



Office of the
Medicaid Inspector
General

FRANK T. WALSH

Acting Medicaid Inspector General

Audit of Encounter Data for Reported Payments Made to Participating and Non-Participating Providers that were Excluded for Dates of Service April 1, 2017 through March 31, 2021

**Final Audit Report
Audit #: 2023Z80-017V**

Excellus Health Plan, Inc.

Plan ID #: 00477023



Office of the
Medicaid Inspector
General

KATHY HOCHUL
Governor

FRANK T. WALSH
Acting Medicaid Inspector General

March 10, 2023

Excellus Health Plan, Inc.
165 Court Street Floor 6
Rochester, New York 14647-0001

Final Audit Report
Audit #: 2023Z80-017V
Plan ID #: 00477023

Dear Provider:

This is the Office of the Medicaid Inspector General's (OMIG) Final Audit Report for Excellus Health Plan, Inc. (Plan).

In accordance with Title 18 of the Official Compilation of the Codes, Rules and Regulations of the State of New York Part 517 and the Medicaid Managed Care/Family Health Plus/HIV Special Needs Plan/Health and Recovery Plan, Managed Long Term Care Partial Capitation, Medicaid Advantage Plus (MAP), Program of All-Inclusive Care for the Elderly (PACE), Medicaid Advantage (MA), and Fully Integrated Duals Advantage (FIDA) Model Contracts (Contracts), the attached Final Audit Report represents the final determination on the issues found during OMIG's audit.

The Plan's February 16, 2023 response to OMIG's February 2, 2023 Draft Audit Report stated that the Plan is in agreement with the Draft Audit Report findings. As a result, the overpayments identified in this Final Audit Report remain unchanged from those cited in the Draft Audit Report. The total amount due is \$27,015.84.

OMIG has attached the exhibit(s) of paid claims identified as overpayments. Please email [REDACTED] if you have any questions or comments concerning this report. Please refer to audit number 2023Z80-017V in all correspondence.

Sincerely,

[REDACTED]
System Match and Recovery
Division of Systems Utilization and Review
Office of the Medicaid Inspector General

[REDACTED]
Attachments

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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 providers of Medicaid reimbursable services, equipment, and supplies. These audits and reviews are directed at assessing provider 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 Provider Manuals, *Medicaid Update* publications, and the Contracts.

Objective

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

- recover the Plan's reported payments made to excluded participating and non-participating providers.

Audit Scope

An audit of encounter data with dates of service in the period beginning April 1, 2017 and ending March 31, 2021 to determine if participating and/or non-participating providers excluded from participation with the New York State Medicaid Program were permitted by the Plan to participate in any activity related to furnishing medical care, services, or supplies for which costs were reported to the State, was completed.

Please note that due to the implementation of the National Provider Identifier (NPI) on September 1, 2008, there may be multiple Provider Identification Numbers associated with the Primary Provider Identification Number. The NPI is linked to the Primary Provider Identification Number. The Primary Provider Identification Number is used for correspondence and recoupment.

Audit Findings

OMIG issued a Draft Audit Report to the Plan on February 2, 2023 that identified \$27,015.84, in Medicaid overpayments. The Plan's February 16, 2023 response to the Draft Audit Report stated that the Plan is in agreement with the Draft Audit Report findings. As a result, the overpayments identified in this Final Audit Report remain unchanged from those cited in the Draft Audit Report.

OMIG has identified the following findings:

1. Plan Reported Payments Made to Participating and Non-Participating Providers that Were Excluded

A person who is excluded from the program cannot be involved in any activity relating to furnishing medical care, services or supplies to recipients of medical assistance for which claims are submitted to the program or relating to claiming or receiving payment for medical care, services or supplies during the period.

18 NYCRR § 515.5(c)

Providers reimbursed on a cost-related basis may not claim as allowable costs any amounts paid or credited to any person who is excluded from the program or who is in violation of any condition of participation in the program.

18 NYCRR § 515.5(d)

Pursuant to 42 CFR 455.436 and 42 CFR 438.610, the Contractor shall confirm the identity and determine the exclusion status of new Participating Providers, re-enrolled Participating Providers and all current Participating Providers, any subcontractors, and any person with an ownership or control interest or who is an agent or managing employee of the Participating Provider or subcontractor through routine checks of Federal and State databases...

2019 Medicaid Managed Care/Family Health Plus/HIV Special Needs Plan/Health and Recovery Plan Model Contract Section 18.9(c)(i)

2016 Medicaid Advantage Model Contract Section 18.10(c)(i)

2017 Managed Long Term Care Partial Capitation Contract Article VIII(F)(3)(p)(iii)(A)

2016 PACE Model Contract Article VI(E)(3)(l)(iii)

The FIDA Plan may not employ or contract with Providers excluded from participation in Federal health care programs under either section 1128 or section 1128A of the Social Security Act, and implementing regulations at 42 C.F.R. § 1001 et. seq. Federal financial participation (FFP) is not available for amounts expended for Providers excluded by Medicare, Medicaid, or the State Children's Health Insurance Program, except for Emergency Services.

2014 FIDA Model Contract 2.7.1.5

Pursuant to 42 CFR 455.101, the Contractor is required to check against the Medicaid excluded Provider list any employee in the capacity of general manager, business manager, administrator, director, or other individual who exercises operational or managerial control over, or who directly or indirectly conducts the day to day operations at initial hiring and periodically thereafter.

2017 Medicaid Advantage Plus Model Contract Section 18.9(b)

The Contractor is required to check new Providers, re-enrolled Providers and all current Participating Providers against the Excluded Provider List on a monthly basis, which includes updates from the List of Excluded Individuals and Entities (LEIE) and the Restricted, Terminated or Excluded Individuals or Entities List. The Contractor will require all network Providers to monitor staff and employees against the stated exclusion list and report any exclusions to the Contractor on a monthly basis.

2017 Medicaid Advantage Plus Model Contract Section 18.9(c)

Pursuant to 42 CFR 455.436 and 42 CFR 438.610, the Contractor shall confirm the identity and determine the exclusion status of Non-Participating Providers, upon or no later than 30 days of payment of first claim through routine checks of Federal and State databases...

2019 Medicaid Managed Care/Family Health Plus/HIV Special Needs Plan/Health and Recovery Plan Model Contract Section 18.9(c)(ii)

2016 Medicaid Advantage Model Contract Section 18.10(c)(ii)

2017 Managed Long Term Care Partial Capitation Contract Article VIII(F)(3)(p)(iii)(B)

If SDOH excludes or terminates a provider from its Medicaid program, the Contractor shall, upon learning of such exclusion or termination, immediately terminate the Provider Agreement with the Participating Provider with respect to the Contractor's ... product, and agrees to no longer utilize the services of the subject provider, as applicable...

2019 Medicaid Managed Care/Family Health Plus/HIV Special Needs Plan/Health and Recovery Plan Model Contract Section 21.5(a)

2016 Medicaid Advantage Model Contract Section 21.3(a)

2017 Managed Long Term Care Partial Capitation Contract Article VII(I)(1)

2017 Medicaid Advantage Plus Model Contract Section 21.4(a)

If Medicaid payments are made by the Contractor to an excluded or terminated provider for dates of service after the provider's exclusion or termination effective date, the Contractor shall report and explain within 60 days of identifying the payment, in a form and format to be determined by OMIG in consultation with SDOH, when and how the payment was identified, and the date on which the encounter data was adjusted to reflect the recovery.

2019 Medicaid Managed Care/Family Health Plus/HIV Special Needs Plan/Health and Recovery Plan Model Contract Section 21.5(c)

2016 Medicaid Advantage Model Contract Section 21.3(c)

2017 Managed Long Term Care Partial Capitation Contract Article VII(I)(3)

As a result of this finding, OMIG has identified 4 instance(s), totaling **\$27,015.84** (Exhibit A), where the Plan reported inappropriately made payments to excluded participating or non-participating providers.

Based on this determination, the total amount due to DOH, as defined in 18 NYCRR Section 518.1, is **\$27,015.84** (Exhibit A).

Do not submit claim voids or adjustments in response to this Final Audit Report. Repayment instructions are outlined on the next page.

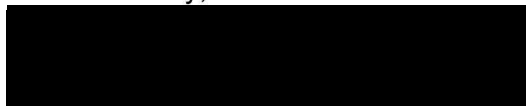
Repayment Options

In accordance with 18 NYCRR Part 518, which regulates the collection of overpayments, your repayment options are described below.

Option #1: Make a full payment by check, money order, or OMIG's Online Payment Portal within 20 days of the date of the Final Audit Report.

- The check should be made payable to the **New York State Department of Health, should include the audit number on the memo line**, and be mailed with the attached remittance advice to:

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



- If you elect to pay electronically through OMIG's Online Payment Portal, please visit <https://omig.ny.gov/online-payment-portal> or contact OMIG's Bureau of Collections Management by telephone or email, at the above number or address.

Option #2: Enter into a repayment agreement with OMIG. If your repayment terms exceed 90 days from the date of the Final Audit Report, recoveries of amounts due are subject to interest charges at the prime rate plus 2%. OMIG's acceptance of a repayment agreement is based on your repaying the Medicaid overpayment as agreed. OMIG will adjust the rate of recovery, or require payment in full, if your unpaid balance is not being repaid as agreed. If you wish to enter into a repayment agreement, please contact the Bureau of Collections Management within 20 days, by telephone or email, as provided above.

Should you fail to select a payment option above within 20 days of the date of this Report, OMIG will initiate recoupment by withholding all or a part of your payments otherwise payable, in accordance with 18 NYCRR 518.6. Additionally, OMIG reserves the right to use any remedy allowed by law to collect the amount due. Pursuant to the State Finance Law Section 18(5), a collection fee equal to twenty two percent (22%) of the amount due, including interest, may be added to the amount owed.

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 Section 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 Systems Utilization and Review
800 North Pearl Street
Albany, New York 12204

Mission

The mission of the Office of the Medicaid Inspector General is to enhance the integrity of the New York State Medicaid program by preventing and detecting fraudulent, abusive, and wasteful practices within the Medicaid program and recovering improperly expended Medicaid funds while promoting high quality patient care.

Vision

To be the national leader in promoting and protecting the integrity of the Medicaid program.



Office of the
Medicaid Inspector
General

REMITTANCE ADVICE

Excellus Health Plan, Inc.
165 Court Street Floor 6
Rochester, New York 14647-0001

Plan ID #: 00477023

Audit #: 2023Z80-017V

Amount Due: \$27,015.84

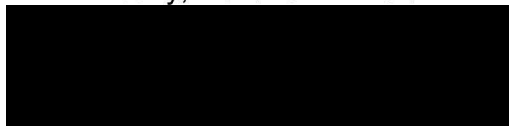
Audit
Type

- ☐ Managed Care
☒ Fee-for-Service
☐ Rate

Checklist

1. To ensure proper credit, please enclose this form with your check.
2. Make checks payable to: New York State Department of Health.
3. ***Record the audit number on your check.***
4. Mail the check to:

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



If you elect to pay electronically through OMIG's Online Payment Portal, please visit <https://omig.ny.gov/online-payment-portal> or contact OMIG's Bureau of Collections Management by telephone or email, at the above number or address.