# Department of Health

# Medicaid Program: Cost Saving Opportunities on Payments of Medicare Part C Claims

Report 2020-S-65 | September 2021

OFFICE OF THE NEW YORK STATE COMPTROLLER
Thomas P. DiNapoli, State Comptroller

Division of State Government Accountability

# Audit Highlights

## Objective

To determine whether Medicaid cost savings can be achieved by modifying the reimbursement methodology for Medicare Part C cost-sharing claims in accordance with federal requirements. The audit covered the period from July 1, 2016 through December 31, 2020.

## About the Program

The Department of Health administers the New York State Medicaid program. Many of the State's Medicaid recipients are enrolled in both Medicaid and Medicare. Medicare is the primary payer for medical services provided to these dual-eligible recipients. Medicaid typically pays for cost-sharing liabilities, which include Medicare deductibles, coinsurance, and copayments.

Under Medicare Part C, private companies administer Medicare benefits by offering different health care plans (known as Medicare Advantage Plans) and processing and paying claims for services. The Centers for Medicare & Medicaid Services (CMS) allows state Medicaid programs several options for paying the Medicare Part C cost-sharing. States can pay: the full Medicare cost-sharing liability, their standard Medicaid fee for a service, or a rate between those amounts established by the state and approved by CMS.

In 2016, the New York State Legislature approved a plan for Medicaid to pay 85 percent of dual-eligibles' copayment or coinsurance on Medicare Part C outpatient claims, except for ambulance and psychology services, for which Medicaid pays 100 percent of the cost-sharing liability (inpatient services also still paid 100 percent). The plan was approved by CMS and enacted as New York State Social Services Law § 367-a, effective July 1, 2016.

The number of Medicaid recipients joining Medicare Advantage Plans has grown from 546,589 in July 2016 to 720,034 in December 2020. Medicaid payments for Medicare Part C claims during this period totaled about $972 million for the claim types reviewed by this audit: outpatient claims for clinic, practitioner, transportation, referred ambulatory, durable medical equipment, laboratory, eye care, and dental services; and inpatient claims.

## Key Findings

- New York's current Medicaid payment rules for Medicare Part C cost-sharing liabilities compared to the allowable alternatives have significantly different costs to the Medicaid program.
- If New York Medicaid had limited its cost-sharing so that the total payment (Medicare's payment plus what Medicaid was billed for the copayment or coinsurance) was no more than the typical Medicaid fee, it could have saved over $419 million from July 1, 2016 to December 31, 2020. Other states already use this approach, and it is similar to how New York Medicaid currently pays Medicare Part B cost-sharing.
- We project that, using this reimbursement methodology, the State could save over $122 million annually based on the average savings for the last two years.

## Key Recommendation

- Formally re-evaluate the existing Medicaid methodology for processing and paying Medicare Part C cost-sharing liabilities (including the necessity of exemptions to payment limitations for ambulance, psychology, and inpatient services), and engage other stakeholders, as appropriate.

**Office of the New York State Comptroller**
**Division of State Government Accountability**

September 21, 2021

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

Dear Dr. Zucker:

The Office of the State Comptroller is committed to helping State agencies, public authorities, and local government agencies manage their resources efficiently and effectively. By so doing, it provides accountability for the tax dollars spent to support government operations. The Comptroller oversees the fiscal affairs of State agencies, public authorities, and local government agencies, as well as their compliance with relevant statutes and their observance of good business practices. This fiscal oversight is accomplished, in part, through our audits, which identify opportunities for improving operations. Audits can also identify strategies for reducing costs and strengthening controls that are intended to safeguard assets.

Following is a report of our audit of the Medicaid Program entitled *Cost Saving Opportunities on Payments of Medicare Part C Claims*. This audit was performed pursuant to the State Comptroller's authority under Article V, Section 1 of the State Constitution and Article II, Section 8 of the State Finance Law.

This audit's results and recommendation are resources for you to use in effectively managing your operations and in meeting the expectations of taxpayers. If you have any questions about this report, please feel free to contact us.

Respectfully submitted,

*Division of State Government Accountability*

# Contents

# Glossary of Terms

| Term | Description | Identifier |
|---|---|---|
| CMS | Centers for Medicare & Medicaid Services | *Agency* |
| Department | Department of Health | *Auditee* |
| Dual-eligibles | Medicaid recipients who are also enrolled in Medicare | *Key Term* |
| Plans | Medicare Advantage Plans | *Key Term* |

# Background

The New York State Medicaid program is a federal, state, and local government-funded program that provides a wide range of medical services to those who are economically disadvantaged and/or have special health care needs. For the State fiscal year ended March 31, 2021, New York's Medicaid program had approximately 7.3 million recipients and Medicaid claim costs totaled about $68.1 billion. The federal government funded about 56.5 percent of New York's Medicaid claim costs, and the State and the localities (the City of New York and counties) funded the remaining 43.5 percent.

The Department of Health (Department) administers the New York State Medicaid program. Many of the State's Medicaid recipients are dually eligible for both Medicaid and Medicare, the federal health insurance program for the elderly and disabled. Individuals enrolled in both programs are referred to as "dual-eligibles." Medicare is the primary payer for medical services provided to dual-eligible recipients. Medicaid typically pays for cost-sharing liabilities on behalf of Medicaid recipients, such as Medicare deductibles, coinsurance, and copayments.

The Medicare program has multiple parts. Medicare Part A provides hospital insurance, including inpatient care. Part B provides medical insurance for doctors' services and outpatient care. Under Part C, private companies administer Medicare benefits through different health care plans, known as Medicare Advantage Plans (Plans), which are tailored to the specific needs of Medicare enrollees. Plans must include all traditional (Parts A and B) Medicare-approved services. Medicare pays the companies a fixed monthly amount on behalf of each Medicare Part C recipient enrolled in their Plans, and the Plans reimburse their participating providers for services. For dual-eligible individuals, providers bill Medicaid for enrollees' Medicare Part C cost-sharing liabilities.

Pursuant to the Social Security Act[1], state Medicaid programs are not required to pay more for Medicare cost-sharing than what their Medicaid plan would typically pay for a given service. Furthermore, guidance from the Centers for Medicare & Medicaid Services (CMS) allows states several options for Medicare cost-sharing. States can choose to pay:

- The full Medicare cost-sharing liability;
- The amount their Medicaid program allows for the service (i.e., for a non-dual-eligible); or
- A rate between those amounts established by the state and approved by CMS.

Up until July 1, 2016, Medicaid generally paid the entire cost-sharing liability billed by a Plan provider, regardless of the amount. In an effort to reduce Medicaid cost-sharing payments, in 2016, as part of phase 6 of the Medicaid Redesign Team's project plan, the New York State Legislature approved a plan for Medicaid to pay 85 percent of dual-eligibles' copayment or coinsurance on Medicare Part C outpatient claims (such as practitioner and clinic services), except for ambulance

1 Per the Social Security Act § 1902 (n)

and psychology services, for which Medicaid will pay 100 percent of the cost-sharing liability. The plan was approved by CMS and enacted as New York State Social Services Law § 367-a, effective July 1, 2016.

The number of New York State Medicaid recipients joining a Plan has grown annually, increasing from 546,589 on July 1, 2016 to 720,034 as of December 31, 2020. Medicaid expenditures for Medicare Part C claims during this 4½-year period totaled about $972 million for the claim types reviewed by this audit: outpatient claims for clinic, practitioner, transportation, referred ambulatory, durable medical equipment, laboratory, eye care, and dental services; and inpatient claims.

# Audit Findings and Recommendation

We determined Medicaid's current rules for paying Medicare Part C cost-sharing liabilities compared to the allowable alternatives have significantly different costs to the Medicaid program. According to CMS guidance and in conformance with the Social Security Act, state Medicaid programs can choose to limit their Medicare cost-sharing so that the total payment (Medicare's payment plus Medicaid's payment) is no more than the typical Medicaid fee. However, for the audit period July 1, 2016 through December 31, 2020, New York State Medicaid payment rules resulted in expenditures for Medicare Part C coinsurances and copayments that, combined with Medicare's payment, significantly exceeded the typical Medicaid fee. If the Medicaid payment rules limited Medicare Part C coinsurance and copayments (after considering Medicare's payment) to no more than the typical Medicaid fee, Medicaid would have saved over $419 million for the audit period on the claim types we reviewed.

According to Department officials, for the State's 2016 budget negotiation, they submitted several proposals to reduce Medicaid's payments for Medicare Part C cost-sharing liabilities, one being for Medicaid to pay the lesser of either (1) the amount it would have paid for non-dual-eligible Medicaid recipients (i.e., the typical Medicaid fee) or (2) the amount billed for Medicare cost-sharing liabilities. While the Legislature ultimately opted for a percentage of coinsurance methodology, the Department has not evaluated the cost savings effect of the new payment rules or performed any risk assessments to compare the actual versus projected cost savings of the various options in the years since the methodology went into effect.

## Cost Savings for Medicare Part C Cost-Sharing Liabilities

We estimated over $419 million in cost savings for clinic and inpatient services, as well as professional services including practitioner, transportation, referred ambulatory, durable medical equipment, laboratory, eye care, and dental. These cost savings estimates are based on limiting coinsurances and copayments only, as Medicaid payment rules currently require full payment of Medicare deductibles across Medicare Parts A, B, and C.[2]

We recalculated Medicaid's payment amount on the selected Medicare Part C claims based on the lesser of either the typical Medicaid fee for a given service or the combined amount of Medicare's payment plus Medicaid's payment of Medicare cost-sharing liabilities, and identified substantial differences compared with Medicaid's current payment methodology.

We use two chemotherapy claims to illustrate our cost savings calculations. As shown in Table 1, under the current rule, Medicaid paid $3,683 and $2,449, respectively, for these two claims. In contrast, under the "lesser of" rule, limiting Medicaid's cost-sharing liability to its typical fee less the amount that Medicare paid, Medicaid would have paid only $1,520 for Claim 1 and could have saved its entire $2,449 payment for Claim 2.

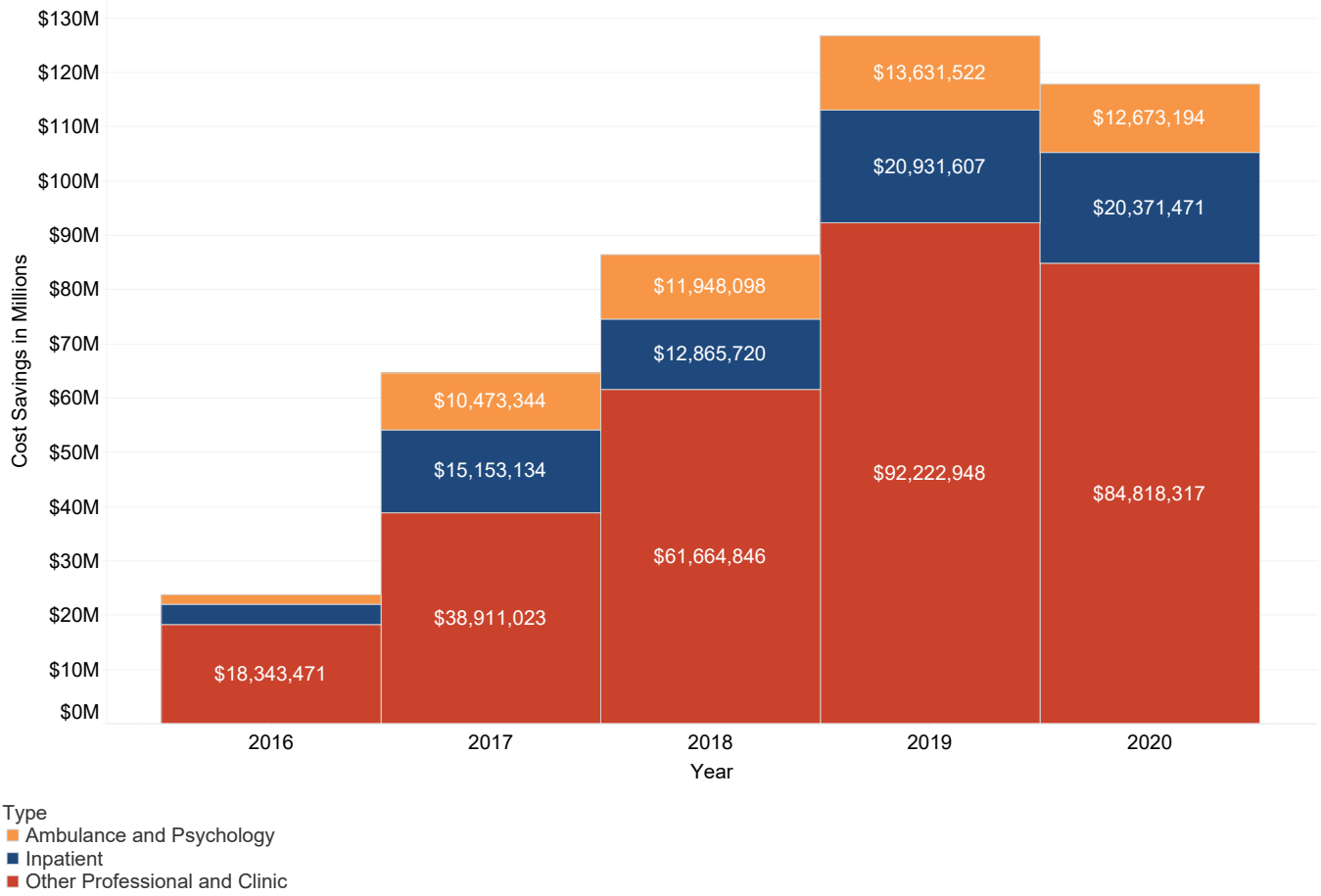
2 Per New York State Social Services Law § 367-a

## Table 1 – Cost Savings Examples

| | | Claim 1 | Claim 2 |
|---|---|---|---|
| Current rule | Amount Medicare paid | $17,333 | $11,525 |
| | Cost-sharing liability billed to Medicaid | 4,333 | 2,881 |
| | A. Medicaid's cost-sharing payment (85%) | $3,683 | $2,449 |
| "Lesser of" rule | Typical Medicaid fee | $18,853 | $9,916 |
| | Less: amount Medicare paid | 17,333 | 11,525 |
| | B. Medicaid's cost-sharing payment | $1,520 | $0 |
| **Potential Cost Savings (A – B)** | | **$2,163** | **$2,449** |

The cost differences between the two methods (the current payment rule vs. the "lesser of" rule) are labeled as potential cost savings and shown by year in Figure 1.

## Figure 1 – Potential Cost Savings by Year




Note: 2016 is a partial year from July 1, 2016 through December 31, 2016. Additionally, the decrease in 2020 is likely the result of the COVID-19 pandemic because of restrictions placed on recipients and providers.

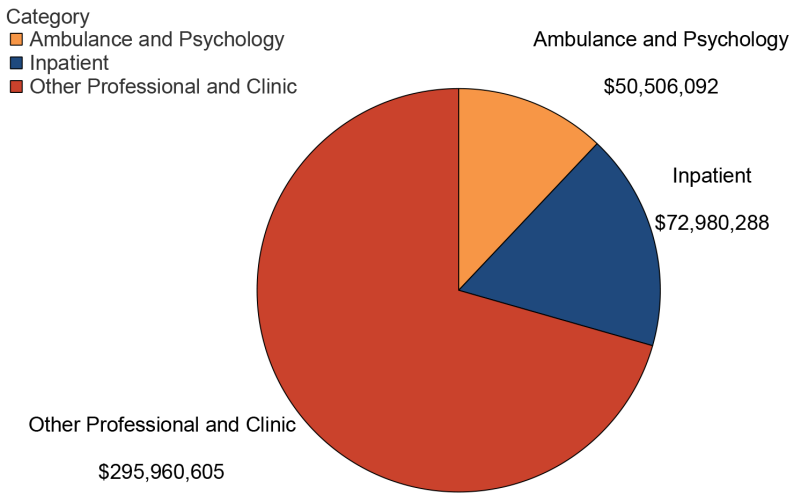
As Figure 1 illustrates, the potential for Medicaid cost savings is significant and generally rising annually. New York could have saved nearly $118 million for the year 2020 alone. We project that the State could save over $122 million annually based on the average savings for the last two years.

Additionally, there is a clear inconsistency in Medicaid payment rules among Medicare Part B, which covers outpatient services, and Part C outpatient services. Medicaid pays Medicare Part B cost-sharing at the lesser of either the typical Medicaid fee for a given service or the combined amount of Medicare's payment plus what Medicaid was billed for the Medicare cost-sharing liability (like the methodology we used to calculate cost savings), but allows payments for cost-sharing liabilities for Medicare Part C outpatient services to exceed the typical Medicaid fee.

We also determined that certain other state Medicaid programs (like Florida and Texas) use the "lesser of" approach when reimbursing providers for Medicare Part C cost-sharing. Further, while other states achieve cost savings by limiting cost-sharing on Medicare inpatient services, New York currently does not place any limitations on Medicare cost-sharing for inpatient services.

Figure 2 and Table 2, which show potential cost savings by category and claim type, respectively, highlight potential savings of about $73 million for inpatient services. They also show about $50 million that would have been saved for ambulance and psychology service claims under the "lesser of" methodology versus the current method of paying cost-sharing liabilities in full for these outpatient services.

## Figure 2 – Potential Savings by Category



### Table 2 – Potential Savings by Claim Type

| Claim Type | Cost Savings |
|---|---|
| Clinic | $143,230,044 |
| Practitioner – other than psychologist | 137,544,615 |
| Inpatient | 72,980,288 |
| Transportation – ambulance only | 48,608,734 |
| Referred ambulatory | 10,753,426 |
| Durable medical equipment | 2,957,478 |
| Practitioner – psychologist only | 1,897,358 |
| Laboratory, eye care, and dental | 1,475,042 |
| **Total** | **$419,446,985** |

The Department relies on providers to accurately and honestly report cost-sharing liabilities, which Medicaid pays 85 percent and 100 percent of depending on the service, regardless of the cost-sharing amount claimed. We found that New York's current Medicaid payment rules for Medicare Part C compared to the allowable alternatives have significantly different costs to the Medicaid program.

## Recommendation

1. Formally re-evaluate the existing Medicaid methodology for processing and paying Medicare Part C cost-sharing liabilities (including the necessity of exemptions to payment limitations for ambulance, psychology, and inpatient services), and engage other stakeholders, as appropriate.

# Audit Scope, Objective, and Methodology

The objective of our audit was to determine whether Medicaid cost savings can be achieved by modifying the reimbursement methodology for Medicare Part C cost-sharing claims in accordance with federal requirements. The audit covered the period from July 1, 2016 through December 31, 2020.

To accomplish our objective and assess related internal controls, we interviewed Department officials. We reviewed applicable federal guidance and sections of federal and State regulations, and examined the Department's relevant Medicaid policies and procedures. Also, we reviewed certain other states' Medicaid reimbursement methodologies for services rendered to dual-eligible recipients enrolled in a Plan. Our review focused on Medicare Part C cost-sharing on fee-for-service Medicaid claims for clinic, dental, durable medical equipment, eye care, inpatient, laboratory, practitioner, referred ambulatory, and transportation services. We reviewed claims data from the Medicaid Data Warehouse and eMedNY, the Medicaid claims processing system, and determined the data was reliable.

Consistent with CMS guidelines, we calculated the amount Medicaid could have saved if Medicaid paid Medicare Part C cost-sharing liabilities at the lesser of what Medicaid was billed for cost-sharing or what Medicaid would allow for a claim that was billed for a non-dual-eligible recipient. We used Medicare billing information listed on claims, including coinsurance and copayment amounts billed, to determine cost savings; however, we excluded deductibles from cost savings estimates because Medicaid is generally required to pay any Medicare deductible amounts. We shared our methodology and findings with officials from the Department and the Office of the Medicaid Inspector General during the audit for their review.

# Statutory Requirements

## Authority

The audit was performed 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 conducted our 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 objective. We believe that the evidence obtained provides a reasonable basis for our findings and conclusions based on our audit objective.

In addition to being the State Auditor, the Comptroller performs certain other constitutionally and statutorily mandated duties as the chief fiscal officer of New York State. These include operating the State's accounting system; preparing the State's financial statements; and approving State contracts, refunds, and other payments. These duties could be considered management functions for purposes of evaluating organizational independence under generally accepted government auditing standards. In our professional judgment, these duties do not affect our ability to conduct this independent performance audit of the Department's oversight and administration of Medicaid regarding cost saving opportunities on Medicare Part C cost-sharing.

## Reporting Requirements

We provided a draft copy of this report to Department officials for their review and formal comment. We considered the Department's comments in preparing this final report and have included them in their entirety at the end of it. Our response to certain Department comments is included in our State Comptroller's Comment, which is embedded in the Department's response.

Within 180 days after final release of this report, as required by Section 170 of the Executive Law, the Commissioner of the Department of Health shall report to the Governor, the State Comptroller, and the leaders of the Legislature and fiscal committees, advising what steps were taken to implement the recommendation contained herein, and if the recommendation was not implemented, the reasons why.

# Agency Comments and State Comptroller's Comment

NEW YORK STATE OF OPPORTUNITY. Department of Health

**ANDREW M. CUOMO**
Governor

**HOWARD A. ZUCKER, M.D., J.D.**
Commissioner

**LISA J. PINO, M.A., J.D.**
Executive Deputy Commissioner

July 13th, 2021

Ms. Andrea Inman, Audit Director
Office of the State Comptroller
Division of State Government Accountability
110 State Street – 11th Floor
Albany, NY 12236-0001

Dear Ms. Inman:

Enclosed are the Department of Health's comments on the Office of the State Comptroller's Draft Audit Report 2020-S-65 entitled, "Medicaid Program: Cost Savings Opportunities on Payments of Medicare Part C Claims."

Thank you for the opportunity to comment.

Sincerely,

Theresa Egan
Deputy Commissioner for Administration

Enclosure

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## Department of Health Comments on the Office of the State Comptroller's Draft Audit Report 2020-S-65 entitled, "Medicaid Program: Cost Saving Opportunities on Payments of Medicare Part C Claims"

The following are the responses from the New York State Department of Health (Department) to the Draft Audit Report 2020-S-65 entitled, "Medicaid Program: Cost Saving Opportunities on Payments of Medicare Part C Claims" by the Office of the State Comptroller (OSC).

**Recommendation #1:**

Formally re-evaluate the existing Medicaid methodology for processing and paying Medicare Part C cost-sharing liabilities (including the necessity of exemptions to payment limitations for ambulance, psychology, and inpatient services), and engage other stakeholders, as appropriate.

**Response #1:**

New York State Social Services Law (SSL) 367-a directs the Department to reimburse 85% of the patient responsibility for individuals that have both Medicaid and Medicare Part C coverage. SSL 367-a also directs the Department to reimburse ambulance and psychology providers full Medicare Part C patient responsibility amounts. OSC did not identify any overpayments made by the Department or noncompliance with SSL requirements. The Department is in full compliance with SSL and does not have the authority to implement a different cost-sharing methodology for processing and paying Medicare Part C cost-sharing liabilities, unless amendments to the SSL are enacted or this section of the law is repealed.

**State Comptroller's Comment** – We understand that the reimbursement methodology is contained in the Social Services Law. However, as this audit report points out, there is an opportunity for significant cost savings to the State. The Department, as the agency responsible for administering New York State's Medicaid program, should take all appropriate action to contain the costs of this program. We urge the Department to take steps to implement the recommendation contained in this report.

Furthermore, the audit objective was to determine only whether Medicaid cost savings can be achieved by modifying the reimbursement methodology for Medicare Part C cost-sharing claims in accordance with federal requirements. As shown in the report, significant cost savings would occur. The audit report did not comment on whether or not overpayments occurred, nor was it intended to.

# Contributors to Report

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