



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

Making government work better

Official Audit Report – Issued July 16, 2018

Office of Medicaid (MassHealth)—Review of Vision Care Claims Paid to Dr. Khuong Nguyen

For the period July 1, 2011 through December 31, 2016





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

Making government work better

July 16, 2018

Dr. Khuong Nguyen
Westborough Eye Care
1 East Main Street
Westborough, MA 01581

Dear Dr. Nguyen:

I am pleased to provide this performance audit of the claims for which you were paid by the Office of Medicaid for vision care provided to MassHealth members. This report details the audit objective, scope, methodology, findings, and recommendations for the audit period, July 1, 2011 through December 31, 2016. 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 to you for the cooperation and assistance 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: Daniel Tsai, Assistant Secretary and Director, MassHealth
Marylou Sudders, Secretary, Executive Office of Health and Human Services
Alda Rego, Assistant Secretary for Administration and Finance, Executive Office of Health and Human Services
Teresa Reynolds, Executive Assistant to Secretary Sudders
Joan Senatore, Director of Compliance, Office of Medicaid

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LIST OF ABBREVIATIONS

CMR	Code of Massachusetts Regulations
CPT Codebook	<i>Current Procedural Terminology Professional Edition 2017</i>
DCF	Department of Children and Families
DYS	Department of Youth Services
E/M	evaluation and management
EMR	electronic medical record
MassCor	Massachusetts Correctional Industries
MMIS	Medicaid Management Information System
OSA	Office of the State Auditor
PREA	Prison Rape Elimination Act
RFR	Request for Response

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 and 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 vision care claims paid to Dr. Khuong Nguyen for the period July 1, 2011 through December 31, 2016. During this period, MassHealth paid Dr. Nguyen \$587,315 to provide vision care for 5,324 MassHealth members. The purpose of this audit was to determine whether these services provided to MassHealth members were properly supported by documentation and allowable in accordance with certain MassHealth regulations.

The audit was conducted as part of OSA's ongoing independent statutory oversight of the state's Medicaid program. Several of our previously issued audit reports disclosed significant weaknesses in MassHealth's claim-processing system, 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.

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

Finding 1 Page 11	Dr. Nguyen did not keep medical records at his office supporting services provided to youths residing in state-run facilities and programs.
Recommendations Page 12	<ol style="list-style-type: none">1. Dr. Nguyen should keep documentation, whether in his electronic medical record system or as hard copies, for vision care provided to youths residing in Department of Children and Families programs and make it available upon request.2. Dr. Nguyen should collaborate with MassHealth to determine the amount to be repaid for vision care that was not documented.

Finding 2 Page <u>13</u>	Dr. Nguyen submitted \$108,166 in questionable claims for dispensing services.
Recommendations Page <u>14</u>	<ol style="list-style-type: none">1. Dr. Nguyen should collaborate with MassHealth to determine the amount of dispensing services to be repaid.2. Dr. Nguyen should submit claims for dispensing services for a MassHealth member only upon fitting the new eyeglasses to that member.
Finding 3 Page <u>15</u>	Dr. Nguyen had inadequate documentation to support approximately \$27,255 in vision care services.
Recommendations Page <u>17</u>	<ol style="list-style-type: none">1. Dr. Nguyen should ensure that he properly documents the comprehensive medical history and comprehensive examination involved for each instance in which he uses evaluation and management (E/M) code 99328 or 99337.2. Dr. Nguyen should collaborate with MassHealth to determine the amount to be repaid for improperly documented E/M services.

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 to approximately 1.9 million eligible low- and moderate-income children, families, seniors, and people with disabilities. In fiscal year 2016, MassHealth paid healthcare providers more than \$14.8 billion, of which approximately 50% was funded by the Commonwealth. Medicaid expenditures represent approximately 41% of the Commonwealth’s total annual budget.

According to Section 402 of Title 130 of the Code of Massachusetts Regulations, MassHealth pays for vision care provided to eligible MassHealth members. Dr. Khuong Nguyen, optometrist and sole proprietor of Westborough Eye Care LLC in Westborough, is a certified MassHealth service provider. He received a total of \$587,315 for vision care provided to MassHealth members during the audit period.

MassHealth Payments Received by Dr. Nguyen

Fiscal Year	Number of Members Served	Number of Claims	Amount Received from MassHealth
2012	1,610	3,840	\$ 121,609
2013	1,376	3,311	105,263
2014	1,408	3,217	106,195
2015	1,628	3,873	129,046
2016	1,343	2,970	96,327
July 1, 2016–December 31, 2016*	526	919	28,875
Total		<u>18,130</u>	<u>\$ 587,315</u>

* Only the first six months of fiscal year 2017 were within our audit period.

Vision Care Services

The vision care services provided by opticians, optometrists, and ophthalmologists¹ to eligible MassHealth members include performing eye exams; diagnosing, treating, and managing disorders of the eye and the associated structures; and fitting and ordering eyewear. MassHealth instructs providers

1. Opticians specialize in filling lens prescriptions, helping patients choose eyeglasses, and fitting eyeglasses. Optometrists perform vision examinations, fit and prescribe contact lenses and eyeglasses, diagnose and treat eye-related conditions, and prescribe some medications. Ophthalmologists can perform all the same services as optometrists as well as eye-related surgeries.

to use specific procedure codes to bill for vision care services, such as dispensing services, eyeglass repairs, comprehensive eye examinations, and problem-specific eye examinations.

Dispensing services: The following are considered dispensing services: assisting a member in choosing appropriate frames, taking necessary measurements for ordering lenses and frames from the optical supplier, fitting the completed eyeglasses to the member, determining whether the member can see clearly through the eyeglasses, making necessary adjustments to the lenses and/or frames, and giving the member the eyeglasses. Dispensing also includes periodic readjustments and minor repairs of eyeglasses for the first six months from the date the member receives them.

Repairs: Members are entitled to have their broken eyeglasses repaired with replacement parts from the optical supplier. If the replacement parts are not available from the optical supplier, members are entitled to entire replacement frames.

Eye examinations: Members are entitled to comprehensive eye examination once per 12-month period if they are under the age of 21 and once per 24-month period if they are 21 or older.

Problem-specific eye examinations: Members are entitled to comprehensive eye examinations more than once per eligibility period when there are referrals from their physicians; when they complain of blurred vision, headaches, pain, or redness; or when they are diagnosed with conditions or chronic diseases that could impair vision, such as diabetes, hyperthyroidism, human immunodeficiency virus, cataracts, or infection.

Massachusetts Correctional Industries

MassHealth's optical supplier is Massachusetts Correctional Industries (MassCor). For eligible Medicaid members, optometrists and opticians use MassCor's online system to order eyeglass-related materials and services produced or provided by Massachusetts inmates, including eyeglass frames, eyeglass lenses, frame cases, lens tints and coatings, and replacement parts.

Vision Care Billing and Documentation Requirements for Evaluation and Management Procedure Codes

During the audit period, MassHealth paid Dr. Nguyen for 4,427 vision care services that he billed using evaluation and management (E/M) codes, primarily when providing services to members residing in Department of Youth Services (DYS) facilities and Department of Children and Families (DCF) programs.

Based on the American Medical Association's *Current Procedural Terminology Professional Edition 2017* (the CPT Codebook), E/M services are divided into broad categories such as office visits, hospital visits, and domiciliary and rest home visits. Most categories are divided into two or more subcategories of E/M services. For example, for office visits, there are subcategories for new patients and established patients. These subcategories are further classified into levels of E/M services, broken down by the nature of the work, place of service, and patient status. The more complex the service, the more the physician is compensated; therefore, for complex services, more information must be documented. Medical providers must select the E/M procedure code that best represents the services rendered and ensure that the medical documentation for those services meets the requirements in the CPT Codebook.

During our audit period, Dr. Nguyen billed the following procedure codes for vision care provided to MassHealth members residing in DYS facilities and DCF programs:

Procedure Code	Description in CPT Codebook
99328	Domiciliary or rest home visit for E/M for a new patient, which requires these three key components: <ul style="list-style-type: none">• a comprehensive history• a comprehensive examination• medical decision-making of high complexity Typically, 75 minutes are spent face to face with the patient and/or family.
99337	Domiciliary or rest home visit for E/M for an established patient, which requires two of these three key components: <ul style="list-style-type: none">• a comprehensive history• a comprehensive examination• medical decision making of moderate to high complexity Typically, 60 minutes are spent face to face with the patient and/or family.

When billing for medical services using these higher-complexity procedure codes (99328 and 99337), physicians must ensure that their medical documentation of services rendered includes, at a minimum, the following key components:

Comprehensive History	Comprehensive Examination	High-Complexity Decision-Making
<ul style="list-style-type: none"> • Chief complaint • Extended history of present illness • Complete review of systems performed • Complete past, family, and/or social history 	<ul style="list-style-type: none"> • Examination of all nine organs/systems • Examination of every element of one organ or system 	<ul style="list-style-type: none"> • Extensive number of diagnoses or management options • Extensive amount and/or complexity of data to be reviewed • High risk of significant complications, morbidity, and/or mortality

Services Provided at DYS Facilities and DCF Programs

During the audit period, Dr. Nguyen provided vision care to children who were in the custody of DYS and DCF. To do so, Dr. Nguyen traveled to various DYS facilities and DCF programs.² According to DYS and DCF officials, the agencies typically enter into contracts with medical professionals to provide specialty medical services, such as vision care, at their facilities and programs. However, during the audit period, neither of these agencies had a contract for vision care with Dr. Nguyen.

As illustrated in the table below, 72% of the vision care services provided by Dr. Nguyen to MassHealth members were for youths residing in DYS facilities and DCF programs during the audit period.

Vision Care Provided by Dr. Nguyen to MassHealth Members

Location of Services	Number of Paid Claims	Amount Paid	Percentage of Total Services
DYS Facilities and DCF Programs	12,887	\$ 423,559	72%
Westborough Eye Care	5,166	161,426	27%
Other	77	2,331	1%*
Total	<u>18,130</u>	<u>\$ 587,316</u>	<u>100%</u>

* Discrepancies in totals are due to rounding.

2. The DCF programs are licensed by the Department of Early Education and Care, which houses the children who are in DCF custody.

DYS officials stated that on April 29, 2016, they informed Dr. Nguyen that he could no longer perform vision care at DYS facilities until he submitted a bid in reply to a Request for Response (RFR)³ to provide vision care at those facilities. This RFR included a requirement to complete training on the federal Prison Rape Elimination Act of 2003.⁴ Although Dr. Nguyen ceased his visits to DYS facilities upon receiving the notification from DYS, DYS continued to transport some youths in facilities near his Westborough office to that location for vision care. He also stated that he still traveled to DCF programs to provide vision care.

3. Section 21.02 of Title 801 of the Code of Massachusetts Regulations defines RFRs as “the mechanism used to communicate Procurement specifications and to request Responses or interest from potential Bidders.”

4. The Prison Rape Elimination Act of 2003 was enacted to prevent the sexual abuse and sexual harassment of people in the custody of correctional facilities. Massachusetts was required to comply with this federal law, which includes adult prisons and jails, community confinement facilities, and juvenile facilities, starting in August 2012.

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 activities of Dr. Khuong Nguyen for the period July 1, 2011 through December 31, 2016.

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 are 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. Nguyen properly bill MassHealth for vision care services he provided to its members?	No; see Findings 1, 2, and 3

We gained an understanding of the control environment at Westborough Eye Care and evaluated the controls over billing processes we deemed significant to our audit objective.

To perform our audit procedures, we obtained from the state's Medicaid Management Information System (MMIS) all data for claims paid by MassHealth to Dr. Nguyen. We relied on the work performed by OSA in a separate project that tested certain information system controls in MMIS, which is maintained by the Executive Office of Health and Human Services. As part of the work performed, OSA reviewed existing information, tested selected system controls, and interviewed knowledgeable agency officials about the MMIS claim data. Additionally, we performed other validity and integrity tests on all claim data for this audit, including (1) testing for missing data, (2) scanning for duplicate records, (3) looking for dates outside specific time periods, and (4) tracing a sample of claims queried to source documents. Based on these procedures, we determined that the claim data obtained from MMIS were sufficiently reliable for the purposes of this audit.

Through interviews with Dr. Nguyen, we learned that he has traveled to Department of Youth Services (DYS) facilities and Department of Children and Families (DCF) programs throughout the Commonwealth to provide vision care to youths in DYS and DCF custody. We interviewed DYS and DCF officials to gain an understanding of their experience working with Dr. Nguyen when he provided vision care to youths in their custody, including asking them about any policies and procedures for allowing medical professionals into their facilities. We also requested medical service contracts for the vision care provided by Dr. Nguyen.

We selected a statistically random sample of 180 out of 18,130 paid vision care claims from the audit period, using an expected error rate of 50%, a desired precision range of 15%, and a confidence level of 95%, to determine whether Dr. Nguyen properly billed MassHealth for these services. 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 vision care claims would be within a range of +/- 7.5%, or 15% (point estimate), of the error in the population of 18,130 claims.

To determine whether Dr. Nguyen properly billed MassHealth for vision care, we reviewed information in members' medical records for the sampled claims, including the servicing provider name, date of service, description of chief complaint, documentation of physical examinations, review of physiological systems, and medical decision-making.

The statistical sampling method described above allows us to extrapolate the sampled findings to the entire population of vision care claims paid. We did not project any identified errors to the population of vision care services for Finding 1 because we extrapolated these errors in Finding 3 and we performed 100% testing of all dispensing services for Finding 2. For Finding 3, the actual error rate in our sample was 21.67%, and when projecting this to the total population of paid vision care claims, we are 95% confident that at least 16.74% (at the lower limit) or at most 27.30% (at the upper limit) of Dr. Nguyen's vision care claims were overpaid. In OSA's opinion, the lower limit (the most conservative amount), 16.74%, is the minimum amount that Dr. Nguyen must repay to the Commonwealth.

Since Dr. Nguyen did not maintain complete medical records at his office documenting services provided to members residing in DYS facilities and DCF programs, contrary to MassHealth recordkeeping requirements, we performed the following additional procedures to verify that he performed the vision care services at those locations:

- We interviewed DYS and DCF nurse managers and other DYS and DCF officials about their processes and procedures for obtaining Dr. Nguyen's services. We also had discussions with DYS officials, and performed our own additional research, on DYS's requirement that people entering its facilities successfully complete training on the Prison Rape Elimination Act of 2003.
- For a judgmental sample of seven DYS facilities, we reviewed visitor logbooks and operations logbooks (a total of 69 logbooks) for evidence that Dr. Nguyen actually entered the facilities to provide vision care to the members for whom he billed. All DYS facilities maintain a visitor logbook that requires visitors, including medical professionals, to sign in and out when visiting. Additionally, DYS staff members maintain an operations logbook, updated for each resident in 15-minute increments, that is signed daily by all DYS staff members on a shift. This logbook tracks the location of each youth in custody and notes all visitors who come into contact with each youth, including medical professionals.
- For a judgmental sample of three DCF programs, we interviewed program directors and obtained and reviewed medical documentation supporting vision care provided by Dr. Nguyen to youths in DCF custody.
- For the 39 out of the 180 sampled claims that were billed using procedure codes 99328 and 99337 for services provided to DYS and DCF youths, we obtained and reviewed Dr. Nguyen's supporting documentation from the facilities and programs. Our review consisted of examining whether Dr. Nguyen properly documented the services provided and included all of the required components when billing for a higher-complexity evaluation and management service in accordance with the Centers for Medicare and Medicaid Services' 1995 Documentation Guidelines for Evaluation and Management Services.

To determine whether Dr. Nguyen properly billed for dispensing services, we performed the following tests:

- We compared all dispensing service claims to orders for materials for the same member to determine whether Dr. Nguyen placed the material order with MassHealth's optical supplier, Massachusetts Correctional Industries, and reviewed the timing of when he submitted a claim for dispensing services.
- We reviewed all dispensing claim data to determine whether Dr. Nguyen billed for multiple dispensing orders when only one pair of eyeglasses was ordered.
- For all DYS and DCF youths who received eyeglasses, we confirmed with DYS and DCF officials and with Dr. Nguyen himself that he mailed the eyeglasses to the facilities and programs.

DETAILED AUDIT FINDINGS WITH AUDITEE'S RESPONSE

1. Dr. Khuong Nguyen did not keep medical records at his office supporting services provided to youths residing in state-run facilities and programs.

Dr. Khuong Nguyen did not keep adequate medical records at his office for all services he provided at Department of Youth Services (DYS) facilities and Department of Children and Families (DCF) programs during our audit period. Specifically, for our test sample of 180 medical records, Dr. Nguyen could not provide us with adequate documentation for 130 claims (72%) for members residing in those locations. When a MassHealth provider does not keep medical records supporting medical services, it raises concerns about whether the services were actually provided.

Authoritative Guidance

According to Section 402.418(C) of Title 130 of the Code of Massachusetts Regulations (CMR), Dr. Nguyen must keep all associated medical records at his office for vision care provided at facilities outside his office:

The MassHealth agency pays for vision care services provided to a member residing in a public or private facility, if payment for these services is not included in the facility's rate. A medical record must be kept on file at the provider's office.

Reasons for Insufficient Documentation

Dr. Nguyen stated that he preferred to leave all documentation for services he provided to members residing in DYS facilities or DCF programs at the facilities or programs, since he did not want the personally identifiable information in the patient files to leave those locations. However, it should be noted that we asked staff members at DYS facilities and DCF programs where Dr. Nguyen provided vision care to provide us with any documentation they had regarding 39 of the above-mentioned 130 claims, but neither agency was able to locate 8 (21%) of the 39 files⁵ requested, so there is no evidence that those services were provided.

Dr. Nguyen stated that he no longer travels to DYS facilities and that for youths in DCF programs, he now maintains the medical records using electronic medical record (EMR) software.

5. The payments associated with these 39 claims are questioned in Finding 3.

Recommendations

1. Dr. Nguyen should keep documentation, whether in his EMR system or as hard copies, for vision care provided to youths residing in DCF programs and make it available upon request.
2. Dr. Nguyen should collaborate with MassHealth to determine the amount to be repaid for vision care that was not documented.

Auditee's Response

We kept a written copy of the medical record at the facility and an encrypted electronic record in the office. We kept a written copy of the exam form at the facility and a secured electronic version in our office. We already provided all 180 (100%) medical records to the State Auditors last year. . . . We will provide the state auditor again if needed with the 8 (21%) missing records from the facilities. We spend thousands of dollars to upgrade our computer system and EMR to provide remote access from anywhere around the world since we provided in home visits.

MassHealth's Response

1. *MassHealth agrees that Dr. Nguyen must maintain appropriate records for all patients, including patients that reside in DCF programs, as required by 130 CMR 402.417 and 418, and make the patient records available upon request.*
2. *MassHealth will outreach to the provider to identify paid claims for which the provider did not maintain documentation required under 130 CMR 402.417 and 418. MassHealth will determine the overpayment amount and initiate recovery from Dr. Nguyen after the final audit report has been issued.*

Auditor's Reply

Although Dr. Nguyen states that he kept written records at the facilities and electronic records at his office, he could not produce a complete medical record (written or electronic) for 130 of the 180 sampled claims upon request. The documentation he produced to support these claims consisted only of printed screenshots of the claims he had submitted to MassHealth and was therefore inadequate.

The 8 files Dr. Nguyen mentions in his response are included in the 130 missing medical records that we requested. As noted above, Dr. Nguyen, DYS, and DCF could not locate the files during our audit, and therefore there was no evidence that the services in question were performed. Dr. Nguyen told us he had begun using an EMR system in order to maintain complete medical records in the future.

2. Dr. Nguyen submitted \$108,166 in questionable claims for dispensing services.

Dr. Nguyen was overpaid by as much as \$108,166 on 3,858 billings for eyeglass dispensing services. Specifically, for 3,618 claims, totaling \$101,460, Dr. Nguyen shipped eyeglasses ordered for youths in DYS and DCF custody to the facilities' and programs' addresses without fitting the eyeglasses to the youths (i.e., ensuring that the MassHealth members could clearly see with their new glasses). Additionally, for 114 claims, totaling \$3,194, Dr. Nguyen billed for dispensing glasses with a service date before the eyeglasses had even been ordered. Further, for 92 claims, totaling \$2,562, Dr. Nguyen submitted claims for multiple eyeglasses when only one pair was ordered. Finally, he submitted 34 claims, totaling \$950, for dispensing eyeglasses when no eyeglasses were ordered.

As a result, MassHealth may have unnecessarily paid Dr. Nguyen \$108,166 that it could have used to provide other necessary services to members. The table below summarizes the problems we identified with these billings.

Questionable Claims for Dispensing Services

Billing Problem	Number of Claims	Amount Overpaid
Dispensed When Mailed to the Member	3,618	\$ 101,460
Dispensed Glasses Before Ordering	114	3,194
Dispensed Multiple Glasses for Only One Order	92	2,562
Dispensed When No Glasses Were Ordered	34	950
Total	<u>3,858</u>	<u>\$ 108,166</u>

Authoritative Guidance

According to MassHealth Transmittal Letter VIS-37, dated May 2008,

The date of service for dispensing vision care materials is the date on which the vision care materials are delivered to the member, not the date of the initial eye exam, nor the date the materials are ordered.

Additionally, according to 130 CMR 402.416, providers should submit claims for dispensing services only after eyeglasses have been ordered from the optical supplier and properly fitted to the member:

(D) In order for a vision care provider to be paid for dispensing an eyeglass prescription involving ophthalmic materials [eyeglasses] and services available through the optical supplier, all such materials and services must be ordered from the optical supplier. . . .

(E) In order to receive payment for dispensing an item, the dispensing practitioner must take all necessary measurements, verify lens characteristics, and adjust the completed appliance [eyeglasses] to the individual.

Reasons for Improper Billing

Regarding billing for dispensing services without fitting the eyeglasses to the patients, Dr. Nguyen stated that he does not fit eyeglasses to the youths at DYS facilities and DCF programs because it would be too costly and time-consuming for him to travel to each site to make sure the eyeglasses fit. He stated that during the audit period, instead of traveling to the sites, he mailed the eyeglasses to each facility and made adjustments to youths' eyeglasses in subsequent visits. He did not comment on why he submitted the remaining questionable billings.

Recommendations

1. Dr. Nguyen should collaborate with MassHealth to determine the amount of dispensing services to be repaid.
2. Dr. Nguyen should submit claims for dispensing services for a MassHealth member only upon fitting the new eyeglasses to that member.

Auditee's Response

*Regarding dispensing fees, our procedures according to Masshealth regulations [CMR 402.416] were to check the prescription, adjust the frame if they were bent, tighten all screws. We then packaged, and shipped to each child as soon as possible per request from all these facilities. If there were any defects on the lenses, we would remove them. We would [etch] the names of the patients on the side of the frames. Per requests from the chief medical staffs of these facilities from Greenfield to Brewster, we would mail these glasses to their residents since the majority of them were short-term residents. We needed to give them the spectacles before they leave, since many were missing spectacles for months or some cases years. . . . Therefore shipping these glasses out right away was the priority instead of waiting until I returned to the facility to dispense the eyeglasses in a month or two. We **did** adjust these eyeglasses on these kids when I went back to the facilities at a later date. We would prefer that DYS and DCF transporting these kids to us to be fitted on their faces. . . . In addition to dispensing these spectacles, we also fixed many old pairs of glasses at these facilities at no cost. We were allowed to bill for these repairs, but we never billed Masshealth for repairs since most were minor repairs like missing a screw or needing a new nose piece or temple. . . . We sometimes we replaced a new frame for these kids who were in need of an unrepairable frame with our own expenses without billing Masshealth.*

We also made many pairs of glasses for free to the facilities with our own lab due to the slow process of manufacturing at Masscor facility without billing Masshealth for glasses.

MassHealth's Response

- 1. MassHealth will outreach to the provider to identify paid claims for improperly billed eyeglass dispensing. MassHealth will determine the overpayment amount and initiate recovery from Dr. Nguyen after the final audit report has been issued.*
- 2. MassHealth agrees that Dr. Nguyen should only submit a claim for eyeglass dispensing only upon fitting the eyeglasses to the MassHealth member.*

Auditor's Reply

Although Dr. Nguyen asserts that his dispensing procedures were in accordance with MassHealth regulations, 130 CMR 402.416 states that providers should submit claims for dispensing services only after eyeglasses have been ordered from an optical supplier and properly fitted to the member. Since this did not happen in the instances detailed above, Dr. Nguyen was not allowed to bill MassHealth for the services. Although the doctor asserts that he believes it was in the best interest of his patients to ship their glasses rather than have them wait for fitting, he must comply with MasHealth regulations in order to be compensated for his services. Further, we cannot comment on whether the facilities in question requested that Dr. Nguyen ship glasses without fitting, but again, he should have made sure that he performed a fitting and documented this fact before billing MassHealth. It should be noted that Dy. Nguyen did not comment on the fact that we identified 92 claims, totaling \$2,562, that he submitted for multiple eyeglasses when only one pair was ordered, and another 34 claims, totaling \$950, for dispensing eyeglasses when no eyeglasses were ordered.

Finally, Dr. Nguyen also states that he ordered many pairs of glasses from his own laboratory without using MassHealth's optical supplier, Massachusetts Correctional Industries. If this is the case, he was not allowed to bill MassHealth for the glasses, because 130 CMR 402.416(D) states that optometrists must order eyeglasses from MassHealth's optical supplier.

3. Dr. Nguyen had inadequate documentation to support approximately \$27,255 in vision care services.

Dr. Nguyen did not have the required documentation to substantiate the vision care services he billed using evaluation and management (E/M) service codes 99337 and 99328. Dr. Nguyen billed under these codes only when providing services to youths residing in DYS facilities and DCF programs. He billed

under procedure code 99337 in 1,844 instances, totaling \$86,535, and under procedure code 99328 in 2,523 instances, totaling \$170,167. Out of the 180 statistically sampled claims we tested, 39 were billed by Dr. Nguyen using the 99337 or 99328 code, but for those 39 claims, Dr. Nguyen did not document a comprehensive medical history or a comprehensive examination as required.

Further, DYS and DCF officials at the facilities where these services were provided told us that, based on their observations, Dr. Nguyen only provided routine (not complex) annual eye exams and appointments were scheduled weeks in advance. They also stated that when Dr. Nguyen visited their facilities, his exams typically lasted only 20 to 30 minutes, in contrast to the 60 or 75 minutes that medical professionals typically spend on exams billed using the 99337 and 99328 codes. For all serious or emergency eye problems, they told us, youths were transported to the hospital for vision care.

Because Dr. Nguyen did not adequately document all the necessary information to support billing for vision care using procedure codes 99337 and 99328, there is inadequate assurance that the services met the requirements for using these codes.

Authoritative Guidance

Regarding billing using procedure code 99328, 101 CMR 315.000 provides the following description of the related services:

Domiciliary or rest home visit for the evaluation and management of a new patient, which requires these three key components: a comprehensive history; a comprehensive examination; and medical decision making of high complexity. . . . Usually, the patient is unstable or has developed a significant new problem requiring immediate physician attention. Typically, 75 minutes are spent with the patient and/or family or caregiver.

Regarding billing using procedure code 99337, 101 CMR 315.000 provides the following description of the related services:

Domiciliary or rest home visit for the evaluation and management of an established patient, which requires at least two of these three key components: a comprehensive interval history; a comprehensive examination; medical decision making of moderate to high complexity. . . . Usually, the presenting problem(s) are of moderate to high severity. The patient may be unstable or may have developed a significant new problem requiring immediate physician attention. Typically, 60 minutes are spent with the patient and/or family or caregiver.

These documentation requirements for procedure codes 99328 and 99337 are the same ones described in the American Medical Association's *Current Procedural Terminology Professional Edition 2017*.

Reasons for Insufficient Documentation

Dr. Nguyen stated that he believes that he has adequate documentation to support the vision care services he billed MassHealth for using the 99328 and 99337 E/M codes.

Recommendations

1. Dr. Nguyen should ensure that he properly documents the comprehensive medical history and comprehensive examination involved for each instance in which he uses E/M code 99328 or 99337.
2. Dr. Nguyen should collaborate with MassHealth to determine the amount to be repaid for improperly documented E/M services.

Auditee's Response

Regarding billing 99328 and 99337, Masshealth only allowed us to bill only these codes. [Manager @ Masshealth: "Similarly, 99337 (high complexity) is the appropriate replacement for the deleted 99333. Optometrists have only been allowed to bill for 99323 and 99333 from this particular series of E/M's—therefore, they are now only allowed to bill for those two replacement codes 99328 and 99337. We do not allow them the lower-level codes."] These outdated codes were established decades ago without considering the change of technology. We had technology like the retinal camera that allows us to image the retina in 2 seconds or autorefractor that determined the eyeglasses prescription in 5 seconds. If 90 minutes was required to do an eye examination, the reimbursement rate \$40 would be less than a technician we would hire in the office not calculating the cost of technology investment and our cost of traveling to and from these 38 facilities. These locations ranged from Greenfield to Brewster, MA. Regarding the complexity of the medical exam, the auditors only interviewed [10] out of 38 facilities, therefore it would be hard to generalize the complexity and time spent. However, from the [180] charts audited out of [12,887] encountered billed, more than half were high complexity cases ranging from corneal puncture with a pencil to Idiopathic Intracranial Hypertension. All these encounters were upon the requests from the medical staffs at these facilities and the majority of the cases were comprehensive eye examination.

MassHealth's Response

1. *MassHealth agrees that Dr. Nguyen should properly document the comprehensive medical history and comprehensive examination involved for each instance in which he bills MassHealth using E/M code 99328 or 99337.*
2. *MassHealth will outreach to the provider to identify paid claims for evaluation and management services for which the provider did not maintain sufficient documentation, including documentation that the provider performed a comprehensive medical history and a comprehensive examination. MassHealth will determine the overpayment amount and initiate recovery from Dr. Nguyen after the final audit report has been issued.*

Auditor's Reply

Dr. Nguyen states that MassHealth instructed him to use procedure codes 99328 and 99337 when billing for eye exams provided outside the office. However, in its response, MassHealth does not support this assertion; it states that it will determine when overpayments occurred and will seek reimbursement. Further, regardless of what technology is used during an exam, providers are required to adequately document all the necessary information to support billing for vision care using procedure codes 99337 and 99328. In the case of the billings in question, there is inadequate documentation to substantiate that the services billed met the requirements for using these procedure codes.

OTHER MATTERS

Services Provided at Department of Youth Services Facilities

In 2003, Congress passed the Prison Rape Elimination Act (PREA). Its stated purpose is to “provide for the analysis of the incidence and effects of prison rape in Federal, State, and local institutions and to provide information, resources, recommendations, and funding to protect individuals from prison rape.”

In August 2012, the US Department of Justice issued its final PREA standards for correctional facilities. These standards require that medical professionals be trained in (among other things) detecting and assessing signs of sexual abuse and harassment, preserving evidence of abuse, responding professionally to victims of sexual abuse, and reporting allegations of sexual abuse and harassment. Additionally, the correctional facilities are required to maintain documentation that all medical professionals have completed this required training.

Despite this requirement, between August 1, 2012 and April 28, 2016, Dr. Khuong Nguyen provided 4,381 vision care services, totaling \$149,888, to 1,221 youths in Department of Youth Services (DYS) facilities without having undergone the required PREA training. In April 2016, DHS officials became aware of this situation and notified Dr. Nguyen in writing that he would no longer be allowed access to the agency’s facilities until he completed the required training. Since that time, youths residing at DHS facilities in close proximity to Dr. Nguyen’s Westborough office have been transported to his office to receive vision care.

PREA does not require medical specialists who provide services to DHS youths outside DHS facilities to attend PREA training, but the Office of the State Auditor believes that DHS should require the training as a best practice. This training will better ensure that all medical specialists providing services to youths in DHS custody are aware of the PREA standards, which were designed to identify, prevent, and/or respond to potential sexual abuse and harassment.