nonemergency medical transportation (NEMT) services submitted by transportation providers in New York State for the period April 1, 2005, through March 31, 2006.

SAMPLING FRAME

The sampling frame was an Access file containing 2,277,713 Medicaid NEMT claims totaling $97,489,723 ($48,750,864 Federal share). The claims data was extracted from the New York State Medicaid Management Information System.

SAMPLE UNIT

The sample unit was an individual claim for an NEMT service submitted by a New York State provider and for which the New York State Department of Health claimed Federal Medicaid reimbursement.

SAMPLE DESIGN

We used a simple random sample.

SAMPLE SIZE

We selected a sample of 100 claims.

SOURCE OF RANDOM NUMBERS

We used the Office of Audit Services' statistical software, RAT-STATS 2007, to generate the random numbers for our simple random sample.

METHOD FOR SELECTING SAMPLE ITEMS

We consecutively numbered the claims in the sampling frame. After generating 100 random numbers, we selected the corresponding frame items. We created a list of 100 sample items.

ESTIMATION METHODOLOGY

We used RAT-STATS to calculate our estimates. We used the lower limit of the 90-percent confidence interval to estimate the overpayment associated with the unallowable Medicaid claims for NEMT services.

APPENDIX B: SAMPLE RESULTS AND ESTIMATES

Sample Details and Results

NEMT Claims in Frame	Value of Frame (Federal Share)	Sample Size	Value of Sample (Federal Share)	Number of Claims With Unallowable Services	Value of Unallowable Services (Federal Share)
2,277,713	$48,750,864	100	$2,010	40	$793

Estimates of Unallowable Services
(Limits Calculated for the 90-Percent Confidence Interval)

	Total Claims	Federal Share
Point estimate	$911,085	$18,054,178
Lower limit	723,237	13,473,577
Upper limit	1,109,297	22,634,779

APPENDIX C: SUMMARY OF DEFICIENCIES FOR EACH SAMPLED CLAIM

Deficiencies

1	Transportation claim not adequately documented
2	No Medicaid-eligible medical services
3	Condition justifying order for ambulette services not noted in medical record
4	No medical practitioner's order for transportation services
5	Driver not reported timely to the Department of Motor Vehicles

Office of Inspector General Review Determinations for Sampled Claims

Sample Claim	Deficiency 1	Deficiency 2	Deficiency 3	Deficiency 4	Deficiency 5	No. of Deficiencies
1	X	X				2
2		X	X			2
3						0
4						0
5				X		1
6						0
7					X	1
8						0
9						0
10						0
11						0
12	X					1
13						0
14						0
15						0
16						0
17	X					1
18						0
19						0
20	X			X		2
21						0
22	X	X				2
23						0
24						0
25	X					1
26						0
27						0
28						0
29				X		1
30						0

Sample Claim	Deficiency 1	Deficiency 2	Deficiency 3	Deficiency 4	Deficiency 5	No. of Deficiencies
31						0
32						0
33						0
34						0
35						0
36						0
37	X					1
38						0
39	X					1
40						0
41				X		1
42	X					1
43	X					1
44						0
45						0
46						0
47						0
48						0
49	X					1
50						0
51	X					1
52					X	1
53				X		1
54						0
55						0
56	X					1
57			X			1
58	X	X				2
59						0
60					X	1
61						0
62						0
63						0
64						0
65		X				1
66						0
67	X					1
68			X	X		2
69		X	X			2
70	X					1
71						0
72						0

Sample Claim	Deficiency 1	Deficiency 2	Deficiency 3	Deficiency 4	Deficiency 5	No. of Deficiencies
73						0
74						0
75		X				1
76						0
77						0
78	X					1
79		X			X	2
80						0
81						0
82						0
83			X			1
84						0
85						0
86						0
87						0
88						0
89						0
90		X	X			2
91			X			1
92						0
93	X			X		2
94					X	1
95	X					1
96						0
97	X					1
98	X					1
99						0
100	X	X				2
Category Totals	**22**	**10**	**7**	**7**	**5**	**51**[1]
40 Claims With Deficiencies						

[1] Eleven claims contained more than one deficiency.

APPENDIX D: DEPARTMENT OF HEALTH COMMENTS

NEW YORK
state department of
HEALTH

Nirav R. Shah, M.D., M.P.H.
Commissioner

Sue Kelly
Executive Deputy Commissioner

September 16, 2011

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-02-09-01024

Dear Mr. Edert:

Enclosed are the New York State Department of Health's comments on the Department of Health and Human Services, Office of Inspector General's draft audit report A-02-09-01024 on "Review of Medicaid Payments for Nonemergency Medical Transportation Services Submitted by Providers in New York State."

Thank you for the opportunity to comment.

Sincerely,

Robert W. Reed
Deputy Commissioner
for Administration

Enclosure

cc: Jason A. Helgerson
James C. Cox
Diane Christensen
Dennis Wendell
Stephen Abbott
Stephen F. LaCasse
Irene Myron
Ronald Farrell
Barry Benner
John Brooks

New York State Department of Health's Comments on the Department of Health and Human Services Office of Inspector General's Draft Audit Report A-02-09-01024 on "Review of Medicaid Payments For Nonemergency Medical Transportation Services Claims Submitted By Providers in New York State"

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's (OIG) draft audit report A-02-09-01024 on "Review of Medicaid Payments for Nonemergency Medical Transportation Services Claims Submitted by Providers in New York State."

Recommendation #1:

The Department should refund $14,531,449 to the Federal Government.

Response #1:

The Department does not entirely agree with the recommendation for it to refund $14,531,449 to the Federal government.

The OIG audit sample consisted of 100 randomly selected claims from amongst the 2,277,713 claims reimbursed for audit period. The OIG review found that the Department claimed unallowable services for 42 of the 100 claims in the audit sample, with 15 of the 42 alleged non-compliant claims containing more than one deficiency. The Department claimed $842 in federal reimbursement relative to these 42 claims, which OIG extrapolated across the entire claims universe to conclude that the Department was reimbursed $14,531,449 in unallowable claims.

OIG identified five areas of non-compliance and documented the specific claims associated with each. The Department and the New York State Office of the Medicaid Inspector General (OMIG) reviewed the claims, with the results summarized below.

1. Inadequate Documentation

For 22 claims, OIG found that the transportation provider could not adequately document nonemergency medical transportation (NEMT) services to support the claim. The Department disagrees with this finding for one of the claims (#51) as its review of the case documentation verified the existence of adequate trip documentation. It appears OIG disallowed this claim because the transportation provider did not specifically document the number of miles traveled. However, while 18 NYCRR § 505(e)(8) requires providers to document the origination and destination of each trip, providers are not required to document the number of miles traveled. In similar audits, OMIG typically utilizes mapping software to

determine the distance, then compares this information to the claim and also to the prior approval roster maintained by the provider containing the approved mileage. OMIG notes that in some cases the trip ticket and/or the driver's log will identify the odometer readings at the pick-up and destination points, although it is not required.

In addition, three other claims (#1, #17 and #56) are from transportation providers that are no longer in business and which could not be located. The Department believes OIG should set these three claims aside for resolution between CMS and the Department.

2. No Medicaid-Eligible Medical Services

For 12 claims, OIG found that the medical practitioner could not provide documentation to support that the beneficiary received Medicaid-eligible medical services on the date of transport. The Department disputes this finding for 6 of the 12 claims, as its review verified that medical services were provided on the transportation date of service in the following instances:

- Claim #24 - laboratory services were submitted by Jamaica Hospital Medical Center.
- Claim #69 - adult day health care services were submitted by Episcopal Residential Health Care Facility.
- Claim #75 - adult day health care services were submitted by Elant at Goshen.
- Claim #79- adult day health care services were submitted by Elant at Goshen.
- Claim #88 - mental health services were submitted by [redacted] and physician services were submitted by [redacted]
- Claim #100 - physician services were submitted by [redacted]

3. Condition Justifying Order for Ambulette Services Not Noted in Medical Record

For 10 claims, OIG found that the beneficiary's medical record did not indicate the condition justifying the practitioner's order for ambulette services. The Department disputes this finding for 6 of the 10 claims as its review of the case documentation determined that the need for ambulette service was self-evident. The Department does not require justification to be documented in the medical record when the need for the mode of transportation utilized can be readily inferred by reviewing the medical history or by patient observation.

- Claims #41 and #53 – the recipients are nursing home residents, and the recipient associated with Claim #53 additionally requires the use of a wheelchair. Eligibility for nursing home services includes the need for hands-on care and the full-time assistance of personal care and medical staff. Information documenting this level of care is contained in the nursing home's medical records. Nursing home staff ordered the ambulette transportation, as this mode of transportation provided the necessary personal assistance

Office of Inspector General Note -- The deleted text has been redacted because it is personally identifiable information.

required. The Department maintains that the medical records contain documentation justifying the need for ambulette transportation.

- Claim #51 – the medical service was provided by a rehabilitation center. Information in the audit case record indicates that the rehabilitation center's medical record states the recipient has cerebral palsy, and includes the following note, "[recipient] transitioned to stand from a bench seat with maximum support but refuses to repeat the activity…patient cannot lift head." Rehabilitation facility staff ordered the ambulette transportation, which provides the necessary personal assistance required of recipients with this type of physical condition. The Department maintains that the medical record contains documentation justifying the need for ambulette transportation.

- Claims #57 and #69 – the recipients participate in an adult day health care program. A condition of acceptance into the program requires that the recipient be in need of nursing home services but be capable of living in the community with the ongoing support of family and the day health care program. Medical records maintained by the adult day health care program document the need for hands-on assistance of personal and medical care. Adult day health care program staff ordered the ambulette transportation, which provided the necessary personal assistance required. The Department maintains that the medical records contain documentation justifying the need for ambulette transportation.

- Claim #68 - the case record contains a medical necessity form that justifies the need for ambulette transportation which was supplied by the prior authorization agent, ACCESS Transit. As stated in the record, the beneficiary "…needs assistance prompting for ADLS [activities of daily living]—needs door to door assistance—cognitive." Ambulette transportation provides the necessary personal assistance recommended on the form. 18 NYCRR § 505(c)(2)(iv) provides for ambulette transportation in situations where, "the recipient has a disabling physical condition other than… or a disabling mental condition, either of which requires the personal assistance provided by an ambulette service, and the ordering practitioner certifies, in a manner designated by the department, that the recipient cannot be transported by a taxi, livery service, bus or private vehicle and requires transportation by ambulette service." The Department maintains that the case record, including the medical necessity form justifying the need for ambulette transportation, sufficiently documents the claim.

4. No Medical Practitioner's Order for Transportation Services

For 8 claims, OIG found that the request for prior authorization was not supported by an order from a medical practitioner. According to OIG, neither the local social services district, the transportation provider or the ordering physician could provide a medical practitioner's order for the transportation service. The Department does not agree with this finding and believes the 8 claims should be allowed.

It appears OIG disallowed these claims because the auditors were unable to locate paper documentation confirming written practitioners' orders for the transportation services. The

Department finds this interpretation inconsistent with 18 NYCRR § 505.10(d)(4) which states, "a request for prior authorization for nonemergeny ambulance transportation must be supported by the order of an ordering practitioner who is the MA recipient's attending physician, physician's assistant or nurse practitioner." The regulations do not specifically require the maintenance of a unique written order to support each request. The regulatory requirement is achieved and electronically documented through safeguards built into the prior authorization process that ensure only the requests of appropriate medical practitioners are approved. All requests must include the medical practitioner's ID number and require the approval of a prior authorization official who is either a government employee or a representative working on behalf of the government. In addition, the eMedNY system will not accept an authorization without the medical practitioner's ID number, which is system verified as a valid ordering practitioner.

Further, transportation providers are not required to maintain documentation from medical practitioners verifying that a request for a particular mode of transportation was made. Confirmation of the need for a particular mode of transportation is between the medical practitioner and the prior authorization official, and may include confidential medical information that is not to be shared with the transportation provider.

5. Driver Not Reported Timely to the Department of Motor Vehicles

For 5 claims, OIG found that the transportation provider did not report the name of the ambulette driver that provided the NEMT service to the Department of Motor Vehicles (DMV) within 10 days of commencement of employment. The Department does not dispute this finding.

Recommendation #2:

The Department should strengthen its policies and procedures to ensure that providers comply with Federal and State requirements for ordering, documenting and claiming NEMT services.

Response #2:

The Department agrees with this OIG recommendation and has already updated the Transportation Manual and posted it online (www.emedny.org) as of July 15, 2011. The Department will additionally include guidance for providers of nonemergency transportation services in an upcoming edition of it Medicaid Update monthly provider publication, reinforcing the policies and procedures published in January 2011.

Recommendation #3:

The Department should require the New York State social services districts to strengthen their quality assurance mechanism to ensure that nonemergency transportation services are properly provided.

Response #3:

The Department agrees with this OIG recommendation and has already initiated the process of contracting with a transportation manager to implement a quality assurance program for NEMT services provided in New York State. Additionally, the Department provides information and updates to all prior authorization officials, in an effort to increase quality and ensure adherence with program requirements. The Department will re-issue instructions on ordering the correct mode of transportation, and reinforce the importance of documenting services ordered.