



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

Making government work better

Official Audit Report – Issued April 24, 2017

Office of Medicaid (MassHealth)—Review of Evaluation and Management Claims Paid to Resil Medical Associates, P.C.

For the period January 1, 2011 through December 31, 2015





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Making government work better

April 24, 2017

Claude Resil, MD, Medical Director
Resil Medical Associates, P.C.
599 Pleasant Street
Brockton, MA 02301

Dear Dr. Resil:

I am pleased to provide this performance audit of evaluation and management claims paid to Resil Medical Associates, P.C. by the Office of Medicaid (MassHealth). This report details the audit objectives, scope, methodology, findings, and recommendations for the audit period, January 1, 2011 through December 31, 2015. My audit staff discussed the contents of this report with you, and your comments are reflected in the report.

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

Sincerely,

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

Suzanne M. Bump
Auditor of the Commonwealth

TABLE OF CONTENTS

EXECUTIVE SUMMARY	1
OVERVIEW OF AUDITED ENTITY	3
AUDIT OBJECTIVES, SCOPE, AND METHODOLOGY	8
DETAILED AUDIT FINDINGS WITH AUDITEE’S RESPONSE.....	11
1. Resil Medical Associates, P.C. did not always use properly licensed staff members to perform evaluation and management services.	11
2. RMA improperly billed MassHealth for approximately \$17,346 of E/M services performed by NPs.	14
3. RMA did not always provide required supervision to non-independent NPs.	18
4. RMA lacked collaborative arrangements and prescriptive-practice guidelines for independent NPs.	20

LIST OF ABBREVIATIONS

APRN	advanced practice registered nurse
CMR	Code of Massachusetts Regulations
CNP	certified nurse practitioner
E/M	evaluation and management
MMIS	Medicaid Management Information System
NP	nurse practitioner
OSA	Office of the State Auditor
PA	physician assistant
RMA	Resil Medical Associates, P.C.
RN	registered nurse

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 selected evaluation and management (E/M) claims paid to Resil Medical Associates, P.C. (RMA) for the period January 1, 2011 through December 31, 2015. During this period, RMA was paid approximately \$512,000 to provide E/M services for 866 MassHealth members. The purpose of the audit was to determine whether RMA properly billed MassHealth for E/M services during the audit period.

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 unallowable and potentially fraudulent 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	RMA did not always use properly licensed staff members to perform E/M services.
Recommendations Page 13	<ol style="list-style-type: none">1. RMA should cease having registered nurses (RNs) perform high-complexity E/M services for members.2. RMA should update its website to accurately reflect the licenses of its personnel.3. RMA should reimburse the Commonwealth the \$2,467 of improper payments that we identified.4. RMA should collaborate with MassHealth to review all instances in which Dr. Resil and the RNs worked in the same RMA location to determine any additional amounts due the Commonwealth.

Finding 2 Page <u>14</u>	RMA improperly billed MassHealth for approximately \$17,346 of E/M services performed by nurse practitioners (NPs).
Recommendations Page <u>16</u>	<ol style="list-style-type: none">1. RMA should collaborate with MassHealth to repay the overpayment of approximately \$17,346 that we identified.2. RMA should modify the eClinical system so that the actual service provider's information (e.g., whether s/he is an independent NP, non-independent NP, or physician) is recorded and used in billing MassHealth for E/M services.3. RMA should develop and implement internal controls to ensure the accuracy of claims submitted. At a minimum, these controls should ensure that each claim identifies the actual service provider and reflects the correct modifier code when necessary.4. RMA 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. RMA should ensure that its billing staff knows, and adheres to, these requirements when billing for services provided to MassHealth members.
Finding 3 Page <u>18</u>	RMA did not always provide required supervision to non-independent NPs.
Recommendation Page <u>19</u>	RMA should ensure that a physician is present at all times to provide personal supervision to non-independent NPs serving members.
Finding 4 Page <u>20</u>	RMA lacked collaborative arrangements and prescriptive-practice guidelines for independent NPs.
Recommendations Page <u>21</u>	<ol style="list-style-type: none">1. RMA should develop a collaborative arrangement detailing the medical services and prescriptive practices for each independent NP.2. RMA should establish policies and procedures to ensure that independent NPs function within the scope of their licensure and not as licensed practicing physicians.

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 billion, of which approximately 50%¹ was funded by the Commonwealth. Medicaid expenditures represent approximately 39% of the Commonwealth’s total annual budget.

According to Section 433 of Title 130 of the Code of Massachusetts Regulations (CMR), MassHealth pays for physician services provided to eligible MassHealth members. From January 1, 2011 through December 31, 2015, MassHealth paid approximately \$473 million to physicians for evaluation and management (E/M) services for 1,085,612 members, as detailed below.

Office or Other Outpatient E/M Services

Calendar Year	Amount Paid	Members Served	Number of Claims
2011	\$ 75,437,187	462,003	1,281,599
2012	77,225,796	470,690	1,272,149
2013	116,849,364	482,409	1,906,685
2014	123,208,582	566,673	1,923,634
2015	79,836,519	543,145	1,260,825
Total	<u>\$472,557,448</u>	<u>2,524,920*</u>	<u>7,644,892</u>

* Of these 2,524,920 members, the unduplicated count is 1,085,612.

Dr. Claude Resil, the medical director and owner of Resil Medical Associates, P.C. (RMA), is a certified MassHealth service provider with offices in Dorchester and Brockton. RMA received a total of \$605,051 from MassHealth during the audit period for the services detailed below.

1. During the federal government’s fiscal year 2015, the Federal Medical Assistance Percentage for Massachusetts was 50%.

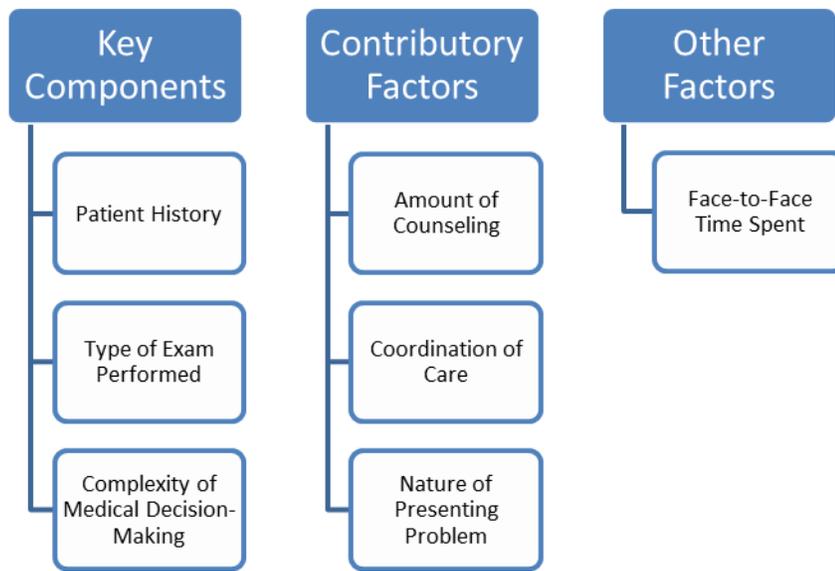
Services Provided by RMA

Services Provided	Amount Paid
Medicine	\$ 556,675
Laboratory	11,641
Physician Services	35,923
Surgery	244
Other	568
Total	<u>\$ 605,051</u>

Our audit focused on RMA’s billing practices for E/M claims. Specifically, we reviewed RMA’s E/M claims for procedure codes 99201–99205 (new patients) and 99211–99215 (established patients). These claims totaled \$511,994 during the audit period and are included in the Medicine category above.

E/M Services

Based on the American Medical Association’s *Current Procedural Terminology Professional Edition 2014* (the CPT Codebook), patient visits provided in an office or outpatient setting are billed using 10 specifically defined E/M procedure codes. The more complex the service, the more the physician is compensated. For example, when a new patient presents with a minor problem (e.g., sunburn) requiring straightforward medical decision-making, the CPT Codebook directs providers to bill using E/M procedure code 99201. MassHealth pays physicians \$45.56 for this service. In contrast, when a new patient presents with a moderate- to high-severity problem (e.g., treatment for chronic obstructive pulmonary disease) that requires highly complex medical decision-making, the CPT Codebook directs providers to bill using E/M procedure code 99205. MassHealth pays physicians \$214.52 for this service. Medical providers must select the E/M procedure code that best represents the services rendered, giving consideration to the following seven factors:



Below is a table showing the E/M codes applicable to office and outpatient settings, descriptions of the related services, and the personnel who can perform these services, according to the CPT Codebook.

E/M Procedure Code	Description
99201	New patient, self-limited or minor presenting problem, requiring the presence of a physician or other qualified healthcare professional
99202	New patient, low- to moderate-severity presenting problem, requiring the presence of a physician or other qualified healthcare professional.
99203	New patient, moderate presenting problem, requiring the presence of a physician or other qualified healthcare professional
99204	New patient, moderate- to high-severity presenting problem, requiring the presence of a physician or other qualified healthcare professional
99205	New patient, moderate- to high-severity presenting problem, requiring the presence of a physician or other qualified healthcare professional
99211	Established patient, minimal presenting problem that may not require the presence of a physician
99212	Established patient, self-limited or minor presenting problem, requiring the presence of a physician or other qualified healthcare professional
99213	Established patient, low- to moderate-severity presenting problem, requiring the presence of a physician or other qualified healthcare professional
99214	Established patient, moderate- to high-severity presenting problem, requiring the presence of a physician or other qualified healthcare professional
99215	Established patient, moderate- to high-severity presenting problem, requiring the presence of a physician or other qualified healthcare professional

As indicated by the above table, physicians and other qualified healthcare professionals (e.g., nurse practitioners, or NPs) are qualified to provide E/M services for MassHealth members. These healthcare professionals are qualified by education, training, licensure, and other factors. Registered nurses (RNs) do not have the required qualifications and education to perform high-complexity E/M services for members. Their qualifications and education, and the services they can perform, are set forth in Board of Registration in Nursing regulation 244 CMR 3.00. (Those of NPs are set forth in 244 CMR 4.00.) The table below details the required qualifications and education of NPs and RNs, as well as the scope of services each can perform.

Qualifications, Education, and Services

	NP	RN
Qualifications and Education	<ul style="list-style-type: none"> • valid Massachusetts RN license • good moral character • graduate degree from accredited certified nurse practitioner (CNP) program • completion of graduate-level advanced assessment, advanced pathophysiology, and advanced pharmacotherapeutics • CNP certificate from an organization recognized by the Board of Registration in Nursing 	<ul style="list-style-type: none"> • license to practice professional nursing • graduation from an approved school for professional nursing • current RN license
Services Performed	<ul style="list-style-type: none"> • advanced assessments • diagnoses • treatment • referrals • consultations • prescriptions 	<ul style="list-style-type: none"> • health maintenance • teaching • counseling • planning and restoration

Billing Requirements for Services Provided by NPs

NPs are nationally certified, state-licensed medical professionals who can practice medicine as part of a healthcare team and in collaboration with physicians and other healthcare professionals. Both independent NPs and non-independent NPs may take patients' medical histories, conduct physical exams, diagnose and treat illnesses, develop treatment plans, order and interpret tests, write

prescriptions, assist in surgery, provide counsel on preventive care, and make rounds in hospitals and nursing homes. Although the services they provide are the same, the billing requirements for independent and non-independent NPs differ. Independent NPs have their own unique MassHealth provider identification numbers, which they must use when billing for E/M services. In contrast, non-independent NPs do not have unique MassHealth provider identification numbers. Typically, they are employed by physicians and collaborate with them when providing E/M services. A non-independent NP's services are billed using the collaborating physician's MassHealth provider identification number with a required modifier code. This code prompts MassHealth to pay 85% of the rate it would pay for a physician to perform these services. The services must be provided under the personal supervision of a physician.

Collaborative Arrangements

Collaborative arrangements are required by MassHealth and the Board of Registration in Nursing for independent NPs who treat MassHealth members. A collaborative arrangement is developed by the independent NP and the collaborating physician. It includes written instructions describing the services, medical procedures, and prescribing practices the independent NP is authorized to perform. MassHealth receives a copy of the collaborative arrangement that includes the signatures of the independent NP and the collaborating physician. In addition, the Board of Registration in Nursing requires this document to be kept on file in the workplace and updated every two years. The board may request a copy of the collaborative arrangement, and failure to provide the documentation may result in disciplinary action.

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 Resil Medical Associates, P.C. (RMA) for the period January 1, 2011 through December 31, 2015.

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 the objective; and where the objective is discussed in the audit findings.

Objective	Conclusion
Did RMA submit claims to MassHealth for evaluation and management (E/M) services in accordance with applicable laws, rules, and regulations?	No; see Findings <u>1</u>, <u>2</u>, <u>3</u>, and <u>4</u>

Auditee Selection

As stated earlier, MassHealth paid physicians approximately \$473 million for office or other outpatient E/M services during our audit period. Because of the significant amount of these expenditures, as well as prior OSA audits that identified unallowable physician claims for E/M services, OSA is continuing to audit this type of claim. To identify the providers that represented the highest risk, we performed data analytics on all E/M claims from the audit period to identify (1) the frequency and cost of E/M services performed by providers and (2) service trends and billing anomalies that indicate potential fraud, waste, and abuse. Our data analytics identified high E/M costs and a high frequency of E/M services associated with certain providers. Specifically, some providers frequently billed for the most complex E/M services, which require the most time to perform and result in the greatest MassHealth payment. Based on the results of this analysis, we selected RMA.

Methodology

To achieve our audit objective, we reviewed applicable state and federal laws, rules, and regulations; MassHealth bulletins and transmittal letters; the MassHealth All Provider Manual; and the MassHealth Physician Manual. Also, we requested, and received when available, the following documentation from RMA:

- employee manual
- office policies and procedures
- member medical records
- employee list and job descriptions
- physician's work schedule
- members' scheduled appointments

We gained an understanding of the internal controls over the billing process that we deemed significant to our audit objective; we evaluated the design of those controls and tested their effectiveness.

We selected a statistically random sample of 67² of the 4,516 E/M paid claims from the audit period to determine whether RMA properly billed MassHealth for these services. In some instances, we were able to project³ the sample error rate to the total population in order to estimate the potential overpayment. To determine the appropriateness of these claims, we reviewed members' medical records, including the service providers, locations of services, and appointment times. Also, we looked at employee schedules, office hours, and scheduled appointments for the sampled claims. Because the service provider was not accurately reflected in the medical records, we requested that Dr. Resil review each claim in our sample to determine the service provider and location. We verified Dr. Resil's determinations on these claims by performing a separate review of employee work schedules, office hours, appointment times, dates of employment, and service locations.

In one area, we expanded our audit test beyond the sampled 67 claims to fully quantify the financial effects of certain employees performing services above their levels of education and training. In this

2. We determined the sample size using a confidence level of 90% and a tolerable error rate of 10%.

3. Our projection yields a range of potential overpayments. The lower limit—the most conservative amount—is recommended for repayment to the Commonwealth.

instance, the audit team examined all 618 claims paid for high-complexity E/M services during the brief periods these individuals were employed by RMA.

We used the Executive Office of Health and Human Services' website to determine the status of licenses held by RMA's professional staff members on the date of service for each claim in our sample. Also, we reviewed the Medicaid Management Information System (MMIS) to determine whether the nurse practitioners (NPs) employed by RMA were independent or non-independent. In addition, we determined whether each NP had a collaborative arrangement with Dr. Resil.

In a previous audit (No. 2015-8020-14O), OSA assessed the reliability of the MassHealth data in MMIS, which is maintained by the Executive Office of Health and Human Services. As part of this assessment, 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 time periods; and (5) tracing a sample of claims queried to source documents. Based on this analysis, we determined that the data obtained were sufficiently reliable for the purposes of this report.

DETAILED AUDIT FINDINGS WITH AUDITEE'S RESPONSE

1. Resil Medical Associates, P.C. did not always use properly licensed staff members to perform evaluation and management services.

Resil Medical Associates, P.C. (RMA) used three registered nurses (RNs) to provide high-complexity evaluation and management (E/M) services for members during the audit period. RNs are only qualified to perform low-level E/M services; in using them to perform high-complexity E/M services, RMA is providing members with a level of care below the level for which it is paid, and it could be jeopardizing their health and safety.

Our sample of 67 claims, from a population of 4,516 claims paid to RMA during the audit period, identified two instances in which two of the three RNs provided high-complexity E/M services to members. One RN provided high-complexity E/M services for approximately four months before becoming a board-certified nurse practitioner (NP). The second RN was employed by RMA for approximately three weeks. The third is Dr. Resil's wife; she was employed throughout the audit period. Although our sample of billings did not include any for which the doctor's wife was indicated as the service provider, she is listed on RMA's website as an NP, although (according to Dr. Resil and information on the Executive Office of Health and Human Services' website) she is only certified as an RN.

In order to quantify the financial effect of this issue, we performed additional audit work⁴ beyond the sampled 67⁵ claims and determined that RMA was improperly paid at least \$2,467 for high-complexity E/M services provided by the three RNs. This amount is based on a review of all of RMA's E/M claims⁶ during the audit period.

-
4. Based on a review of employee work schedules, we were able to isolate the days when the registered nurses were the only professionals serving members at one of RMA's two locations. For these days, if we determined that a claim for high-complexity E/M services was attributable to the registered nurses, we considered it unallowable. It should be noted that on these days, Dr. Resil was treating patients at RMA's other location. We could not determine the extent of unallowable payments for days when the registered nurses and Dr. Resil worked at the same location. This was because RMA does not accurately reflect the service provider in its claims and medical records.
 5. We expanded our testing to include all 618 claims submitted for high-complexity E/M services performed when Dr. Resil was the only qualified provider at RMA. Twenty-eight of these claims were for services performed by RNs.
 6. Our review of E/M claims did not include payments for dual-eligible members, i.e., members with both Medicare and Medicaid coverage.

Authoritative Guidance

“Registered nurse” is defined in Section 3.01 of Title 244 of the Code of Massachusetts Regulations (CMR) as follows:

Registered Nurse is the designation given to an individual who is licensed to practice professional nursing, holds ultimate responsibility for direct and indirect nursing care, is a graduate of an approved school for professional nursing, and is currently licensed as a Registered Nurse pursuant to M.G.L. c. 112. Included in such responsibility is providing nursing care, health maintenance, teaching, counseling, planning and restoration for optimal function and comfort, of those they serve.

This regulation does not authorize RNs to perform high-complexity E/M services.

In contrast, 244 CMR 4.02 states that advanced practice registered nurses (APRNs)⁷ are qualified to perform high-complexity E/M services:

APRN means a currently licensed Massachusetts Registered Nurse (RN) who has current authorization by the Board to engage in advanced practice nursing activities. APRN practice activities include, but are not limited to: advanced assessment, diagnosis, treatment, referrals, consultations, and other modalities for individuals, groups or communities across the life span for health promotion or health maintenance and for those who are experiencing acute or chronic disease, illness, trauma or other life-altering event in which rehabilitative, and/or palliative interventions are necessary. APRN practice is defined to include only those activities within the APRN's authorized clinical category, scope of practice competencies, and accepted standards of Advanced Nursing practice.

In addition, 244 CMR 4.05(3) details the requirements for practicing as a certified nurse practitioner (CNP):

To be eligible for initial Board authorization to practice as a CNP an applicant must provide proof satisfactory to the Board of the following . . . Current CNP certification granted by a Board recognized certifying organization.

Finally, 244 CMR 4.04 prohibits entities from misrepresenting qualifications of nursing staff members:

No person will announce or represent to the public that such person is an APRN or use the name of any APRN clinical category unless such person has complied with the requirements for and received Board authorization to practice as an APRN in accordance with 244 CMR 4.00.

CNP is an APRN clinical category, so this regulation applies to CNPs.

7. Section 4.03 of this regulation designates certified registered nurse anesthetists, certified nurse midwives, certified nurse practitioners, clinical nurse specialists, and psychiatric clinical nurse specialists as APRNs.

Reasons for Noncompliance

Dr. Resil stated that the RNs employed by his practice had all the qualifications to become NPs, but were waiting to receive authorization from the Board of Registration in Nursing to practice as APRNs. Additionally, Dr. Resil stated that he was available by telephone to provide supervision for these nurses when necessary. However, until they receive authorization from the board, they are not qualified to perform high-complexity E/M services for MassHealth members, whether or not Dr. Resil is available.

Recommendations

1. RMA should cease having RNs perform high-complexity E/M services for members.
2. RMA should update its website to accurately reflect the licenses of its personnel.
3. RMA should reimburse the Commonwealth the \$2,467 of improper payments that we identified.
4. RMA should collaborate with MassHealth to review all instances in which Dr. Resil and the RNs worked in the same RMA location to determine any additional amounts due the Commonwealth.

MassHealth's Response

MassHealth provided the following response to our original draft report, which identified a total of \$9,605 in overpayments. After discussions with Dr. Resil and review of additional records, we determined he was the servicing provider and adjusted the overpayment accordingly.

MassHealth agrees with the recommendations that Resil Medical Associates P.C. ("RMA") 1) cease having registered nurses (RN) perform high-complexity E/M services; 2) update its website to accurately reflect the licenses of its personnel; 3) reimburse the Commonwealth the \$9,605 of improper payments; and 4) collaborate with MassHealth to review all instances in which Dr. Resil and the RNs worked in the same RMA location to determine any additional amounts due the Commonwealth.

Auditee's Response

After reviewing your report we have acknowledged that:

1. *[One employee] was hired as a part-time Nurse Practitioner for about 2 weeks (due to personal reasons her stay was short-lived). . . .*

Our conclusion is: [her] services were rendered by a Nurse Practitioner who did not have her License yet. RMA did not knowingly hire an unlicensed Nurse Practitioner. Given the fact that services were provided to the patients, I (Dr. Resil) am requesting that those services be downgraded to "Nursing Visits" knowing the financial burdens and heavy responsibility that a Primary Care Physician Office has to face.

2. *[The second employee], hired as a part-time Nurse Practitioner started to see patients on: 5/14/2015. According to your review, her license was issued on 06/17/2015. During that period, she provided services. . . .*

Conclusion: she started working as a Nurse Practitioner right after successfully passing the board. Our understanding was once you pass the board you could provide NP services while waiting for the physical card. We did misjudge and we will take responsibility for this gap. Again I (Dr. Resil) am requesting that those services be downgraded to "Nursing Visits" knowing the financial burdens and heavy responsibility that a Primary Care Physician Office has to face.

On those rare sessions when the NP is working along with Dr. Resil, she participated in the data collection and physical exam, however, Dr. Resil personally examined the patient and came up with the Assessment and Treatment Plan. As a result those services are properly billed under Dr. Resil.

Auditor's Reply

According to its response, RMA agrees with our finding that unlicensed employees performed E/M services before receiving the appropriate licensure. Although these employees had successfully completed their academic requirements for licensure, the state's Board of Registration in Nursing specifically requires that RNs have current board authorization to engage in advanced practice nursing. RMA requests that the Office of the State Auditor (OSA) consider reducing the amount of overpayment by characterizing the claims as lower-complexity services, which would result in lower payment amounts. However, OSA does not have this authority. Again, we recommend that RMA negotiate terms of the overpayments with MassHealth. Additionally, OSA's calculation of the overpaid amount represents all claims that RMA agreed were for services performed by unlicensed NPs. RMA is aware that RNs do not have the required qualifications and education to perform and bill any E/M services except those that are classified as low in complexity.

Finally, RMA states that on rare occasions, Dr. Resil personally performed E/M services and the unlicensed NP assisted him. However, we did not consider these instances when determining the overpayment amount. Our overpayment amount represents services performed by unlicensed NPs who performed services when Dr. Resil was not present.

2. RMA improperly billed MassHealth for approximately \$17,346 of E/M services performed by NPs.

RMA did not use required modifier codes for non-independent NPs or the provider identification numbers for independent NPs when billing MassHealth for E/M services. MassHealth pays for E/M

services provided by both types of NPs at lower rates than it pays when the same services are provided by physicians. Because RMA did not submit claims using the required modifier codes or the appropriate provider identification numbers, it was paid the standard physician rate, which resulted in approximately \$17,346 of overpayments during the audit period. The Commonwealth could have used these funds to provide additional services for MassHealth members.

We examined the medical records for a random statistical sample of 67 out of 4,516 paid claims for all E/M services in order to project the potential problem to the population. Of these 67 claims, we identified 23 (34%) as claims for services provided by independent or non-independent NPs.⁸ However, RMA billed for these services as if they had been performed by a physician.

We projected the error rate to the entire population of E/M claims paid (totaling \$511,994) using a confidence level of 90% and a margin of error of 10%. The result was a projected overpayment of \$17,346⁹ during the audit period.

Authoritative Guidance

According to 101 CMR 317.04(3), providers must use modifier codes when billing for services performed by qualified professionals other than physicians. For non-independent NPs,¹⁰ the regulation requires the use of the SA modifier, defined below:

Nurse Practitioner rendering service in collaboration with a physician. (This modifier is to be applied to service codes billed by a physician which were performed by a non-independent nurse practitioner employed by the physician or group practice.) (An independent nurse practitioner billing under his/her own individual number should not use this modifier.)

The modifier ensures that MassHealth will pay the appropriate, lower rate for the NP's services, which is established in MassHealth All Provider Bulletin 235 as 85% of the full physician rate.

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

Except as provided in other program regulations, a claim for a medical service may be submitted only by the provider that provided the service. . . . An individual practitioner may not claim

8. Dr. Resil had to identify each service provider because they were not accurately reflected in the members' medical records.
9. Based on our statistical sampling approach, we are 90% confident that the overpayment for the audit period ranges from \$17,346 to \$33,158.
10. RMA employed both independent and non-independent nurse practitioners.

payment under his or her own name and provider 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.

Finally, 130 CMR 433.409(D) states that medical records must accurately reflect the service provider:

Medical records corresponding to office, home, nursing facility, hospital outpatient department, and emergency department services provided to members must include . . . the name and title of the person performing the service, if the service is performed by someone other than the physician claiming the payment for the service.

Reasons for Improper Billing

Dr. Resil stated that he was not aware that claims for independent NP services were paid at a lower rate or that services provided by non-independent NPs required certain modifier codes. In addition, RMA's electronic health-record system (eClinical) is set up to accept only Dr. Resil as the provider for E/M services. Dr. Resil explained that he instructed the NPs to leave the provider notes in eClinical open in order for him to review them, apply the applicable procedure code, and sign off as the service provider. In following this practice, Dr. Resil is inaccurately reflecting the service provider in the medical records and causing RMA to improperly bill for E/M services.

Recommendations

1. RMA should collaborate with MassHealth to repay the overpayment of approximately \$17,346 that we identified.
2. RMA should modify eClinical so that the actual service provider's information (e.g., whether s/he is an independent NP, non-independent NP, or physician) is recorded and used in billing MassHealth for E/M services.
3. RMA should develop and implement internal controls to ensure the accuracy of claims submitted. At a minimum, these controls should ensure that each claim identifies the actual service provider and reflects the correct modifier code when necessary.
4. RMA 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. RMA should ensure that its billing staff knows, and adheres to, these requirements when billing for services provided to MassHealth members.

MassHealth's Response

MassHealth agrees with the recommendations that Resil Medical Associates P.C. ("RMA") 1) collaborate with MassHealth to repay the identified overpayments of approximately \$17,346; 2) should modify the eClinical system so that the actual service provider's information is recorded

and used in billing MassHealth for E/M services; 3) develop and implement internal controls to ensure the accuracy of claims submitted identifies the actual service provider and reflects the correct modifier code when necessary; and 4) periodically review all the billing requirements in MassHealth's regulations, as well as updates described in MassHealth's transmittal letters and provider bulletins. RMA should ensure that its billing staff knows, and adheres to, these requirements when billing for services provided to MassHealth members.

Auditee's Response

Dr. Resil signed all the NP notes because of the understanding of: if an independent Nurse Practitioner decides to work as salaried NP she has deferred her right to bill MassHealth directly as a result the Physician after reviewing the note can sign. However, Dr. Resil was unaware of the use of the "SA Modifier" while signing off the notes of the Non-independent Nurse Practitioner. Then again our office thought that the reduced fee of 85% of physician payment was only applicable to Independent Nurse Practitioners who want to bill MassHealth directly with their Provider Number. Conclusion: we agree to reimburse MassHealth of the extra 15% paid for services rendered by the Non-independent Nurse Practitioner during that time frame. . . . I (Dr. Resil) review the bills for Medical Diagnosis accuracy & level of service prior to transmission.

We have already implemented that the Nurse Practitioner should lock her note upon completion and the "SA Modifier" be used when submitting claims to MassHealth.

Auditor's Reply

OSA disagrees with RMA's response that its independent NPs, who work as salaried employees, defer their right to bill MassHealth with their provider identification numbers. That statement is contrary to MassHealth regulation 130 CMR 450.301(A)(1), which states,

An individual practitioner may not claim payment under his or her own name and provider 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.

Thus even if the NPs are salaried employees, they are required to use their own provider identification numbers when performing services for MassHealth members.

In OSA's opinion, RMA should ensure compliance with all MassHealth requirements when billing for services provided by its NPs by periodically reviewing 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 make sure that its billing staff knows, and adheres to, these requirements when billing for services provided to MassHealth members.

Finally, RMA states that it will reimburse MassHealth for “the extra 15% paid for services rendered by the Non-independent Nurse Practitioner during that time frame.” This is not consistent with our recommendation that RMA collaborate with MassHealth to repay the overpayment of approximately \$17,346 that we identified.

3. RMA did not always provide required supervision to non-independent NPs.

RMA did not always have a supervising physician on site while non-independent NPs performed E/M services for members. This supervision is essential for ensuring that members receive quality care and for enabling non-independent NPs to obtain clinical guidance directly from an onsite physician if necessary.

Our review of the aforementioned 67 randomly sampled claims, related member medical records, staffing schedules, and service locations revealed 7 instances (10.4% of claims) in which members received E/M services from a non-independent NP while the supervising physician (Dr. Resil) was at another RMA location.

Authoritative Guidance

MassHealth's All Provider Bulletin 235 requires non-independent NPs to render services under the personal supervision of a physician:

Services provided by nonphysician practitioners, such as physician assistants, nurse practitioners, and nurse midwives . . . must be provided under the personal supervision of an eligible primary care physician, and otherwise be properly billed under the supervising physician's national provider identifier.

In addition, MassHealth officials informed us that a physician must be physically present with the non-independent NP in order to bill for the service under the physician.

Reasons for Noncompliance

RMA has offices in Dorchester and Brockton. These offices have overlapping hours, and Dr. Resil divides his time between the locations. RMA employs no additional physicians. Consequently, at times, the non-independent NPs serve members at one location while Dr. Resil is treating members at the other. During these times, Dr. Resil cannot give the non-independent NPs the required personal supervision.

Dr. Resil stated that he employs NPs in order to keep both offices running a full schedule and was unaware that non-independent NPs need personal supervision. He added that as long as he is available to the non-independent NPs by telephone, MassHealth regulations are followed. However, based on MassHealth All Provider Bulletin 235 and comments made by MassHealth officials, Dr. Resil's telephone availability does not fulfill the requirement of personal supervision.

Recommendation

RMA should ensure that a physician is present at all times to provide personal supervision to non-independent NPs serving members.

MassHealth's Response

MassHealth agrees with the recommendations that Resil Medical Associates P.C. ("RMA") should ensure that a physician is present at all times to provide personal supervision to non-independent NPs serving members.

Auditee's Response

After reviewing thoroughly the MassHealth provision on Physician personal supervision of Nurse Practitioners & Physician Assistants, it is not required that the physician should be in the same building. Nurse Practitioners & Physician Assistants have their own [Drug Enforcement Administration, or DEA] & Mass. Controlled Substance Number and [as] a result, can see patients independently while being supervised directly or remotely (through electronic devices) by a Physician (Page 4-29, date 09/28/2012 (C) Supervisory Arrangement Requirements). . . .

Not only I was always available by phone to answer questions from both Independent & Non-independent Nurse Practitioners during their alone sessions but I could real-time see their notes from the remote office computers. I feel they always have adequate supervision. The notion that Independent Nurse Practitioner does not need direct physician supervision and Non-independent Nurse Practitioner does is not founded. They both have the same credentials (a License, DEA, Mass. Controlled Substance certificate); the only difference is the Independent Nurse Practitioner has a MassHealth Provider number. Thus I respectfully disagree with that notion and should not be financially penalized for that. Furthermore I have contacted my peers both in the state and in Florida and they have concluded that it is common practice to have NPs working from different offices and that supervision can be conducted remotely as we have the necessary mediums to conduct such supervision.

Auditor's Reply

In its response, RMA disagrees that non-independent NPs need personal supervision from a collaborating physician when performing services. However, the regulations RMA mentions in its response are for physician assistants (PAs) only and do not apply to non-independent NPs.

According to MassHealth's response, a physician must be "present at all times to provide personal supervision to non-independent NPs serving members." MassHealth's regulations recognize that NPs and PAs have very different education and training. Therefore, Dr. Resil must appropriately supervise non-independent NPs, as required by MassHealth, when they provide services to members.

Any payment RMA received for improperly billing for E/M services provided by unsupervised non-independent NPs are contrary to MassHealth regulations, and Dr. Resil should work with MassHealth to repay them.

Finally, Dr. Resil responded that other physicians and medical practices across the United States bill for E/M services in a manner similar to RMA's practices. We could not verify this statement, but regardless, it does not validate RMA's billing practices. RMA should have consulted the state's regulatory authority, MassHealth, with any questions concerning validity of its billing practices.

4. RMA lacked collaborative arrangements and prescriptive-practice guidelines for independent NPs.

RMA did not have collaborative arrangements or prescriptive-practice guidelines for its independent NPs. As a result, there is no documentation to substantiate what guidelines RMA has authorized its independent NPs to follow or what procedures they are to comply with when dealing with common medical problems or prescribing medicine. Such guidelines and procedures are intended to ensure that members are provided with consistent and proper healthcare in accordance with state regulations.

Authoritative Guidance

According to 130 CMR 433.433(C)(2), MassHealth requires providers to develop collaborative arrangements that specify the scope of service to be performed by independent NPs:

The independent nurse practitioner's collaborating physician must be a MassHealth provider, or a salaried employee of a MassHealth provider. . . . The nurse practitioner must practice in accordance with written guidelines developed in conjunction with the collaborating physician as set forth in the regulations of the Massachusetts Board of Registration in Nursing (244 CMR). The nurse practitioner must submit to the MassHealth agency thorough documentation of the collaborative arrangement, including guidelines and any written agreement signed by the nurse practitioner and the collaborating physician or physicians. The guideline must specify:

(a) the services the nurse practitioner is authorized to perform under the collaborative arrangement; and

(b) the established procedures for common medical problems.

In order to bill for services to MassHealth members, NPs must also establish prescriptive-practice guidelines with supervising physicians, according to 244 CMR 4.07(2)(a):

An APRN engaged in prescriptive practice will do so in accordance with written guidelines mutually developed and agreed upon with the APRN and the physician supervising the APRN's prescriptive practice.

This requirement is also reflected in 243 CMR 2.10(5)(a), which requires supervising physicians to develop written guidelines for independent NPs to follow when prescribing medications for members:

A physician who supervises an APN [independent nurse practitioner] engaged in prescriptive practice shall do so in accordance with written guidelines mutually developed and agreed upon with the APN.

Reasons for Noncompliance

Dr. Resil stated that he was unaware that a collaborative arrangement was required between independent NPs and physicians. He also explained that RMA's NPs are allowed to function as physicians as long as he is available to answer questions by telephone. Finally, he stated that the independent NPs do not write many prescriptions, so he did not believe the prescriptive-practice guidelines were necessary for them. However, Dr. Resil's NPs are not physicians and should not be allowed to function as such.

Recommendations

1. RMA should develop a collaborative arrangement detailing the medical services and prescriptive practices for each independent NP.
2. RMA should establish policies and procedures to ensure that independent NPs function within the scope of their licensure and not as licensed practicing physicians.

MassHealth's Response

MassHealth agrees with the recommendations that Resil Medical Associates P.C. ("RMA") 1) develop a collaborative arrangement detailing the medical services and prescriptive practices for each independent NP; and 2) establish policies and procedures to ensure that independent NPs function within the scope of their licensure.

Auditee's Response

A Collaborative Agreement was not made with the independent Nurse Practitioners because they had chosen to work for our practice as salaried Nurse Practitioners and had deferred to us the

right to submit claims to MassHealth using RMA Provider Number not their Nurse Practitioner MassHealth Provider number.

Auditor's Reply

RMA states that it does not have collaborative agreements with its NPs because they chose to work as salaried employees and deferred the right to submit claims to MassHealth. However, both MassHealth and Board of Registration in Medicine regulations require physicians and their NPs to enter into collaborative arrangements before NPs prescribe to MassHealth members.