



Commonwealth of Massachusetts  
Office of the State Auditor  
Suzanne M. Bump

*Making government work better*

Official Audit Report – Issued January 13, 2020

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Office of Medicaid (MassHealth)—Review of Claims  
Submitted by Dr. Joseph O’Connor  
For the period January 1, 2015 through December 31, 2018





Commonwealth of Massachusetts  
Office of the State Auditor  
Suzanne M. Bump

*Making government work better*

January 13, 2020

Dr. Joseph O'Connor  
One Market Street  
Lynn, MA 01901

Dear Dr. O'Connor:

I am pleased to provide you with my office's performance audit of Medicaid claims you have submitted to MassHealth. This report details the audit objective, scope, methodology, findings, and recommendations for the audit period, January 1, 2015 through December 31, 2018. My audit staff discussed the contents of this report with you, and your comments are reflected in this report.

I would also like to express my appreciation for the cooperation and assistance you provided to my staff during the audit.

Sincerely,

A handwritten signature in blue ink, appearing to read "SMBump".

Suzanne M. Bump  
Auditor of the Commonwealth

cc: Marylou Sudders, Secretary, Executive Office of Health and Human Services  
Daniel Tsai, Assistant Secretary and Director, Office of Medicaid  
Alda Rego, Assistant Secretary for Administration and Finance, Executive Office of Health and Human Services  
Susan Harrison, Director of Program Integrity, Office of Medicaid  
Joan Senatore, Director of Compliance, Office of Medicaid  
Teresa Reynolds, Executive Assistant to Secretary Sudders

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## LIST OF ABBREVIATIONS

APTSR	Advance Physical Therapy & Sports Rehabilitation
BSI	Bureau of Special Investigations
CMR	Code of Massachusetts Regulations
MMIS	Medicaid Management Information System
OSA	Office of the State Auditor

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## EXECUTIVE SUMMARY

The Office of the State Auditor (OSA) receives an annual appropriation for the operation of a Medicaid Audit Unit to help prevent and identify fraud, waste, and abuse in the Commonwealth's Medicaid program. This program, known as MassHealth, is administered under Chapter 118E of the Massachusetts General Laws by the Executive Office of Health and Human Services, through the Division of Medical Assistance. Medicaid is a joint federal-state program created by Congress in 1965 as Title XIX of the Social Security Act. At the federal level, the Centers for Medicare & Medicaid Services, within the US Department of Health and Human Services, administer the Medicare program and work with state governments to administer state Medicaid programs.

OSA has conducted an audit of MassHealth claims for physical therapy paid to Dr. Joseph O'Connor for the period January 1, 2015 through December 31, 2018. During this period, MassHealth paid Dr. O'Connor \$568,988 to provide physical therapy for 1,129 MassHealth members. The purpose of this audit was to determine whether physical therapy provided to MassHealth members was properly supported by documentation and allowable in accordance with MassHealth regulations.

The audit was initiated as the result of a referral from OSA's Bureau of Special Investigations (BSI). BSI is charged with investigating potential fraudulent claims or wrongful receipt of payment or services from public assistance programs. BSI conducted data analytics of Dr. O'Connor that identified potential improper payments.

The audit was also conducted as part of OSA's ongoing independent statutory oversight of the state's Medicaid program. Several of our previously issued audit reports disclosed weaknesses in MassHealth's claim-processing system and improper billing practices by MassHealth providers, which resulted in millions of dollars in potentially improper payments. As with any government program, public confidence is essential to the success and continued support of the state's Medicaid program.

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Below is a summary of our findings and recommendations, with links to each page listed.

<b>Finding 1</b> <b>Page <a href="#">7</a></b>	Dr. O'Connor improperly billed MassHealth for \$359,266 in physical therapy provided by physical therapy assistants.
<b>Recommendations</b> <b>Page <a href="#">8</a></b>	<ol style="list-style-type: none"><li>1. Dr. O'Connor should collaborate with MassHealth to establish a plan to repay the \$359,266 in overpayments he received from improper physical therapy billings.</li><li>2. Dr. O'Connor should bill MassHealth using his billing provider identification number only for services he personally provides.</li><li>3. Dr. O'Connor should periodically review all the billing requirements in MassHealth's regulations, as well as updates to these regulations that are described in MassHealth's transmittal letters and provider bulletins, and ensure that he knows and adheres to these requirements when he bills for services provided to MassHealth members.</li></ol>

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## OVERVIEW OF AUDITED ENTITY

Under Chapter 118E of the Massachusetts General Laws, the Executive Office of Health and Human Services, through the Division of Medical Assistance, administers the state’s Medicaid program, known as MassHealth. MassHealth provides access to healthcare services for approximately 1.9 million low- and moderate-income children, families, seniors, and people with disabilities annually. In fiscal year 2018, MassHealth paid healthcare providers more than \$15 billion, of which approximately 50% was funded by the Commonwealth. Medicaid expenditures represent approximately 39% of the Commonwealth’s total annual budget.

According to Section 432 of Title 130 of the Code of Massachusetts Regulations, MassHealth pays for physical therapy provided to eligible MassHealth members. Dr. Joseph O’Connor is a therapist and the owner of Advance Physical Therapy & Sports Rehabilitation (APT SR). He has been certified with MassHealth since 1991, and APT SR has been providing physical therapy since 1997. Dr. O’Connor received a total of \$568,988 for therapy provided to MassHealth members during the audit period:

Calendar Year	Number of Members Served	Number of Claims	MassHealth Payments
2015	341	8,190	\$ 140,942
2016	323	6,405	111,182
2017	307	8,100	136,040
2018	413	10,688	180,824
<b>Total</b>	<u>1,384*</u>	<u>33,383</u>	<u>\$ 568,988</u>

\* The total unduplicated number is 1,129.

### Physical Therapy

The therapy provided by physical therapists to eligible MassHealth members includes diagnostic evaluation and therapeutic treatments. Physical therapy provides rehabilitation for patients suffering from physical pain in order to help restore functionality to the greatest extent possible. It includes the following:

- physical therapy evaluations for one member or in a group setting for multiple members
- application of modalities such as hot and cold packs
- therapeutic procedures to develop range of motion, flexibility, strength, and endurance

- 
- gait training
  - massage treatments

MassHealth pays for physical therapy only when there is complete documentation in the member's medical record, and therapists are required to retain documentation for each member for four years after the last date of service. According to MassHealth regulations, the following must be documented in the member's medical record:

- a licensed physician's or licensed nurse practitioner's written referral for evaluation, referral for treatment, and renewal of referral (if applicable) every 60 days
- a written comprehensive evaluation report
- the name, address, and telephone number of the member's primary physician
- at least weekly documentation of the following:
  - the date or dates when therapy was provided
  - the specific therapeutic procedures and methods used
  - the member's response to treatment
  - any changes in the member's condition
  - the problems encountered or changes in the treatment plan or goals, if any
  - the location where the service was provided, if different from that in the evaluation report
  - the amount of time spent in treatment
  - the therapist's signature

Physical therapy providers use this information to determine and update treatment plans for patients.



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## AUDIT OBJECTIVES, SCOPE, AND METHODOLOGY

In accordance with Section 12 of Chapter 11 of the Massachusetts General Laws, the Office of the State Auditor (OSA) has conducted a performance audit of certain claims by Dr. Joseph O'Connor for the period January 1, 2015 through December 31, 2018.

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.

Below is our audit objective, indicating the question we intended our audit to answer, the conclusion we reached regarding our objective, and where the objective is discussed in the audit findings.

Objective	Conclusion
1. Did Dr. O'Connor correctly bill for services provided to MassHealth members?	No; see Finding <u>1</u>

### Methodology

We gained an understanding of the internal controls we deemed significant to our audit objective through inquiries. We also collaborated with our office's Bureau of Special Investigations, which initially identified potential billing irregularities regarding Dr. O'Connor. In addition, we performed the following procedures to obtain sufficient, appropriate audit evidence to address our audit objective.

- We obtained data from MassHealth's Medicaid Management Information System (MMIS) for testing purposes. To test the reliability of the data, we relied on the work performed by OSA in a separate project that tested certain information system controls in MMIS. As part of that work, OSA reviewed existing information, tested selected system controls, and interviewed knowledgeable agency officials about the data. Additionally, we performed validity and integrity tests on all claim data, including (1) testing for missing data, (2) scanning for duplicate records, (3) testing for values outside a designated range, (4) looking for dates outside specific periods, and (5) tracing a sample of claims queried to source documents. Based on these procedures, we determined that the data obtained were sufficiently reliable for the purposes of this report.
- We selected a statistical, random sample of 180 out of 33,383 paid physical therapy claims from the audit period, using an expected error rate of 50%, a desired precision of 15%, and a confidence level of 95%, to determine whether Dr. O'Connor properly billed MassHealth for

these claims. The expected error rate is the anticipated rate of occurrence of the error of improper billing for services; 50% is the most conservative. Desired precision is a measure of how precise the actual error rate is. Confidence level is the numerical measure of how confident one can be that the sample results reflect the results that would have been obtained if the entire population had been tested. For this audit, we designed our sample so that we would be 95% confident that the actual error rate in the sample of 180 claims would be within a range of +/- 7.5%, or 15%, of the error in the population of 33,383 claims.

- To determine whether Dr. O'Connor properly billed MassHealth for physical therapy, we reviewed information in members' medical records for the sampled claims to determine who provided the services to the members. We accomplished this by reviewing a Daily Note/Billing Sheet, which details a member's personal information, diagnosis, referring physician, procedure codes to be billed, and assessment of short- and long-term goals to recover from injury. It is signed by the provider/s who treated the patient on that particular visit. We compared the servicing provider name in our data from MMIS to that of the provider who physically signed each Daily Note/Billing Sheet to determine whether the name in our data matched that of the provider who provided the service.
- In addition, after this initial review, for all providers who signed the Daily Note/Billing Sheet, we researched MMIS and the records of the Division of Professional Licensure to determine the time period when each provider was licensed and eligible to treat MassHealth members and bill MassHealth for services. We then compared these time periods with the date of service for each claim in our sample to determine whether each provider was eligible to treat MassHealth patients and bill MassHealth for services when s/he treated each patient. Providers are not allowed to treat MassHealth patients if they are not licensed and eligible to participate in MassHealth, so through this research we determined whether the providers treated the patients without a license and without eligibility.

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## DETAILED AUDIT FINDINGS WITH AUDITEE'S RESPONSE

### 1. Dr. Joseph O'Connor improperly billed MassHealth for \$359,266 in physical therapy provided by physical therapy assistants.

Dr. Joseph O'Connor improperly submitted claims to MassHealth using his own billing provider identification number for physical therapy that was provided by physical therapy assistants. According to our review of member medical records, 88 (49%) of the 180 sampled claims were improperly billed to MassHealth using Dr. O'Connor's billing provider identification number when the services were actually performed by one of his assistants. MassHealth therapy provider regulation Section 432.412 of Title 130 of the Code of Massachusetts Regulations (CMR) does not allow payment for therapy services provided by physical therapy assistants, even if they are provided under the supervision of a licensed therapist. This resulted in at least \$359,266 in overpayments during the audit period.

#### Authoritative Guidance

According to 130 CMR 432.412, MassHealth does not pay for any physical therapy billed under a provider's name if it is provided by someone under that person's supervision:

*The MassHealth agency does not pay a therapist for any of the following services:*

*(A) services provided by any person under the therapist's supervision.*

Additionally, 130 CMR 450.301(A)(1) states that a provider cannot make a claim for services rendered by another person:

*An individual practitioner may not claim payment under his or her own name and provider ID / service location number for services actually provided by another individual, whether or not the individual who provided the service is also a participating provider, or is an associate, partner, or employee of the individual practitioner.*

#### Reasons for Issue

Dr. O'Connor stated that his previous billing company had used his billing provider identification number for all physical therapy, as it was the fastest way to submit claims. He also stated that previously, he was unsure of how to bill for services provided by his employees and had tried to gain clarification on the issue from MassHealth.

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## Recommendations

1. Dr. O'Connor should collaborate with MassHealth to establish a plan to repay the \$359,266 in overpayments he received from improper physical therapy billings.
2. Dr. O'Connor should bill MassHealth using his billing provider identification number only for services he personally provides.
3. Dr. O'Connor should periodically review all the billing requirements in MassHealth's regulations, as well as updates to these regulations that are described in MassHealth's transmittal letters and provider bulletins, and ensure that he knows and adheres to these requirements when he bills for services provided to MassHealth members.

## Auditee's Response

On Dr. O'Connor's behalf, his legal counsel provided the following written response, dated November 19, 2019, along with supporting documentation.

*Since its founding, [Advance Physical Therapy & Sports Rehabilitation] has always utilized both physical therapists and physical therapy assistants in a team approach when treating patients in its office. My client has found that this team approach has been ideal. The physical therapist assistants have always followed the physical therapist's plan of treatment, which has allowed the physical therapist to evaluate, establish a treatment plan and treat other patients jointly with physical therapist assistants. This is very common practice in clinical physical therapy clinics throughout the Commonwealth of Massachusetts. . . .*

*The current clinical staff is comprised of two physical therapists and three physical therapy assistants. This provides an adequate ratio between clinicians, patients, and staff to ensure appropriate treatment is rendered daily. . . .*

- A. It is undisputed that physical therapists and physical therapy assistants are legally authorized to provide physical therapy treatment pursuant to M.G.L. C. 112, Section 23B. . . . Physical therapy assistants must be under the supervision and direction of a physical therapist whenever working. . . .*

*Section 5.02 delineates the use of supportive personnel as well as the responsibility and supervision of same. These legal and regulatory schemes insure, to the greatest extent possible, that proper, reasonable and appropriate treatment will be rendered to physical therapy patients throughout the Commonwealth.*

- B. Application of 130 CMR 432.413 and 450.301(A)(I)*

*The authoritative guidance cited in the audit report lists firstly 130 CMR 432.413 as the primary source for denying payment for any physical therapy billed under a provider's name if it is provided by someone under that person's supervision:*

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*The MassHealth Agency does not pay a therapist for any of the following services: (A) Services provided by any person under the therapist's supervision.*

*The exact language of (A) is as follows:*

*"The therapist provided the service in a facility approved by the MassHealth Agency and is paid by the facility to provide that service, whether or not the cost of the service is included in the MassHealth Agency's rate of payment for that facility." The conclusion reached in the audit of "any person" under the therapist's supervision from this language is not readily ascertainable nor interpreted in (A).*

*Even if this conclusion is reasonably reached, the Audit does not specifically identify, in detail, any unlicensed physical therapists that provided services (130 CMR 450.212(A)), and further, what number of the total number of claims paid that joint treatment occurred between a physical therapist and a physical therapy assistant. The question is what treatment was attributable to the physical therapist versus the physical therapy assistant. The treatment notes were readily available and could have been reviewed to answer this question.*

- C. *In reviewing the audit, the total amount of monies paid by MassHealth were listed for each of the four years that were the subject of the audit. Upon further analysis of the chart on page three of same, it appears that if claims equals patient visits, then the average course of a therapy regimen would be approximately twenty-four visits for each patient and the average reimbursement amount would be approximately \$17.00 per claim. This seems like an unusually high number of visits and a very low amount paid for services rendered. However, these amounts did not disclose whether or if these totals were secondary or primary MassHealth payments.*

*Many of Advance's patients are also the recipients of Medicare, which always serves as the primary payer . . . when an individual is using both modes of public coverage. Medicare pays the initial eighty percent of the allowed amount and MassHealth pays the remaining percentage of its allowed amount. Since Medicare allows the use of physical therapy assistants my client was in full compliance with its rules and regulations. It is unfair to Advance to not be paid by MassHealth after providing primary services to Medicare patients and being in full [compliance] with its regulations. . . . It is my client's understanding that in the near future, MassHealth will authorize and pay physical therapist assistants, which at that time, both public health programs will be in full uniformity.*

*If the random sample of 180 claims examined and the total number of claims paid cannot be separated by primary and secondary MassHealth payments, with the differing treatment policies, then the validity of the methodology used has to be called into question.*

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## MassHealth's Response

In its response, MassHealth provided the following comments:

*MassHealth has worked diligently with the Provider Compliance Unit (PCU) and the Office of Clinical Affairs (OCA) to identify therapy claims submitted for services provided by therapy assistants. MassHealth, in coordination with PCU and/or OCA, has conducted audits of therapy providers to identify other instances of noncompliance with MassHealth regulations. Additionally, MassHealth works with the Third Party Administrator for Long Term Services and Supports (LTSS TPA) to audit and develop program integrity algorithms to ensure provider compliance with the overall administration of the therapy program.*

*MassHealth is committed to the continued integrity of its Therapy program and will continue the agency's program integrity efforts in collaboration with the LTSS TPA and OCA. Furthermore, MassHealth will continue engaging with the therapy provider network to ensure comprehensive understanding of MassHealth regulations and guidelines, and to offer additional opportunities for provider education.*

*Regarding the audit finding and recommendations in the audit, MassHealth agrees with the . . . recommendations.*

MassHealth also stated in its response that it would "follow through with its own audit of Dr. O'Connor to determine the amount of repayment."

## Auditor's Reply

As noted above, MassHealth regulations do not allow payment for therapy services provided by physical therapy assistants, even if they are provided under the supervision of a licensed therapist. Also, MassHealth does not enroll physical therapy assistants; therefore, they are ineligible for certification that would allow them to bill MassHealth for services they provide. All therapy services provided to MassHealth members must be performed and billed only by a licensed therapist, and each licensed therapist must be separately enrolled as a MassHealth therapy provider using his/her own individual identification number.

Despite the assertion of Dr. O'Connor's legal counsel, the question of which treatment was attributable to the physical therapist and which was attributable to the physical therapy assistant is moot, as Dr. O'Connor used his billing provider identification number for each of the paid claims although he provided none of the services questioned in our report. This is contrary to MassHealth regulations that state that a provider cannot make a claim for services rendered by another person. Also, Dr. O'Connor's legal counsel incorrectly states,

*The authoritative guidance cited in the audit report lists firstly 130 CMR 432.413 as the primary source for denying payment for any physical therapy billed under a provider's name if it is provided by someone under that person's supervision.*

The report cites 130 CMR 432.412, which states that MassHealth does not pay for any physical therapy billed under a provider's name if it is provided by someone under that person's supervision. It also cites 130 CMR 450.301(A)(1), which states that a provider cannot make a claim for services rendered by another person.

Dr. O'Connor's legal counsel also states that our audit did not take into consideration the various other insurance programs for patients besides Medicaid, such as Medicare. Our audit only questions the unallowable payments made directly by MassHealth's Medicaid program. None of the payments in question were outside that scope. The audit sampling method the Office of the State Auditor (OSA) used to select and extrapolate our sample to obtain our results is described in the "Audit Objectives, Scope, and Methodology" section of this report and is based on sound statistical sampling techniques. OSA will share this information with MassHealth and Dr. O'Connor in the process of resolving the issues identified in this report.

Dr. O'Connor's legal counsel questions the method of projecting the overpayment and whether the sample was random. In conducting our sampling, OSA used RAT-STATS, a statistical sampling program created by the Office of Audit Services within the US Office of Inspector General in the US Department of Health and Human Services. This software determines a statistically appropriate sample, giving consideration to the total size of the population, expected error rate, confidence level, and desired precision, which are defined in the "Audit Objectives, Scope, and Methodology" section of this report. RAT-STATS is widely used by audit agencies and is recognized by MassHealth as the sampling software of choice for evaluating provider claims using a statistical sampling method. Once the sample size was determined, OSA used Audit Command Language, which is a data analysis software program recognized statewide, to select a random sample of claims paid to Dr. O'Connor. OSA's sampling method was sound and consistent with applicable professional standards.

Based on the issues we identified with Dr. O'Connor's billing practices during this audit, we urge that he implement our recommendations and work with MassHealth to resolve this matter.