



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

Making government work better

Official Audit Report – Issued April 20, 2016

Office of Medicaid (MassHealth)—Review of Providers Excluded from Participating in the Medicaid Program

For the period January 1, 2013 through December 31, 2014





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April 20, 2016

Ms. Marylou Sudders, Secretary
Executive Office of Health and Human Services
One Ashburton Place, 11th Floor
Boston, MA 02108

Dear Secretary Sudders:

I am pleased to provide this performance audit of the Office of Medicaid's (MassHealth's) activities to ensure that excluded providers do not participate in the state's Medicaid program. This report details the audit objective, scope, methodology, findings, and recommendations for the audit period, January 1, 2013 through December 31, 2014. My audit staff discussed the contents of this report with management at MassHealth, whose comments are reflected in this report.

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

Sincerely,

A handwritten signature in blue ink, appearing to read "SMB", written over a light blue circular watermark.

Suzanne M. Bump
Auditor of the Commonwealth

cc: Daniel Tsai, Assistant Secretary and Director, MassHealth
Joan Senatore, Director of Compliance, Executive Office of Health and Human Services

TABLE OF CONTENTS

EXECUTIVE SUMMARY	1
OVERVIEW OF AUDITED ENTITY	3
AUDIT OBJECTIVES, SCOPE, AND METHODOLOGY	5
DETAILED AUDIT FINDINGS WITH AUDITEE’S RESPONSE.....	7
1. MassHealth made \$476,787 of unallowable payments for medical services and prescriptions (including opiates) by excluded providers.	7
a. Excluded providers received \$426,105 of unallowable payments for medical services.	7
b. MassHealth paid \$50,682 for unauthorized prescriptions by excluded providers.	8

LIST OF ABBREVIATIONS

ACA	Patient Protection and Affordable Care Act of 2010
BMCHP	Boston Medical Center HealthNet Plan
CMS	Centers for Medicare and Medicaid Services
DME	durable medical equipment
EOHHS	Executive Office of Health and Human Services
FFS	fee-for-service
GSA	General Services Administration
HIPAA	Health Insurance Portability and Accountability Act
HHS-OIG	United States Department of Health and Human Services' Office of Inspector General
MCO	managed-care organization
NHP	Neighborhood Health Plan
NPI	National Provider Identifier

EXECUTIVE SUMMARY

The Office of the State Auditor has conducted an audit of the Office of Medicaid's (MassHealth's) activities to ensure that excluded providers do not participate in the state's Medicaid program for the period January 1, 2013 through December 31, 2014. The purpose of this audit was to determine whether MassHealth has sufficient controls in place to ensure that such providers are not billing and receiving payments from MassHealth, in accordance with federal law and regulations.

Healthcare providers who are found to have violated federal law and/or regulations may be excluded by the federal government from further participation in federally funded programs, including Medicaid. To ensure that excluded providers are barred from participating in Medicaid nationwide, the United States Department of Health and Human Services' Office of Inspector General and the federal General Services Administration generate, and make available to the public, lists of Medicaid-excluded providers. MassHealth is required by federal law to use these lists to terminate the participation of offending providers in the Commonwealth's Medicaid program.

In order to ensure that payments are made only to eligible providers, MassHealth must have effective controls in place, including program regulations; operating policies and procedures; monitoring activities, including system edits; and enforcement action.

This audit was conducted as part of our ongoing independent statutory oversight of the state's Medicaid program. Several of our previously issued audit reports have disclosed significant weaknesses in MassHealth's claim-processing system, which resulted in hundreds of millions of dollars in unallowable and potentially fraudulent claim payments. As with any government program, public confidence is essential to the success and continued support of the state's Medicaid program.

Based on our audit, we have concluded that MassHealth did not have sufficient controls to ensure that excluded providers neither participate in the Medicaid program nor receive payments from MassHealth.

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

Finding 1 Page 7	MassHealth made \$476,787 of unallowable payments for medical services and prescriptions (including opiates) by excluded providers.
Recommendations Page 9	<ol style="list-style-type: none">1. MassHealth should establish adequate controls to ensure that the excluded-provider lists generated by its contractor Maximus are current and are used effectively.2. MassHealth should take appropriate action to recoup the \$476,787 in unallowable payments associated with excluded providers.

OVERVIEW OF AUDITED ENTITY

Under Chapter 118E of the Massachusetts General Laws, the Commonwealth's Executive Office of Health and Human Services is responsible for the administration of the state's Medicaid program, known as MassHealth. MassHealth provides access to healthcare services to approximately 1.9 million eligible low- and moderate-income individuals, couples, and families annually. In fiscal year 2015, MassHealth paid healthcare providers more than \$13.6 billion, of which approximately 50% was funded by the Commonwealth. Medicaid expenditures represent approximately 38% of the Commonwealth's total annual budget.

Medicaid

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 (CMS), within the federal Department of Health and Human Services, administer the Medicare program and work with state governments to administer their Medicaid programs.

Each state administers its Medicaid program in accordance with its CMS-approved state plan. States have considerable flexibility in designing and operating their Medicaid programs, but must comply with applicable federal requirements established by Section 1902 of Title XIX of the Social Security Act. Among other things, the act requires states to ensure that Medicaid beneficiaries receive services only from qualified providers and that excluded providers do not receive payment from states' Medicaid programs.

Excluded Providers

Healthcare providers may be excluded from federally funded programs, including Medicaid, for several reasons, including convictions related to patient abuse and healthcare fraud. To ensure that these excluded providers do not participate in any state Medicaid program, the Patient Protection and Affordable Care Act of 2010 (ACA) stated that, effective January 1, 2011, providers excluded in one state could not continue to treat Medicaid beneficiaries in another state. Before the ACA was passed, if one state terminated a provider's participation in its Medicaid program, the provider could enroll, or continue to participate, in another state's Medicaid program.

Federal Excluded-Provider Databases

The United States Department of Health and Human Services' Office of Inspector General (HHS-OIG) and the federal General Services Administration (GSA) generate, and make available to the public, two separate databases that list individuals who are excluded from participating in any federal program, including Medicaid. The HHS-OIG database, the List of Excluded Individuals/Entities, contains only the names of excluded providers identified by HHS-OIG. The GSA database, the Excluded Parties List System, contains suspension or debarment actions taken by various federal agencies against businesses or individuals.

MassHealth Excluded-Provider Data Matches

As part of its program-integrity effort, MassHealth contracts with Maximus, Inc. to process provider enrollment requests and to maintain a database of providers who are eligible to participate in MassHealth. In maintaining this database, Maximus routinely removes any excluded provider listed in the HHS-OIG and GSA databases. In addition, Maximus identifies excluded providers from nine additional databases and lists,¹ including CMS's database of excluded Medicaid providers (TIBCO Managed File Transfer Internet Server Web). CMS's database is a master list of excluded providers, maintained by 42 states,² including Massachusetts. MassHealth uses this information to try to ensure that none of the excluded providers on these lists are enrolled as MassHealth providers. In addition, MassHealth officials indicated that this information is available to the agency's contracted managed-care organizations (MCOs) to ensure that excluded providers do not serve MCO members.

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1. The other eight excluded-provider databases/lists used by Maximus are maintained by the Massachusetts Board of Registration in Medicine, the Massachusetts Board of Registration in Nursing, the Massachusetts Division of Public Licensure, the Massachusetts Division of Health Professions Licensure, the New Hampshire Board of Medicine, the Rhode Island Department of Health, the Connecticut Department of Public Health, and the New York Department of Health's Office of Professional Medical Conduct.
 2. Of these 42 states, 36 publish their excluded-provider data on the state's Medicaid provider website.

AUDIT OBJECTIVES, SCOPE, AND METHODOLOGY

In accordance with Section 12 of Chapter 11 of the Massachusetts General Laws, the Office of the State Auditor has conducted a performance audit of the Office of Medicaid’s (MassHealth’s) activities to ensure that excluded providers do not participate in the state’s Medicaid program for the period January 1, 2013 through December 31, 2014.

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 finding and conclusion based on our audit objective.

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

Objective	Conclusion
Does MassHealth ensure that excluded providers neither participate in the Medicaid program nor receive payments from MassHealth?	No; see Finding 1

To achieve our objective, we reviewed applicable state and federal laws, regulations, and other authoritative guidance such as MassHealth Provider Bulletins and Transmittal Letters. We reviewed MassHealth’s current strategic plan, internal control plans, organization charts, and policies and procedures. In addition, we reviewed the United States Department of Health and Human Services’ Office of Inspector General (HHS-OIG) reports and other independent auditors’ reports regarding excluded providers. We also requested and reviewed MassHealth’s contract with Maximus, Inc. for maintaining the Commonwealth’s eligible-provider list. We interviewed officials at MassHealth and Maximus to determine the processes Maximus uses to identify excluded providers and maintain the eligible-provider list. To achieve our objective, we gained an understanding of the internal controls we deemed significant to our audit objective and evaluated the design and effectiveness of controls intended to ensure that excluded providers neither participate in the Medicaid program nor receive payments from MassHealth.

We obtained the HHS-OIG, General Services Administration (GSA), and Centers for Medicare and Medicaid Services (CMS) excluded-provider databases, as well as individual lists of excluded providers from 36 state

Medicaid agencies, and conducted computer-aided data-matching with MassHealth's current eligible-provider list to determine whether excluded providers gave treatment or prescribed medication that resulted in payments from MassHealth during our audit period. As required by the federal Health Insurance Portability and Accountability Act (HIPAA), all individual covered healthcare providers or organizations must use the National Provider Identifier (NPI) in connection to all HIPAA standard transactions. The NPI is a 10-digit identification number assigned by CMS to uniquely identify a healthcare provider. The audit team used the NPI as the key element to compare excluded provider data from various sources to the Commonwealth's Medicaid Management Information System to determine whether excluded providers received payment from Medicaid during our audit period. Because not all providers are required to have an NPI, it is possible that not all excluded providers were identified in our testing.

We assessed the reliability of the MassHealth data in the Medicaid Management Information System. As part of this assessment, we reviewed existing system control information, tested selected system controls, and interviewed knowledgeable agency officials about the data. In addition, 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, and (4) looking for dates outside specific time periods. We did not assess the validity of HHS-OIG's List of Excluded Individuals/Entities, GSA's Excluded Parties List System, CMS's TIBCO Managed File Transfer Internet Server Web, or the datasets of individual states. Our computer-assisted data-matching may not have identified all excluded providers enrolled in MassHealth, because of errors in the data, inconsistent data formats, and typographical errors. However, based on the analysis conducted, we determined that the data were sufficiently reliable for the purposes of this report.

DETAILED AUDIT FINDINGS WITH AUDITEE'S RESPONSE

1. MassHealth made \$476,787 of unallowable payments for medical services and prescriptions (including opiates) by excluded providers.

During our audit period, MassHealth made unallowable payments totaling \$476,787 to excluded providers and pharmacies. These payments included medical services provided, and prescriptions authorized, for members by excluded providers. If excluded providers are allowed to abuse the Medicaid system, MassHealth members could receive substandard services.

a. Excluded providers received \$426,105 of unallowable payments for medical services.

MassHealth made \$426,105 of unallowable payments to excluded physicians and durable medical equipment (DME) suppliers. In total, 12 excluded providers submitted more than 5,500 claims for more than 1,800 members, as noted in the table below.

Unallowable Payments Made to Excluded Providers

Provider Type	Amount Paid	Number of Claims	Members Served
Physician	\$ 168,921	2,375	578
DME Supplier	133,753	1,714	319
DME Supplier	41,359	454	197
Physician	29,453	40	12
Physician	13,077	172	73
Physician	12,197	209	157
Physician	10,165	324	249
DME Supplier	9,654	125	114
Physician	6,661	94	78
Physician	446	20	19
Physician	370	6	5
DME Supplier	50	1	1
Total	<u>\$ 426,105*</u>	<u>5,534</u>	<u>1,802</u>

* Small discrepancies in dollar amounts are due to rounding.

The majority of these unallowable payments were made by managed-care organizations (MCOs). Specifically, of the \$426,105, MCOs paid \$410,246 (96%), and the remaining \$15,859 (4%) was paid by MassHealth as fee-for-service (FFS) payments.

b. MassHealth paid \$50,682 for unauthorized prescriptions by excluded providers.

Seven excluded providers executed prescriptions for MassHealth members for a total of \$50,682. These included prescriptions for Schedule II controlled substances that have high potential for abuse. In total, these excluded providers executed 3,445 prescriptions for 863 members. As noted in the table below, these improper payments were made not to the excluded providers but to pharmacies at which the prescriptions were filled or refilled.

Physician	Payment to Pharmacy	Number of Pharmacy Claims	Members Served
A	\$ 19,021	1,394	441
B	16,481	522	128
C	6,886	1,189	149
D	5,702	161	70
E	1,516	44	29
F	629	29	13
G	447	106	33
Total	<u>\$ 50,682</u>	<u>3,445</u>	<u>863</u>

330 of these prescriptions, for 251 members, were for controlled substances such as opiates and amphetamines.

The majority of these pharmacy payments were made by MassHealth as FFS payments. Specifically, of the \$50,682, MassHealth paid \$40,878 (81%), and the remaining \$9,804 (19%) was paid by MCOs.

Authoritative Guidance

According to the state Executive Office of Health and Human Services (EOHHS) website,

In accordance with the Patient Protection and Affordable Care Act . . . the MassHealth program is required to terminate enrollment of any provider that is excluded under Medicare or by any other state Medicaid agency.

In addition, according to MassHealth's All Provider Bulletin 196,

Federal regulations . . . prohibit MassHealth from paying for any items or services furnished, ordered, or prescribed by the excluded individual or entity. . . . The payment prohibition bars

- *direct payment to excluded individuals and entities;*
- *payment to individuals or entities that employ or contract with excluded individuals or entities; and*
- *payment for administrative and management services furnished by excluded individuals or entities that are not directly related to patient care, but are a necessary component of providing items and services to MassHealth members.*

Finally, according to the Special Advisory Bulletin on the Effect of Exclusion from Participation in Federal Health Care Programs issued by the United States Department of Health and Human Services' Office of Inspector General, no payments are to be made "for any items or services furnished (1) by an excluded person or (2) at the medical direction or on the prescription of an excluded person."

Reasons for Noncompliance

MassHealth does not have adequate controls in place to prevent excluded providers from participating in the Medicaid program. Specifically, MassHealth has not established adequate policies and procedures to effectively use the excluded-provider list generated by its contractor Maximus and ensure its use by MCOs.

Recommendations

1. MassHealth should establish adequate controls to ensure that the excluded-provider lists generated by Maximus are current and are used effectively.
2. MassHealth should take appropriate action to recoup the \$476,787 in unallowable payments associated with excluded providers.

MassHealth's Response

MassHealth responded to our first recommendation as follows:

MassHealth agrees with the . . . recommendation that MassHealth should ensure that the excluded provider lists generated by our Customer Service Contractor, Maximus are current and are used effectively by our Managed Care Contractors.

MassHealth has controls in place to prevent excluded providers from participating in the Medicaid program for fee for service providers (FFS). For example, MAXIMUS, by its contract with EOHHS, is currently required by CMS to review providers through the various data base screenings no less

than monthly for existing providers and at enrollment, re-enrollment and revalidation. Additionally, MAXIMUS does weekly reviews of the State board repositories. MAXIMUS sent MassHealth Provider Operations a list of the websites that it reviews and the frequency of those reviews. MassHealth Provider Operations has also shared MAXIMUS's document with the MCO program staff, and the MCO program staff will utilize this list to identify vulnerabilities in the existing MCO contract requirements and to ensure the MCO contract is updated to reflect any additions needed to correct vulnerabilities.

MassHealth is also working to enhance information sharing related to excluded providers with the MCOs. . . . MassHealth is researching ways in which MAXIMUS may augment its information sharing practices by providing these files to the MCOs (MCOs have access to the list of excluded providers on the MassHealth web site).

Finally, MassHealth has formed a workgroup to enhance our current procedures and will ensure that all stakeholders are notified and receive current information on excluded providers.

Separately, MassHealth responded as follows to our second recommendation:

MassHealth agrees that it should take appropriate action to recoup the unallowable payments associated with excluded providers. To facilitate review, MassHealth separated the 2013–2014 excluded provider claims by MCO and then shared each MCO's file with them. Upon confirming the appropriate amounts, MassHealth will work with the MCOs to ensure they recoup any unallowable payments made to excluded providers.

MassHealth has reviewed the \$15,859 in FFS non-pharmacy claims provided by the [Office of the State Auditor]. . . .

First, on occasion, through normal course of business provider relationships are terminated retroactively. . . . When this occurs, claims paid during the retroactive termination period need to be reviewed and voided. MassHealth is strengthening this process with its provider enrollment vendor, MAXIMUS, to ensure that the claim is appropriately voided for retroactive terminations. The claims from the retroactive terminations have been referred to MassHealth to be voided. . . .

Second, there are claims that [are] paid after the provider termination. MassHealth has found that these payments are related to Medicare crossover claims. There are certain cases in which CMS regulations require the rendering provider on the claim, but MassHealth does not enroll the provider type. For example, Medicare enrolls Licensed Independent Clinical Social Workers (LICSWs), whereas MassHealth does not. MassHealth's [Medicaid Management Information System, or MMIS] currently does not have edits to prevent crossover claims being paid if the rendering provider is an excluded provider but is not enrolled as a MassHealth provider. MassHealth has initiated a change request to modify the MMIS edit criteria to exclude payments where the rendering provider has been terminated for cause. This change will allow MassHealth to continue appropriately paying crossover claims without risking payments to excluded providers. . . .

In addition, MassHealth has reviewed the FFS pharmacy claims provided by the [Office of the State Auditor]. It is the guidance of the Massachusetts Board of Pharmacy to pay for refilled prescriptions prescribed by terminated providers to avoid having a member denied medically necessary drugs.

This represents claim payments of \$8,875. Initial prescriptions ordered by excluded prescribers may have been paid due to a delay in transferring excluded provider information from MassHealth's MMIS to its separate pharmacy claims payment system. MassHealth is currently working with the pharmacy vendor, Xerox, to explore systems solutions and validate processes to identify where additional safeguards can be made.

MCO Responses

We shared a draft of this report with three MCOs: Celticare Health, Boston Medical Center HealthNet Plan (BMCHP), and Neighborhood Health Plan (NHP). Celticare Health had no comments on the draft. BMCHP and NHP and provided the following responses.

BMCHP Response

The Audit Report concludes that MassHealth does not have sufficient controls to ensure that excluded providers are neither participating in the Medicaid program nor receiving payments from MassHealth. . . .

MCOs could benefit from further guidance on the specific sources for exclusion data that MCOs should be monitoring. We note that the MCO Contract does not comprehensively identify all sources of exclusion information and required frequency of monitoring. For example, the MCO Contract makes no reference to the MED database. And, the MCO Contract requires MCOs to check the MassHealth Exclusion list only "during the credentialing process."

BMCHP suggests that a formal advisory setting forth all relevant and required exclusion databases, with updates as databases change or consolidate, and the required frequency of monitoring, would create beneficial consistency and uniformity. We also note that, on occasion, we encounter inconsistent or incomplete information about provider exclusion dates, reinstatements, etc. Our ability to act decisively in response to new exclusions is dependent on the accuracy, quality and timeliness of the information accessed by and provided to us.

As a result of your office's audit, BMCHP has also closely reviewed our own internal policies and procedures and are making refinements to ensure that even more effective and efficient compliant processes are in place. We look forward to working closely and collaboratively with MassHealth as it improves and updates policies and procedures relating to ensuring that no excluded providers are participating in the MassHealth Medicaid program or receiving payment from the Medicaid fee-for-service or MCO payers.

NHP Response

NHP did not specifically comment on the identified problems with MassHealth's controls over preventing excluded providers from participating in the Medicaid program. However, it did provide a

description of the process it uses to identify excluded providers and how it collaborates with MassHealth in this process:

As part of the credentialing and biennial re-credentialing of providers, NHP, either directly or through our delegated entities, checks the:

- *Massachusetts Board of Registration in Medicine (BORIM)*
- *Division of Professional Licensure (DPL) Disciplinary Actions Online Report*
- *Office of Inspector General (OIG)—List of Excluded Individuals/Entities (LEIE)*
- *Systems Award Management (SAM)*

Individuals who are identified as having been excluded from participation in federally funded programs are not enrolled. In addition, NHP would provide same day notification to MassHealth of any provider who has been denied credentialing due to program integrity reasons (Note: Since this notification requirement went into effect, NHP has not denied credentialing to any provider for program integrity reasons).

In addition, credentialing staff proactively monitor for sanctions by checking the following data bases:

- *Massachusetts Board of Registration in Medicine (BORIM)—at least twice a month.*
- *Division of Professional Licensure (DPL)—the Disciplinary Actions Online Report—at least monthly*
- *Office of Inspector General (OIG)—List of Excluded Individuals/Entities (LEIE)—at least monthly*
- *Systems Award Management (SAM)—at least monthly*

If NHP identifies any individuals that have been excluded from participation in federally funded programs or who have had their license to practice suspended or terminated NHP terminates those providers and provides notification of such to MassHealth.

NHP delegates credentialing, re-credentialing and provider monitoring to the following entities:

- *Harvard Pilgrim Health Care*
- *Massachusetts General Physician Organization*
- *Beacon Health Options (for behavioral health providers)*
- *CVS Caremark (for pharmacies)*

Our delegated vendors have similar processes in place to screen for excluded providers. When a delegated vendor identifies an excluded provider, they notify NHP who in turn notifies MassHealth.

NHP coordinates our process with MassHealth by sharing and responding to information. On an unscheduled basis MassHealth will provide NHP with information concerning disenrolled providers. This notice may include a single provider or multiple providers that have been identified either by MassHealth itself or by one of the Medicaid Managed Care Organizations. That list is circulated internally to a broad set of stakeholders, including [NHP departments] Credentialing, Contracting, Provider Relations, Behavioral Health and Pharmacy for action inclusive of disenrolling the provider from NHP's network, inclusive of the delegated behavioral health and pharmacy networks.

Auditor's Reply

Based on its response, MassHealth, with one exception, agrees with our findings and recommendations and is taking appropriate action to prevent excluded providers from participating in MassHealth and recoup unallowable payments associated with excluded providers.

Regarding the Massachusetts Board of Pharmacy's guidance to refill prescriptions prescribed by terminated providers, we agree that the health of the member is paramount and should not be jeopardized in any way. However, we recommend that MassHealth ensure that members with such prescriptions are promptly directed to new healthcare providers in order to limit the number of refills they receive from excluded providers.

Also, we recommend that MassHealth consider BMHCP's suggestions and comments when determining the most effective manner to address this excluded-provider issue.