



STATE OF NEW YORK  
OFFICE OF THE STATE COMPTROLLER

December 23, 2020

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

Re: Improper Medicaid Payments for  
Childhood Vaccines  
Report 2020-F-3

Dear Dr. Zucker:

Pursuant to the State Comptroller's authority as set forth in Article V, Section 1 of the State Constitution and Article II, Section 8 of the State Finance Law, we have followed up on the actions taken by officials of the Department of Health (Department) to implement the recommendations contained in our audit report, *Improper Medicaid Payments for Childhood Vaccines* (Report [2017-S-41](#)).

**Background, Scope, and Objective**

The Vaccines for Children Program (VFC Program) is a federally funded Medicaid benefit that provides free vaccines to eligible children younger than 19 years of age whose parents or guardians may not be able to afford them. The VFC Program helps ensure children receive their recommended vaccines and are protected from a number of diseases. The Centers for Disease Control and Prevention (CDC) is responsible for implementation of the VFC Program. The CDC purchases vaccines from drug manufacturers at a discount and distributes the vaccines to state health departments and certain local and territorial public health agencies at no cost. These agencies then distribute the vaccines at no cost to physicians and public health clinics enrolled in the VFC Program. Because the federal government purchases the vaccines, providers are not reimbursed for the cost of the vaccines. Instead, they are paid a fee for administering the vaccines. For children enrolled in Medicaid, the Medicaid program pays the vaccine administration fee.

We issued our initial audit report on December 6, 2018. The audit objective was to determine whether Medicaid made improper payments for free vaccines available through the VFC Program. The audit covered the period January 1, 2012 to May 31, 2017. We identified \$32.7 million in improper Medicaid payments, which included payments for free vaccines and inaccurate payments for the administration fee. Of this amount:

- Managed care organizations (MCOs) made improper payments totaling \$29.8 million to health care providers. The improper payments occurred because of control weaknesses in the MCOs' claims processing systems.

- The Department made improper fee-for-service payments totaling \$2.9 million to health care providers. The improper payments occurred because providers did not bill claims according to Medicaid policies and the Department's Medicaid claims processing and payment system, eMedNY, lacked controls to prevent overpayments.

The objective of our follow-up was to assess the extent of implementation, as of November 30, 2020, of the six recommendations included in the initial audit report.

### **Summary Conclusions and Status of Audit Recommendations**

Department officials have made some progress in addressing the problems identified in the initial audit report, yet significant action is still required to prevent future Medicaid overpayments. All six of the report's audit recommendations were partially implemented.

### **Follow-Up Observations**

#### **Recommendation 1**

*Review the \$29.8 million in improper MCO payments that we identified and instruct the MCOs to recover overpayments where appropriate. Ensure the MCOs recover the improper payments and account for the recoveries on their MMCORs.*

Status – Partially Implemented

Agency Action – MCOs annually report their recoveries to the Department in Medicaid Managed Care Operating Reports (MMCORs). In January 2019, the Department began its review of the improper MCO payments. The Department reached out to MCOs in February 2019, directing them to review all the identified overpayments. The MCOs initiated the recoupment and void process with the intent to finalize by December 31, 2020. However, the process will take longer because, according to the Department, the MCOs disputed the overpayments related to the vaccine administration fee.

Federal regulations require the Department to identify the amount that the State will pay providers for the administration of a VFC Program vaccine to a Medicaid-eligible child. The regulations further state that this amount cannot exceed the State's regional maximum administration fee that is established by the Secretary of the Department of Health and Human Services. The MCOs' dispute is based on training provided by the Department in October 2017. In the training, the Department informed the MCOs that under Medicaid managed care, the regional maximum reimbursement for vaccine administration fees is established through contractual agreement between an MCO and its providers. As a result of the MCOs' dispute, the Department put its recovery efforts on hold while it waits for clarification from the Centers for Medicare & Medicaid Services (CMS). In August 2019, the Department contacted CMS for its opinion regarding the regional maximum fee as it relates to Medicaid managed care. According to Department officials, as of November 2020, they are still waiting for final guidance from CMS.

We note that we contacted CMS in May 2019, specifically asking if the state Medicaid program or Medicaid managed care plan can ever pay more than the regional maximum fee. CMS officials responded that the vaccine administration fee should never exceed the regional maximum fee and that the regional maximum fee applies to all children in Medicaid, regardless of the delivery system (managed care or fee-for-service).

## **Recommendation 2**

*Formally instruct MCOs on the proper payment of VFC Program claims in order to comply with Medicaid standards. This includes ensuring:*

- *Administration fees do not exceed the regional maximum administration fee (and ensuring providers are instructed on the proper submission of claims with VFC Program modifiers);*
- *Administered units do not exceed the number of vaccines reported;*
- *VFC Program vaccine lists are complete and up-to-date; and*
- *Claims for Medicaid recipients younger than 19 years old are processed using VFC Program payment rules.*

Status – Partially Implemented

Agency Action – In its 90-day response, the Department stated it would issue plan guidance to instruct the MCOs on the proper payment of VFC Program vaccine administration fees for all eligible members. Instructions would provide guidance and recommendations for MCOs to implement front end measures on their claim payment systems to ensure payments for vaccine administrations do not exceed the regional maximum fee, administration units do not exceed the number of vaccines administered, and MCOs do not pay for the cost of VFC Program vaccines. As noted in Recommendation 1, however, Department officials contacted CMS regarding the regional maximum fee and are still awaiting final guidance from CMS regarding the regional maximum fee before issuing their own guidance to the MCOs.

## **Recommendation 3**

*Monitor encounter claims to ensure MCOs are not overpaying providers for VFC Program vaccines and administration fees.*

Status – Partially Implemented

Agency Action – To monitor encounter claims and ensure MCOs are not overpaying providers for VFC Program vaccines and administration fees, the Department designed an automated query to identify potential overpayments made after our initial audit period, and will share the results with the Office of the Medicaid Inspector General. The Department is completing its quality assurance process on the query. Once testing is complete, the Department plans to periodically use the query as a monitoring tool.

## **Recommendation 4**

*Review the \$2.9 million in improper fee-for-service payments that we identified and recover overpayments where appropriate.*

Status – Partially Implemented

Agency Action – The improper payments occurred because providers did not properly bill Medicaid for the vaccines or administration fees and eMedNY, the Department's claims processing and payment system, lacked controls to prevent the overpayments. The Department recovered \$39,923 of the \$78,064 related to ordered ambulatory and

pharmacy claims. However, the remaining \$2.8 million in payments related to Ambulatory Patient Groups (APG) claims have not been recovered.

Throughout the initial audit and in its 90-day response, the Department expressed concerns with the audit methodology for calculating overpayments related to APG claims. Specifically, the Department noted that all the claims needed to be rebilled correctly, but then re-run through its APG grouper/pricer software to determine whether the corrected claims actually resulted in overpayments. Our report and State Comptroller's Comment acknowledged the Department's concerns and concluded the improper claims represented actual and potential overpayments. We further noted that, while the exact overpayment amount cannot be determined without running the claims through the APG grouper/pricer, the individual line item(s) of each claim we identified were billed inaccurately (i.e., not in accordance with Department policy). Furthermore, the Department in its response acknowledged that the claims were not billed correctly and resulted in improper payments.

The Department stated it would have to rerun each claim (62,847 claims) individually through the grouper/pricer software because it is not able to batch process a large volume of claims through the software. We encourage the Department to have providers rebill their claims in accordance with Department policies to ensure proper payment.

#### **Recommendation 5**

*Design and implement eMedNY edits to prevent improper payments of VFC Program vaccines and administration fees on APG, ordered ambulatory, and pharmacy claims.*

Status – Partially Implemented

Agency Action – The Department implemented a pharmacy claims edit in May 2019 that prevents payments for vaccines available for free through the VFC Program. In addition, in July 2020, the Department updated its grouper/pricer logic to help prevent improper payments on APG claims. The Department is still researching and evaluating its current system edits, as well as possible system changes for ordered ambulatory claims.

#### **Recommendation 6**

*Ensure all VFC Program policies and guidance are up-to-date and formally advise providers on how to properly bill Medicaid for VFC Program vaccines and administration fees.*

Status – Partially Implemented

Agency Action – In July 2020, the Department issued a Medicaid Update (the Department's official publication for Medicaid providers) that formally advised providers on Medicaid fee-for-service's vaccine coverage policy and instructed providers on how to properly bill Medicaid for VFC Program vaccines and administration fees.

Our initial report noted that the billing guidance in the APG Provider Manual was contrary to instructions in the September 2012 Medicaid Update and that, in addition to re-issuing billing guidance in a Medicaid Update, the Department should update its APG Provider Manual to reflect the instructions in the Medicaid Update. The Department has still not updated the contradictory billing guidance in the APG Provider Manual. Specifically, the manual directs providers to bill VFC Program vaccines as ordered ambulatory claims.

Major contributors to this report were Emily Proulx, Benjamin Babendreier, and Reid Vogel.

We would appreciate your response to this report within 30 days, indicating any actions planned to address the unresolved issues discussed in this report. We thank the management and staff of the Department for the courtesies and cooperation extended to our auditors during this review.

Very truly yours,

Daniel Towle  
Audit Manager

cc: Mr. Robert Schmidt, Department of Health  
Ms. Erin Ives, Acting Medicaid Inspector General