

Department of Health and Human Services

**OFFICE OF  
INSPECTOR GENERAL**

**SOME OF NEW YORK'S CLAIMS  
FOR MEDICAID SUPPORTED  
EMPLOYMENT SERVICES  
WERE UNALLOWABLE**

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# *Office of Inspector General*

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## EXECUTIVE SUMMARY

*New York claimed at least \$23 million in Federal Medicaid reimbursement for supported employment services that were unallowable.*

### WHY WE DID THIS REVIEW

During a previous Office of Inspector General review on supported employment services—vocational services for individuals with developmental disabilities— in another State, we identified a significant number of services that were improperly submitted for Federal Medicaid reimbursement. On the basis of these results, we decided that a review of New York’s supported employment services was warranted.

The objective of this review was to determine whether the New York State Department of Health’s (Health Department) claims for Medicaid reimbursement for supported employment services complied with certain Federal and State requirements.

### BACKGROUND

Supported employment services are ongoing support services and other appropriate services needed to support and maintain individuals with developmental disabilities for whom competitive employment at or above the minimum wage is unlikely and who, because of their disabilities, need intensive ongoing support to perform in a work setting. Services are provided in a variety of settings, particularly worksites where people without disabilities are employed, and include activities needed to sustain paid work (e.g., supervision and training by job coaches).

In New York, Federal funding for supported employment services is provided through two home- and community-based services waiver programs: the Office for People With Developmental Disabilities and Bridges to Health waivers. The Health Department is required to provide for initial evaluations and annual reevaluations of beneficiaries’ level-of-care needs. Further, Federal regulations require that services be furnished under completed and approved care and supported employment plans. In addition, providers must maintain complete and accurate records to support services billed.

The Health Department is also required to claim reimbursement at the appropriate level-of-support billing rate and ensure that services provided to beneficiaries receiving similar services through the New York State Education Department (Education Department) are not claimed under the Health Department’s waiver programs.

### HOW WE CONDUCTED THIS REVIEW

For the period January 1, 2009, through June 30, 2012, we limited our review to Medicaid costs claimed for supported employment services. From a total of approximately \$171 million (\$86 million Federal share) that the Health Department claimed, we reviewed a random sample of 100 beneficiary-months of service. A beneficiary-month includes all supported employment services for a beneficiary for 1 month.

## **WHAT WE FOUND**

Some of the Health Department's claims for Federal Medicaid reimbursement for supported employment services did not comply with certain Federal and State requirements. Specifically, the Health Department accurately claimed Medicaid reimbursement for all supported employment services during 65 of the 100 beneficiary-months in our random sample. However, the Health Department claimed Medicaid reimbursement for unallowable supported employment services during the remaining 35 beneficiary-months.

The Health Department made claims for unallowable services because providers did not ensure (1) that services claimed were properly billed as supported employment services, (2) that supported employment services were provided only to beneficiaries with completed and approved care and supported employment plans, (3) that supported employment services were adequately documented, (4) that supported employment services were claimed at the appropriate level-of-support billing rate, (5) that beneficiaries' assessments and level-of-care evaluations were documented, and (6) that beneficiaries were not eligible for similar services through the Education Department. On the basis of our sample results, we estimated that the Health Department improperly claimed at least \$23,054,993 in Federal Medicaid reimbursement for unallowable supported employment services.

## **WHAT WE RECOMMEND**

We recommend that the Health Department:

- refund \$23,054,993 to the Federal Government and
- ensure that it complies with certain Federal and State requirements by requiring providers to:
  - claim reimbursement only for documented supported employment services,
  - provide supported employment services only to beneficiaries for whom there is a completed and approved care and supported employment plan,
  - claim reimbursement at the appropriate level-of-support billing rate,
  - ensure and document that all beneficiaries approved for supported employment services have been assessed and evaluated to need the required level of care, and
  - ensure that all beneficiaries receiving similar services from the Education Department are not claimed under its waiver programs.

## HEALTH DEPARTMENT COMMENTS AND OUR RESPONSE

In written comments on our draft report, the Health Department partially agreed with our recommendations and described actions it planned to take to address our findings and recommendations. Under separate cover, the Health Department provided additional documentation to support services for certain sampled beneficiary-months.

The Health Department disagreed with 14 of the 38 sampled items for which, in our draft report, we determined that services did not comply with State and Federal requirements, including 3 for which it disagreed with multiple deficiencies that we identified. Specifically, the Health Department disagreed with our interpretations of requirements for which we based 14 of our determinations as well as our determinations for 4 sample items.

The Health Department disagreed with our interpretations of requirements related to (1) how the level-of-support billing rate methodology is calculated (six sampled items), (2) the waiver's requirement for beneficiaries to be competitively employed in the integrated community labor market (five sampled items), and (3) the waiver's prerequisite for a specific assessment form to evaluate the need for the required level of care (two sampled items). Further, the Health Department disagreed with our determinations that (1) a supported employment plan detailing the beneficiary's employment status was not in place (two sampled items), (2) a beneficiary did not have a completed and approved care plan (one sampled item), and (3) a beneficiary was receiving supported employment services through the Education Department (one sampled item).

After reviewing the Health Department's comments and additional documentation, we maintain that our findings and recommendations are valid for 10 of the 14 sampled items. For the remaining four sampled items, we understand the Health Department's position that supported employment services provided were in accordance with the description of the service in the State regulations and revised our report accordingly. One of these four sampled items had another deficiency; therefore, we maintain that this sampled item is unallowable. For the sampled items for which we maintain that our findings and recommendations are valid, we used the formula described in State regulations (14 NYCRR § 635-10.5(d)(1)) to calculate the applicable level-of-support billing rate. In addition, we used forms provided by the Health Department to assist in our determinations. Also, section 4442.6 of CMS's *State Medicaid Manual* indicates that a level-of-care assessment must be included in the care plan. Further, 42 CFR § 441.302(c) requires at least annual reevaluations of each beneficiary receiving waiver services. The Health Department did not provide any new documentation to change our previous determinations.

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## INTRODUCTION

### WHY WE DID THIS REVIEW

During a previous Office of Inspector General review on supported employment services—vocational services for individuals with developmental disabilities—in another State, we identified a significant number of services that were improperly submitted for Federal Medicaid reimbursement.<sup>1</sup> On the basis of these results, we decided that a review of New York’s supported employment services was warranted.

### OBJECTIVE

Our objective was to determine whether the New York State Department of Health’s (Health Department) claims for Medicaid reimbursement for supported employment services complied with certain Federal and State requirements.

### BACKGROUND

#### The Medicaid Program

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 Federal requirements. The Health Department administers New York’s Medicaid program.

#### Home- and Community-Based Services Waivers Under the Medicaid Program

Section 1915(c) of the Social Security Act (the Act) authorizes Medicaid home- and community-based services (HCBS) waiver programs.<sup>2</sup> HCBS may be provided only to beneficiaries who a State Medicaid agency determines would, in the absence of such services, require the Medicaid-covered level of care provided in a hospital, nursing facility, or intermediate care facility for persons with intellectual disabilities.<sup>3</sup>

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<sup>1</sup> *Most of New Jersey’s Claims for Medicaid Supported Employment Services Were Unallowable* (A-02-12-01009, issued December 24, 2013).

<sup>2</sup> A State’s HCBS waiver program must be approved by CMS and allows a State to claim Federal reimbursement for services not usually covered by Medicaid. HCBS are generally provided to Medicaid-eligible beneficiaries in the community rather than in an institutional setting.

<sup>3</sup> Changes in terminology are based on Rosa’s Law (P.L. No. 111-256). For more information, see CMS Final Rule, 77 Fed. Reg. 29002, 29021 & 29028 (May 16, 2012).

To be eligible for Federal Medicaid reimbursement, HCBS must be furnished under a written plan of care (care plan)<sup>4</sup> and, on at least an annual basis, beneficiaries receiving HCBS must be reevaluated. To be eligible for HCBS, a beneficiary's care plan must include an assessment of the services needed to prevent the beneficiary from requiring institutionalization. The care plan must specify the medical and other services to be provided and their frequency.

## **Supported Employment Services in New York**

In New York, Federal funding for supported employment services is primarily provided through the Office for People with Developmental Disabilities (OPWDD) waiver program.<sup>5</sup> OPWDD administers the OPWDD waiver, which provides services to individuals with intellectual and developmental disabilities under a cooperative agreement with the Health Department.

New York's waiver agreement with CMS defines supported employment services as ongoing support services and other appropriate services needed to support and maintain individuals with developmental disabilities for whom competitive employment at or above the minimum wage is unlikely, and who, because of their disabilities, need intensive ongoing support to perform in a work setting.<sup>6</sup> Services are provided in a variety of settings, particularly worksites where people without disabilities are employed (e.g., supermarkets), and include activities needed to sustain paid work (e.g., supervision and training by job coaches).

Supported employment services are billed by providers as a monthly fee that incorporates the level of support provided, and documentation of services performed must be completed and signed by a job coach. The level of support is established by providers using developmental and demographic information submitted on a beneficiary's DDP-2, Developmental Disabilities Profile, an OPWDD form used to describe individuals added to OPWDD programs. The Health Department must also ensure that similar services are not otherwise available to a beneficiary through the Education Department.<sup>7</sup>

For details on Federal and State requirements related to supported employment services, see Appendix A.

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<sup>4</sup> New York's waiver agreement with CMS states that the care plan must be reviewed, signed, and approved by the Medicaid service coordinator supervisor.

<sup>5</sup> Supported employment services are also provided under the Bridges to Health waiver program. However, these services represented less than 1 percent of New York's supported employment services claims. These claims were included in our sample frame; however, none were selected as part of our random sample.

<sup>6</sup> See also CMS, *State Medicaid Manual*, § 4442.3.B.3.c.

<sup>7</sup> Through its Office of Adult Career and Continuing Education Services, the Education Department offers vocational habilitation services similar to those offered by the Health Department to eligible beneficiaries.

## HOW WE CONDUCTED THIS REVIEW

For the period January 1, 2009, through June 30, 2012, we limited our review to Medicaid costs claimed for supported employment services. From a total of approximately \$171 million (\$86 million Federal share) that the Health Department claimed, we reviewed a random sample of 100 beneficiary-months of service.<sup>8</sup>

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 objectives.

Appendix B contains the details of our audit scope and methodology, Appendix C contains our statistical sampling methodology, and Appendix D contains our sample results and estimates.

## FINDINGS

Some of the Health Department's claims for Federal Medicaid reimbursement for supported employment services did not comply with certain Federal and State requirements. Specifically, the Health Department accurately claimed Medicaid reimbursement for all supported employment services during 65 of the 100 beneficiary-months in our random sample. However, the Health Department claimed Medicaid reimbursement for unallowable supported employment services during the remaining 35 beneficiary-months.

Of the 35 beneficiary-months with supported employment services for which the Health Department improperly claimed Federal Medicaid reimbursement, 7 contained more than 1 deficiency. Appendix E contains a summary of deficiencies, if any, identified for each sampled beneficiary-month.

The Health Department made claims for unallowable services because the providers did not ensure (1) that services claimed were properly billed as supported employment services, (2) that supported employment services were provided only to beneficiaries with completed and approved care and supported employment plans, (3) that supported employment services were adequately documented, (4) that supported employment services were claimed at the appropriate level-of-support billing rate, (5) that beneficiaries' assessments and level-of-care evaluations were documented, and (6) that beneficiaries were not eligible for similar services through the Education Department. On the basis of our sample results, we estimated that the Health Department improperly claimed at least \$23,054,993 in Federal Medicaid reimbursement for unallowable supported employment services.

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<sup>8</sup> A beneficiary-month includes all supported employment services for a beneficiary for 1 month.

## SERVICES CLAIMED WERE NOT SUPPORTED EMPLOYMENT SERVICES

Supported employment services include those individual service plan-specified services and/or interventions required by the person to become employable and/or remain effectively employed within the integrated community labor market<sup>9</sup> (14 NYCRR § 635-10.4(d)(3)). New York's waiver agreement with CMS states that supported employment services consist of intensive, ongoing supports that enable participants for whom competitive employment at or above the minimum wage is unlikely absent the provision of supports, and who, because of their disabilities, need supports, to perform in a regular work setting.

During 12 beneficiary-months, the Health Department claimed reimbursement for services that were not supported employment. Specifically:

- **Competitive employment at or above minimum wage not maintained.** During 9 beneficiary-months in which providers billed for supported employment services, their records indicated that the beneficiaries were paid below minimum wage or the provider paid their salary.
- **Integrated employment not maintained.** During 1 beneficiary-month in which providers billed for supported employment services, their records indicated that the beneficiaries were employed at provider sites and, therefore, not within the integrated community labor market.
- **Neither competitive nor integrated employment maintained.** During 2 beneficiary-months in which providers billed for supported employment services, their records indicated that the beneficiaries did not have both competitive and integrated employment.

For 2 of these 12 beneficiary-months, we adjusted payment amounts to reflect allowable prevocational services provided and recalculated the associated claims at the applicable (lower) reimbursement rate.

## SERVICES NOT PROVIDED IN ACCORDANCE WITH CARE PLAN

HCBS must be furnished under a written care plan subject to approval by the State Medicaid agency (42 CFR § 441.301(b)(1)(i)). A care plan must specify the services to be provided, their frequency, and the type of provider (§ 4442.6 of CMS's *State Medicaid Manual*). In addition, New York's waiver agreement with CMS states that all waiver services will be furnished pursuant to a written care plan and that Federal financial participation will not be claimed for

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<sup>9</sup> We interpreted the term "integrated community labor market" to mirror the U.S. Department of Labor's Office of Disability Employment Policy's description of "integrative employment." The U.S. Department of Labor describes integrated employment as "jobs held by people with the most significant disabilities in typical workplace settings where the majority of persons employed are not persons with disabilities. In these jobs, the individuals with disabilities earn wages consistent with wages paid to workers without disabilities in the community who perform the same or similar work; the individuals earn at least minimum wage, and they are paid directly by the employer." U.S. Department of Labor, Office of Disability Employment Policy, accessed at <http://www.dol.gov/odep/topics/IntegratedEmployment.htm> on February 20, 2014.

waiver services that are not included in the care plan. Further, the waiver agreement requires that the care plan be signed by the Medicaid service coordinator supervisor.

During 11 beneficiary-months, the Health Department claimed reimbursement for some supported employment services that were not provided in accordance with the beneficiary's care plan. Specifically:

- **Care plans missing or incomplete.** During 6 beneficiary-months, providers claimed reimbursement for supported employment services provided to beneficiaries whose care plans were missing or incomplete (i.e., missing relevant sections).
- **Services not included in care plans.** During 4 beneficiary-months, providers claimed reimbursement for supported employment services not specified in beneficiaries' care plans.
- **Care plan not signed.** During 1 beneficiary-month, the provider claimed reimbursement for supported employment services for a beneficiary whose care plan was not signed by the Medicaid service coordinator supervisor.

## **SERVICES NOT DOCUMENTED**

States must have agreements with Medicaid providers under which providers agree to keep such records as are necessary to fully disclose the extent of the services provided to individuals receiving assistance under a State plan (§ 1902(a)(27) of the Act). In addition, States are required to maintain documentation of services provided (2 CFR § 225, App. A § C.1.j.).

New York's regulations require providers to prepare and maintain contemporaneous records (18 NYCRR § 504.3(a)).<sup>10</sup> Also, providers may only claim reimbursement of supported employment services performed for an eligible beneficiary who is employed and to whom the provider has rendered, on separate days, at least two face-to-face documented supported employment services in accordance with the beneficiary's individual care plan and supported employment plan (14 NYCRR § 635-10.5(d)(7)(i)). Further, OPWDD requires that service notes must be signed and dated by the job coach who provided the service (OPWDD Administrative memorandum (ADM) #2007-01).

During 7 beneficiary-months, the Health Department claimed reimbursement for some supported employment services that were not adequately documented. Specifically:

- **Face-to-face services not documented or performed.** During 4 beneficiary-months, the required face-to-face meetings were not documented or performed.

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<sup>10</sup> The date the note was written must be "contemporaneous" to the date the supported employment service was provided. For our purposes, we used the State's definition of "contemporaneous," which it defines as "at the time the service was delivered or shortly after" (OPWDD ADM #2007-01).

- **Service notes not signed or not signed contemporaneously.** During 2 beneficiary-months, the service notes were not signed by the job coach or not signed contemporaneously (e.g., service note was signed 3 months after service date).
- **Service notes not provided.** During 1 beneficiary-month, providers did not maintain any service notes to support the services billed.

### **SERVICES NOT CLAIMED IN ACCORDANCE WITH APPLICABLE LEVEL-OF-SUPPORT BILLING RATE**

Supported employment services are reimbursed at a monthly service fee based, in part, on a level-of-support (14 NYCRR § 635-10.5(d)(1)) determination. The level-of-support determination is based on responses to questions on the DDP-2 form. If the required information (e.g., information related to the beneficiary’s developmental capabilities) to calculate the level of support is unavailable, the monthly service fee is reimbursed at the lowest fee level for the appropriate region until the information can be collected.

During 6 beneficiary-months, the Health Department did not claim reimbursement for supported employment services provided to beneficiaries in accordance with level-of-support billing rate requirements. Specifically:

- **Improper billing level.** During 5 beneficiary-months, supported employment services were billed at a higher monthly service fee than the beneficiary’s DDP-2 form indicated.
- **Billing level support not provided.** The provider did not provide the DDP-2 form to support services billed for 1 beneficiary-month.<sup>11</sup>

### **SERVICES NOT PROVIDED IN ACCORDANCE WITH SUPPORTED EMPLOYMENT PLAN**

Providers are required to develop and maintain a supported employment plan for each beneficiary receiving supported employment services (New York’s OPWDD ADM # 2007-01).<sup>12</sup> The plan must cover the time period of the payment claim and include a description of the individualized supported employment services and the location of the service provided.

During 4 beneficiary-months, the Health Department claimed reimbursement for some supported employment services that were not provided in accordance with a supported employment plan. Specifically:

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<sup>11</sup> For this beneficiary-month, we questioned the difference between the service fee billed and the service fee associated with the lowest fee level for the appropriate area.

<sup>12</sup> New York’s waiver agreement with CMS states that OPWDD issues ADMs for waiver services that identify all elements required for billing Medicaid.

- **Supported employment plans missing.** During 2 beneficiary-months, providers claimed reimbursement for supported employment services provided to beneficiaries whose supported employment plans were missing.
- **Services not described in supported employment plan.** During 1 beneficiary-month, the supported employment plan did not list or describe the beneficiary’s job.
- **Supported employment plan not in effect.** During 1 beneficiary-month, the supported employment plan was not in effect during half of the beneficiary-month when services were claimed.

## **LEVEL-OF-CARE ASSESSMENT NOT DOCUMENTED**

To be eligible for HCBS, which include supported employment services, a beneficiary’s care plan must include a level-of-care assessment approved by the service coordinator that includes the services needed to prevent the beneficiary from requiring institutionalization.<sup>13</sup> Each beneficiary receiving HCBS must also have periodic reevaluations, at least annually, to determine whether the beneficiary continues to need the level of care provided (42 CFR § 441.302(c)).

During 2 beneficiary-months, the Health Department claimed reimbursement for supported employment services provided to beneficiaries for whom the associated provider did not provide a level-of-care assessment.

## **SERVICES AVAILABLE THROUGH EDUCATION DEPARTMENT**

Federal regulations and the waiver agreement require that States provide assurances to CMS that supported employment services, if provided as habilitation services under an HCBS waiver, are (1) not otherwise available to the beneficiary through a local educational agency under the Individuals with Disabilities Education Act or the Rehabilitation Act of 1973 and (2) furnished as part of expanded habilitation services (42 CFR § 441.302).

During 2 beneficiary-months, the Health Department claimed reimbursement for supported employment services for beneficiaries who were simultaneously receiving similar services through the Education Department.

## **CONCLUSION**

On the basis of our sample results, we estimated that the Health Department improperly claimed at least \$23,054,993 in Federal Medicaid reimbursement for supported employment services that did not comply with certain Federal and State requirements.

The Health Department made claims for unallowable services because providers did not ensure (1) that services claimed were properly billed as supported employment services, (2) that

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<sup>13</sup> Section 1915(c) of the Act, 42 CFR § 441.301(b)(1)(iii), and the State’s OPWDD waiver agreement with CMS.

supported employment services were provided only to beneficiaries with completed and approved care and supported employment plans, (3) that supported employment services were adequately documented, (4) that supported employment services were claimed at the appropriate level-of-support billing rate, (5) that beneficiaries' assessments and level-of-care evaluations were documented, and (6) that beneficiaries were not eligible for similar services through the Education Department.

### **RECOMMENDATIONS**

We recommend that the Health Department:

- refund \$23,054,993 to the Federal Government and
- ensure that it complies with certain Federal and State requirements by requiring providers to:
  - claim reimbursement only for documented supported employment services,
  - provide supported employment services only to beneficiaries for whom there is a completed and approved care and supported employment plan,
  - claim reimbursement at the appropriate level-of-support billing rate,
  - ensure and document that all beneficiaries approved for supported employment services have been assessed and evaluated to need the required level of care, and
  - ensure that all beneficiaries receiving similar services from the Education Department are not claimed under its waiver programs.

### **HEALTH DEPARTMENT COMMENTS AND OFFICE OF INSPECTOR GENERAL RESPONSE**

In written comments on our draft report, the Health Department partially agreed with our recommendations and described actions it planned to take to address our findings and recommendations. Under separate cover, the Health Department provided additional documentation to support services for certain sampled beneficiary-months.

The Health Department disagreed with 14 of the 38 sampled items for which, in our draft report, we determined that services did not comply with Federal and State requirements, including 3 for which it disagreed with multiple deficiencies that we identified. Specifically, the Health Department disagreed with our interpretation of requirements for which we based 14 of our determinations, as well as our determinations for 4 sample items.<sup>14</sup>

The Health Department disagreed with our interpretations of requirements related to (1) how the

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<sup>14</sup> In the report section addressing the Health Department's comments (following page), we did not separate the State agency's reasons for its disagreeing with our findings into separate subsections because the issues (i.e., our interpretation of Federal and State requirements and our determinations) generally overlapped.

level-of-support billing rate methodology is calculated (six sampled items), (2) the waiver's requirement for beneficiaries to be competitively employed in the integrated community labor market (five sampled items), and (3) the waiver's prerequisite for a specific assessment form to evaluate the need for the required level of care (two sampled items). Further, the Health Department disagreed with our determinations that (1) a supported employment plan detailing the beneficiary's employment status was not in place (two sampled items), (2) a beneficiary did not have a completed and approved care plan (one sampled item), and (3) a beneficiary was receiving supported employment services through the Education Department (one sampled item).

The Health Department's comments appear as Appendix F.

After reviewing the Health Department's comments and additional documentation, we maintain that our findings and recommendations are valid for 10 of the 14 sampled items. For the remaining four sampled items, we understand the Health Department's position that supported employment services provided were in accordance with the description of the service in the State regulations and revised our report accordingly. One of these four sampled items had another deficiency; therefore, we maintain that this sampled item is unallowable.

### **Services Not Claimed in Accordance With Applicable Level-of-Support Billing Rate**

#### *Health Department Comments*

The Health Department stated that the beneficiary's DDP-2 form for each of the 6 unallowable sampled beneficiary-months that we disallowed supported the applicable level-of-support billing rate at which the associated service was billed. The Health Department also offered to explain its DDP-2 scoring process to show that its calculations were correct.

#### *Office of Inspector General Response*

We maintain that we used the correct (i.e., applicable) level-of-support billing rate formula in accordance with State regulations (14 NYCRR § 635-10.5(d)(1)). In addition, using the methodology that the Health Department provided to us, we established and used a hierarchy of applicable DDP-2 forms to make our determinations. Specifically:

- During 4 sampled beneficiary-months (numbers 20, 73, 85, and 99), the DDP-2 form was completed more than 2 years before the corresponding service. According to the Health Department's hierarchy of applicable DDP-2 forms, if a DDP-2 form is not completed within 2 years of the date of the supported employment service, that form must be disregarded, and the next applicable form within the 2-year period should be used.<sup>15</sup>
- During 1 sampled beneficiary-month (number 9), the DDP-2 forms were completed more than 2 years after our sampled service. According to the Health Department's hierarchy of applicable DDP-2 forms, the default billing rate is the lowest level of support for

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<sup>15</sup> We calculated the level-of-support billing rate using the DDP-2 form considered the most applicable in accordance with the hierarchy methodology.

claims for which all DDP-2 forms available were more than 2 years after the corresponding service.

- During 1 sampled beneficiary-month (number 53), the Health Department did not use the proper calculation methodology. Specifically, the Health Department used answers to questions under the “medical status” section of the DDP-2 form to calculate the level-of-support billing rate. We calculated the applicable level-of-support billing rate using the methodology described in State regulations.

## **Services Claimed Were Not Supported Employment Services**

### *Health Department Comments*

For 5 sampled beneficiary-months, the Health Department stated that the supported employment services provided were in accordance with how these services are described in the State’s regulations, and maintained that competitive and integrated employment standards were met.

### *Office of Inspector General Response*

We understand the Health Department’s interpretation for four of these claims and made the appropriate adjustments to the findings and recommendations.<sup>16</sup> For one sample item (number 20), the beneficiary received a monthly stipend and did not earn a minimum wage salary. Therefore, we maintain that the services claimed were not supported employment services. We defer to CMS as to how to handle the other three claims (numbers 11, 37, and 71), totaling \$869 in Federal Medicaid reimbursement, because we continue to believe that the competitive and integrated employment standards pertaining to these beneficiaries’ employment statuses do not reflect the design and intent of the supported employment program.

## **Services Not Provided in Accordance With Supported Employment Plan**

### *Health Department Comments*

The Health Department disagreed with our determination that approved supported employment plans were not provided for 2 sampled beneficiary-months. During 1 sampled beneficiary-month, the Health Department stated that the beneficiary’s job description was detailed in the supported employment plan. During another sampled beneficiary-month, the Health Department stated that we should have used the date that the beneficiary’s supported employment plan was signed rather than the plan’s effective date to determine if an approved supported employment plan was in place during the time our sampled supported employment services were provided.

### *Office of Inspector General Response*

We maintain that services in 2 beneficiary-months were not provided in accordance with the supported employment plan. A supported employment plan must “include a description of the individualized supported employment services and the location of the service provided”

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<sup>16</sup> Three claims were adjusted because one claim (number 47) had another deficiency.

(New York's OPWDD ADM # 2007-01). During 1 sampled beneficiary-month (number 47), some of the service notes indicated that the beneficiary's job entailed "packaging toys"; however, this job description did not appear on the beneficiary's supported employment plan. The supported employment plan described the beneficiary's job as a "lawn care worker/painter" and made no reference to packaging toys. Regarding the other sampled beneficiary-month (number 67), we maintain that the effective date—not the date the supported employment plan was signed—is the date the plan goes into effect. Therefore, the sampled supported employment services were not covered by an approved plan.

## **Level-of-Care Assessment Not Documented**

### *Health Department Comments*

The Health Department stated that a specific level-of-care assessment form is not required to determine a beneficiary's ICF/MR certification status. Further, the Health Department provided a letter from CMS, dated December 2004, indicating that an "omission of the ICF/MR Level-of-Care Eligibility Documentation (LCED) form does not automatically trigger a disallowance of participation in the waiver." The Health Department resubmitted care plans for the 2 unallowable sampled beneficiary-months (numbers 30 and 31) and provided LCED forms for prior years.

### *Office of Inspector General Response*

We maintain that the level-of-care assessments were not documented for the 2 sampled beneficiary-months. Each beneficiary receiving HCBS must also have periodic reevaluations, at least annually, to determine whether the beneficiary continues to need the level of care provided (42 CFR § 441.302(c)). In addition, the waiver agreement states that the "... level of care instrument for the HCBS waiver is identical to the level of care instrument used for ICF/MR" (the LCED form). All LCED forms provided by the Health Department did not cover our 2 sampled beneficiary-months; therefore, no level-of-care assessments were documented.

## **Services Available Through Education Department**

### *Health Department Comments*

The Health Department stated that for 1 sampled beneficiary-month (number 60), the beneficiary's services were no longer provided by the Education Department. According to the Health Department, the beneficiary was referred for extended supported employment services provided under the Health Department's waiver in June 2000.

### *Office of Inspector General Response*

We maintain that the beneficiary's services were available through the Education Department. Supported employment services, if provided as habilitation services under an HCBS waiver, are allowable if not otherwise available to the beneficiary through a local educational agency under the Individuals with Disabilities Education Act or the Rehabilitation Act of 1973 (42 CFR

§ 441.302) (emphasis added). During the sampled beneficiary-month, service notes and the care plan indicated that the beneficiary was receiving supported employment services provided by the Education Department in accordance with the above-referenced Act during our service month. Because services were available through the Education Department, supported employment services covered under the Health Department's waiver were unallowable.

## **APPENDIX A: FEDERAL AND STATE REQUIREMENTS FOR SUPPORTED EMPLOYMENT SERVICES**

### **FEDERAL AND STATE REQUIREMENTS FOR ELIGIBILITY FOR SUPPORTED EMPLOYMENT SERVICES**

Section 1915(c) of the Act authorizes Medicaid HCBS waiver programs. A State's HCBS waiver program must be approved by CMS and allows a State to claim Federal reimbursement for services not usually covered by Medicaid. HCBS are generally provided to Medicaid-eligible beneficiaries in the community rather than in an institutional setting.

Section 1915(c) of the Act and Federal regulations (42 CFR § 441.301(b)(1)(iii)) provide that HCBS may be provided only to beneficiaries who have been determined would, in the absence of such services, require the Medicaid-covered level of care provided in a hospital, nursing facility, or intermediate care facility for persons with intellectual disabilities. In addition, Federal regulations (42 CFR § 441.302(c)) require a State agency to provide for an initial evaluation of the beneficiary's need for the level of care that would be provided in an institution unless the individual receives HCBS. The regulations further require at least annual reevaluations of each beneficiary receiving HCBS.

Section 4442.6 of CMS's *State Medicaid Manual* requires an assessment of the individual to determine the services needed to prevent institutionalization that must be included in the care plan. In addition, the care plan must specify the medical and other services to be provided, their frequency, and the type of provider. No Federal financial participation is available under a section 1915(c) waiver for HCBS furnished without a written care plan.

Pursuant to 42 CFR section 441.302(i), the State must assure CMS that prevocational, educational, or supported employment services, or a combination of these services, if provided as habilitation services under the waiver, are (1) not otherwise available to the individual through a local educational agency under the Individuals with Disabilities Education Act or the Rehabilitation Act of 1973 and (2) furnished as part of expanded habilitation services.

Section 4442.3.B.3.c of CMS's *State Medicaid Manual* defines supported employment services to include paid employment that (1) is for persons for whom competitive employment at or above the minimum wage is unlikely and who, because of their disabilities, need intensive ongoing support to perform in a work setting; (2) is conducted in a variety of settings, particularly worksites in which persons without disabilities are employed; and (3) is supported by any activity needed to sustain paid work by persons with disabilities, including supervision, training, and transportation.

New York's waiver agreement with CMS states that supported employment consists of intensive, ongoing supports that enable participants for whom competitive employment at or above the minimum wage is unlikely absent the provision of supports, and who, because of their disabilities, need supports, to perform in a regular work setting.

Pursuant to 14 NYCRR § 635-10.4(d)(3), supported employment services include those individual service plan-specified services and/or interventions required by the person to become employable and/or remain effectively employed within the integrated community labor market.

### **FEDERAL AND STATE REQUIREMENTS FOR DOCUMENTATION NEEDED TO SUPPORT SUPPORTED EMPLOYMENT SERVICES BILLED**

Section 1902(a)(27) of the Act, 42 U.S.C. § 1396a(a)(27), mandates that States have agreements with Medicaid providers under which providers agree to keep such records as are necessary fully to disclose the extent of the services provided to individuals receiving assistance under a State plan. The Office of Management and Budget Circular A-87, *Cost Principles for State, Local, and Tribal Governments*, Att. A, section C.1.j (2 CFR § 225, App. A § C.1.j), requires States to maintain documentation of services provided.

Providers enrolling in the Medicaid program agree to prepare and to maintain contemporaneous records demonstrating the right to receive payment under the medical assistance program (18 NYCRR § 504.3(a)). In addition, a provider may claim reimbursement of supported employment services performed for an eligible beneficiary to whom the provider has rendered, on separate days, at least two face-to-face documented supported employment services in accordance with the beneficiary's individual service plan and supported employment plan (14 NYCRR § 635-10.5(d)(7)(i)).

OPWDD requires that the job coach who delivered the service must sign, provide his/her work title, and include the date the service note was written, thus verifying that the service was delivered (OPWDD ADM #2007-01). Further, the date on a service note must be contemporaneous to the date the service was provided (OPWDD ADM #2007-01).

### **FEDERAL REQUIREMENTS FOR SUPPORTED EMPLOYMENT SERVICES BEING PROVIDED IN ACCORDANCE WITH AN APPROVED CARE PLAN**

HCBS, by Federal regulation, must be furnished under a written care plan subject to approval by the State agency (42 CFR § 441.301(b)(1)(i)). In addition, New York's waiver agreement with CMS states that all waiver services will be furnished pursuant to a written care plan, and Federal financial participation will not be claimed for waiver services that are not included in the individual written care plan. Further, upon completion of the initial care plan, the Medicaid service coordinator supervisor must review, sign, and approve the plan. Any time a significant change is made to the care plan and portions are revised and rewritten, the supervisor must review, sign, and approve the changes to the plan.

A care plan must specify the services to be provided, their frequency, and the type of provider (§ 4442.6 of CMS's *State Medicaid Manual*).

## **STATE REQUIREMENTS FOR SERVICES CLAIMED IN ACCORDANCE WITH APPLICABLE LEVEL-OF-SUPPORT BILLING RATE**

Supported employment services are reimbursed at a monthly supported employment service fee based on an applicable level of support (14 NYCRR § 635-10.5(d)). The level of support is established using developmental and demographic information on a beneficiary's DDP-2. If the required data is unavailable to calculate a person's level of support, the monthly supported employment service fee is reimbursed at the lowest fee level for the appropriate region until the required data can be collected and entered into the data system.

## **STATE REQUIREMENTS FOR SERVICES BEING PROVIDED IN ACCORDANCE WITH AN APPROVED SUPPORTED EMPLOYMENT PLAN**

New York's waiver agreement with CMS states that OPWDD issues ADMs for waiver services that identify all elements required for billing Medicaid. According to OPWDD ADM #2007-01, the supported employment agency is required to develop and maintain the supported employment plan. The plan must cover the time period of the payment claim and include a description of the individualized supported employment services and the location of the service provided.

## APPENDIX B: AUDIT SCOPE AND METHODOLOGY

### SCOPE

Our review covered the Health Department's claims for Medicaid payments made in 263,738 beneficiary-months totaling \$171,414,837 (\$85,707,418 Federal share) for supported employment services during the period January 1, 2009, through June 30, 2012.

The scope of our audit did not require us to perform a medical review or an evaluation of the medical necessity for supported employment services claimed for reimbursement. Rather, we limited our review of the Health Department's internal controls over the waiver programs to those applicable to the claims reviewed because our objective did not require an understanding of all internal controls over the waiver programs.

We performed our fieldwork at 65 providers' offices throughout New York from February through April 2013.<sup>17</sup>

### METHODOLOGY

To accomplish our objective, we:

- reviewed applicable Federal and State Medicaid laws, regulations, and guidance;
- met with CMS financial and program management officials to gain an understanding of the waivers' approval, administration, and assessment processes;
- met with Health Department officials to discuss administration and monitoring of the waiver programs;
- obtained from New York's Medicaid Management Information System (MMIS) a sampling frame of 263,738 beneficiary-months with supported employment services for which the Health Department claimed reimbursement totaling approximately \$171 million (\$86 million Federal share) from January 1, 2009, through June 30, 2012;<sup>18</sup>
- selected a simple random sample of 100 beneficiary-months from the sampling frame and, for each beneficiary-month:
  - determined whether contracted providers met New York qualification requirements to provide supported employment services,

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<sup>17</sup> The 65 providers included 4 State-operated developmental centers.

<sup>18</sup> Our review allowed us to establish reasonable assurance of the authenticity and accuracy of the data obtained from the MMIS file for our audit period. We also established reasonable assurance of the completeness of the data by reconciling the claims data in the MMIS to the Health Department's claim for reimbursement in the CMS-64.

- determined whether the beneficiary was assessed to be eligible for supported employment services under the waivers,
- determined whether supported employment services were provided in accordance with an approved care plan,
- determined whether supported employment services were provided in accordance with an approved supported employment plan,
- determined whether supported employment services claimed were billed at the appropriate level-of-support rate, and
- determined whether documentation supported the supported employment services billed;
- estimated the unallowable Federal Medicaid reimbursement paid in the total population of 263,738 beneficiary-months;<sup>19</sup> and
- discussed the results of our review with Health Department officials.

See Appendix C for the details of our statistical sampling methodology and Appendix D for 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 objectives.

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<sup>19</sup> For those beneficiary-months that included both allowable and unallowable services, we included only the portion of the Federal Medicaid reimbursement associated with the unallowable services in our estimate.

## **APPENDIX C: STATISTICAL SAMPLING METHODOLOGY**

### **POPULATION**

The population consisted of beneficiary-months for which the Health Department received Medicaid reimbursement for supported employment services provided during the period January 1, 2009, through June 30, 2012. A beneficiary-month is defined as all supported employment services for one beneficiary for 1 month.

### **SAMPLING FRAME**

The sampling frame was an Access file containing 263,738 beneficiary-months totaling \$171,414,837 (\$85,707,418 Federal share) for which the Health Department received Medicaid reimbursement for supported employment services provided during the period January 1, 2009, through June 30, 2012. We extracted the data for these beneficiary-months from the New York MMIS.

### **SAMPLE UNIT**

The sample unit was a beneficiary-month.

### **SAMPLE DESIGN**

We used a simple random sample.

### **SAMPLE SIZE**

We selected a sample of 100 beneficiary-months.

### **SOURCE OF THE RANDOM NUMBERS**

We generated the random numbers with the Office of Inspector General, Office of Audit Services (OAS), statistical software.

### **METHOD FOR SELECTING SAMPLE ITEMS**

We consecutively numbered the beneficiary-months in our sampling frame. After generating 100 random numbers, we selected the corresponding frame items for our sample.

### **ESTIMATION METHODOLOGY**

We used the OAS statistical software to calculate our estimates. We used the lower limit of the 90-percent confidence interval to estimate the overpayment associated with the unallowable supported employment services in the beneficiary-months.

## APPENDIX D: SAMPLE RESULTS AND ESTIMATES

### Sample Details and Results

| <b>Beneficiary-Months in Frame</b> | <b>Value of Frame (Federal Share)</b> | <b>Sample Size</b> | <b>Value of Sample (Federal Share)</b> | <b>No. of Beneficiary-Months With Unallowable Services</b> | <b>Value of Unallowable Services (Federal Share)</b> |
|------------------------------------|---------------------------------------|--------------------|--|--|--|
| 263,738                            | \$85,707,418                          | 100                | \$32,888                               | 35   | \$13,017   |

### **Estimated Value of Unallowable Services (Federal Share)** *(Limits Calculated for a 90-Percent Confidence Interval)*

|                |              |
|----------------|--------------|
| Point estimate | \$34,331,949 |
| Lower limit    | 23,054,993   |
| Upper limit    | 45,608,905   |

**APPENDIX E: SUMMARY OF DEFICIENCIES  
FOR EACH SAMPLED BENEFICIARY-MONTH**

**Legend**

|          |  |
|----------|--|
| <b>1</b> | Services claimed were not supported employment services                          |
| <b>2</b> | Services not provided in accordance with care plan                               |
| <b>3</b> | Services not documented  |
| <b>4</b> | Services not claimed in accordance with applicable level-of-support billing rate |
| <b>5</b> | Services not provided in accordance with supported employment plan               |
| <b>6</b> | Level-of-care assessment not documented  |
| <b>7</b> | Services available through Education Department                                  |

**Office of Inspector General Review Determinations for the 100 Sampled Beneficiary-Months**

| Sample Beneficiary-Month | Deficiency 1 | Deficiency 2 | Deficiency 3 | Deficiency 4 | Deficiency 5 | Deficiency 6 | Deficiency 7 | No. of Deficiencies |
|--------------------------|--------------|--------------|--------------|--------------|--------------|--------------|--------------|---------------------|
| 1                        |              |              |              |              |              |              |              | 0                   |
| 2                        |              |              |              |              |              |              |              | 0                   |
| 3                        |              |              |              |              |              |              |              | 0                   |
| 4                        |              |              |              |              |              |              |              | 0                   |
| 5                        |              |              |              |              |              |              |              | 0                   |
| 6                        |              |              |              |              |              |              |              | 0                   |
| 7                        |              |              |              |              |              |              |              | 0                   |
| 8                        |              | X            |              |              |              |              |              | 1                   |
| 9                        |              |              |              | X            |              |              |              | 1                   |
| 10                       |              |              |              |              |              |              |              | 0                   |
| 11                       |              |              |              |              |              |              |              | 0                   |
| 12                       |              |              |              |              |              |              |              | 0                   |
| 13                       | X            |              |              |              |              |              |              | 1                   |
| 14                       |              |              |              |              |              |              |              | 0                   |
| 15                       |              |              |              |              |              |              |              | 0                   |
| 16                       |              |              |              |              |              |              |              | 0                   |
| 17                       | X            |              |              |              |              |              |              | 1                   |
| 18                       |              | X            |              |              |              |              |              | 1                   |
| 19                       | X            |              |              |              |              |              |              | 1                   |
| 20                       | X            |              |              | X            |              |              |              | 2                   |
| 21                       |              |              |              |              |              |              |              | 0                   |
| 22                       |              |              |              |              |              |              |              | 0                   |
| 23                       |              |              |              |              |              |              |              | 0                   |

| Sample Beneficiary-Month | Deficiency 1 | Deficiency 2 | Deficiency 3 | Deficiency 4 | Deficiency 5 | Deficiency 6 | Deficiency 7 | No. of Deficiencies |
|--------------------------|--------------|--------------|--------------|--------------|--------------|--------------|--------------|---------------------|
| 24                       |              |              |              |              |              |              |              | 0                   |
| 25                       |              |              |              |              |              |              |              | 0                   |
| 26                       |              |              |              |              |              |              |              | 0                   |
| 27                       |              |              |              |              |              |              |              | 0                   |
| 28                       |              |              |              |              |              |              |              | 0                   |
| 29                       |              |              |              |              |              |              |              | 0                   |
| 30                       |              | X            |              |              |              | X            |              | 2                   |
| 31                       |              |              |              |              |              | X            |              | 1                   |
| 32                       |              |              |              |              |              |              |              | 0                   |
| 33                       |              |              |              |              |              |              |              | 0                   |
| 34                       |              |              |              |              |              |              |              | 0                   |
| 35                       |              |              |              |              |              |              |              | 0                   |
| 36                       |              |              |              |              |              |              |              | 0                   |
| 37                       |              |              |              |              |              |              |              | 0                   |
| 38                       |              | X            | X            |              | X            |              |              | 3                   |
| 39                       | X            |              |              |              |              |              |              | 1                   |
| 40                       |              |              | X            |              |              |              |              | 1                   |
| 41                       |              | X            |              |              |              |              |              | 1                   |
| 42                       |              |              |              |              |              |              |              | 0                   |
| 43                       |              | X            | X            |              |              |              |              | 2                   |
| 44                       |              |              |              |              |              |              |              | 0                   |
| 45                       | X            |              | X            |              |              |              |              | 2                   |
| 46                       |              |              |              |              |              |              |              | 0                   |
| 47                       |              |              |              |              | X            |              |              | 1                   |
| 48                       | X            |              |              |              |              |              |              | 1                   |
| 49                       |              |              |              |              |              |              |              | 0                   |
| 50                       |              |              |              |              |              |              |              | 0                   |
| 51                       |              |              |              |              |              |              |              | 0                   |
| 52                       |              |              | X            |              |              |              |              | 1                   |
| 53                       |              |              |              | X            |              |              |              | 1                   |
| 54                       |              |              |              |              |              |              |              | 0                   |
| 55                       |              |              |              |              |              |              |              | 0                   |
| 56                       |              |              |              |              |              |              |              | 0                   |
| 57                       |              |              |              |              |              |              |              | 0                   |
| 58                       |              |              |              |              |              |              |              | 0                   |
| 59                       |              | X            |              |              |              |              |              | 1                   |
| 60                       |              |              |              |              |              |              | X            | 1                   |

| Sample Beneficiary-Month | Deficiency 1 | Deficiency 2 | Deficiency 3 | Deficiency 4 | Deficiency 5 | Deficiency 6 | Deficiency 7 | No. of Deficiencies |
|--------------------------|--------------|--------------|--------------|--------------|--------------|--------------|--------------|---------------------|
| 61                       |              |              |              |              |              |              |              | 0                   |
| 62                       |              |              |              |              |              |              |              | 0                   |
| 63                       |              |              |              |              |              |              |              | 0                   |
| 64                       |              |              |              |              |              |              |              | 0                   |
| 65                       |              |              |              |              |              |              |              | 0                   |
| 66                       |              |              |              |              |              |              |              | 0                   |
| 67                       |              |              |              |              | X            |              |              | 1                   |
| 68                       | X            |              |              |              |              |              |              | 1                   |
| 69                       |              | X            |              |              |              |              |              | 1                   |
| 70                       |              |              |              |              |              |              |              | 0                   |
| 71                       |              |              |              |              |              |              |              | 0                   |
| 72                       | X            |              |              |              |              |              |              | 1                   |
| 73                       |              |              |              | X            |              |              |              | 1                   |
| 74                       |              | X            | X            |              |              |              |              | 2                   |
| 75                       |              |              |              |              |              |              |              | 0                   |
| 76                       |              |              |              |              |              |              |              | 0                   |
| 77                       |              |              |              |              |              |              |              | 0                   |
| 78                       |              |              |              |              |              |              |              | 0                   |
| 79                       |              |              |              |              |              |              |              | 0                   |
| 80                       |              |              |              |              |              |              |              | 0                   |
| 81                       | X            |              |              |              |              |              |              | 1                   |
| 82                       |              |              |              |              |              |              |              | 0                   |
| 83                       |              |              |              |              |              |              |              | 0                   |
| 84                       |              |              |              |              |              |              |              | 0                   |
| 85                       |              |              |              | X            |              |              |              | 1                   |
| 86                       |              |              |              |              | X            |              |              | 1                   |
| 87                       |              |              |              |              |              |              |              | 0                   |
| 88                       |              |              |              |              |              |              |              | 0                   |
| 89                       |              |              |              |              |              |              |              | 0                   |
| 90                       |              |              |              |              |              |              |              | 0                   |
| 91                       |              |              |              |              |              |              |              | 0                   |
| 92                       |              |              |              |              |              |              |              | 0                   |
| 93                       |              |              |              |              |              |              |              | 0                   |
| 94                       |              |              |              |              |              |              |              | 0                   |
| 95                       |              |              |              |              |              |              | X            | 1                   |
| 96                       |              |              |              |              |              |              |              | 0                   |
| 97                       | X            | X            | X            |              |              |              |              | 3                   |

| Sample Beneficiary-Month              | Deficiency 1 | Deficiency 2 | Deficiency 3 | Deficiency 4 | Deficiency 5 | Deficiency 6 | Deficiency 7 | No. of Deficiencies |
|---------------------------------------|--------------|--------------|--------------|--------------|--------------|--------------|--------------|---------------------|
| 98                                    |              | X            |              |              |              |              |              | 1                   |
| 99                                    |              |              |              | X            |              |              |              | 1                   |
| 100                                   | X            |              |              |              |              |              |              | 1                   |
| Category Totals                       | <b>12</b>    | <b>11</b>    | <b>7</b>     | <b>6</b>     | <b>4</b>     | <b>2</b>     | <b>2</b>     | <b>44</b>           |
| <b>35 Beneficiary-Months in Error</b> |              |              |              |              |              |              |              |                     |

## APPENDIX F: HEALTH DEPARTMENT COMMENTS



Howard A. Zucker, M.D., J.D.  
Acting Commissioner of Health

Sue Kelly  
Executive Deputy Commissioner

May 21, 2014

Mr. James P. Edert  
Regional Inspector General for Audit Services  
Department of Health and Human Services  
Office of the Inspector General  
Jacob Javits Federal Building  
26 Federal Plaza, Room 3900  
New York, NY 10278

Ref. No. A-02-13-01004

Dear Mr. Edert:

Enclosed are the Department of Health's comments on the U.S. Department of Health and Human Services, Office of Inspector General Draft Audit Report #A-02-13-01004 entitled, "Some of New York's Claims for Medicaid Supported Employment Services Were Unallowable."

Thank you for the opportunity to comment.

Sincerely,

*Michael J. Nazarko*

Michael J. Nazarko  
Deputy Commissioner  
for Administration

Enclosure

cc: Jason A. Helgerson  
James C. Cox  
Diane Christensen  
Lori Conway  
Robert Loftus  
Joan Kewley  
James Russo  
Ronald Farrell  
Brian Kiernan  
Elizabeth Misa  
Ralph Bielefeldt  
OHIP Audit BML

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**New York State Department of Health  
Comments on the  
Department of Health and Human Services  
Office of Inspector General  
Draft Audit Report A-02-13-01004 entitled  
Some of New York’s Claims for Medicaid  
Supported Employment Services Were Unallowable**

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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 (OIG) Draft Audit Report A-02-13-01004 entitled, “Some of New York’s Claims for Medicaid Supported Employment Services Were Unallowable.”

**Recommendation #1:**

Refund \$25,177,394 to the Federal Government.

**Recommendation #2:**

Ensure that the Department complies with certain Federal and State requirements by requiring providers to:

- claim reimbursement only for documented supported employment services,
- provide supported employment services only to beneficiaries for whom there is a completed and approved care and supported employment plan,
- claim reimbursement at the appropriate level-of-support billing rate,
- ensure and document that all beneficiaries approved for supported employment services have been assessed and evaluated to need the required level of care, and
- ensure that all beneficiaries receiving similar services from the Education Department are not claimed under its waiver programs.

**Response #1 and #2:**

The Department agrees to take necessary corrective actions to help ensure that Federal and State requirements are met. However, the Department does not agree that \$25,177,394 is the appropriate amount that should be refunded to the Federal Government.

The Draft Audit Report identifies certain beneficiary months/claims that contain one or more of seven types of deficiencies, which therefore, makes them unallowable for reimbursement. The Department disagrees with some of the deficiencies noted by OIG. These are outlined below by deficiency type. For each, we have provided information and documentation supporting the Department’s position. Given the information provided herein and the documentation already

provided to the auditors, we respectfully request each of the below referenced beneficiary months/claims no longer be designated as being deficient, and that the amount to be refunded to the Federal Government be reduced appropriately. Following this, we describe the corrective actions that will be taken to help ensure that Federal and State requirements are met.

### **Services Claimed Were Not Supported Employment Services (SEMP)**

The draft audit report identifies 16 sample claims/beneficiary months that contained this deficiency, stating that competitive employment at or above minimum wage was not maintained, integrated employment was not maintained, and neither competitive nor integrated employment was maintained. There are five claims/beneficiary months in which we disagree that they contained this deficiency.

There is nothing in Federal or State law, rule or policy that requires that a person receiving supported employment maintain employment, or that this employment be competitive and integrated in the way the report is interpreting such terms.

Federal guidance is provided in a Centers for Medicare and Medicaid Services (CMS) September 2011 Informational Bulletin. In this Bulletin, CMS defines supported employment as “ongoing supports to participants who, because of their disabilities, need intensive on-going support to obtain and maintain an individual job in competitive or customized employment, or self-employment, in an integrated work setting in the general workforce for which an individual is compensated at or above the minimum wage.” The Office for People With Developmental Disabilities (OPWDD) Home and Community-Based Services (HCBS) Waiver defines supported employment as “ongoing supports that enable participants, for whom competitive employment at or above the minimum wage is unlikely absent the provision of supports, and who, because of their disabilities, need supports, to perform in a regular work setting. Supported employment may include assisting the participant to locate a job or develop a job on behalf of the participant.” Also, State regulations at 14 New York Codes, Rules and Regulations (NYCRR)- Subpart 635-10 define supported employment as a program of appropriate staff and/or material supports for a person desiring to obtain, or be maintained in a competitive employment setting.

### **Claim’s #11 and #37:**

The auditor’s notes<sup>1</sup> for these claims state that “the Beneficiary did not maintain competitive/integrated employment, worked at the provider site” and “the beneficiary worked under an internship with salary paid by the Developmental Disability Services Office.” The supports provided to these beneficiaries are within the scope of allowable and Medicaid fundable supported employment services as defined by both CMS and New York State. There is certainly no rule that prohibits a provider from hiring and paying an individual with developmental disabilities who utilizes HCBS supported employment services, and there is no Federal or State rule or guidance that disqualifies employment supports provided to an individual in such a job from Medicaid funding.

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<sup>1</sup> We were provided additional information from the auditors for each claim and each deficiency, which was entitled “Auditor Explanation of Errors Cited”. Here and in the rest of the response, the term “auditor’s notes” refers to this additional information.

Both beneficiaries in these claims participated in the Employment Training Program (ETP) which is a paid internship that utilizes discovery and job readiness to assist individuals with developmental disabilities in obtaining competitive employment. As part of the paid internship, a customized employment approach is used to “carve” a job that matches the beneficiary’s interests and skills with the needs of a business. Job coaching supports are provided during the internship to assist the beneficiary in learning their job duties and being hired by the business.

The ETP program assisted both individuals in obtaining and maintaining competitive employment, and both were paid minimum wage. One individual (#11) worked at a bakery located in the local community in the general workforce. Job development and job coaching supports were provided by the provider, who assisted the beneficiary in obtaining the internship; provided job coaching supports at the bakery so the beneficiary could learn specific job tasks and duties; and assisted the beneficiary in ultimately being hired as an employee of the bakery. The other individual (#37) also participated in the ETP, utilizing discovery and job readiness to assist the individual to obtain and maintain competitive employment; the beneficiary was hired by the provider and earns at least minimum wage.

ETP has been a very successful model for assisting individuals with developmental disabilities to obtain and maintain competitive employment which is why it is a strategy in the Transformation Agreement between OPWDD and CMS. Several businesses that have hired ETP interns have indicated that they were initially hesitant to hire a worker with developmental disabilities. The paid internship reduced risk for the business and provided an opportunity for the business to see that a person with developmental disabilities could be successful in the general workforce. The ETP paid internship meets both OPWDD and CMS definitions of supported employment.

**Claim #20:**

The auditor’s notes for the finding state that “Beneficiary did not maintain competitive employment, received a stipend not a salary.” This beneficiary is maintaining competitive employment working at a college, and there is no CMS or OPWDD requirement that supportive employment requires that payment be structured as a salary rather than a stipend. This claim should be viewed as supported employment as the job and related supports are consistent with both the OPWDD and CMS definitions of supported employment.

**Claim #47:**

The auditor’s notes for the finding stated that “Beneficiary did not maintain competitive/integrated employment, worked as part of an enclave at provider site,” and “Beneficiary’s salary paid by provider.”

As stated earlier, the September 2011 CMS Informational Bulletin on employment related services, supported employment is defined as “ongoing supports to participants who, because of their disabilities, need intensive on-going support to obtain and maintain an individual job in competitive or customized employment, or self-employment, in an integrated work setting in the general workforce for which an individual is compensated at or above the minimum wage.” In OPWDD’s HCBS Waiver supported employment is defined as “ongoing supports that enable participants, for whom competitive employment at or above the minimum wage is unlikely absent the provision of supports, and who, because of their disabilities, need supports, to perform in a regular work setting.

Supported employment may include assisting the participant to locate a job or develop a job on behalf of the participant.” Also, in OPWDD’s Regulation - 14 NYCRR- Subpart 635-10, supported employment is defined as a program of appropriate staff and/or material supports for a person desiring to obtain, or be maintained in a competitive employment setting.

In this claim, the beneficiary is engaged in seasonal employment as a lawn care worker. The employment is in the community, the earnings are minimum wage, and documentation indicates that the job coach is assisting the beneficiary in obtaining additional employment.

All this is consistent with both OPWDD and CMS guidance related to supported employment. While the beneficiary is employed by the provider, this is still considered supported employment due to the wage and the integrated setting. Also, as previously noted, there is no Federal or State guidance that prohibits a provider from hiring an individual with developmental disabilities who utilizes HCBS supported employment services.

**Claim #71:**

The auditor’s notes for the finding state that “Beneficiary did not maintain competitive/integrated employment. Beneficiary works under a program developed by provider solely for developmentally disabled individuals and is paid a salary by provider.”

As stated earlier, in the September 2011 CMS Informational Bulletin on employment related services, supported employment is defined as “ongoing supports to participants who, because of their disabilities, need intensive on-going support to obtain and maintain an individual job in competitive or customized employment, or self-employment, in an integrated work setting in the general workforce for which an individual is compensated at or above the minimum wage”. In OPWDD’s HCBS Waiver, supported employment is defined as “ongoing supports that enable participants, for whom competitive employment at or above the minimum wage is unlikely, absent the provision of supports, and who, because of their disabilities, need supports, to perform in a regular work setting. Supported employment may include assisting the participant to locate a job or develop a job on behalf of the participant.” In OPWDD’s Regulation - Part 635.10, supported employment is defined as a program of appropriate staff and/or material supports for a person desiring to obtain, or be maintained in a competitive employment setting. Also, there is no Federal or State guidance that prohibits providers from hiring and paying individuals with developmental disabilities who utilize HCBS supported employment services.

The beneficiary in this claim is an employee of the provider and maintained competitive employment above minimum wage, working 35 hours a week as a messenger. The job and related supports is consistent with both OPWDD and CMS guidance related to supported employment. Please see Attachment A for more information regarding this issue for these claims/beneficiary months. This attachment, and the other attachments identified, will be provided to DHHS – OIG under separate cover. Based on this information, and the other information submitted during the course of the audit, we respectfully request that this deficiency be removed for all five claims/beneficiary months.

The above responses provide sufficient information to document that the beneficiary month/claims are indeed supported employment services. Additionally, the Department believes that the policy

and programmatic implications of these deficiencies are significant, especially those related to the internship program:

- If paid internship programs were not viewed as supported employment, over 600 interns could lose their jobs as providers would have no means to bill for this service. These services could not be billed as pre-vocational as an alternative because the job coaching supports that these 600 individuals are receiving are related to specific job tasks and these individuals are also earning minimum wage, all of which is inconsistent with the definition of prevocational services. This would be inconsistent with CMS and OPWDD efforts to increase competitive employment outcomes for people with developmental disabilities.
- The implication of not viewing certain claims (e.g. #37) as supported employment is that many provider agencies would no longer be able to hire people with developmental disabilities on their payroll performing a number of job duties in integrated settings where they earn at or above minimum wage. Individuals with developmental disabilities who are currently employed would lose their job coaching supports and likely their jobs. These individuals would probably utilize more costly day habilitation services. This would also have the effect of reducing the number of people with developmental disabilities who are engaged in competitive employment thus impacting OPWDD employment goals and efforts to implement the Transformation Agreement.

#### **Services Not Provided in Accordance with Supported Employment Plan**

The draft audit report identifies four sample claims/beneficiary months that contains this deficiency. For two of them (#47 and #67) we disagree that a Supported Employment Plan was not in place.

##### **Claim #47:**

The claim/beneficiary month had a deficiency because, as stated in the report “during one beneficiary-month, the supported employment plan did not list or describe the beneficiary’s job.” We are providing a supported employment plan covering the claim/beneficiary month that states the beneficiary’s job.

##### **Claim #67:**

The claims/beneficiary month had a deficiency because, as stated in the report “during one beneficiary-month, the supported employment plan was not in effect during half of the beneficiary-month when services were claimed.” The beneficiary month is April 2009. There are two supported employment plans that we are providing, one in effect up to April 14, 2009, and the other plan was effective April 16, 2009; therefore, there is a lag of only a day, and not half the month. The auditors may have, in error, used the “effective date” stated on the plan, instead of considering the date the plan was reviewed and signed.

Please see Attachment B for more information regarding the issue for these claims/beneficiary months. This attachment, and the other attachments identified, will be provided to DHHS – OIG under separate cover. Based on this information, and the other information submitted during the

audit, we respectfully request that this deficiency be removed for the above claims/beneficiary months.

#### **Level of Care Assessment not Documented**

The draft audit report identifies two sample claims/beneficiary months that contain this deficiency (#31 and #30), with which we disagree.

The auditor's notes provided to us states the following reason for the disallowance in this category: "Interim Care Facility/Mental Retardation (ICF/MR) certification not provided". Per the attached letter from CMS, a certain form, e.g., ICF/MR – Level of Care Eligibility Determination (LCED) form is not required. CMS stated that it would "...review a participant's file including plans of care, budgets, prior LCEDs, HCBS waiver application to substantiate participation or continued participation in the waiver."

We are uncertain if the auditors were looking for a particular document. However, the auditors were provided many documents, including plans of care (these claims were not cited as having an error in that category), Developmental Disabilities Profile (DDP-2's), etc., which we think appropriately demonstrates the need for continued participation in the waiver.

Please see Attachment C for more information regarding the issues for these claims/beneficiary months. This attachment, and the other attachments identified, will be provided to DHHS – OIG under separate cover. Based on this information, and the other information submitted during the audit, we respectfully request that this deficiency be removed for the above two claims/beneficiary months.

#### **Services Available Through the Education Department**

The draft audit report identifies two sample claims/beneficiary months that contain this deficiency. For one of these claims/beneficiary months (#60) we are submitting documentation (Education Department referral letter), to support that the services were no longer provided by the Education Department.

Please see Attachment D for more information regarding the issue for this claim/beneficiary month. This attachment, and the other attachments identified, will be provided to DHHS – OIG under separate cover. Based on this information, and the other information submitted during this audit, we respectfully request that this deficiency be removed for the above claim.

#### **Services not Claimed in Accordance with Applicable Level of Support Billing Rate**

The draft audit report identifies six sample claims/beneficiary months (#9, #20, #53, #73, #85 and #99) that contain this deficiency.

For all of these claims/beneficiary months, we submitted documentation to the auditors in response to the preliminary findings, to show that the beneficiary's DDP-2 form supported the monthly service fee the service was billed at (and all DDP-2's were provided). We are resubmitting them again and would be happy to provide an explanation of the calculation of the rate if necessary.

Please see Attachment E for more information regarding this issue for these claims/beneficiary months. This attachment, and the other attachments identified, will be provided to DHHS – OIG under separate cover. Based on this information, and the other information submitted during the audit, we respectfully request that this deficiency be removed for all six of the above claims/beneficiary months.

**\* Services not Provided in Accordance with Care Plan**

The draft audit report identifies 11 sample claims/beneficiary months that contain this error. For one of these claims (#53) we do not agree it contains this deficiency.

We are submitting documentation to show that an acceptable care plan was in place. There is an addendum to the initial Care Plan, and this addendum covers the claim/beneficiary month and provides evidence that the services were provided in accordance with a care plan.

Please see Attachment F for more information regarding these issues for this claim/beneficiary month. This attachment, and the other attachments identified, will be provided to DHHS – OIG under separate cover. Based on this information, and the other information submitted during this audit, we respectfully request that this deficiency be removed for the above claim/beneficiary month.

**CORRECTIVE ACTIONS:**

For those deficiency categories where there are remaining errors with the claim(s)/beneficiary month(s), the Department and OPWDD will continue to collaborate on enhancing Quality Improvement (QI) efforts to strengthen policies and procedures for overseeing and administering the program. The Department and OPWDD continue to have quarterly meetings to discuss QI issues and opportunities, maintain a Quality Work Plan and meet quarterly to discuss its implementation. Work plan activities will incorporate researching possible enhancements to oversight practices as well as other potential improvements. OPWDD will also incorporate training on proper supported employment billing and documentation into regional and statewide provider meetings and trainings (in part addressing the issue of ensuring that SEMP claims are SEMP services).

The redesigned Department/OPWDD Individual Service Plan (ISP) review process includes annual OPWDD review of a Department-generated, statistically valid sample of ISP's. The Department directly performs the fiscal component for a sub-sample of the ISP's, verifying that only waiver services documented in the ISP are billed to Medicaid (as evidenced in the Data Mart Claim Detail Report). Separate from this Department review, OPWDD performs a 5 percent sample review of ISPs statewide, reviewing the quality of the plan and the services which individuals receive. This review is conducted as a part of OPWDD's ongoing survey process of provider agencies. OPWDD reports the results of this review as performance measures in the CMS 372 report.

OPWDD also conducts desk reviews of eMedNY data based on indicators of inappropriate billing/aberrant claims. A number of system edits exist, however, desk reviews are performed to ensure that system edits are functioning as expected or to check for items that conflict with

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**\*Office of Inspector General Note: This finding for Sample #53 was removed prior to the issuance of the draft report and is not identified within the report.**

OPWDD regulations or policies but for which system edits have not been put in place. OPWDD has had a number of contracts with provider agencies, identified in its Waiver Agreement as Organized Health Care Delivery System (OHDS). Under the OHDS, a provider agency enters into a contract with OPWDD to provide a service. Once the service is provided, the agency is reimbursed by OPWDD for the service under the terms of the contract. OPWDD then bills Medicaid for the service, and therefore, OPWDD is identified as the provider of record for the services. Desk reviews are also conducted for these billings.

Furthermore, the Office of the Medicaid Inspector General (OMIG) and OPWDD's Office of Audit Services will conduct statewide audits to ensure that documentation is available to support the services billed and services are provided pursuant to a written plan of care. The OMIG is working with OPWDD on the protocols and these audits will commence after the audit protocols are finalized.