



DEPARTMENT OF HEALTH & HUMAN SERVICES

Office of Inspector General

Washington, D.C. 20201

November 28, 2011

TO: Donald M. Berwick, M.D.
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 City (A-02-08-01017)

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 City. 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-02-08-01017.

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

November 30, 2011

Report Number: A-02-08-01017

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 City*. 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-02-08-01017 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
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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 CITY**



Daniel R. Levinson
Inspector General

November 2011
A-02-08-01017

Office of Inspector General

<http://oig.hhs.gov>

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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 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.

OBJECTIVE

Our objective was to determine whether DOH claimed Federal Medicaid reimbursement for NEMT services claims submitted by transportation providers in New York City 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 City 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 54 claims. However, for the 46 remaining claims, DOH claimed Medicaid reimbursement for services that were not allowable or were potentially unallowable. Specifically, 36 claims contained services that did not comply with certain Federal and State requirements, and for 10 claims, we could not determine whether services complied with Federal and State regulations.

Of the 36 noncompliant claims, 6 contained more than 1 deficiency:

- For 18 claims, the transportation provider could not adequately document NEMT services to support the claim.
- For six 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 six claims, the medical practitioner could not provide documentation to support that the beneficiary received a Medicaid-eligible medical service on the date of transport.
- For six claims, the beneficiary's medical record did not indicate the condition justifying the practitioner's order for ambulance services.
- For six claims, the transportation provider did not report the ambulance driver who provided the NEMT service to the Department of Motor Vehicles within 10 days of commencement of employment.

Of the 10 claims for which we could not determine compliance with Federal and State Medicaid reimbursement requirements:

- For five claims, we could not verify the inspection status of the vehicle used to provide the transportation service.
- For five claims, 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 City social services district's quality assurance mechanism did not adequately ensure that NEMT services were properly provided.

Based on our sample results, we estimate that DOH improperly claimed \$16,951,335 in Federal Medicaid reimbursement for 979,886 NEMT claims during the period April 1, 2005, through March 31, 2006. In addition, we estimate that DOH claimed \$2,926,253 in Federal Medicaid reimbursement for 193,375 NEMT claims that may not have complied with Federal and State Medicaid requirements.

RECOMMENDATIONS

We recommend that DOH:

- refund \$16,951,335 to the Federal Government;
- work with CMS to resolve the claims, totaling an estimated \$2,926,253, for which Medicaid reimbursement may have been unallowable;
- 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 City social services district to strengthen its quality assurance mechanism to ensure that NEMT services are properly provided.

DEPARTMENT OF HEALTH COMMENTS AND OFFICE OF INSPECTOR GENERAL RESPONSE

In its 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 four sampled claims. In addition, DOH stated that it had updated its guidance for NEMT service providers and planned to implement a quality assurance program for NEMT services provided in the New York City area. DOH also requested that we provide information needed to resolve with CMS the claims related to our second recommendation. DOH's comments appear in their entirety as Appendixes D and E.

After reviewing DOH's comments, we maintain that our findings and recommendations are valid. In addition, we provided the information that DOH requested.

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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. In New York City, the New York City Human Resources Administration/Department of Social Services administers the local district's NEMT services program.

§ 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 ambulette⁴ 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 City 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 3,499,122 claims for NEMT services, totaling \$151,003,695 (\$75,507,782 Federal share), submitted by 196 transportation providers in New York City for the period April 1, 2005, through March 31, 2006.

We plan to issue a separate report (A-02-09-01024) on DOH's claims for Medicaid reimbursement for NEMT services claims submitted by providers outside New York City.

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, 52 transportation providers in New York City, 90 medical practitioners throughout the New York metropolitan area, and the New York City social services district office in New York, New York.

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 City social services officials to gain an understanding of the district's policies and procedures related to its administration of the NEMT program;
- ran computer programming applications at the MMIS fiscal agent that identified a sampling frame of 3,499,122 NEMT services claims,⁵ totaling \$151,003,695 (\$75,507,782 Federal share), made by 196 transportation providers;⁶
- selected a simple random sample of 100 claims from the sampling frame of 3,499,122 claims⁷ and, for these 100 claims:

⁵ Providers can submit an NEMT claim for a one-way trip to/from a Medicaid-covered medical service, a round trip, or a multileg trip.

⁶ We used providers' correspondence addresses and county codes on the MMIS to identify those located in New York City. The sampling frame did not include NEMT claims submitted by three transportation providers that were under criminal investigation.

⁷ Our random sample comprised 95 round trips and 5 one-way trips. Of these, NEMT services were claimed for ambulette (79 claims), van or similar method for day treatment center visits (8 claims), livery (7 claims), taxicab (4 claims), or nonemergency ambulance (2 claims).

- interviewed the ordering practitioner and office staff, if available,⁸ 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,⁹ 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 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 a transportation provider; and
- estimated the unallowable and potentially unallowable Federal Medicaid reimbursement in the population of 3,499,122 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.

FINDINGS AND RECOMMENDATIONS

DOH claimed Federal Medicaid reimbursement for some NEMT services submitted by transportation providers in New York City 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 54 claims. However, for the 46 remaining claims, DOH claimed Medicaid reimbursement for services that were not allowable or were potentially unallowable.

⁸ For various reasons (e.g., relocation, out of business), we were able to interview only 90 of the 93 practitioners related to our sampled claims.

⁹ For various reasons (e.g., relocation, out of business), we were able to interview only 52 of the 62 transportation providers related to our sample. For five providers whom we could not locate, we were able to obtain documentation supporting the claim from other sources (e.g., subsequent business owners).

Specifically, 36 claims contained services that did not comply with certain Federal and State requirements, and for 10 claims, we could not determine whether services complied with Federal and State regulations.

Of the 36 noncompliant claims, 6 contained more than 1 deficiency:

- For 18 claims, the transportation provider could not adequately document NEMT services to support the claim.
- For six 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 six claims, the medical practitioner could not provide documentation to support that the beneficiary received Medicaid-eligible medical services on the date of transport.
- For six claims, the beneficiary's medical record did not indicate the condition justifying the practitioner's order for ambulance services.
- For six claims, the transportation provider did not report the ambulance driver who provided the NEMT service to the Department of Motor Vehicles within 10 days of commencement of employment.

Of the 10 claims for which we could not determine compliance with Federal Medicaid reimbursement requirements:

- For five claims, we could not verify the inspection status of the vehicle used to provide the transportation service.
- For five claims, 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 City social services district's quality assurance mechanism did not adequately ensure that NEMT services were properly provided.

Based on our sample results, we estimate that DOH improperly claimed \$16,951,335 in Federal Medicaid reimbursement for 979,886 NEMT claims during the period April 1, 2005, through March 31, 2006. In addition, we estimate that DOH claimed \$2,926,253 in Federal Medicaid reimbursement for 193,375 NEMT claims that may not have complied with Federal and State Medicaid requirements.

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.¹⁰

For 18 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 14 sample claims, the transportation provider could not provide documentation related to the NEMT service, and for 4 other claims, the transportation provider could not document the name of the driver who transported the beneficiary.

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 6 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 six 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.

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 6 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.

¹⁰ 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.

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.

For 6 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.¹¹

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 6 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 three of these claims, as of May 2, 2011, the transportation provider still had not reported the driver to the Department of Motor Vehicles.

POTENTIALLY UNALLOWABLE CLAIMS

Vehicle Inspection Status Could Not Be Verified

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. Department of Transportation regulations (17 NYCRR § 720.2(A)) state that a motor vehicle shall not be operated unless it displays an unexpired certificate of inspection issued to the current owner or operator.

¹¹ We were able to interview only five of the six ordering practitioners because one of the practitioners was no longer in business.

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.

For 5 of the 100 claims in our sample, the transportation provider's records did not document the vehicle used to provide the NEMT service.¹³ Therefore, we could not determine whether the vehicle had been issued a certificate of inspection, and DOH could not assure that the beneficiary was transported in a properly inspected vehicle. Consequently, we are setting aside these claims for resolution by CMS and DOH.

Providers Could Not Be Located

We could not determine whether five claims complied with certain Federal and State requirements because we could not locate the transportation providers or medical practitioners associated with these claims. Consequently, we are setting aside these claims for resolution by CMS and DOH.¹⁴

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 City social services district's quality assurance mechanism did not adequately ensure that NEMT services were properly provided.

RECOMMENDATIONS

We recommend that DOH:

- refund \$16,951,335 to the Federal Government;
- work with CMS to resolve the claims, totaling an estimated \$2,926,253, for which Medicaid reimbursement may have been unallowable;
- 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 City social services district to strengthen its quality assurance mechanism to ensure that NEMT services are properly provided.

¹³ The transportation provider's records did not document the vehicle used to provide the NEMT service for 13 other sample claims that we determined to be unallowable.

¹⁴ We could not locate the transportation provider or medical practitioner for four other sample claims that we determined to be unallowable. CMS requirements are unclear regarding record-retention policies for transportation providers and medical practitioners who cease operations.

DEPARTMENT OF HEALTH COMMENTS AND OFFICE OF INSPECTOR GENERAL RESPONSE

In its comments on our draft report, DOH partially agreed with our first recommendation (financial disallowance) and agreed with our remaining recommendations.¹⁵ Specifically, DOH disagreed with our interpretation of certain State requirements related to prior authorization of NEMT services and with our findings related to four sampled claims. In addition, DOH stated that it had updated its guidance for NEMT service providers and planned to implement a quality assurance program for NEMT services provided in the New York City area. DOH also requested that we provide information needed to resolve with CMS the claims related to our second recommendation. DOH's comments appear in their entirety as Appendixes D and E.

Prior Authorization of Nonemergency Transportation Services

Department of Health Comments

DOH stated that it appeared we disallowed six 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 MMIS will not accept a request for prior authorization without a system-verified medical practitioner’s identification number.

Office of Inspector General Response

We did not consider only a practitioner’s written order as supporting documentation of a physician’s 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.¹⁶ For all six 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 from the transportation provider, the medical practitioner whose identification number was entered into the DOH’s MMIS, or the medical provider to whom the beneficiary was transported.

¹⁵ DOH furnished comments to our draft report on August 11, 2011. In a letter dated September 23, 2011, DOH provided additional comments on a finding that it did not dispute in its original comments.

¹⁶ We note that for 13 of the 100 sampled claims, DOH could not provide a prior approval form signed by a medical practitioner. However, for seven of these claims, we obtained a signed prior approval form from the ordering practitioner.

Moreover, claim information, including the medical practitioner's identification number, was submitted to the DOH's fiscal agent by the transportation provider.¹⁷ The MMIS could not validate that there was a practitioner's order. Rather, the MMIS could only validate 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.

After reviewing DOH's comments, we maintain that our finding regarding prior authorization of NEMT services is valid.

Findings Related to Specific Sampled Claims

Department of Health Comments

For two sampled claims (claim numbers 29 and 48), DOH stated that the transportation provider was no longer in business and could not be located; DOH also stated that the claims should be set aside for resolution between DOH and CMS. For the third sampled claim (claim number 35), DOH stated that the transportation provider associated with the claim was terminated from participation in the Medicaid program and that the State was seeking recoveries from the provider. DOH stated that the claim should therefore not be extrapolated across our population of claims. For the fourth sampled claim (claim number 63), DOH stated that the driver associated with the claim was removed from the Department of Motor Vehicles' roster of approved drivers on June 27, 2007, more than 1 year after the January 9, 2006, sampled service date.

Office of Inspector General Response

Regarding the two sampled claims for which the transportation provider was no longer in business and could not be located, we disagree that these claims should be set aside. We obtained claim information from other sources. Specifically, for claim number 29, we obtained documentation from an attorney representing the transportation provider's family; for claim number 48, we obtained the associated beneficiary's medical records from the medical practitioner to whom the beneficiary was transported.¹⁸ For claim number 35, although the State is seeking recoveries from the transportation provider, we note that the recoveries relate to services claimed after our audit period. For claim number 63, our finding related to when the driver was added to the Department of Motor Vehicles' roster by the transportation provider, not when the driver was removed from the roster.

¹⁷ During our audit period, it was the general practice of medical practitioners to fax NEMT requests to transportation providers. Upon completion of the requested NEMT service, the transportation provider prepared a request for provider approval for the medical practitioner's (or an authorized staff member's) signature. The transportation provider then submitted the form (which included the medical practitioner's identification number and signature) to the DOH's fiscal agent for payment.

¹⁸ The medical practitioner could not document that the beneficiary received a Medicaid-eligible service on the sampled service date. Generally, transportation providers would not have access to a beneficiary's medical records.

After reviewing DOH's comments, we maintain that our findings regarding the four sampled claims are valid.

We provided the information that DOH requested to resolve with CMS the claims related to our second recommendation.

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 City for the period April 1, 2005, through March 31, 2006.

SAMPLING FRAME

The sampling frame was an Access file containing 3,499,122 Medicaid NEMT claims totaling \$151,003,695 (\$75,507,782 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 City 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 sequentially numbered the 3,499,122 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 and potentially 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)
3,499,122	\$75,507,782	100	\$2,281	36	\$655

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

	<u>Federal Share</u>	<u>Total Claims</u>
Point estimate	\$22,904,203	1,259,684
Lower limit	16,951,335	979,886
Upper limit	28,857,071	1,561,803

Sample Details and Results

NEMT Claims in Frame	Value of Frame (Federal Share)	Sample Size	Value of Sampled Claims (Federal Share)	Number of Claims With Potentially Unallowable Services	Value of Potentially Unallowable Services (Federal Share)
3,499,122	\$75,507,782	100	\$2,281	10	\$185

Estimated Value of Potentially Unallowable Services
(Limits Calculated for the 90-Percent Confidence Interval)

	<u>Federal Share</u>	<u>Total Claims</u>
Point estimate	\$6,483,873	349,912
Lower limit	2,926,253	193,375
Upper limit	10,041,493	572,864

APPENDIX C: SUMMARY OF DEFICIENCIES FOR EACH SAMPLED CLAIM**Deficiencies**

1	Service not adequately documented
2	No practitioner order for transportation service
3	No Medicaid-eligible medical service
4	Condition justifying order not noted in medical record
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						0
2						0
3						0
4	X					1
5						0
6						0
7	X		X			2
8	X					1
9		X				1
10						0
11						0
12						0
13						0
14	X					1
15	X					1
16	X					1
17						0
18						0
19					X	1
20					X	1
21	X					1
22					X	1
23						0
24		X				1
25						0
26	X					1
27						0
28				X	X	2
29	X			X		2
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				X		1
36			X	X		2
37						0
38		X				1
39						0
40						0
41					X	1
42						0
43	X			X		2
44						0
45						0
46						0
47	X					1
48			X			1
49	X					1
50						0
51						0
52			X			1
53						0
54						0
55		X				1
56						0
57						0
58	X					1
59						0
60						0
61						0
62						0
63					X	1
64						0
65						0
66	X					1
67						0

Sample Claim	Deficiency 1	Deficiency 2	Deficiency 3	Deficiency 4	Deficiency 5	No. of Deficiencies
68						0
69						0
70						0
71	X					1
72						0
73						0
74						0
75	X					1
76						0
77						0
78		X				1
79						0
80						0
81						0
82	X					1
83						0
84						0
85						0
86						0
87		X				1
88	X					1
89						0
90						0
91						0
92						0
93						0
94			X	X		2
95						0
96			X			1
97						0
98						0
99						0
100						0
Category Totals	18	6	6	6	6	42 ¹
36 Claims With Deficiencies						

¹ Six claims contained more than one deficiency.

APPENDIX D: DEPARTMENT OF HEALTH COMMENTS (AUGUST 11, 2011)



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

Sue Kelly
Executive Deputy Commissioner

August 11, 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-02-08-01017

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-02-08-01017 on "Review of Medicaid Payments for Nonemergency Medical Transportation Services Claims Submitted by Providers in New York City."

Thank you for the opportunity to comment.

Sincerely,

A handwritten signature in black ink, appearing to read "Robert W. Reed". The signature is written in a cursive style with a large, sweeping "R" and "W".

Robert W. Reed
Deputy Commissioner
For Administration

Enclosure

cc: Jason 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-02-08-01017 on
"Review of Medicaid Payments
For Nonemergency Medical Transportation Services Claims
Submitted By Providers in New York City"**

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-02-08-01017 on "Review of Medicaid Payments for Nonemergency Medical Transportation Services Claims Submitted by Providers in New York City."

Recommendation #1:

The Department should refund \$16,951,335 to the Federal Government.

Response #1:

The Department does not entirely agree with the recommendation for it to refund \$16,951,335 to the Federal government.

The OIG audit sample consisted of 100 randomly selected claims from amongst the 3,499,122 claims reimbursed for audit period. The OIG review found that the Department claimed unallowable services for 36 of the 100 claims in the audit sample. The Department claimed \$655 in federal reimbursement relative to these 36 claims, which OIG extrapolated across the entire claims universe to conclude that the Department was reimbursed \$16,951,335 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 18 claims, OIG found that the transportation provider could not adequately document NEMT services to support the claim. The Department does not dispute this finding for 17 of the 18 claims. Claim #29 is from a transportation provider that is no longer in business and which OIG could not locate. The Department believes that OIG should set this claim aside for resolution between CMS and the Department.

2. *No Medical Practitioner's Order for Transportation Services*

For six claims, OIG found that the request for prior authorization was not supported by an order from a medical practitioner in the Department's files, the beneficiary's medical record or the transportation provider's files. The Department does not dispute this finding.

3. *No Medicaid-Eligible Medical Services*

For six 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 does not dispute this finding for 5 of the 6 claims. Claim #48 is from a transportation provider that is no longer in business and which OIG could not locate. The Department believes that OIG should set this claim aside for resolution between CMS and the Department.

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

For six claims, OIG found that the beneficiary's medical record did not indicate the condition justifying the practitioner's order for ambulette services. The Department does not dispute this finding for 4 of the 6 claims. The provider associated with Claim #35 was terminated from participation in the program effective September 1, 2008. OMIG sought the recovery of reimbursement, resulting in a judgment being forwarded to the New York State Office of the Attorney General for enforcement on June 17, 2011. Considering these circumstances, the Department disagrees with OIG's extrapolating the claim across the claims universe. In addition, Claim #29 has more than one deficiency and, for the reason explained in 1 above, the Department believes that OIG should set this claim aside for resolution between CMS and the Department.

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

For six 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 for 5 of the 6 claims. OIG disallowed 50 percent of Claim #63 because the driver for the initial leg of the trip was not listed on the DMV roster. However, Department review confirmed that the driver's name was removed from the roster on June 27, 2007, which is after the January 9, 2006 service date. OIG should therefore allow this claim.

Recommendation #2:

The Department should work with CMS to resolve the claims, totaling an estimated \$2,926,253, for which Medicaid reimbursement may have been unallowable.

Response #2:

OIG was recently requested to furnish supporting documentation relative to this recommendation. When received, the Department and OMIG will evaluate the claims and then work cooperatively with CMS to resolve them.

Recommendation #3:

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 #3:

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

Recommendation #4:

The Department should require the New York City social services district to strengthen its quality assurance mechanism to ensure that NEMT services are properly provided.

Response #4:

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 the New York City area by early next year.

APPENDIX E: DEPARTMENT OF HEALTH COMMENTS (SEPTEMBER 23, 2011)



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

Sue Kelly
Executive Deputy Commissioner

September 23, 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. Draft Audit A-02-08-01017

Dear Mr. Edert:

On August 11, 2011, the New York State Department of Health furnished comments on Department of Health and Human Services, Office of Inspector General draft audit report A-02-08-01017 on its "Review of Medicaid Payments for Nonemergency Medical Transportation Services Claims Submitted by Providers in New York City." In these comments, the Department does not dispute the audit findings associated with the six claims for which OIG found that the request for prior authorization was not supported by an order from a medical practitioner in either the Department's files, the beneficiary's medical record or the transportation provider's files. However, upon closer examination, the Department believes that these claims are sufficiently documented and therefore should not have been disallowed by OIG.

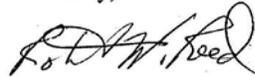
It appears OIG disallowed these claims because the auditors were unable to locate paper documentation confirming written practitioners' orders for the transportation services. The Department finds this interpretation inconsistent with 18 NYCRR § 505.10(d)(4) which states, "a request for prior authorization for nonemergency 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.

The Department respectfully requests OIG to take this additional information into consideration when finalizing the audit report. Thank you.

Sincerely,



Robert W. Reed
Deputy Commissioner
for Administration

Enclosure

cc: Mr. Helgeson
Mr. Cox
Ms. Christensen
Mr. Wendell
Mr. Abbott
Mr. LaCasse
Ms. Myron
Mr. Farrell
Mr. Benner
Mr. Brooks