NEW YORK STATE | Office of the Medicaid Inspector General

KATHY HOCHUL
Governor

FRANK T. WALSH, JR.
Acting Medicaid Inspector General

Review of Capitation Payments When New York State Paid Fee for Service Long-Term Care Services During the Capitation Period

Revised Final Audit Report
Audit #: 19-5190

Agewell New York
Plan ID #: 03481927

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Acting Medicaid Inspector General

September 30, 2021

[redacted]
Agewell New York
1991 Marcus Avenue, Suite M201
Lake Success, New York 11042

Re: Revised Final Audit Report
Audit #: Audit # 19-5190
Provider ID #: 03481927

[redacted]

This is the Office of the Medicaid Inspector General's (OMIG) hereby recinds the Final Audit Report for Audit #19-5190 issued on May 27,2021. It is replaced by this Revised Final Audit Report.

In accordance with the Medicaid Managed Long Term Care Partial Capitation Model Contract and Title 18 of the Official Compilation of the Codes, Rules and Regulations of the State of New York (18 NYCRR) Section 517.6, this Final Audit Report represents the final determination on the issues found during OMIG's audit.

During the case closing process it was determined that retro rate adjustments changed the amounts on some of the inappropriate capitation payments. This caused the overpaid amount to be reduced from $56,495.45 to $56,430.51. A detailed explanation of the findings can be found in the Audit Findings section of this report.

The attachments referred to in this Revised Final Audit Report will be sent via the Health Commerce System (HCS). Please provide a contact person with a dedicated HCS account. If you have any questions, or to obtain your copy of the attachment via HCS, please contact [redacted] or through email at [redacted] Please refer to audit number 19-5190 in all correspondence.

[redacted]
Office of the Medicaid Inspector General

Attachments
Certified Mail Number: 7021-0350-0000-6247-3600
Return Receipt Requested
[redacted]

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Background, Objective, and Audit Scope

Background

The New York State Department of Health (DOH) is the single state agency responsible for the administration of the Medicaid program. As part of its responsibility as an independent entity within DOH, the Office of the Medicaid Inspector General (OMIG) conducts audits and reviews of various Plans of Medicaid reimbursable services, equipment and supplies. These audits and reviews are directed at assessing Plan compliance with applicable laws, regulations, rules and policies of the Medicaid program as set forth in New York Public Health Law, New York Social Services Law, the regulations of DOH (Titles 10 and 18 of the New York Codes Rules and Regulations), the regulations of the Department of Mental Hygiene (Title 14 of the New York Codes Rules and Regulations), DOH's Medicaid Plan Manuals, Medicaid Managed Long-Term Care Contracts and Medicaid Update publications.

Managed long–term care is a system that streamlines the delivery of long–term services to people who are chronically ill or disabled and who wish to stay in their homes and communities. These services, such as home care or adult day care, are provided through MLTC Plans that are approved by the New York State Department of Health. The entire array of services to which an enrolled member is entitled can be received through the MLTC plan the member has chosen.

Objective

The objective of this audit was to assess the Plan's adherence to applicable laws, regulations, rules and policies governing the New York State Medicaid program, as well as compliance with the Contracts.

Audit Scope

This review is being conducted due to Medicaid eligibility and/or retro enrollment / disenrollment issues which resulted in New York State making long term care fee for service Medicaid payments for services which are included in the Plan's scope of benefits. These fee for service payments were for dates of service in which the Plan was paid a capitation payment. The review's scope was limited to the enrollees and dates as outlined in Attachment A (Review Scope – Capitations under Review). OMIG reviewed the Plan's long term care service payments to ensure the Plan provided services required for the months that the Plan received a capitation payment and/or to ensure a provider did not receive duplicate payments from both the Plan and New York State Fee for Service Medicaid for the same dates of service to the same enrollee.

Regulations and Contracts of General Application

Each audit finding is supported by relevant regulations, policy statements and manuals. In addition, the audit findings in this audit are supported by regulations of general application to the Medicaid program. These regulations are provided below.

"By enrolling the provider agrees: (a) to prepare and to maintain contemporaneous records demonstrating its right to receive payment. . . and to keep for a period of six years from the date the care, services or supplies were furnished, all records necessary to disclose the nature and extent of services furnished and all information regarding claims for payment submitted by, or on behalf of, the provider. . . (e) to submit claims for payment only for services actually furnished and which were medically necessary or otherwise authorized under the Social Services Law when furnished and which were provided to eligible persons; … (i) to comply with the rules, regulations and official directives of the department."

18 NYCRR Section 504.3

"The inspector shall have the following functions, duties and responsibilities: … (9) to require and compel the production of such books, papers, records and documents as may be deemed to be relevant or material to an investigation, examination or review."

NY Public Health Law Section 32(9)

"…OMIG may review and audit contracts, cost reports, claims, bills and all other expenditures of medical assistance program funds to determine compliance with federal and state laws and regulations and take such corrective actions as are authorized by federal or state laws and regulations."

Managed Long-Term Care Partial Capitation Contract,
Article VIII, Section P

"The Contractor shall preserve and retain all records relating to Contractor performance under this Contract in readily accessible form during the term of this Contract and for a period of six (6) years thereafter. All provisions of this Contract relating to record maintenance and audit access shall survive the termination of this Contract and shall bind the Contractor until the expiration of a period of six (6) years commencing with termination of this Contract or if an audit is commenced, until the completion of the audit, whichever occurs later."

2015 Contract, Article VIII, Section E
2012 Contract, Article VIII, Section D

"An overpayment includes any amount not authorized to be paid under the medical assistance program, whether paid as the result of inaccurate or improper cost reporting, improper claiming, unacceptable practices, fraud, abuse or mistake."

18 NYCRR Section 518.1(c)

"…the Department may recover premiums in all cases where no services are provided during the applicable period, unless the Contractor demonstrates that it was at risk for provision of medical services for any portion of the payment period. Instances where the Contractor is not at risk include, but are not necessarily limited to, circumstances where the enrollee was not eligible for services, or where providers in fact refused or failed to render any services. …"

Managed Long-Term Care Partial Capitation Contract,
Article VI, F(1), effective January 1, 2015

Audit Findings

OMIG's preliminary findings are as follows, for 15 capitation payments the Plan received appropriate capitation payments and made payments to providers for long term care service. For 13 capitation payments Medicaid eligibility and/or retro enrollment / disenrollment issues resulted in the Plan receiving inappropriate capitation payments. For these capitation payments all the enrollee's long care services were paid by the NYS Medicaid Fee for Service. These services were included in the Plan's scope of benefits. Additionally, during the engagement letter development and prior to the issuance of the review's engagement letter the Plan voided 5 claims and these claims were removed from the audit.

The total amount of overpayment, as defined in 18 NYCRR Section 518.1, is $ $56,430.51. Subsequent to the issuance of the audit's engagement letter, the Plan voided 5 claims in the amount of $ $56,430.51. Therefore, no remaining balance is due to DOH (Attachment B).

Hearing Rights

The Plan has the right to challenge this action and determination by requesting an administrative hearing within sixty (60) days of the date of this notice. In accordance with 18 NYCRR 519.18(a), "The issues and documentation considered at the hearing are limited to issues directly relating to the final determination. An appellant may not raise issues regarding the methodology used to determine any rate of payment or fee, nor raise any new matter not considered by the department upon submission of objections to a draft audit or notice of proposed agency action."

If the Plan wishes to request a hearing, the request must be submitted in writing within sixty (60) days of the date of this notice to:

General Counsel
New York State
Office of the Medicaid Inspector General
Office of Counsel
800 North Pearl Street
Albany, New York 12204

Questions regarding the request for a hearing should be directed to Office of Counsel, at [redacted]

If a hearing is held, the Plan may have a person represent it or the Plan may represent itself. If the Plan chooses to be represented by someone other than an attorney, the Plan must supply along with its hearing request a signed authorization permitting that person to represent the Plan at the hearing; the Plan may call witnesses and present documentary evidence on its behalf.

For a full listing of hearing rights please see 18 NYCRR Part 519.

Contact Information

Office Address:

New York State
Office of the Medicaid Inspector General
Division of Medicaid Audit
800 N. Pearl St
Albany, New York 12204