



City of New York

OFFICE OF THE COMPTROLLER

Scott M. Stringer
COMPTROLLER



FINANCIAL AUDIT

Marjorie Landa

Deputy Comptroller for Audit

Audit Report on the Department of
Education's Efforts to Maximize
Medicaid Reimbursement Claims for
Special Education Services

FK18-111A

July 14, 2021

<http://comptroller.nyc.gov>



THE CITY OF NEW YORK
OFFICE OF THE COMPTROLLER
SCOTT M. STRINGER

July 14, 2021

To the Residents of the City of New York:

My office has audited the New York City Department of Education (DOE) to determine if DOE has adequate controls over its Medicaid claims to maximize its Medicaid reimbursement revenue for special education services. We audit City agencies, such as the DOE, to increase accountability and to ensure that the City receives all the funds to which it is entitled.

The audit found that DOE did not have adequate controls in place to ensure that student Occupational Therapy (OT), Physical Therapy (PT), and Speech Therapy service encounters met all of the federal and State Medicaid reimbursement documentation requirements. Consequently, DOE could not submit Medicaid reimbursement claims where such documentation was unavailable. For School Year 2018-2019, we estimate that DOE did not realize gross Medicaid reimbursements totaling as much as \$179,688,706, for OT, PT, and Speech Therapy services.

Additionally, DOE does not, as a matter of policy, submit *any* Medicaid reimbursement claims for evaluations and reevaluations, Psychological Counseling, certain Speech Therapy services, Special Transportation, and Skilled Nursing provided to public and non-public school students; and covered services provided to pre-school students who attend public schools and certain private schools and pre-school students who receive instruction at home. For School Year 2018-2019, we estimate that DOE did not realize gross Medicaid reimbursements totaling as much as \$9,966,540 for Psychological Counseling, certain Speech Therapy services, and covered services provided to pre-school public and non-public school students. Since DOE did not maintain evaluation and re-evaluation data, and did not provide us with students' IEP data containing frequency and duration of recommended services for Special Transportation and Skilled Nursing, we could not independently estimate potential Medicaid reimbursement revenue.

The audit makes 30 recommendations, including that the DOE should: perform a systematic analysis of those OT, PT, and Speech Therapy service encounters that do not pass the claim validation process to determine why those encounters did not meet Medicaid claiming requirements and to identify and prioritize corrective actions to maximize future Medicaid reimbursement revenues; and submit Medicaid reimbursement claims for Psychological Counseling, evaluations, certain Speech Therapy services, Special Transportation, Skilled Nursing, and covered services provided to preschool-age students where appropriate.

The results of the audit have been discussed with DOE officials and their comments have been considered in preparing this report. DOE's complete written response is attached to this report.

If you have any questions concerning this report, please e-mail my Audit Bureau at audit@comptroller.nyc.gov.

Sincerely,

A handwritten signature in black ink, appearing to read "Scott M. Stringer".

Scott M. Stringer

TABLE OF CONTENTS

EXECUTIVE SUMMARY	1
Audit Findings and Conclusions	2
Audit Recommendations.....	3
Agency Response.....	3
AUDIT REPORT	5
Background	5
Objective.....	7
Scope and Methodology Statement.....	7
Discussion of Audit Results	7
FINDINGS AND RECOMMENDATIONS.....	13
DOE Failed to Ensure That Documented OT, PT, and Speech Therapy Service Encounters Met Medicaid Claiming Requirements	14
Recommendation	17
DOE Did Not Obtain Written Orders or Referrals	18
Recommendations	24
DOE Did Not Ensure That Provider Credentials Were Obtained and Verified	25
Recommendations	30
DOE Did Not Obtain Parental Consent to Bill Medicaid	32
Recommendations	35
DOE Did Not Ensure That Providers Certified Session Notes	35
Recommendations	36
DOE Did Not Ensure That Providers Selected Appropriate CPT Codes	37
Recommendations	38
DOE Did Not Ensure That Providers Adequately Described Students' Progress...	39
Recommendation	40
DOE Failed to Ensure That Providers Documented Service Encounters	40
Recommendations	43
DOE Failed to Submit Medicaid Reimbursement Claims for All Covered Students and Service Types.....	44
DOE Does Not Submit Medicaid Reimbursement Claims for Psychological Counseling Services	44
Recommendations	47

DOE Does Not Submit Medicaid Reimbursement Claims for Evaluations 49
Recommendation 50
DOE Does Not Submit Medicaid Reimbursement Claims for Certain Speech
Therapy Services 50
Recommendation 52
DOE Does Not Submit Medicaid Reimbursement Claims for Special Transportation
Services 54
Recommendation 56
DOE Does Not Submit Medicaid Reimbursement Claims for Skilled Nursing
Services 56
Recommendation 56
DOE Does Not Submit Medicaid Reimbursement Claims for Covered Services
Provided to All Pre-School Students 57
Recommendation 58

DETAILED SCOPE AND METHODOLOGY.....59

ADDENDUM

THE CITY OF NEW YORK OFFICE OF THE COMPTROLLER FINANCIAL AUDIT

Audit Report on the Department of Education's Efforts to Maximize Medicaid Reimbursement Claims for Special Education Services

FK18-111A

EXECUTIVE SUMMARY

The New York City Department of Education (DOE) is required by the federal Individuals with Disabilities Act (IDEA) to ensure that students with disabilities have available to them a free appropriate public education that emphasizes special education and related services designed to meet their needs. The IDEA requires DOE to develop, and to review and update at least annually, an Individualized Education Program (IEP) for students with disabilities who require special education services. Students with an IEP can receive special education services through placement in various school settings including: traditional public schools; Charter schools; New York State Education Department (NYSED) approved non-public schools (NYSED-approved schools);¹ private schools; and home and hospital instruction.

DOE is entitled to submit Medicaid reimbursement claims for covered services provided to Medicaid eligible students with disabilities who are between the ages of 3 and 21. The New York State Department of Health (NYSDOH) and the New York State Department of Education (NYSED) jointly developed the Preschool/School Supportive Health Services Program (SSHSP) to help school districts obtain Medicaid reimbursement. The SSHSP Medicaid-In-Education Medicaid Provider Policy and Billing Handbook (Medicaid Handbook) states that “[i]n order to submit claims to the Medicaid program for SSHSP services, certain documentation requirements must be met” which include, among other things,

- The student's IEP;
- Written orders or referrals which document the medical necessity for related services;
- Verification of provider credentials such as current licensure;

¹ NYSED approves special education programs operated pursuant to sections 853, 4201, and 4410 of the New York State Education Law. Section 853 and 4410 schools are operated by private agencies and provide day and/or residential programs for school-age and preschool-age students with disabilities, respectively. Section 4201 schools provide educational services to school-age students with disabilities including deafness, blindness, severe emotional disturbance, or severe physical disabilities.

- Session notes which document diagnostic and/or treatment services provided to students; and
- Parental consent to bill Medicaid.

During our audit scope period of July 1, 2017 through June 30, 2019, DOE used the Special Education Student Information System (SEIS): (1) to record IEP information for all school-age students; and (2) to document the provision of related services for students in traditional public schools, Charter schools, private schools, and home and hospital instruction. DOE used EasyTrac to document the provision of related services in NYSED-approved schools.

The DOE Office of Medicaid Operations (OMO) is responsible for the coordination of programmatic and administrative efforts to maximize Medicaid reimbursement claims for related services including Physical Therapy (PT), Occupational Therapy (OT), and Speech Therapy. OMO is charged with ensuring that Medicaid reimbursement claims submitted by DOE meet federal and State requirements, and with finding efficiencies to increase claims.

In the City's Comprehensive Annual Financial Report, DOE reported net annual adopted budget and actual Medicaid reimbursement revenue of \$97,000,000 for both Fiscal Year 2018 and Fiscal Year 2019. Currently, the State and City share gross Medicaid reimbursements equally—50 percent each.

Audit Findings and Conclusions

DOE failed in several different ways to make adequate efforts to maximize Medicaid reimbursement claims for special education services. First, DOE did not have adequate controls in place to ensure that student OT, PT, and Speech Therapy service encounters met all of the federal and State Medicaid reimbursement documentation requirements including, among other things, the requirements to:

- Obtain written orders or referrals for services;
- Verify provider credentials;
- Record session notes to document that diagnostic and/or treatment services were provided to students; and
- Obtain parental consent to bill Medicaid.

Consequently, DOE could not submit Medicaid reimbursement claims for those services. For School Year 2018-2019 (i.e., July 1, 2018 through June 30, 2019), we estimate that DOE did not realize gross Medicaid reimbursements totaling as much as \$179,688,706, for OT, PT, and Speech Therapy services.

Additionally, DOE does not, as a matter of policy, submit *any* Medicaid reimbursement claims for the following covered services:

- Evaluations and reevaluations, Psychological Counseling, certain speech services, Special Transportation, and Skilled Nursing provided to public and non-public school students; and
- Covered services provided to pre-school students who attend public schools and private schools (other than NYSED-approved pre-school special education programs operated pursuant to section 4410 of the New York State Education Law), and pre-school students who receive instruction at home.

For School Year 2018-2019, we estimate that DOE did not realize gross Medicaid reimbursements totaling as much as \$9,966,540 for Psychological Counseling, certain Speech Therapy services, and covered services provided to pre-school public and non-public school students.² Since DOE did not maintain evaluation and re-evaluation data, and did not provide us with students' IEP data including service start and end dates, frequency, or duration of recommended services for Special Transportation and Skilled Nursing, we could not independently estimate potential Medicaid reimbursement revenue.

Audit Recommendations

Based on our findings, we made 30 recommendations to DOE, including that DOE should:

- Perform a systematic analysis of those OT, PT, and Speech Therapy service encounters that do not pass the claim validation process to determine why those encounters did not meet Medicaid claiming requirements and to identify and prioritize corrective actions to maximize future Medicaid reimbursement revenues;
- Submit Medicaid reimbursement claims for Psychological Counseling service encounters which meet State and federal requirements;
- Ensure that evaluations are conducted and documented in a way that allows DOE to claim for covered services and submit Medicaid reimbursement claims for those services where appropriate;
- Reconsider the feasibility of submitting Medicaid reimbursement claims for Speech Therapy services provided under the supervision of a licensed provider and provided to students in all public and non-public schools, including but not limited to, running a pilot with adequate staffing levels and compliance with timely and complete session note;
- Ensure that contracted providers maintain electronic transportation logs which include Medicaid required elements for each trip and submit Medicaid reimbursement claims for Special Transportation services where appropriate;
- Immediately start claiming for Skilled Nursing services which meet federal and State requirements; and
- Take all necessary steps to ensure that Medicaid documentation claiming requirements are met for covered services provided to preschool-age students and submit Medicaid reimbursement claims for those services where appropriate.

Agency Response

In its response, DOE generally did not agree with or did not address the report's findings that it did not successfully claim for OT, PT, and Speech Therapy services and that it does not, as a matter of policy, submit any Medicaid reimbursement claims for

- Covered services provided to pre-school students who attend public schools and private schools other than NYSED-approved preschool special education programs operated pursuant to section 4410 of the New York State Education Law, or pre-school students who receive instruction at home or in the hospital; and

² The gross Medicaid reimbursements totaling \$9,966,540 include \$2,831,539 for Psychological Counseling, \$1,481,373 for certain Speech Therapy services, and \$5,653,628 for covered services provided to pre-school public and non-public school students. The \$1,481,373 for certain Speech Therapy services is also included in the gross Medicaid reimbursements totaling \$179,688,706.

- Evaluations and reevaluations, Psychological Counseling, certain speech services, Special Transportation, and Skilled Nursing provided to public and non-public school students.

DOE stated only that “as the Department continues enhancing procedures and data collection practices, related services that currently may be cost-prohibitive or present challenges in collecting data, can become part of the claiming process in the future.”

At various points in its response, DOE stated that the report’s methodology was flawed based on its claims that the auditors did not establish reasonable criteria, did not evaluate internal controls, made errors, ignored DOE “guidance,” and used “inflated figures and unfounded assumptions to overstate the amount of unclaimed potential revenue.” As is discussed in the Discussion of Audit Results and in connection with specific findings, DOE’s claims are entirely unfounded and in some instances reflect its contention that the audit should have been limited to addressing only issues that DOE directed the auditors to examine within frameworks that DOE provided. In furtherance of its arguments, DOE attempted to discredit the methodologies used in the audit and misrepresented certain audit findings and recommendations. In one such particularly blatant instance, DOE inaccurately stated that the report “suggests that Medicaid reimbursement should be prioritized over student needs in the development of IEPs.” This, like much of what DOE contends about the audit’s methodologies, findings, and recommendations, simply is not true, as is discussed in more detail below.

With regard to 17 of the report’s 30 recommendations, DOE stated that they “describe an existing Department process.” With regard to the remaining 13 recommendations, DOE stated that “the Comptroller offers no suggestion for improving specific processes beyond vague suggestions that the Department should hold schools and providers ‘fully accountable’ and ensure documentation for ‘all students.’ The lack of specificity makes it impossible for the Department to properly consider such recommendation[s].” Nevertheless, DOE agreed with 25 of the report’s 30 recommendations. DOE disagreed with the remaining five recommendations including that DOE should: (1) review the NYSED Office of the Professions license data and inform NYSED Office of the Professions about data integrity issues; (2) determine whether it is feasible to employ system edits in SESIS to ensure that providers certify session notes; (3) review uncertified session notes and follow-up with those providers; (4) ensure that staff include Psychological Counseling on IEPs when determined to be clinically appropriate; and (5) reconsider the feasibility of submitting Medicaid reimbursement claims for Speech Therapy services provided under the supervision of a licensed provided and provided to students in all public and non-public schools.

As noted, each of DOE’s assertions regarding the report’s methodology, findings, and recommendations is patently untrue and unfounded. These issues are detailed in the Discussion of Audit Results and Findings and Recommendations sections of this report.

AUDIT REPORT

Background

The DOE is required by the IDEA to ensure that all children with disabilities have available to them a free appropriate public education that emphasizes special education and related services designed to meet their needs. The IDEA requires DOE to develop, and review and update at least annually, an IEP for all students with disabilities who require special education services. The IEP documents DOE's plan to provide special education services to meet a student's needs.

DOE is responsible for the development of students' IEP's regardless of the school setting. DOE is generally required to arrange for the IEP-mandated services within 60 school days of the receipt of consent to evaluate for a student. Students with an IEP can receive special education services through placement in various school settings such as: traditional district public schools; NYSED-approved schools; Charter schools; private or religious schools; and home and hospital instruction.

To ensure students are receiving their required services, DOE must assign a provider. DOE assigns providers to students in the following order: first, DOE will attempt to assign a DOE employee to provide the services. If DOE is unable to assign a DOE employee to provide the services, they will next look to a contracted agency for a provider. Finally, if they are unable to assign a DOE employee or contracted provider, DOE will issue a voucher for the parent to find an independent provider, which is known as a Related Services Authorization (RSA) for school-age students or an Independent Agreement (IA) for preschool-age students.

After related services have been provided and documented, DOE is entitled to submit Medicaid reimbursement claims for covered services provided to Medicaid eligible students as long as all documentation requirements are met. Title XIX of the Social Security Act allows for Medicaid reimbursement claims for services included in the IEP of a student with a disability. Accordingly, the New York State Social Services Law permits reimbursements to public school districts for expenditures made by or on behalf of the local school districts for medical care and services furnished to children ages 3 to 21.

The NYSDOH is responsible for oversight of the New York State Medicaid Program. The NYSDOH and NYSED jointly developed the SSHSP to help school districts obtain Medicaid reimbursement for services provided to students with disabilities. The Medicaid Handbook states that "[i]n order to submit claims to the Medicaid program for SSHSP services, certain documentation requirements must be met." Required documentation to submit a Medicaid claim includes, but is not limited to, the following:

- The student's IEP;
- Verification of current certification, licensure, and/or registration, as relevant, of clinician providing the service;
- Parental Consent for Release of Information to check Medicaid eligibility of the student;
- Written Orders/Referrals (prescriptions) which establish medical necessity for the related service; and
- Session notes for each billable service which document that the servicing provider delivered certain diagnostic and/or treatment services to a student on a particular date and include, among other things, a brief description of the student's progress made by receiving the service during the session.

The DOE's OMO is responsible for the coordination of programmatic and administrative efforts to maximize claims for Medicaid reimbursements of related services for applicable areas including:

- Physical Therapy (PT);
- Occupational Therapy (OT); and
- Speech Therapy.

OMO is charged with ensuring that claims submitted by DOE meet federal and State requirements, and with finding efficiencies to increase Medicaid claims. In February 2018, OMO consisted of one Executive Director and four staff members. As part of its Medicaid claiming process, OMO performs a data validation to identify OT, PT, and Speech Therapy services which meet all documentation requirements and should be submitted for Medicaid reimbursement. The Medicaid in Education Alert #18-08 states that for SSHSP services rendered on and after July 1, 2017, providers are entitled to submit Medicaid reimbursement claims within 21 months from the date of service.

In School Year 2011–2012, DOE transitioned from paper-based IEPs for school-age students with disabilities to a computer-based system, called SESIS. SESIS was intended to support the entire special education life-cycle of each student; facilitate and monitor timely and efficient delivery of special education services by DOE and third-party service-providers; produce federal, State, and City reports; and support Medicaid claims to achieve a level of reimbursement commensurate with Medicaid-eligible services provided. During our audit scope period of July 1, 2017 through June 30, 2019, SESIS was used to: (1) record IEP information for all school-age students; and (2) document the provision of related services for students in traditional public schools, Charter schools, private or religious schools, and home and hospital instruction.

NYSED-approved schools serving New York City students are responsible for assisting DOE in managing and collecting the documents needed for Medicaid reimbursements for related services. During our scope period, DOE utilized EasyTrac to assist NYSED-approved schools with collecting and documenting parental consent forms and written orders/referrals in addition to documenting the provision of related services.

New York State Education Law Section 3609-b allows some of the State share of Medicaid reimbursements due to a school district to be assigned on behalf of the school district to the NYSDOH. Currently, the State and City share of total Medicaid reimbursements is 50 percent each.

In the New York City Comprehensive Annual Financial Report, DOE reported net adopted budget and actual Medicaid reimbursement revenue for Fiscal Years 2016 through 2020, as detailed in Table I below.

Table I

Adopted Budget and Actual
Medicaid Reimbursement Revenue

Fiscal Year	Adopted Budget Medicaid Revenue	Actual Medicaid Revenue
2016	\$97,000,000	\$17,988,033
2017	\$40,500,000	\$40,500,000
2018	\$97,000,000	\$97,000,000
2019	\$97,000,000	\$97,000,000
2020	\$123,500,000	\$73,500,000

Objective

The objective of this audit was to determine if the Department of Education has adequate controls over its Medicaid claims to maximize its Medicaid reimbursement revenue for special education services.

Scope and Methodology Statement

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. This audit was conducted in accordance with the audit responsibilities of the City Comptroller as set forth in Chapter 5, §93, of the New York City Charter.

This audit covered the period of July 1, 2017 through June 30, 2019. Please refer to the Detailed Scope and Methodology at the end of this report for the specific procedures and tests that were conducted.

Discussion of Audit Results

The matters covered in this report were discussed with DOE officials during and at the conclusion of this audit. A preliminary draft report was sent to DOE and discussed with DOE officials at an exit conference held on May 17, 2021. On May 28, 2021, we submitted a draft report to DOE with a request for written comments. We received a written response from DOE on June 14, 2021. Additionally, on June 15, 2021, DOE provided us with data to support certain assertions included in its written response.

In its response, DOE generally did not agree with or did not address the report's findings that it did not successfully claim for OT, PT, and Speech Therapy services and that it does not, as a matter of policy, submit any Medicaid reimbursement claims for

- Covered services provided to pre-school students who attend public schools and private schools other than NYSED-approved preschool special education programs operated pursuant to section 4410 of the New York State Education Law, or pre-school students who receive instruction at home or in the hospital; and
- Evaluations and reevaluations, Psychological Counseling, certain speech services, Special Transportation, and Skilled Nursing provided to public and non-public school students.

DOE stated only that “as the Department continues enhancing procedures and data collection practices, related services that currently may be cost-prohibitive or present challenges in collecting data, can become part of the claiming process in the future.”

DOE stated the report's methodology was flawed and therefore, dismissed the report's findings and recommendations. Specifically, DOE stated that

Although the Report claims that the auditors' objective was to evaluate the adequacy of the Department's controls over the maximizing of Medicaid revenue, the auditors did not establish reasonable criteria or evaluate the Department's controls. . . . Further the Report presents in isolation a selective group of records (e.g., Parent consent, Orders/Referrals) that are required for a valid Medicaid claim, and it then offers individual counts of missing records as if each individual record on its own can result in a Medicaid claim. Thus, it failed to assess these records as a set that must all be complete in order to submit a claim—which would be the correct approach to estimate potential revenue. This flawed methodology . . . was used by the auditors to formulate an expected number of records to be collected; and any instance where the collection did not achieve 100 percent, it was reported as a failure of the control. . . .

as a result, the Department finds the assertions made in the Report inaccurate and the corresponding recommendations lacking appropriate support.

As discussed in more detail below and in connection with specific audit findings, the auditors did in fact establish appropriate and relevant criteria for each of the report's findings, assess internal controls, and test compliance with federal and State Medicaid requirements. Moreover, while DOE would have the auditors only “assess [Medicaid claiming] records as a set that must all be complete in order to submit a claim,” in fact, it is only by conducting tests of the individual claiming elements that DOE can identify impediments to claiming and take necessary and appropriate action to develop and prioritize corrective action plans aimed at maximizing Medicaid reimbursement revenue.

Additionally, DOE stated the auditors made errors, ignored DOE “guidance,” and used “inflated figures and unfounded assumptions to overstate the amount of unclaimed potential revenue.” DOE also stated that the report “suggests that Medicaid reimbursement should be prioritized over student needs in the development of IEPs.”

However, DOE is incorrect in making each of these claims. As a general matter, disagreeing with DOE feedback on the auditors testing and scope of inquiry does not mean that information DOE provided was ignored. To the contrary, as DOE expressly acknowledges in its audit response, the

auditors did in fact adjust preliminary findings to reflect additional evidence provided by DOE during the audit. Where that did not occur, it was not because DOE “guidance” was ignored, but rather it was because it was not relevant or appropriate to particular audit testing and findings, as is described in more detail below.

With regard to the report’s recommendations, DOE stated that

Of the thirty recommendations in this Report, seventeen describe an existing Department process that has been shared with the Comptroller through interviews and documentation requests. . . . A problem with the remaining recommendations is that the Comptroller offers no suggestion for improving specific processes beyond vague suggestions that the Department should hold schools and providers ‘fully accountable’ and ensure documentation for ‘all students.’ The lack of specificity makes it impossible for the Department to properly consider such recommendation[s].

Nevertheless, DOE agreed with 25 of the report’s 30 recommendations. DOE disagreed with the remaining five recommendations including that DOE should: (1) review the NYSED Office of the Professions license data and inform NYSED Office of the Professions about data integrity issues; (2) determine whether it is feasible to employ system edits in SESIS to ensure that providers certify session notes; (3) review uncertified session notes and follow-up with those providers; (4) ensure that staff include Psychological Counseling on IEPs when determined to be clinically appropriate; and (5) reconsider the feasibility of submitting Medicaid reimbursement claims for Speech Therapy services provided under the supervision of a licensed provided and provided to students in all public and non-public schools.

However, as noted, each of DOE’s assertions regarding the report’s methodology, findings, and recommendations is patently untrue and unfounded, as detailed below and in applicable finding sections of the report.

The Auditors Appropriately Established Criteria, Assessed Internal Controls, and Tested Compliance with Medicaid Requirements

To achieve the audit objective, the auditors did in fact establish relevant criteria for each of the report’s findings, assess internal controls, and test compliance with federal and State Medicaid requirements. GAGAS states that “[a]uditors may use the stated program purpose and goals as criteria for assessing program performance.” Additionally, GAGAS states that

Criteria represent the laws, regulations, contracts, . . . specific requirements . . . against which performance is compared or evaluated. . . . Auditors should use criteria that are relevant to the audit objectives and permit consistent assessment of the subject matter.

GAGAS further states that examples of criteria include the “policies and procedures established by officials of the audited entity.” As disclosed throughout the report, the auditors appropriately used the following relevant criteria in accordance with GAGAS (1) OMO’s stated purpose—maximizing Medicaid claims and ensuring that claims submitted by DOE meet State and federal requirements, (2) the IDEA, (3) the Medicaid Handbook, (4) the SSHSP Q&A, (5) the NYCDOE Medicaid Billing Policy and Procedures Manual, and (6) DOE contracts with providers and employees.

Contrary to DOE’s assertion, the auditors also assessed DOE’s internal controls over the Medicaid reimbursement claiming process. The auditors determined whether or not DOE

implemented internal controls and when controls were in place, assessed the adequacy and effectiveness of those controls. As disclosed throughout the report, the auditors performed procedures including, but not limited to, internal control assessments and tests of DOE's claim validation process, drop-off analysis, Parental Consent Form and written order/referral monitoring, provider credential verification processes, and SESIS and EasyTrac system edits.

With regard to our detailed testing, it is of concern that DOE does not see the necessity and value of testing DOE's compliance with each individual Medicaid claiming requirement. Only with such testing can DOE identify impediments to claiming and take necessary and appropriate action to develop and prioritize corrective action plans aimed at maximizing Medicaid reimbursement revenue.

The Auditors Appropriately Considered Information Provided by DOE

DOE is incorrect in asserting that the auditors "made errors" and "ignored Department guidance" when developing potential Medicaid reimbursement claims and reimbursement revenue. A preliminary draft report was sent to DOE and discussed at an exit conference on May 17, 2021. At the exit conference, DOE officials provided additional information regarding potential claims which was considered in connection with the preparation of the draft report. On June 1, 2021, we advised DOE that

after our exit conference we updated previous analysis for compliance with Medicaid claiming requirements for March 2018 and March 2019 and made the following changes:

1. Analyzed unique encounters
2. Considered parental consent status within 15 months of the date of service
3. Considered student Medicaid eligibility and any students with a lapse in coverage for each month
4. Considered the most recent IEP document for each student

We also updated our analysis of Pre-K active mandates (other than NYSED-approved schools) and identified active mandates for each month within the school year.

DOE acknowledged that the auditors appropriately considered information provided by DOE and modified their analysis by stating that "the Department understands that the auditors have made some attempt to correct their analysis through our input, **resulting in considerably adjusted estimates.**" [Emphasis added.]

The Auditors Did Not Overstate Potential Medicaid Reimbursements

DOE stated that the auditors "inflated figures" primarily by using "gross revenue amounts in their estimations of unclaimed revenue." However, DOE's objection to the reporting of potential gross Medicaid reimbursements on the basis that it "overstates the potential benefits and can mislead the reader" is unfounded. GAGAS states that

Auditors should plan and perform procedures to develop the elements of a finding necessary to address the audit objectives. . . . The effect is a clear, logical link to establish the impact or potential impact of the difference between the situation that exists (condition) and the required or desired state (criteria). The effect or potential effect identifies the outcomes or consequences of the condition. . . . Effect or

potential effect may be used to demonstrate the need for corrective action in response to identified problems or relevant risks.

In reporting potential gross Medicaid reimbursements totaling as much as \$188,173,873, we appropriately: (1) identified the consequences of DOE's failures to ensure that documented OT, PT, and Speech Therapy service encounters met Medicaid claiming requirements and to submit any Medicaid reimbursement claims for the other covered services; and (2) demonstrated the need for corrective action. Furthermore, we expressly state that we are reporting "gross Medicaid reimbursements" and repeatedly disclose that the State and City share of total Medicaid reimbursements is 50 percent each in the Executive Summary, Background, and Findings and Recommendations sections of this report. We report the gross figure since DOE is responsible for submitting Medicaid reimbursement claims and this is the total value of potential gross Medicaid reimbursements that would be shared equally between the City and the State.

Additionally, DOE stated that the auditors used "unfounded assumptions" when estimating potential gross Medicaid reimbursement revenue for: (1) service encounters which appear to have taken place but were not documented; and (2) for covered services provided to pre-school students who attend traditional public schools, Charter schools, and private schools other than NYSED-approved preschool special education programs, and pre-school students who receive instruction at home. With regard to potential gross Medicaid reimbursements for undocumented service encounters, DOE stated that "[a]ny attempt for a projection using this data would have required statistical and objective testing, which the auditors did not conduct." However, we estimated potential gross Medicaid reimbursement revenue by using DOE's own assumptions and the same methodology employed by DOE to project Medicaid reimbursements for its Speech Therapy UDO pilot project.

With regard to potential gross Medicaid reimbursement revenue for covered services provided to pre-school students, DOE stated that

This estimate is based solely on IEP mandate data without a comparison to placement data, making the assumption that every IEP recommendation leads to placement and service delivery; parents have the right to refuse placement. It also does not consider mandates for three-year-old students whose parents chose to extend Early Intervention services through the Department of Health and Mental Hygiene rather than moving forward with IEP services.

However, DOE did not provide us with supporting documentation for the above-detailed assertions. Therefore, we had no basis to modify our finding. As previously stated, a preliminary draft report was sent to DOE and discussed at an exit conference on May 17, 2021. Further, on June 1, 2021, we shared the results of our analysis of Pre-K active mandates (other than NYSED-approved schools) and identified active mandates for each month within the school year.

The Report Does Not Suggest That Medicaid Reimbursement Revenue Should Be Prioritized over Student Needs

Finally, DOE stated that "the Report suggests that Medicaid reimbursement should be prioritized over student needs in the development of IEPs" and "that the Department should take steps to increase the number of students who are recommended for psychological counseling." Further, DOE also stated that "[t]he implementation of the Comptroller's recommendation may be an IDEA violation, and it would encourage the Committee on Special Educations to make recommendations that are focused on revenue rather than the student's needs." However, those statements are patently untrue. Rather than advocating medically unwarranted and unlawful

actions, the report simply raises questions based on the evidence provided about whether DOE correctly classified students' mandated services on their IEPs since licensed psychologists, LCSW's, and LMSW's reported that they provided Psychological Counseling to students in DOE's system of record. Furthermore, the report does not recommend that DOE take actions which would violate IDEA and make IEP recommendations that are focused on revenue rather than the students' need. To the contrary, the report recommends that DOE provide guidance and training to staff responsible for developing IEPs as to when Psychological Counseling should be recommended by the IEP team and ensure that staff include Psychological Counseling on IEPs *when determined to be clinically appropriate*.

The full text of the DOE's response is included as an addendum to this report.

FINDINGS AND RECOMMENDATIONS

DOE failed in several ways to make adequate efforts to maximize Medicaid reimbursement claims for special education services. First, DOE did not have adequate controls in place to ensure that student OT, PT, and Speech Therapy service encounters met all of the federal and State Medicaid reimbursement claiming requirements including, among other things, the requirements to:

- Obtain written orders or referrals for services;
- Verify provider credentials;
- Record session notes to document that diagnostic and/or treatment services were provided to students; and
- Obtain parental consent to bill Medicaid.

Consequently, DOE could not submit Medicaid reimbursement claims for those services due to inadequate documentation. For School Year 2018-2019 (i.e., July 1, 2018 through June 30, 2019), we estimate that DOE did not realize gross Medicaid reimbursements totaling, as much as, \$179,688,706, for OT, PT, and Speech Therapy services which were for: (1) covered procedures; and (2) provided to students who were eligible for Medicaid and less than 21 years old on the encounter date, and for whom a parent did not refuse consent to bill Medicaid. As previously noted, New York State Education Law Section 3609-b allows some of the State share of Medicaid reimbursements due to a school district to be assigned on behalf of the school district to the NYSDOH. Currently, the State and City share of total Medicaid reimbursements is 50 percent each.

Additionally, DOE does not, as a matter of policy, submit *any* Medicaid reimbursement claims for the following covered services:

- Evaluations and reevaluations, Psychological Counseling, certain speech services, Special Transportation, and Skilled Nursing provided to public and non-public school students; and
- Covered services provided to pre-school students who attend public schools and private schools other than NYSED-approved pre-school special education programs operated pursuant to section 4410 of the New York State Education Law, or pre-school students who receive instruction at home.

For School Year 2018-2019, we estimate that DOE did not realize gross Medicaid reimbursements totaling, as much as, \$9,966,540 for Psychological Counseling, certain Speech Therapy services, and covered services provided to pre-school public and non-public school students. Since DOE did not maintain evaluation and re-evaluation data, and did not provide us with students' IEP data including service start and end dates, frequency, or duration of recommended services for Special Transportation and Skilled Nursing, we could not independently estimate potential Medicaid reimbursement revenue.

These findings are discussed in the following sections of the report.

DOE Failed to Ensure That Documented OT, PT, and Speech Therapy Service Encounters Met Medicaid Claiming Requirements

The Medicaid Handbook states that “[i]n order to submit claims to the Medicaid program for SSHSP services, certain documentation requirements must be met.” However, DOE did not ensure that documented OT, PT, and Speech Therapy service encounters met federal and State claiming requirements including the requirements to:

- Obtain written orders or referrals (i.e., prescriptions) which document the medical necessity for related services;
- Describe students’ progress;
- Certify service provision;
- Verify provider licensure and National Provider Identifier (NPI);
- Identify the appropriate Current Procedural Terminology (CPT) code(s); and
- Obtain parental consent to bill Medicaid.

Consequently, DOE was not able to submit Medicaid reimbursement claims for those encounters that did not meet requirements.

OMO is responsible for maximizing Medicaid claims and for ensuring that claims submitted by DOE meet State and federal requirements. Each month, OMO performs a validation process to identify OT, PT, and Speech Therapy service encounters that meet federal and State Medicaid reimbursement claiming requirements and submits claims for those encounters which pass the validation process.

For the period July 1, 2018 through June 30, 2019, DOE documented that it provided 6,759,056 OT, PT, and Speech Therapy service encounters for which DOE could have received, *at maximum*, combined gross Medicaid reimbursements totaling \$324,507,968—i.e., OT, PT, and Speech Therapy service encounters which were: (1) recorded in SESIS or EasyTrac; (2) for covered procedures; and (3) provided to students who were eligible for Medicaid and less than 21 years old on the encounter date, and for whom a parent did not refuse consent to bill Medicaid (potential School Year 2018-2019 claims). However, based on OMO’s validation process, 1,621,949 of those 6,759,056—24.0 percent—documented OT, PT, and Speech Therapy service encounters did not meet one or more of the federal and State Medicaid reimbursement claiming requirements. Consequently, DOE did not realize gross Medicaid reimbursements totaling, as much as, \$154,496,863.

Based on data provided by DOE for March 2018 and March 2019, we identified 737,066 and 734,277 service encounters, respectively, for which DOE may have been able to submit Medicaid reimbursement claims—i.e., OT, PT, and Speech Therapy service encounters which were: (1) recorded in SESIS or EasyTrac; (2) for covered procedures; and (3) provided to students who were eligible for Medicaid and less than 21 years old on the encounter date, and for whom a parent did not affirmatively refuse consent to bill Medicaid (potential claims for March 2018 and March 2019). We then determined whether those service encounters met each of the federal and State Medicaid reimbursement claiming requirements as detailed in Table II below. Primarily, we found that DOE did not ensure that documented OT, PT, and Speech Therapy service encounters met federal and State claiming requirements for obtaining written orders or referrals, verifying provider credentials, and obtaining parental consent to bill Medicaid. To a lesser extent, we found that DOE did not ensure that documented OT, PT, and Speech Therapy service encounters met

federal and State claiming requirements for certifying service provision, identifying appropriate CPT codes, and adequately describing students' progress.

Table II

Analysis of Whether Documented
OT, PT, and Speech Therapy
Service Encounters Met Medicaid
Reimbursement Claiming
Requirements for March 2018 and
March 2019

Medicaid Reimbursement Claiming Requirement	March 2018			March 2019		
	Total Number of Documented OT, PT, and Speech Therapy Service Encounters	Number of Documented OT, PT, and Speech Therapy Service Encounters That Met Requirement	Number of Documented OT, PT, and Speech Therapy Service Encounters That Did Not Meet Requirement	Total Number of Documented OT, PT, and Speech Therapy Service Encounters	Number of Documented OT, PT, and Speech Therapy Service Encounters That Met Requirement	Number of Documented OT, PT, and Speech Therapy Service Encounters That Did Not Meet Requirement
Written Order or Referral	737,066	500,896	236,170	734,277	550,481	183,796
Provider Credential - NPI	737,066	552,231	184,835	734,277	534,798	199,479
Provider Credential - License	737,066	631,384	105,682	734,277	603,166	131,111
Parental Consent	737,066	667,044	70,022	734,277	651,323	82,954
Certified Services	737,066	724,374	12,692	734,277	719,342	14,935
Adequate Session Notes	737,066	728,257	8,809	734,277	726,713	7,564
Appropriate CPT Code	737,066	721,081	15,985	734,277	723,545	10,732

We asked DOE whether it performed a systematic analysis of those OT, PT, and Speech Therapy service encounters that did not pass the validation process: (1) to determine why those encounters did not meet Medicaid claiming requirements; and (2) to identify and prioritize corrective actions to maximize future Medicaid reimbursement revenues. In response, DOE stated,

[W]e do analysis and checks on data both before and after for those potential claims not meeting the requirements (drop-off). . . . This includes:

- Analysis on Medicaid parental consents, with follow up to schools where consents have not been sent or received during the school year.
- Analysis on students who need a prescription/referral for service, prioritizing deployment of DOE physicians to work with students to obtain prescriptions where the potential for Medicaid reimbursements is greatest.

However, we found that OMO's efforts were inadequate for the reasons discussed below in the following sections of the report.

DOE Response: “[T]he Department disagrees with these estimates and how they were formulated. . . . The Report is lacking specific context on each of this item as follows:

- The unique service encounters described by the auditors are made up of both certified sessions, and uncertified entries that are not considered encounters. . . .
- The condition that a student did not have a refused parental consent status for the applicable period may lead to the belief that the lack of refusal status is a requirement to submit a claim. However, parental consent must be obtained prior to submitting a claim, . . . Further, in many instances, a lack of a parental consent refusal status as defined in the Report just means that the Department sent one or more parent consent requests to the parent and the parent never returned it.
- Although the Department makes every effort to get the most current and reliable data, the Medicaid coverage status can change at any time and such conditions may not be captured by the steps described by the auditors. . . .

the analysis also fails to account for instances where services were provided in accordance with IDEA, but the service does not qualify for reimbursement under the Medicaid program. A common example which was shared with the auditors is when a student is recommended in a group setting of two or more students and the student is served individually (group of one). . . .

it is disappointing that final estimates were formulated with a flawed methodology and were not made in an objective and realistic manner.”

Auditor Comment: The purpose of our analysis was to identify the full population of *potential* claims that DOE could submit *if* it met all Medicaid claiming requirements. As previously mentioned, we identified potential claims for OT, PT, and Speech Therapy service encounters which were: (1) recorded in SESIS or EasyTrac; (2) for covered procedures; and (3) provided to students who were eligible for Medicaid and less than 21 years old on the encounter date, and for whom a parent did not refuse consent to bill Medicaid. We then analyzed whether and to what extent DOE service encounters met each of the federal and State Medicaid reimbursement claiming requirements. It is possible for a single service encounter to not comply with one or more of the documentation requirements necessary to submit a Medicaid reimbursement claim.

We appropriately included uncertified encounters in the population of potential claims since they represent service encounters that were recorded by providers in DOE's system of record but were not certified as accurate and complete. In its own response, DOE acknowledged that uncertified encounters *may represent*, among other things, “draft records awaiting revision/certification” and as such, it was appropriate to include them in our calculation of *potential* claims that DOE could submit *if* it met all Medicaid claiming requirements. We note that uncertified encounters account for only 1.9 percent of the total encounters analyzed. As disclosed in the report, there were 27,627 uncertified encounters out of the 1,471,343 OT, PT, and Speech Therapy service encounters which were documented in SESIS as taking place in March 2018 and March 2019.

Additionally, we appropriately included students for whom a parent did not affirmatively refuse consent to bill Medicaid in the population of potential claims since DOE may prospectively and retroactively bill Medicaid *if* it obtains a signed Parental Consent Form. The DOE Claiming Rules state, “[u]pon consent, claims can be submitted for all the future services along with prior services up to the period allowed by New York State Department of Health [Currently 15 months].” Therefore, any student who does not have a refused Parental Consent Form could potentially be included in DOE’s claims if DOE distributed and collected a Parental Consent Form.

With regard to Medicaid coverage, we used data that was provided to us by DOE to conduct our analysis. Furthermore, we note that DOE used this same data to perform its own Medicaid claiming validation process. We also considered DOE’s feedback and modified our analysis to remove students for which the State rejected claims for a lapse in Medicaid coverage.

DOE Response: “[T]he Report presents in isolation a selective group of records (e.g., Parent consent, Orders/Referrals) that are required for a valid Medicaid claim, and it then offers individual counts of missing records as if each individual record on its own can result in a Medicaid claim. Thus, it failed to assess these records as a set that must all be complete in order to submit a claim—which would be the correct approach to estimate potential revenue. . . . any instance where the collection did not achieve 100 *percent*, it was reported as a failure of the control. This is neither fair nor reasonable.”

Auditor Comment: We separately analyzed each claiming requirement in order to determine the extent to which DOE was lacking documentation for each claiming requirement, and as a result, could not submit Medicaid reimbursement claims and ultimately, maximize its Medicaid reimbursement revenue. It is of concern that DOE does not see the necessity and value of individually testing DOE’s compliance with each Medicaid claiming requirement. In the absence of this information, DOE cannot identify impediments to claiming and take necessary and appropriate action to develop and prioritize corrective action plans aimed at maximizing Medicaid reimbursement revenue.

Recommendation

DOE should:

1. Perform a systematic analysis of those OT, PT, and Speech Therapy service encounters that do not pass the claim validation process to determine why those encounters did not meet Medicaid claiming requirements and to identify and prioritize corrective actions to maximize future Medicaid reimbursement revenues.

DOE Response: “The Department agrees with this recommendation to the extent that it already analyzes encounters that do not pass the claim validation process and identifies and prioritizes programs to maximize Medicaid reimbursement revenue. These actions have led to a steady increase of Medicaid reimbursement revenue in each year of our program’s existence.”

Auditor Comment: Contrary to DOE’s assertion, DOE generally does not perform a systematic analysis of those OT, PT, and Speech Therapy service encounters that do not pass the claim validation process. On July 29, 2020, DOE stated in a written response to questions posed by the auditors that “[w]e do not

perform additional checks on the encounters that fall off during the two-step validation, as the DOE's process correctly determines which related service sessions should be submitted for reimbursement based on the data we have. . . . we do analysis and checks on data both before and after for those potential claims not meeting the requirements (drop-off), and submitted claims that have been rejected. This includes:

- Analysis on Medicaid parental consents, with follow up to schools where consents have not been sent or received during the school year.
- Analysis on students who need a prescription/referral for service, prioritizing deployment of DOE physicians to work with students to obtain prescriptions where the potential for Medicaid reimbursements is greatest.”

Therefore, we reiterate our recommendation that DOE should perform a systematic analysis of those OT, PT, and Speech Therapy service encounters that do not pass the claim validation process to determine why those encounters did not meet Medicaid claiming requirements and to identify and prioritize corrective actions to maximize future Medicaid reimbursement revenues.

DOE Did Not Obtain Written Orders or Referrals

The NYS Medicaid Handbook states,

The written order/written referral (prescription) is the documentation that establishes medical necessity for the related service In order to bill Medicaid, a written order/written referral from a qualified Medicaid provider is required. Written orders/written referrals must be prospective and must be kept on file.

The NYCDOE Medicaid Billing Policy and Procedures Manual states,

Where the DOE seeks to claim for related services that require a written order/written referral (prescription) in order to establish that the service is medically necessary, the DOE will obtain such an order. An order/referral is valid for the time period contained in the order up to one year.

DOE stated that “NYCDOE Physicians create orders for all NYC District and Charter school students who receive Occupational and or Physical therapy. Referrals for speech services are created by [Speech-Language Pathologist] SLP providers, whether they are employed by DOE or contract providers.” With regard to Speech Therapy services provided by DOE employees, DOE stated that

As part of the Memorandum of Agreement between the DOE and the [United Federation of Teachers] UFT (signed November 30, 2016) that allows DOE access to the SLP license of DOE speech providers, a requirement is set forth that speech providers must create referrals for service within 10 school days of first serving a student.

Further, DOE stated that it incentivized DOE employees to obtain SLP licenses by offering them a \$5,000 salary differential.

Additionally, DOE vendor contracts state that they shall provide properly licensed providers and that

Each year, prior to the commencement of services, it shall be the responsibility of the Contractor to ensure that each Speech Language Pathologist assigned to provide and/or supervise Speech-Language services under the Contract completes a Speech Language Referral.

DOE RSA and IA contracts do not require Speech Therapy providers to write referrals for Speech Therapy services. However, DOE informed us that each year it advises independent providers that they must write referrals. DOE provided us with guidance that it shares each year which states that

If you are a speech provider with an SLP, complete an Electronic Speech Referral for each student on your caseload. If you do not have the SLP and serve under the supervision of a speech therapist with an SLP, your supervisor should complete an Electronic Speech Referral for each student on your caseload.

NYSED-approved school contracts require them to “comply with all applicable Medicaid regulations, and ensure related services are provided per guidelines in the New York State Education Department’s Medicaid Provider Policy and Billing Handbook.” Additionally, NYSED-approved school contracts state that, if directed, they,

shall distribute and collect Board-provided prescriptions/orders/authorizations/referrals for service forms (collectively referred to as “related service forms”) to students’ parents/guardians. The Center-based Provider shall track the return of the related service forms and enter other information as required in EasyTrac. If related service forms are not returned, Provider shall send the parent/guardian a follow-up letter, the content of which shall be supplied by the Board.

However, DOE did not ensure that written orders or referrals were obtained at all or timely for 419,966 of the 1,471,343—28.5 percent—OT, PT, and Speech Therapy service encounters which were documented as taking place in March 2018 and March 2019, and for which DOE could potentially have submitted Medicaid reimbursement claims as detailed in Table III and Table IV below.

Table III

Analysis of Written Orders and Referrals for Documented OT, PT, and Speech Therapy Service Encounters for March 2018

School Setting	Documented OT, PT, and Speech Therapy Service Encounters for Which DOE Obtained Written Orders or Referrals		Documented OT, PT, and Speech Therapy Service Encounters for Which DOE Did Not Obtain Written Orders or Referrals Timely or at All		Documented OT, PT, and Speech Therapy Service Encounters for Which DOE Did Not Obtain Written Orders or Referrals	Documented OT, PT, and Speech Therapy Service Encounters for Which DOE Did Not Obtain Written Orders or Referrals at All
	#	%	#	%		
Public Schools	399,897	68.0%	188,116	32.0%	79,322	108,794
Traditional Public Schools	375,848	69.2%	167,222	30.8%	73,209	94,013
Charter Schools	24,049	53.5%	20,894	46.5%	6,113	14,781
Non-Public Schools	100,999	67.8%	48,054	32.2%	8,988	39,066
NYSED-Approved Schools for Students with Disabilities	93,173	76.1%	29,326	23.9%	5,403	23,923
Other Non-Public Schools	7,826	29.5%	18,728	70.5%	3,585	15,143
Total	500,896	68.0%	236,170	32.0%	88,310	147,860

Table IV

Analysis of Written Orders and Referrals for Documented OT, PT, and Speech Therapy Service Encounters for March 2019

School Setting	Documented OT, PT, and Speech Therapy Service Encounters for Which DOE Obtained Written Orders or Referrals		Documented OT, PT, and Speech Therapy Service Encounters for Which DOE Did Not Obtain Written Orders or Referrals Timely or at All		Documented OT, PT, and Speech Therapy Service Encounters for Which DOE Did Not Obtain Written Orders or Referrals	Documented OT, PT, and Speech Therapy Service Encounters for Which DOE Did Not Obtain Written Orders or Referrals at All
	#	%	#	%		
Public Schools	452,567	75.3%	148,548	24.7%	73,426	75,122
Traditional Public Schools	426,794	77.6%	122,983	22.4%	63,331	59,652
Charter Schools	25,773	50.2%	25,565	49.8%	10,095	15,470
Non-Public Schools	97,914	73.5%	35,248	26.5%	8,986	26,262
NYSED-Approved Schools for Students with Disabilities	91,528	85.9%	14,975	14.1%	4,046	10,929
Other Non-Public Schools	6,386	24.0%	20,273	76.0%	4,940	15,333
Total	550,481	75.0%	183,796	25.0%	82,412	101,384

DOE informed us that OMO monitors written order and referral status on a monthly basis and that monitoring procedures vary for public schools and NYSED-approved schools for students with disabilities as well as by service type.

With regard to public schools, DOE stated that

For OT/PT orders in public schools, OMO developed an algorithm to manage the deployment of physicians. This algorithm considers the amount of services that are being provided. . . and the overall Medicaid eligibility percentage at the school to create a ranking of where physicians should be deployed in order to create prescriptions (if warranted) that will lead to the greatest amount of revenue. . . .

For speech referrals in public schools, OMO runs a report that looks at referral output from DOE SLPs. . . . OMO has created a report that monitors the completion of the referrals, and shares it with the Office of Related Services (ORS); referral status is discussed during weekly phone calls between OMO and ORS, and ORS supervisors follow up as needed with providers.

However, DOE did not ensure that written orders or referrals were obtained at all or timely for 336,664 of the 1,189,128—28.3 percent—public school service encounters which were documented as taking place in March 2018 and March 2019, and for which DOE could potentially submit Medicaid reimbursement claims, as detailed in Table III and IV above.

From March 2018 to March 2019, DOE increased the number and percentage of service encounters for which it obtained written orders or referrals. However, DOE still needs to make significant progress in this area by holding providers accountable for writing orders or referrals for services, as detailed in Table V below.

On December 8, 2020, DOE stated that “[f]or speech services, approximately 750 out of 3,762 DOE speech providers do not have the SLP license required by NYS Medicaid for reimbursement.” (This issue is further discussed in a separate section of the report below.) Therefore, DOE stated that DOE employees who do not hold an SLP license cannot write referrals for Speech Therapy. However, as acknowledged by DOE, DOE employs more than 3,000 individuals who have SLP licenses and who can write referrals for Speech Therapy for students.

With regard to NYSED-approved schools for students with disabilities, DOE stated that since November 2018, OMO has been sending each school a monthly email “with a list of students who are receiving services but do not have a current order for those services. The email identifies the student and the service(s) for which an order is missing.” Since implementing this procedure, DOE significantly increased the number and percentage of NYSED-approved school service encounters for which it obtained written orders or referrals as detailed in Table III and Table IV above, and Table V below. However, DOE should hold NYSED-approved schools fully accountable for obtaining written orders or referrals.

DOE did not address who is responsible for providing and monitoring written orders and referrals for other non-public schools.

Table V

Analysis of Written Orders/Referrals
by Service and Provider Type for
March 2018 and March 2019

Service/ Provider Type	March 2018				March 2019			
	Documented OT, PT, and Speech Therapy Service Encounters for Which DOE Obtained Written Orders or Referrals		Documented OT, PT, and Speech Therapy Service Encounters for Which DOE Did Not Obtain Written Orders or Referrals		Documented OT, PT, and Speech Therapy Service Encounters for Which DOE Obtained Written Orders or Referrals		Documented OT, PT, and Speech Therapy Service Encounters for Which DOE Did Not Obtain Written Orders or Referrals	
	#	%	#	%	#	%	#	%
Speech Therapy	309,397	65.9%	160,031	34.1%	352,005	74.8%	118,346	25.2%
DOE Employee	225,450	64.5%	124,034	35.5%	270,789	76.1%	85,102	23.9%
SLP	215,322	75.0%	71,646	25.0%	250,442	89.6%	29,198	10.4%
Non-SLP	10,128	16.2%	52,388	83.8%	20,347	26.7%	55,904	73.3%
Contracted Vendor Provider	22,869	61.1%	14,547	38.9%	24,689	58.0%	17,896	42.0%
Independent Provider	13,609	65.0%	7,326	35.0%	11,035	58.7%	7,757	41.3%
NYSED- Approved School Provider	47,469	77.1%	14,124	22.9%	45,492	85.7%	7,591	14.3%
OT	136,969	70.2%	58,214	29.8%	144,854	73.8%	51,293	26.2%
DOE Employee	93,872	76.4%	28,943	23.6%	103,055	79.7%	26,309	20.3%
Contracted Vendor Provider	9,487	41.7%	13,250	58.3%	8,303	38.2%	13,459	61.8%
Independent Provider	4,788	45.3%	5,787	54.7%	3,473	35.1%	6,417	64.9%
NYSED- Approved School Provider	28,822	73.8%	10,234	26.2%	30,023	85.5%	5,108	14.5%
PT	54,530	75.3%	17,925	24.7%	53,622	79.1%	14,157	20.9%
DOE Employee	37,111	77.5%	10,785	22.5%	37,248	79.2%	9,796	20.8%
Contracted Vendor Provider	272	17.2%	1,309	82.8%	246	16.6%	1,235	83.4%
Independent Provider	265	23.5%	863	76.5%	115	11.9%	850	88.1%
NYSED- Approved School Provider	16,882	77.3%	4,968	22.7%	16,013	87.6%	2,276	12.4%
Total	500,896	68.0%	236,170	32.0%	550,481	75.0%	183,796	25.0%

Recommendations

DOE should:

2. Engage additional qualified Medicaid providers to write orders and referrals for OT and PT service encounters for which DOE could potentially submit Medicaid reimbursement claims;

DOE Response: “The Department agrees with this recommendation to the extent that our process and resources are evaluated periodically, and with respect to this particular resource, the Department has already taken steps to increase physician work hours.”

3. Enforce the Memorandum of Agreement between the DOE and the UFT and ensure that DOE SLPs write referrals for Speech Therapy services which they provide or supervise within 10 school days of first serving a student;

DOE Response: “The Department agrees with this recommendation, which is consistent with its practice and longstanding policy. However, the Department is not clear what enforcement is recommended by the Comptroller beyond the measures, consistent with the Agreement, that have already been shared in the course of this audit.”

Auditor Comment: Contrary to DOE’s assertion, DOE did not consistently enforce the UFT agreement and ensure that DOE-employed SLPs wrote referrals for Speech Therapy services within 10 school days. As noted in the finding, DOE-employed SLPs did not write referrals for 29,198 of the 279,640—10.4 percent—Speech Therapy service encounters which they provided in March 2019. Therefore, we reiterate our recommendation that DOE should ensure that DOE SLPs write referrals for Speech Therapy services which they provide or supervise within 10 school days of first serving a student.

4. Enforce contract requirements and hold contracted vendors and NYSED-approved schools fully accountable for obtaining written orders or referrals; and

DOE Response: “The Department agrees with this recommendation to the extent that it does hold contracted vendors and NYSED-approved schools accountable for obtaining written orders and referrals. As to the NYSED-approved schools, the Department is unclear from this recommendation what is meant by contract enforcement as the current contract does not allow for withholding payment, but other measures that the Department uses in our enforcement of the Agreement. These are reimbursable programs that are operated by agencies approved and funded through state regulations. Any recommendation related to their operation should be implemented with the approval of NYSED and changes in the law, when applicable.”

Auditor Comment: Contrary to DOE’s assertion, DOE did not consistently enforce contract requirements and hold contracted vendors and NYSED-approved schools accountable for obtaining written orders or referrals. As noted in the finding, contracted vendors did not write referrals for 32,590 of the 65,828—49.5 percent—OT, PT and Speech service encounters which they provided in March 2019. Further, NYSED-approved schools did not write referrals for 14,975 of the 106,503—14.1 percent—OT, PT and Speech service encounters which they provided in March 2019.

DOE is also incorrect in asserting that “the current contract does not allow for withholding payment.” DOE contracts with NYSED-approved schools state that “[t]he Contractor shall not be entitled to demand or receive full or partial payment, until *each and every one of the provisions of this Agreement is complied with*, and the Chancellor or his designee shall have given written certification to that effect.” [Emphasis added.] Therefore, we reiterate our recommendation that DOE should enforce contract requirements and hold contracted vendors and NYSED-approved schools accountable for obtaining written orders or referrals.

5. Contractually require independent providers who have an SLP to write referrals for Speech Therapy services.

DOE Response: “The Department agrees with this recommendation and will take steps toward updating the Independent Provider Agreement to reference speech referrals. However, the Department expects that this action will have minimal impact on increasing revenue as independent speech providers already create referrals for the students on their caseload, as outlined in yearly communications they receive from the Department and reflected in the data shared with the auditors.”

Auditor Comment: Contrary to DOE’s assertion, independent Speech Therapy providers did not consistently write referrals. As noted in the finding, independent providers did not write referrals for 7,757 of the 18,792—41.3 percent—Speech Therapy service encounters which they provided in March 2019.

DOE Did Not Ensure That Provider Credentials Were Obtained and Verified

The NYS Medicaid Handbook states that OT, PT, and Speech Therapy services must be provided by a licensed provider or must be provided “under the direction” or “under the supervision” of a licensed provider (UDO) to be eligible for Medicaid reimbursement. Additionally, NYS Medicaid Handbook states that “[i]t is the responsibility of Medicaid billing providers (school districts and counties) to verify qualifications prior to submitting claims for Medicaid reimbursement” and the “provider’s NPI must be identified on Medicaid claims submitted for reimbursement.”

DOE informed us that its current practice is to hire only licensed OT and PT providers. For DOE OT and PT providers, DOE stated that “[n]ew therapists must have valid, current license and NPI information . . . as part of the hiring process. Until this information is entered, therapists cannot be processed for hiring and will not be paid.” Further, DOE stated that

The Human Resources Civil Service Management Unit updates therapist’s [license] registration expiration dates . . . on a monthly basis. If they find a missing NPI for a provider who was hired before this process was implemented, the Civil Service Management Unit ascertains the NPI from npinumberlookup.org.

With regard to Speech Therapy providers, DOE stated that

[s]peech teachers do not need a SLP to be hired. To work in a school as teacher of speech, they need initial certification from the [NYSED]. That is how the qualifications are evaluated. Most of hires out of graduate school do not have the SLP upon hire because they need **one year of paid, supervised service** - also known as the clinical fellowship year (CFY). Once they have that year, they can

apply for their SLP license from the [NYSED] Office of Professions. [Emphasis added.]

Further, DOE stated that Speech Therapy providers must provide a valid, current license and NPI to receive the \$5,000 salary differential. DOE stated that “[w]hen a provider’s license registration period is coming near, the Office of Human Resources sends the provider a notification email with steps for updating their registration.”

The NYCDOE Medicaid Billing Policy and Procedures Manual states that DOE asks for proof of license and registration at the time of hire and that “for previously hired SLPs the DOE will either request copies of their licensure or match license information to the NY State database using employee Social Security Numbers.” Additionally, the NYCDOE Medicaid Billing Policy and Procedures Manual states that “DOE has obtained NPIs for all attending related services providers and will require them of all newly hired clinical employees. NPIs are stored as part of the DOE’s human resources database.”

Additionally, DOE vendor contracts state that they shall provide properly licensed providers and that they must supply license and registration information and NPIs for each individual provider. Further, DOE vendor contracts state DOE “reserves the right to withhold payment to the Contractor for a session” if an NPI has not been provided. DOE stated that “[c]ontract providers must enter their NPI in vendor portal or they will not be paid.”

The NYCDOE Medicaid Billing Policy and Procedures Manual states that “[o]nly NYS licensed and currently registered physical therapists, licensed occupational therapists and speech language pathologists may be approved to provide services pursuant to RSAs or Independent Service Provider Agreements.” Further, the NYCDOE Medicaid Billing Policy and Procedures Manual states that independent providers “must submit NYS certification, licensure, and/or registration to the DOE.” Independent provider agreements state that providers must have an NPI number and must write it on each invoice.

NYSED-approved schools for students with disabilities are required by contract to “ensure that all clinicians providing related services under this agreement are properly licensed in New York State and have valid NPI numbers.” For NYSED-approved schools, DOE stated that each month it sends emails “to providers with missing or expired credentials and their school leaders” and provided us with sample notifications.

OMO verifies providers’ credentials and submits claims for only those service encounters that were provided by or supervised by individuals with both a valid license and NPI. Although all Occupational Therapists, Physical Therapists, and contracted Speech Therapists are required to be licensed or supervised by a licensed individual, and DOE reported that 80 percent of DOE-employed Speech Therapists are licensed, DOE did not take all necessary steps: (1) to determine whether providers had a valid license and NPI; (2) to update license and NPI data; and (3) to take corrective action, as needed, to ensure that DOE could submit Medicaid reimbursement claims.

DOE did not ensure that provider licenses were obtained and verified for 236,793 of the 1,471,343—16.1 percent—OT, PT, and Speech Therapy service encounters which were documented as taking place in March 2018 and March 2019, and for which DOE could potentially submit Medicaid reimbursement claims as detailed in Table VI below. Further, DOE did not ensure that provider NPI’s were obtained and verified for 384,314 of the 1,471,343—26.1 percent—OT, PT, and Speech Therapy service encounters which were documented as taking place in March 2018 and March 2019, and for which DOE could potentially submit Medicaid reimbursement claims as detailed in Table VII below.

This happened, in part, because DOE did not obtain and verify license and NPI information for services which were required to be provided by or supervised by a licensed individual. Additionally, for DOE-employed Speech Therapy providers—including newly-hired employees who are being supervised in their CFY—DOE does not “submit claims where services were provided ‘under the direction’ or ‘under the supervision’ of an appropriate practitioner for services provided in a DOE community school for any service.” Since DOE does not submit claims for Speech Therapy UDO services in DOE community schools, DOE does not record and verify the supervising provider’s license and NPI information for those service encounters. On December 8, 2020, DOE stated that, “[f]or speech services, approximately 750 out of 3,762 DOE speech providers do not have the SLP license required by NYS Medicaid for reimbursement.” This issue is further discussed in a separate section of the report below.

Table VI

Analysis of Provider License for
Documented OT, PT, and Speech
Therapy Service Encounters for
March 2018 and March 2019

School Setting	March 2018				March 2019			
	Documented OT, PT, and Speech Therapy Service Encounters for Which DOE Obtained Provider License		Documented OT, PT, and Speech Therapy Service Encounters for Which DOE Did Not Obtain Provider License		Documented OT, PT, and Speech Therapy Service Encounters for Which DOE Obtained Provider License		Documented OT, PT, and Speech Therapy Service Encounters for Which DOE Did Not Obtain Provider License	
	#	%	#	%	#	%	#	%
Public Schools	508,712	86.5%	79,301	13.5%	496,060	82.5%	105,055	17.5%
Traditional Public Schools	467,548	86.1%	75,522	13.9%	460,283	83.7%	89,494	16.3%
Charter Schools	41,164	91.6%	3,779	8.4%	35,777	69.7%	15,561	30.3%
Non-Public Schools	122,672	82.3%	26,381	17.7%	107,106	80.4%	26,056	19.6%
NYSED-Approved Schools for Students with Disabilities	97,961	80.0%	24,538	20.0%	83,444	78.3%	23,059	21.7%
Other Non-Public Schools	24,711	93.1%	1,843	6.9%	23,662	88.8%	2,997	11.2%
Total	631,384	85.7%	105,682	14.3%	603,166	82.1%	131,111	17.9%

Table VII

Analysis of Provider NPI for
Documented OT, PT, and Speech
Therapy Service Encounters for
March 2018 and March 2019

School Setting	March 2018				March 2019			
	Documented OT, PT, and Speech Therapy Service Encounters for Which DOE Obtained Provider NPI		Documented OT, PT, and Speech Therapy Service Encounters for Which DOE Did Not Obtain Provider NPI		Documented OT, PT, and Speech Therapy Service Encounters for Which DOE Obtained Provider NPI		Documented OT, PT, and Speech Therapy Service Encounters for Which DOE Did Not Obtain Provider NPI	
	#	%	#	%	#	%	#	%
Public Schools	444,790	75.6%	143,223	24.4%	442,166	73.6%	158,949	26.4%
Traditional Public Schools	438,882	80.8%	104,188	19.2%	438,174	79.7%	111,603	20.3%
Charter Schools	5,908	13.1%	39,035	86.9%	3,992	7.8%	47,346	92.2%
Non-Public Schools	107,441	72.1%	41,612	27.9%	92,632	69.6%	40,530	30.4%
NYSED-Approved Schools for Students with Disabilities	103,154	84.2%	19,345	15.8%	90,425	84.9%	16,078	15.1%
Other Non-Public Schools	4,287	16.1%	22,267	83.9%	2,207	8.3%	24,452	91.7%
Total	552,231	74.9%	184,835	25.1%	534,798	72.8%	199,479	27.2%

Table VIII

Analysis of Provider License and
NPI for Documented OT, PT, and
Speech Therapy Service Encounters
for March 2018 and March 2019

Service Type/ Provider Type	March 2018				March 2019			
	No License		No NPI		No License		No NPI	
	Providers	Encounters	Providers	Encounters	Providers	Encounters	Providers	Encounters
Speech								
DOE Employee	580	62,516	614	65,223	685	76,251	712	77,569
Contracted Vendor Provider	45	2,839	520	32,887	153	15,424	572	41,599
Independent Provider	20	1,483	285	19,174	47	3,519	287	17,307
NYSED- Approved School Provider	222	13,946	174	11,711	248	12,991	158	9,173
OT								
DOE Employee	46	3,595	200	13,703	41	3,661	180	12,641
Contracted Vendor Provider	38	3,478	299	17,842	42	3,189	306	19,249
Independent Provider	18	1,359	168	9,362	15	722	162	8,721
NYSED- Approved School Provider	143	6,818	98	5,507	148	6,788	100	5,365
PT								
DOE Employee	72	5,229	74	4,790	65	4,829	65	4,053
Contracted Vendor Provider	6	141	53	1,454	13	261	48	1,411
Independent Provider	13	504	54	1,055	8	196	43	851
NYSED- Approved School Provider	82	3,774	48	2,127	87	3,280	39	1,540

OMO's verification process did not identify all services encounters provided by appropriately licensed individuals in part because encounters were not associated with a Provider Identification Number (Provider IDs) which is used to verify credentials. We informed DOE of this issue. In response, DOE deployed a system fix to ensure Provider IDs are associated with encounters. Further, DOE submitted retroactive claims for those encounters that were previously not associated with a Provider ID. DOE projected that it would receive gross Medicaid reimbursement revenues totaling \$498,507. However, DOE submitted gross Medicaid reimbursement claims totaling only \$104,954 for retroactive claims for those encounters that were previously not associated with a Provider ID because not all projected claims met the documentation requirements.

Furthermore, it appears that OMO's verification process may not have identified all service encounters provided by appropriately licensed individuals because data owned and maintained by NYSED Office of the Professions was inaccurate; and therefore, DOE may not have submitted reimbursement claims for encounters which met Medicaid reimbursement documentation requirements. To verify provider credentials, DOE matches its employee and contracted provider

license data to the NYSED Office of the Professions license data. However, based on our review, the NYSED Office of the Professions data which DOE relied upon was inaccurate because it did not include valid social security numbers for 3,073 providers, which are used to match license information. Specifically, the NYSED Office of the Professions license data included 2,039 social security numbers which included an alpha character and 1,034 social security numbers which were reported as “000000000.”

Additionally, we matched DOE provider and DOE NPI data using the provider first and last name. For March 2018, we identified 29 providers (who provided 2,329 service encounters), and for March 2019, we identified 20 providers (who provided 1,548 service encounters), with the same first and last name for whom the Provider ID did not match—either because the service provider did not appear in DOE’s provider data file or the Provider ID was different in the DOE provider data file and the DOE NPI files.

Consequently, DOE may not have identified appropriately licensed providers with a valid NPI, and DOE may not have submitted reimbursement claims for encounters which met Medicaid reimbursement documentation requirements.

DOE Response: “A review of the perceived erroneous data noted the following: 492 licensees had residences outside of the United States; 389 had residences within the United States, but outside of the tristate area; and 567 had profession codes outside of ones used by the Department in the Medicaid claiming program. The Comptroller had ample time to confirm with the NYSED Office of the Professions whether there was reasonable explanation for the perceived data errors. Instead, they choose to make a recommendation that expands on the responsibility of the Department on data that we have no control over, and the data obviously covers more than the related service providers serving Department’s students.”

Auditor Comment: Contrary to DOE’s assertion, the profession codes in the NYSED Office of the Professions license data included *only* providers of Medicaid covered services. DOE relies upon the NYSED Office of the Professions license data to match provider license information as part of its Medicaid claiming validation process. Therefore, it is in fact the responsibility of DOE to ensure that the data it is relying on is accurate and complete by reviewing it and performing basic data integrity tests, including but not limited to, tests for proper field content (alpha/numeric), null or blank fields, and truncations.

Recommendations

DOE should:

6. Conduct a comprehensive review of provider license and NPI data to identify providers, including DOE employees, who do not have a valid license and NPI on file;

DOE Response: “The Department agrees with this recommendation, which is consistent with its practice and longstanding policy, as has been shared with the Comptroller in the course of this audit.”

Auditor Comment: Please see Auditor Comment to Recommendation #7 below.

7. Follow up with providers to obtain current license and NPI data;

DOE Response: “The Department agrees with this recommendation, which is consistent with its practice and longstanding policy, as has been shared with the Comptroller in the course of this audit.”

Auditor Comment: Contrary to DOE’s assertion, DOE did not provide us with documentation to show that it conducted a *comprehensive* review of provider license and NPI data to identify providers who do not have a valid license and NPI on file. Additionally, DOE provided us with documentation to show only that it followed-up with DOE-employed SLPs and NYSED-approved schools to obtain providers’ current credentials. As noted in the finding, DOE did not ensure that provider licenses were obtained and verified for 236,793 of the 1,471,343—16.1 percent—OT, PT, and Speech Therapy service encounters which were documented as taking place in March 2018 and March 2019. Further, DOE did not ensure that provider NPI’s were obtained and verified for 384,314 of the 1,471,343—26.1 percent—OT, PT, and Speech Therapy service encounters which were documented as taking place in March 2018 and March 2019. Therefore, we reiterate our recommendations that DOE should conduct a comprehensive review of provider license and NPI data to identify providers who do not have a valid license and NPI on file and follow up with providers to obtain current credentials.

8. Enforce contracted vendor, independent provider, and NYSED-approved school contract terms to ensure that services are provided by appropriately credentialed individuals;

DOE Response: “The Department agrees with this recommendation, which is consistent with its practice and longstanding policy. It is worth noting that these contracts are for the provisions of special education services recommended in an IEP, and they are to be delivered, first and foremost, consistent with the IDEA.”

Auditor Comment: Contrary to DOE’s assertion, DOE did not consistently enforce contract terms to ensure that services were provided by appropriately credentialed individuals. As noted in Table VIII above, DOE did not ensure that provider credentials were obtained and verified for contracted vendors, independent providers, and NYSED-approved schools. Therefore, we reiterate our recommendation that DOE should enforce contracted vendor, independent provider, and NYSED-approved school contract terms to ensure that services are provided by appropriately credentialed individuals.

9. Ensure that it exercises its contractual right to withhold payments from contracted vendors that fail to submit NPI data;

DOE Response: “The Department agrees with this recommendation inasmuch as it reflects current practice, since our payment system prevents contract providers from being paid unless they submit NPI data.”

10. Review DOE provider and NPI data to ensure that it is accurate and complete and properly identifies appropriately credentialed providers; and

DOE Response: “The Department agrees with this recommendation, which is consistent with its practice and longstanding policy, as has been shared with the Comptroller in the course of this audit.”

Auditor Comment: Contrary to DOE’s assertion, DOE did not review DOE provider and NPI data to ensure that it is accurate and complete and properly

identifies appropriately credentialed providers. As noted in the finding, we identified service providers who did not appear in DOE's provider data file at all. Additionally, there were instances when the Provider ID was different in the DOE provider data file and the DOE NPI files. Therefore, we reiterate our recommendation that DOE should review its provider and NPI data to ensure that it is accurate and complete and properly identifies appropriately credentialed providers.

11. Review the NYSED Office of the Professions license data and inform NYSED Office of the Professions about data integrity issues, including but not limited to, social security numbers which include alpha characters and social security numbers which were reported as "000000000."

DOE Response: "The Department disagrees with this recommendation. The Department already has a mechanism in place to prevent any missing data or not conforming entry to be transferred to a Medicaid claim. As to the reporting to NYSED Office of the Professions, as the Department noted in the detailed response above (page 8), the state's use and purpose of the data was never evaluated by the auditors, so the recommendation is made without any evidence of whether these are purposeful entries in the state data system."

Auditor Comment: As noted in the finding, DOE relies upon the NYSED Office of the Professions license data to match provider license information as part of its Medicaid claiming validation process. Therefore, DOE should ensure that the data it is relying on is accurate and complete by reviewing it and informing NYSED Office of the Professions about potential data integrity issues.

DOE Did Not Obtain Parental Consent to Bill Medicaid

The NYS Medicaid Handbook states that "[i]n order to bill for Medicaid eligible services and evaluations. . . . The school district/county must obtain parental consent to bill Medicaid (in accordance with IDEA) prior to billing Medicaid." Accordingly, the DOE Claiming Rules state,

In order for DOE to claim for Medicaid, parent/guardian of the student should have provided a consent to access/share child's information for the purpose of reimbursement through Medicaid. Upon consent, claims can be submitted for all the future services along with prior services up to the period allowed by New York State Department of Health. Claims cannot be submitted if parent has not provided a consent or withdrawn an already provided consent or refused to provide a consent.

However, DOE did not obtain parental consent to bill Medicaid for 152,976 of the 1,471,343—10.4 percent—OT, PT, and Speech Therapy service encounters which took place in March 2018 and March 2019, and for which DOE could potentially submit Medicaid reimbursement claims. For 129,689 of the 152,976—84.8 percent—services encounters, DOE did not obtain parental consent to bill Medicaid because it did not ensure that schools distributed Parental Consent Forms to students. For the remaining 23,287 service encounters, DOE distributed but did not collect Parental Consent Forms, as detailed in Table IX and Table X below.

Table IX

Analysis of Parental Consent for
Documented OT, PT, and Speech
Therapy Service Encounters for
March 2018

School Setting	Documented OT, PT, and Speech Therapy Service Encounters for Which DOE Obtained Parental Consent		Documented OT, PT, and Speech Therapy Service Encounters for Which DOE Did Not Obtain Parental Consent		Documented OT, PT, and Speech Therapy Service Encounters for Which DOE Did Not Obtain Parental Consent Because DOE Did Not Distribute a Parental Consent Form	Documented OT, PT, and Speech Therapy Service Encounters for Which DOE Did Not Obtain Parental Consent Because DOE Did Not Collect a Parental Consent Form
	#	%	#	%		
Public Schools	545,579	92.8%	42,434	7.2%	33,008	9,426
Traditional Public Schools	525,911	96.8%	17,159	3.2%	14,012	3,147
Charter Schools	19,668	43.8%	25,275	56.2%	18,996	6,279
Non-Public Schools	121,465	81.5%	27,588	18.5%	23,919	3,669
NYSED-Approved Schools for Students with Disabilities	115,518	94.3%	6,981	5.7%	4,069	2,912
Other Non-Public Schools	5,947	22.4%	20,607	77.6%	19,850	757
Total	667,044	90.5%	70,022	9.5%	56,927	13,095

Table X

Analysis of Parental Consent for
Documented OT, PT, and Speech
Therapy Service Encounters for
March 2019

School Setting	Documented OT, PT, and Speech Therapy Service Encounters for Which DOE Obtained Parental Consent		Documented OT, PT, and Speech Therapy Service Encounters for Which DOE Did Not Obtain Parental Consent		Documented OT, PT, and Speech Therapy Service Encounters for Which DOE Did Not Obtain Parental Consent Because DOE Did Not Distribute a Parental Consent Form	Documented OT, PT, and Speech Therapy Service Encounters for Which DOE Did Not Obtain Parental Consent Because DOE Did Not Collect a Parental Consent Form
	#	%	#	%		
Public Schools	546,324	90.9%	54,791	9.1%	47,224	7,567
Traditional Public Schools	525,096	95.5%	24,681	4.5%	21,948	2,733
Charter Schools	21,228	41.3%	30,110	58.7%	25,276	4,834
Non-Public Schools	104,999	78.9%	28,163	21.1%	25,538	2,625
NYSED-Approved Schools for Students with Disabilities	101,021	94.9%	5,482	5.1%	3,577	1,905
Other Non-Public Schools	3,978	14.9%	22,681	85.1%	21,961	720
Total	651,323	88.7%	82,954	11.3%	72,762	10,192

Traditional public schools and NYSED-approved schools for students with disabilities are responsible for distributing and collecting Parental Consent Forms and the DOE Compliance Office and OMO are responsible for monitoring collection and follow-up with schools that are behind on collection. For traditional public schools, DOE provided us with a sample Quarterly Advisory Report and a sample targeted message sent as needed to school principals advising them of Parental Consent Forms which were not distributed or collected. For NYSED-approved schools, DOE provided us with a sample email “sent to school leaders each month calling their attention to the number of students who do not have a current consent response for the school year.” However, based on our findings, DOE did not hold schools fully accountable for distributing Parental Consent Forms and distribution rates decreased from March 2018 to March 2019.

DOE initially informed us that Charter schools were not required to obtain Parental Consent Forms. However, subsequently, during the course of the audit, DOE informed us that it began working with Charter schools to obtain Parental Consent Forms. Specifically, DOE informed us that it undertook initiatives in September 2019 to train Charter school personnel to collect Parental

Consent Forms, and undertook further initiatives in January 2020 to monitor and report Charter schools' Parental Consent Form collection rates.

DOE did not address who is responsible for distributing and monitoring Parental Consent Forms for other non-public schools.

Recommendations

DOE should:

12. Ensure that Parental Consent Forms are distributed to and tracked for all public and non-public school students who are mandated to receive special education services; and

DOE Response: "The Department agrees with this recommendation, which is consistent with its practice and longstanding policy, as has been shared with the Comptroller during this audit."

Auditor Comment: Contrary to DOE's assertion, DOE did not consistently ensure that Parental Consent Forms were distributed to and tracked for all public and non-public school students who were mandated to receive special education services. Primarily, as noted in the finding, DOE did not distribute Parental Consent Forms for 72,762 of the 734,277 services encounters provided in March 2019. Therefore, we reiterate our recommendation that DOE should ensure that Parental Consent Forms are distributed to and tracked for all public and non-public school students who are mandated to receive special education services.

13. Continue its efforts to work with Charter schools to obtain Parental Consent Forms and prioritize efforts for those Charter schools with poor collection rates.

DOE Response: "The Department agrees with this recommendation since it is consistent with the information already shared with the auditors and has no plans to discontinue these efforts."

DOE Did Not Ensure That Providers Certified Session Notes

The NYS Medicaid Handbook states that "[s]ession notes must be completed . . . and must include . . . [the] signature and credentials of the servicing provider and dated signature/credentials of supervising clinician as appropriate." The SESIS Guide for Completing an Encounter Attendance Service Record states that "[c]ertifying a Service Record is equivalent to attaching an electronic version of your signature. All services must be certified, including absences and cancellations." Accordingly, the DOE Medicaid Claiming Rules state that "[i]n order for DOE to claim for Medicaid, the delivery of service i.e. service session record should have been certified by the provider."

However, DOE did not ensure that providers certified session notes for 27,627 of the 1,471,343 OT, PT, and Speech Therapy service encounters which were documented as taking place in March 2018 and March 2019, and for which DOE could potentially submit Medicaid reimbursement claims. Providers who record session notes in EasyTrac (NYSED-approved schools) cannot submit session notes without certifying them. DOE did not include this same feature in SESIS.

As part of its validation process, OMO checks whether providers certified session notes and submits Medicaid reimbursement claims only for certified service encounters. However, OMO does not review uncertified session notes and follow-up with those providers who partially completed session notes and providers who completed but did not certify session notes.

DOE Response: “[T]he Department provided an explanation that accompanied a data report on uncertified SESIS entries which stated: . . . ‘Uncertified records may exist in SESIS for any number of reasons, including but not limited to records that were pre-scheduled by the provider but never deleted when schedules changed; records that were not deleted when a provider entered and certified the correct encounter, etc.; draft records awaiting revision/certification, etc.’ . . .

Most concerning regarding the process used by the Comptroller is that they included the uncertified notes in their analysis without making any attempt to assess the legitimacy of any of these entries.”

Auditor Comment: Contrary to DOE’s assertion, we assessed uncertified encounters and took appropriate steps to remove duplicate service encounters. With regard to prescheduled records or records that were not deleted when a provider entered and certified the correct encounter, we only used the most recent encounter record on file for each student based on the Student ID, service type, group type, service date, and Provider ID to eliminate any potential duplicate encounters entered by providers.

Recommendations

DOE should:

14. Determine whether it is feasible to employ system edits in SESIS to ensure that providers certify session notes; and

DOE Response: “The Department disagrees with this recommendation as it completely disregards the explanation for the use and purpose of uncertified or ‘draft’ session notes that has been shared with the Comptroller in numerous interviews and communications. Draft session notes are a valuable tool for providers in scheduling and caseload management, and this Report provides no explanation for how the removal of this tool would lead to an increase in Medicaid reimbursement revenue.”

Auditor Comment: Uncertified encounters represent service encounters that were recorded by providers in DOE’s system of record but were not certified as accurate and complete. In its own response, DOE acknowledged that uncertified encounters may represent, among other things, “draft records awaiting revision/certification.” As previously stated, providers who record session notes in EasyTrac (NYSED-approved schools) cannot submit session notes without certifying them. However, DOE did not include this same feature in SESIS. Therefore, we reiterate our recommendation that DOE should determine whether it is feasible to employ system edits in SESIS to ensure that providers certify session notes.

15. Review uncertified session notes and follow-up with those providers who partially completed session notes and providers who completed but did not certify session notes.

DOE Response: “The Department disagrees with this recommendation for reasons already stated in recommendation 14 above.”

Auditor Comment: Please see Auditor Comment to Recommendation #14 above.

DOE Did Not Ensure That Providers Selected Appropriate CPT Codes

The NYS Medicaid Handbook states that “[c]laims submitted to Medicaid must...[i]nclude the appropriate Current Procedural Terminology (CPT) code(s).” The NYCDOE Medicaid Billing Policies and Procedures Manual states that

CPT codes are numbers assigned to services that practitioners may provide to a patient including medical, surgical and diagnostic activities. CPT codes are then used by insurers to identify the service provided and ultimately the reimbursement rates. . . .

The NYC DOE will only bill for service codes that are on the list of codes approved for SSHSP billing.

However, DOE did not ensure that providers selected a CPT code at all or selected an appropriate CPT code for the service setting for 26,717 of the 1,471,343 OT, PT, and Speech Therapy service encounters which were documented as taking place in March 2018 and March 2019, and for which DOE could potentially submit Medicaid reimbursement claims. For the 26,717 service encounters, providers did not select a CPT code at all for 23,626 encounters and providers did not select an appropriate CPT code for 3,091 encounters. This happened because: (1) DOE did not employ system edits to require providers to select a CPT code; (2) DOE did not employ system edits to allow providers to select only appropriate CPT codes based on the service setting type (i.e., individual or group); and (3) OMO did not review service encounters that did not pass its validation process.

With regard to SESIS, DOE informed us that “[w]hen a provider enters an encounter service type and group/individual notation, the available CPT codes filter automatically This functionality was implemented in 2017.” However, based on our analysis, the SESIS edit did not work in a very limited number of instances—i.e., for 30 service encounters. Moreover, DOE did not state that it implemented this same edit for EasyTrac.

DOE Response: “The Department has reviewed the supporting data provided by the auditors in support of this finding and note that the auditors either disregarded Medicaid claiming guidance that was shared with them during interviews and in writing, and/or made several errors in analyzing the data.

- As outlined in the *Preschool/School Supportive Health Services Program (SSHSP) Questions and Answers guide* (page 35), services delivered individually to a student who is mandated for group therapy are not reimbursable. This instance often occurs when a student is scheduled for group therapy and the other members of the group are absent or when the students can only be served individually because of the lack of other students to be grouped with. In these instances, the Department counsels providers to record the session with a CPT code for group therapy, which is consistent with the recommended service, and the actual group size of one. As explained to the auditors, **Medicaid will not reimburse a service provided to a student with a group recommendation on their IEP when only one student was present for the service.**

Despite this explanation, the Report incorrectly counts 2,678 of these services as they did not have the group CPT code. Using an individual CPT code in those cases would have been wrong. [Emphasis in original.] . . .

- As noted in the Report, the Department provided documentation for the SESIS edit to restrict CPT codes based on the identified service and group type, which was implemented in 2017. The information was shared based on a request made by the Comptroller. An edit for the EasyTrac system was implemented in August 2020, which was not shared with the auditors at that time because it was not part of their request, and the Department was not aware of any findings or issues with the EasyTrac data at that time.”

Auditor Comment: As noted in the finding, 23,626 of the 26,717 service encounters cited for not containing an appropriate CPT code were for instances in which a provider did not select a CPT code at all and not for the group size requirement not being met. In addition, we did not cite providers for selecting inappropriate CPT codes based on the “group size.” For the remaining 3,091 service encounters we compared the *group setting* entered by the provider in the session note (not the group size) to the CPT code. We note that this methodology is consistent with DOE’s own programming logic.

Furthermore, contrary to DOE’s assertion, DOE was aware of “findings or issues with the EasyTrac data” and had the opportunity to provide us with documentation for the EasyTrac system edit. On May 3, 2021 and June 1, 2021, we provided DOE with data files containing all EasyTrac service encounters cited for not containing an appropriate CPT code for March 2018 and March 2019. Since May 3, 2021, DOE was aware of issues with EasyTrac data and had the opportunity to provide us with supporting documentation to show that it implemented an EasyTrac system edit. However, DOE chose not to provide us with such documentation.

Recommendations

DOE should:

16. Implement a system edit which prepopulates applicable and appropriate CPT code options for the provider to select based on service type and group size selected by the provider; and

DOE Response: “The Department agrees with this recommendation, as this system edit has already been implemented as noted in the Comptroller’s Report.”

Auditor Comment: As previously stated, the SESIS edit did not work in a very limited number of instances—i.e., for 30 service encounters. Therefore, DOE should ensure that the SESIS system edit is functioning as intended.

17. Implement a system edit which requires providers to select an applicable and appropriate CPT code for covered services which were rendered and recorded.

DOE Response: “The Department agrees with this recommendation, as this system edit has already been implemented as noted in the Comptroller’s Report.”

Auditor Comment: Contrary to DOE’s assertion, DOE did not provide documentation to show that DOE implemented a system edit which requires providers to select an applicable and appropriate CPT code for covered services

which were rendered and recorded. As noted in the finding, 23,626 of the 26,717 service encounters cited for not containing an appropriate CPT code were for instances in which a provider did not select a CPT code at all. Therefore, we reiterate our recommendation that DOE should implement a system edit which requires providers to select an applicable and appropriate CPT code for covered services which were rendered and recorded.

DOE Did Not Ensure That Providers Adequately Described Students' Progress

The NYS Medicaid Handbook states,

Service providers must maintain contemporaneous records. Session notes specifically document that the servicing provider delivered certain diagnostic and/or treatment services to a student on a particular date. Session notes must be completed by all qualified providers furnishing the services authorized in a student's IEP for each Medicaid service delivered and must include: ...

Brief description of the student's progress made by receiving the service during the session.

With regard to the description of students' progress, the DOE Medicaid Claiming Rules state,

In order for DOE to claim for Medicaid, the therapists are required to provide quality session notes when recording the encounter attendance. As the quality of the notes can't be assessed electronically, the only validation which can be done is that the notes [describing students' progress] are populated and are greater than 20 characters.

However, DOE did not ensure that providers recorded session notes which adequately described students' progress (i.e., greater than 20 characters) for 16,373 of the 1,471,343 OT, PT, and Speech Therapy service encounters which were documented as taking place in March 2018 and March 2019 and for which DOE could potentially submit Medicaid reimbursement claims. DOE informed us that EasyTrac has a system edit which requires providers to record session notes describing students' progress with at least 20 characters. However, DOE does not employ a similar edit in SESIS.

DOE stated that

Schools have primary responsibility for ensuring that services are consistently provided and reported, with support from central OT, PT and Speech supervisors/managers and Borough Office staff. The Office of Medicaid Operations utilizes the underlying data to monitor the input of session notes.

However, DOE's monitoring is not effective because it does not include a review of the number of characters in SESIS session notes describing students' progress to ensure that encounters meet DOE's Medicaid Claiming Rules. Consequently, OMO is not aware of whether and to what extent schools and providers are recording adequate session notes as required.

Recommendation

DOE should:

18. Review SESIS encounter descriptions of students' progress to ensure they are adequate (i.e., greater than 20 characters) or add a system edit to SESIS which requires the provider to enter at least 20 characters in the session note when describing the student's progress for all therapy sessions.

DOE Response: "The Department will take this recommendation under advisement, inasmuch as the Department has released an RFP for a new special education data management system."

DOE Failed to Ensure That Providers Documented Service Encounters

As previously stated, the NYS Medicaid Handbook states,

Service providers must maintain contemporaneous records. Session notes specifically document that the servicing provider delivered certain diagnostic and/or treatment services to a student on a particular date. Session notes must be completed by all qualified providers furnishing the services authorized in a student's IEP for each Medicaid service delivered and must include:

- Student's name
- Specific type of service provided
- Whether the service was provided individually or in a group (specify actual group size)
- The setting in which the service was rendered (school, clinic, other)
- Date and time the service was rendered (length of session – record session start time and end time)
- Brief description of the student's progress made by receiving the service during the session
- Name, title, signature and credentials of the servicing provider and dated signature/credentials of supervising clinician as appropriate.

DOE informed us that providers are generally required to record session notes, also known as encounters, electronically in SESIS or EasyTrac, and that SESIS and EasyTrac data is used to prepare Medicaid reimbursement claims.³

DOE uses the Weekly Mandated Services Report to monitor the initiation of mandated services. DOE informed us that once a student is assigned to a provider and a provider enters a first attend date, DOE operates under the assumption that mandated services are continually provided thereafter. For those students for whom a first attend date was recorded and therefore, were

³ DOE informed us that it allows contracted providers and RSA providers who provide special education services to pre-school age students to maintain paper records. Additionally, during the audit scope period, DOE allowed Charter school personnel who provide special education services to school-age students to maintain either electronic records in SESIS or paper records. On April 16, 2021, DOE stated that "DOE recently communicated to the charter sector that going forward entry of encounter attendance for services rendered by their staff would be required in the same manner that it is required of related service providers assigned directly by the DOE to work in charter schools."

presumably receiving services, we compared the number of mandated service sessions required by students' IEPs to the number of service sessions recorded in SESIS or EasyTrac for March 2018 and March 2019, to determine whether providers recorded session notes as required.⁴ We estimate that providers did not record session notes for 189,026 OT, PT, and Speech Therapy service encounters which appear to have taken place in March 2018 and March 2019 and should have been recorded in SESIS or EasyTrac, and for which DOE could potentially submit Medicaid reimbursement claims. Based on the service type, group size, and duration of the service encounters which appear to have taken place but were not documented, and the Medicaid reimbursement rates, we calculated that DOE could have received, *at maximum*, combined gross Medicaid reimbursements of \$6,369,734, as detailed in Table XI below.

For School Year 2018-2019, we estimate that DOE could have received, *at maximum*, combined gross Medicaid reimbursements of \$25,191,843.⁵

⁴ For March 2018, we compared students' IEP mandates and SESIS and EasyTrac encounter data for four weeks of service provision as follows: week of March 4, 2018 through March 10, 2018, week of March 11, 2018 through March 17, 2018, week of March 18, 2018 through March 24, 2018, and week of March 25, 2018 through March 31, 2018.

For March 2019, we compared students' IEP mandates and SESIS and EasyTrac encounter data for four weeks of service provision as follows: week of March 3, 2019 through March 9, 2019, week of March 10, 2019 through March 16, 2019, week of March 17, 2019 through March 23, 2019, and week of March 24, 2019 through March 30, 2019.

If a provider reported in SESIS or EasyTrac that a session did not take place because the provider or the student was absent or the session was canceled for some other reason, we did not cite providers for not recording session notes.

⁵ For School Year 2018-2019, we estimated potential Medicaid reimbursement revenue using the same methodology employed by DOE for its Speech Therapy UDO pilot project. In its Speech Therapy UDO pilot project report, DOE stated that it "made the following assumptions. . . . Since mandate data stays relatively constant over the year, the timing of when mandate data is pulled does not have a significant impact on the calculation of projected Medicaid reimbursements. . . . There are 36 service weeks or 8.5 service months in a school year." Therefore, we estimated potential Medicaid reimbursement revenue by multiplying the average weekly potential revenue for unrecorded service encounters in March 2019 by the number of weeks of service provision within the school year (i.e., 36 weeks).

Table XI

Undocumented OT, PT, and Speech
Therapy Service Encounters in
March 2018 and March 2019

School Setting	Service Type	March 2018		March 2019	
		Undocumented Encounters	Potential Revenue	Undocumented Encounters	Potential Revenue
Traditional public school	Speech Therapy	67,086	\$ 1,998,077	51,255	\$ 1,515,777
	OT	21,212	\$ 777,652	17,568	\$ 633,255
	PT	4,461	\$ 222,978	3,084	\$ 165,505
Charter	Speech Therapy	4,390	\$ 125,363	3,639	\$ 107,016
	OT	1,111	\$ 40,417	1,020	\$ 36,337
	PT	124	\$ 6,203	69	\$ 3,154
Nonpublic	Speech Therapy	5,065	\$ 250,900	3,920	\$ 194,097
	OT	1,905	\$ 92,555	1,576	\$ 83,074
	PT	776	\$ 56,495	765	\$ 60,879
Totals		106,130	\$ 3,570,640	82,896	\$ 2,799,094

As previously stated, DOE stated that

Schools have primary responsibility for ensuring that services are consistently provided and reported, with support from central OT, PT and Speech supervisors/managers and Borough Office staff. The Office of Medicaid Operations utilizes the underlying data to monitor the input of session notes.

However, DOE's monitoring is not effective because it does not include a comparison of students' IEP mandates and SESIS and EasyTrac encounter data to ensure that providers record session notes. Consequently, OMO is not aware of whether and to what extent schools and providers are documenting service encounters as required.

DOE Response: "This Report also assumes a value of \$25 million in gross reimbursements for, 'any instances in which the number of services encounters recorded for a student was less than the number of mandated service sessions required by the students' IEP.' To arrive at this number, the Comptroller assumed that any mandated session for which they did not find a documented session note in a specific week must have been fully delivered in accordance with all Medicaid guidelines but not entered by the provider. However, without assessing the validity of these entries, it is impossible for the auditors to know whether these entries reflect sessions delivered or not. This assumption is unrealistic and suggests a lack of effort in developing an accurate estimate

of potential revenue on the part of the auditors since no tests of the underlying data was even attempted. Any attempt for a projection using this data would have required statistical and objective testing, which the auditors did not conduct.”

Auditor Comment: As previously stated, DOE uses the Weekly Mandated Services Report to monitor the initiation of mandated services. DOE informed us that once a student is assigned to a provider and a provider enters a first attend date, DOE operates under the assumption that mandated services are continually provided thereafter. In performing our analysis, we adopted DOE’s own assumption.

Furthermore, as noted in Footnote 5 above, for School Year 2018-2019, we estimated potential Medicaid reimbursement revenue using the same methodology employed by DOE for its Speech Therapy UDO pilot project. In its Speech Therapy UDO pilot project report, DOE stated that it “made the following assumptions. . . . Since mandate data stays relatively constant over the year, the timing of when mandate data is pulled does not have a significant impact on the calculation of projected Medicaid reimbursements. . . . There are 36 service weeks or 8.5 service months in a school year.” Therefore, we estimated potential Medicaid reimbursement revenue by multiplying the average weekly potential revenue for unrecorded service encounters in March 2019 by the number of weeks of service provision within the school year (i.e., 36 weeks).

Recommendations

DOE should:

19. Regularly compare students’ IEP mandates and SESIS and EasyTrac provider assignment and encounter data to identify schools and providers that are not recording session notes as required; and

DOE Response: “The Department agrees with this recommendation, which is consistent with its practice and longstanding policy, as has been shared with the Comptroller in the course of this audit.”

Auditor Comment: Contrary to DOE’s assertion, DOE did not inform us or provide us with documentation to show that it regularly compares students’ IEP mandates and SESIS and EasyTrac provider assignment and encounter data to identify schools and providers that are not recording session notes. During the course of our audit, DOE informed us that it had prioritized monitoring the placement of services and the next logical step would be strengthening the connection between mandates and encounter data.

As noted in the finding, we estimate that providers did not record session notes for 189,026 OT, PT, and Speech Therapy service encounters which appear to have taken place in March 2018 and March 2019 and should have been recorded in SESIS or EasyTrac, and for which DOE could potentially submit Medicaid reimbursement claims. Therefore, we reiterate our recommendation that DOE should regularly compare students’ IEP mandates and SESIS and EasyTrac provider assignment and encounter data to identify schools and providers that are not recording session notes as required.

20. Follow up with those schools and providers that are not recording session notes as required and take appropriate corrective action.

DOE Response: “The Department agrees with this recommendation, which is consistent with its practice and longstanding policy, as has been shared with the Comptroller in the course of this audit.”

Auditor Comment: Please see Auditor Comment to Recommendation #19 above.

DOE Failed to Submit Medicaid Reimbursement Claims for All Covered Students and Service Types

As previously stated, the NYS Medicaid Handbook states that “[s]pecific services provided to school-age students from five years up to 21 years of age and to preschool students ages three to five years may be covered . . . if all Medicaid requirements are met.” Further, the NYS Medicaid Handbook states that covered services include:

- Medical Evaluation;
- Medical Specialist Evaluation;
- Psychological Evaluation;
- Audiological Evaluation;
- Physical Therapy;
- Occupational Therapy;
- Speech Therapy;
- Psychological Counseling;
- Skilled Nursing; and
- Special Transportation.

However, DOE does not, as a matter of policy, submit *any* Medicaid reimbursement claims for:

- Covered services provided to pre-school students who attend public schools and private schools other than NYSED-approved preschool special education programs operated pursuant to section 4410 of the New York State Education Law, or pre-school students who receive instruction at home or in the hospital; and
- Evaluations and reevaluations, Psychological Counseling, certain speech services, Special Transportation, and Skilled Nursing provided to public and non-public school students.

The above-mentioned issued are discussed more fully below.

DOE Does Not Submit Medicaid Reimbursement Claims for Psychological Counseling Services

Section 300.34 of the IDEA states that related services includes psychological services. The NYS Medicaid Handbook states that “[p]sychological counseling services include treatment using a variety of techniques to assist the child in amelioration of behavioral and emotional problems that are severe enough to require treatment.” The School Supportive Health Services Program Preschool Supportive Health Services Program Questions and Answers (the SSPSP Q&A) states that

In order to be Medicaid reimbursable, psychological services in an IEP must be provided by one of the following professionals, acting within his/her scope of practice:

- A NYS licensed and registered psychiatrist;
- A NYS licensed and registered psychologist;
- A NYS licensed and registered clinical social worker [LCSW]; or,
- A NYS licensed master social worker [LMSW] under the supervision of a licensed psychiatrist, licensed psychologist, or licensed clinical social worker.

The NYCDOE Medicaid Billing Policy & Procedure Manual states that “[a]t current time the DOE does not employ LCSWs or LMSWs, and will not be submitting claims for psychological counseling provided by DOE employees.” However, based on our review of DOE’s own data, DOE employed or contracted for qualified Medicaid providers.

After we presented our findings to DOE, DOE stated that it does not claim for Psychological Counseling service encounters because “NYS Medicaid requirements state that the student’s IEP must specifically recommend ‘Psychological Counseling.’ Most NYC DOE students are recommended for ‘Counseling Services,’ which is a different service and would not be reimbursable.”

During School Year 2018-2019, DOE documented that it provided 1,750,782 Counseling service encounters and 279 Psychological Counseling service encounters in SESIS. NYSED-approved schools did not document Counseling and Psychological Counseling service encounters in EasyTrac. Of those 1,751,061 combined service encounters, 230,541 service encounters: (1) were provided by qualified Medicaid providers; and (2) were provided to students who were eligible for Medicaid and less than 21 years old on the encounter date, and for whom a parent did not refuse consent to bill Medicaid. Furthermore, providers recorded a Medicaid eligible CPT code for Psychological Counseling for 61,792 of the 230,541 service encounters. Providers did not record a CPT code for the remaining 168,749 service encounters. Since licensed psychologists, LCSW’s, and LMSW’s classified services as Psychological Counseling in DOE’s system of record, we question whether DOE correctly classified students’ mandated services.

If those 61,792 service encounters met the definition of Psychological Counseling services and other Medicaid requirements and if it was clinically appropriate to classify services as “Psychological Counseling” on students’ IEPs, DOE could have received gross Medicaid reimbursement revenue totaling, *at maximum*, \$2,831,539, as detailed in Table XII below. Since NYSED-approved schools did not document Counseling and Psychological Counseling service encounters in EasyTrac, we could not estimate potential Medicaid reimbursement revenue for those Psychological Counseling services provided in NYSED-approved schools.

Table XII

Maximum Potential Medicaid
Reimbursement Revenue for
Psychological Counseling Services
for School Year 2018-2019

School Setting	Total Number of Documented Counseling and Psychological Counseling Service Encounters	Number of Documented Counseling and Psychological Counseling Service Encounters Which Were Provided by Qualified Individuals and Provided to Medicaid Eligible Students	Maximum Potential Medicaid Reimbursement Revenue
Public Schools	1,668,437	55,011	\$ 2,424,607
Traditional Public Schools	1,607,657	45,498	\$ 1,963,286
LCSW	136,269	25,431	\$ 1,082,042
LMSW	143,852	18,990	\$ 833,405
Psychologist	5,347	1,077	\$ 47,839
Other/Non-licensed	1,322,189	-	-
Charter Schools	60,780	9,513	\$ 461,322
LCSW	15,294	8,948	\$ 432,026
LMSW	22	1	\$ 66
Psychologist	1,921	564	\$ 29,229
Other/Non-licensed	43,453	-	-
Non-Public Schools	82,624	6,781	\$ 406,932
NYSED-Approved Schools for Students with Disabilities	Data unavailable	Data unavailable	Data unavailable
Other Non-Public Schools	82,624	6,781	\$ 406,932
LCSW	43,058	5,686	\$ 339,159
LMSW	3,643	463	\$ 25,285
Psychologist	5,710	632	\$ 42,488
Other/Non-licensed	30,213	-	-
Total	1,751,061	61,792	\$ 2,831,539

DOE is responsible for developing students' IEPs and has known since September 2009 that when clinically appropriate, students' IEPs must specifically recommend Psychological Counseling to be Medicaid reimbursable. The SSHSP Q&A states that

Effective 9/1/2009, in order for psychological counseling services to be Medicaid reimbursable, 'psychological counseling' must be listed on the IEP. The service provided must meet the definition of psychological counseling services included in [State Plan Amendment] SPA #09-61 ('treatment services using a variety of techniques to assist the child in ameliorating behavioral and emotional problems that are severe enough to require treatment.'). . . .

Please note that IEPs developed on or after January 1, 2012 must include the term 'psychological counseling' in order for those services to be Medicaid reimbursable.

On May 19, 2021, we requested that DOE provide us with documentation to show what kind of related services the IEP team can recommend and any supporting documentation and/or guidance provided to the IEP teams which shows when Counseling should be recommended by the IEP team and when Psychological Counseling should be recommended by the IEP team. In response, DOE provided us with the Special Education Standard Operating Procedures Manual. However, this manual does not include Psychological Counseling among the "Recommended Special Education Programs and Services." The Special Education Standard Operating Procedures Manual states that

Related services are developmental, corrective, and other supportive services that may be required to assist a student with a disability to receive meaningful educational benefit. These include assistive technology services, audiological services, counseling, interpreting services for the deaf and hard of hearing, occupational therapy, orientation and mobility services, parent counseling and training, physical therapy, school nurse services, speech language therapy, vision and hearing educational services and may include other developmental, corrective or supportive services if required.

Further, the Special Education Standard Operating Procedures Manual does not provide any guidance as to when Psychological Counseling should be recommended by the IEP team.

Recommendations

DOE should:

21. Provide guidance and training to staff responsible for developing IEPs as to the types of related services--i.e., Counseling and Psychological Counseling--, the types of services which fall within the description of Counseling and Psychological Counseling services, and when Counseling should be recommended by the IEP team and when Psychological Counseling should be recommended by the IEP team;

DOE Response: "The Department agrees with this recommendation, which is consistent with its practice and longstanding policy as generation of appropriate recommendations on an IEP are both professional standards and IDEA requirements. However, as this was an area not tested or evaluated by the Comptroller, the Department disagrees with the formulation of this recommendation."

Auditor Comment: In response to our request for guidance provided to the IEP teams, DOE provided us with only the Special Education Standard Operating Procedures Manual. However, the Special Education Standard Operating

Procedures Manual does not include Psychological Counseling among the “Recommended Special Education Programs and Services” and does not provide any guidance as to the types of services which fall within the description of Counseling and Psychological Counseling services, and when Counseling should be recommended by the IEP team and when Psychological Counseling should be recommended by the IEP team.

As noted in the finding, licensed psychologists, LCSW’s, and LMSW’s reported that they provided 61,792 Psychological Counseling services to Medicaid-eligible students for whom a parent did not refuse consent to bill Medicaid in DOE’s system of record. Therefore, we continue to question whether DOE correctly classified students’ mandated services and reiterate our recommendation that DOE should provide guidance and training to staff responsible for developing IEPs as to the types of related services--i.e., Counseling and Psychological Counseling--, the types of services which fall within the description of Counseling and Psychological Counseling services, and when Counseling should be recommended by the IEP team and when Psychological Counseling should be recommended by the IEP team.

22. Ensure that staff include Psychological Counseling on IEPs when determined to be clinically appropriate;

DOE Response: “The Department disagrees with this recommendation as it suggests that IEP teams should consider Medicaid reimbursement rather than student needs in development of counseling recommendations. The Department does not see cause to question the appropriateness of IEP counseling recommendations.”

Auditor Comment: DOE’s statement is patently untrue; no statement is made in the audit or implied that reimbursement claims should be prioritized over student needs. The report simply questions whether DOE correctly classified students’ mandated services on their IEPs since licensed psychologists, LCSW’s, and LMSW’s reported that they provided Psychological Counseling services to students in DOE’s system of record and therefore, recommends that DOE should ensure that staff include Psychological Counseling on IEPs *when determined to be clinically appropriate*.

23. Ensure that IEPs which include Psychological Counseling services and other student records identify the specific behavioral and emotional problems, describe them as severe or as requiring treatment where appropriate, and in such cases, specify that they are to be provided by a service provider type identified in SPA #09-61;

DOE Response: “The Department agrees with this recommendation, which is consistent with its practice and longstanding policy.”

24. Ensure that NYSED-approved schools document Psychological Counseling service encounters in EasyTrac; and

DOE Response: “The Department will take this recommendation under advisement.”

Auditor Comment: DOE should ensure that NYSED-approved schools document all covered services, including Psychological Counseling service

encounters in EasyTrac, so that DOE can maximize Medicaid reimbursement revenue.

25. Submit Medicaid reimbursement claims for Psychological Counseling service encounters which meet State and federal requirements.

DOE Response: “The Department will take this recommendation under advisement.”

Auditor Comment: DOE should submit Medicaid reimbursement claims for Psychological Counseling service encounters which meet State and federal requirements so that DOE can maximize Medicaid reimbursement revenue.

DOE Does Not Submit Medicaid Reimbursement Claims for Evaluations

As previously stated, the NYS Medicaid Handbook states that covered services include medical, medical specialist, psychological, and audiological evaluations. Further, the NYS Medicaid Handbook states that

The initial evaluation(s) for psychological counseling, physical therapy, occupational therapy, and speech therapy are not Medicaid reimbursable unless an IEP is developed which includes a recommendation for ongoing services in the same therapy type for which the student was evaluated. In addition, all other Medicaid requirements must be met . . .

Discipline specific re-evaluations (e.g., physical therapy, occupational therapy, etc.) are also eligible for Medicaid reimbursement when the recommendation for the re-evaluation is included in the student’s IEP prior to the re-evaluation being conducted and all other Medicaid requirements are met (written order/referral, qualified provider, and documented) regardless of whether or not ongoing services of that same therapy type will continue to be included in the student’s IEP.

The NYCDOE Medicaid Billing Policy & Procedure Manual states that “DOE does not plan to claim for evaluations (audiological, medical, medical specialist or psychological) at this time.” DOE does not submit Medicaid reimbursement claims for evaluations because SESIS does not support evaluations in the manner they need to be recorded and tracked for Medicaid billing. DOE stated that it “will work to make sure that the next iteration of SESIS will be able to support evaluations in the manner they need to be recorded and tracked in compliance with NYS Medicaid policy.”

Furthermore, DOE stated that the “pool of claimable evaluations is very small . . . the DOE has prioritized claiming with greater potential revenue.” Since DOE did not record evaluation data we could not independently estimate potential Medicaid reimbursement revenue. However, we disagree with DOE’s assessment based on DOE’s reported number of evaluations performed during School Year 2018-2019, DOE’s reported Citywide Medicaid enrollment rate, and Medicaid reimbursement rates for evaluations. In its Annual Special Education Data Report for School Year 2018-2019, DOE reported that it provided 14,053 initial evaluations which resulted in IEPs and 61,499 re-evaluations during School Year 2018-2019.⁶ Based on DOE’s reported Citywide Medicaid enrollment rate of 77.79 percent, we estimate that DOE could submit 58,772 Medicaid

⁶ DOE is required to report annual data regarding students receiving special education services in accordance with Local Law 27 of 2015 as amended by Local Law 183 of 2017 and Local Law 89 of 2018. DOE is required to report, among other things, data on evaluations and reevaluations and IEP meetings and classifications.

reimbursement claims for evaluations. Medicaid reimbursement rates for evaluations ranged from \$5.76 to \$147.11.

Recommendation

DOE should:

26. Ensure that evaluations are conducted and documented in a way that allows DOE to claim for covered services and submit Medicaid reimbursement claims for those services where appropriate.

DOE Response: “The Department will take this recommendation under advisement.”

Auditor Comment: DOE should ensure that evaluations are conducted and documented in a way that allows DOE to claim for covered services and submit Medicaid reimbursement claims for those services where appropriate so that DOE can maximize Medicaid reimbursement revenue.

DOE Does Not Submit Medicaid Reimbursement Claims for Certain Speech Therapy Services

As previously stated, the NYS Medicaid Handbook states that covered services include Speech Therapy. To be eligible for reimbursement by Medicaid, services must be provided by a licensed provider or must be provided “under the direction” or “under the supervision” of a licensed provider.. Further, the NYS Medicaid Handbook states that providers must “bill on an encounter-based claiming methodology, using the select list of Current Procedural Terminology (CPT) codes.” For Speech Therapy Services, the CPT codes include, among other things,

- Treatment of speech, language, voice, communication, and/or auditory processing disorder provided to an individual, CPT Code 92507;
- Treatment of speech, language, voice, communication, and/or auditory processing disorder provided to two or more individuals, CPT Code 92508;
- Laryngeal function studies, CPT Code 92520; and
- Treatment of swallowing dysfunction and/or oral function for feeding, CPT Code 92526.

However, DOE does not, as a matter of policy, submit Medicaid reimbursement claims for: (1) Speech Therapy services provided under the direction of licensed providers in “DOE community schools”; and (2) treatment of swallowing dysfunction and/or oral function for feeding in all schools.

The NYCDOE Medicaid Billing Policy and Procedures Manual states that DOE does not “submit claims where services were provided ‘under the direction’ or ‘under the supervision’ of an appropriate practitioner for services provided in a DOE community school for any service.” On December 8, 2020, DOE stated that

For speech services, approximately 750 out of 3,762 DOE speech providers do not have the SLP license required by NYS Medicaid for reimbursement. In February 2018, we launched a speech UDO pilot program, pairing 10 UDO supervisors with non-SLP speech providers. Ultimately, the program was not

successful, as the labor costs for supervision outweighed the potential revenue from Medicaid reimbursement.

However, the UDO pilot was not successful, in large part, because DOE did not ensure non-SLP speech providers recorded encounter data timely and did not ensure adequate UDO supervisor staffing levels. In its UDO pilot program report, DOE stated that it expected that 22,703 service encounters would meet UDO requirements. However, only 8,241 service encounters actually met UDO claiming requirements. DOE reported that providers recorded service encounters within 40 days for only 9,207 of the 22,703 service encounters which DOE expected would meet UDO requirements. Further, the UDO pilot program was limited to 10 UDO supervisors and 4 of the 10 UDO supervisors “were inactive due to leave or resignation, resulting in one to three months of work missed.” DOE stated that “[w]hen a supervisor is not active, the supervisor is not able to review encounters within 45 days of the service date and complete the other UDO documentation requirements.”

DOE stated that the UDO pilot program “focused on a sample month of November 2018. . . . November 2018 represented a month well into the pilot where there were no supervisors on leave or separated from service.” However, DOE did not address the issue of providers not recording encounter data timely.

Additionally, we note that since School Year 2013-14, DOE has submitted Medicaid reimbursement claims for UDO services provided to students in NYSED-approved schools. The NYCDOE Medicaid Billing Policy and Procedures Manual states that

Beginning in the 2013-14 school year, the DOE will begin claiming Medicaid reimbursements where appropriate for services provided to students attending New York State approved non-public schools as well as students receiving services from contract agency or independent providers. . . . the DOE will seek to claim sessions provided ‘under the direction of’ a licensed practitioner of the discipline for the service for Occupational or Physical Therapy and a qualified NYS licensed and current registered speech-language pathologist for Speech Therapy, provided that the qualified practitioner as per the NYS Medicaid Handbook.

DOE also did not submit any Medicaid reimbursement claims for the treatment of swallowing dysfunction and/or oral function for feeding. DOE stated that “at the DOE these services are not provided by speech providers, but rather by school health professionals such as school nurses, which are not allowable titles to claim this code under.”

However, based on our review of SESIS and EasyTrac data, DOE documented that it provided 26,912 service encounters for the treatment of swallowing dysfunction and/or oral function for feeding during School Year 2018-2019. Of those 26,912 service encounters, 16,236 service encounters: (1) were provided by licensed providers; and (2) were provided to students who were eligible for Medicaid and less than 21 years old on the encounter date, and for whom a parent did not refuse consent to bill Medicaid. If those 16,236 service encounters met Medicaid requirements, DOE could have submitted gross Medicaid reimbursement claims totaling, at *maximum*, \$1,481,373, as detailed in Table XIII below.

Table XIII

Maximum Potential Medicaid
Reimbursement Revenue for the
Treatment of Swallowing
Dysfunction and/or Oral Function for
Feeding for School Year 2018-2019

School Setting	Total Number of Documented Service Encounters for the Treatment of Swallowing Dysfunction and/or Oral Function for Feeding	Number of Documented Service Encounters Which Were Provided by Licensed Providers and Provided to Medicaid Eligible Students	Maximum Potential Medicaid Reimbursement Revenue
Public Schools	10,759	6,794	\$ 619,885
Traditional Public Schools	10,599	6,750	\$615,870
Charter Schools	160	44	\$4,015
Non-Public Schools	16,153	9,442	\$ 861,488
NYSED-Approved Schools for Students with Disabilities	14,337	8,496	\$775,175
Other Non-Public Schools	1,816	946	\$86,313
Total	26,912	16,236	\$ 1,481,373

After we presented our findings to DOE, DOE stated that

The suppression of the 92526 CPT code was lifted in 2018, however another edit in our claiming logic prevented these claims from being submitted to NYS Medicaid. DOE is currently working to update claiming logic so these claims will be submitted from now on. We will also submit a catch up claim for the past 15 months of services with CPT code 92526 that have not already been claimed under CPT code 92507.

Recommendation

DOE should:

27. Reconsider the feasibility of submitting Medicaid reimbursement claims for Speech Therapy services provided under the supervision of a licensed provider and provided to students in all public and non-public schools, including but not limited to, running a pilot with adequate staffing levels and compliance with timely and complete session notes.

DOE Response: “The Department disagrees with this recommendation as it has already run an intensive pilot program for UDO speech services in public schools

and determined that the labor costs for this program outweighed the benefits. Nothing in the Comptroller's Report provides substantive support for questioning that determination."

DOE Response: "[I]n 2018 the Department began a pilot program for claiming services for speech teachers who do not have the SLP license and were assigned to work 'under the direction of' (UDO) an SLP licensed supervisor. Ultimately, the Department concluded that the costs outweighed the potential Medicaid revenue derived from those services. However, the Report includes a recommendation to claim UDO speech in district schools despite the Department explaining to the auditors that it conducted this pilot to analyze the feasibility of such claim and the results were not as expected. . . . The justification from the auditors is that they were not satisfied with the results due to some of the challenges that occurred during the pilot, namely session notes not entered timely and supervisors resigning or taking leave. However, as the Department shared with the auditors in multiple interviews, these two challenges did not have a significant impact on the pilot results. As stated in the pilot summary report shared with auditors, only 451 (2%) of session notes were not able to be claimed due to a late entry by the provider; and, even when the Department analyzed months where all supervisors worked, it was not cost effective to proceed with the UDO program. The primary cause for the failure of this pilot came from other UDO requirements - such as an in-person observation by the supervisor for each student on the providers' caseload - which caused the labor costs of the program to exceed the realized Medicaid revenue. The Department also shared with auditors that even if the salaries for the four supervisors who resigned or took leave during the course of the pilot were eliminated from the cost calculations, realized revenue would not have outpaced costs."

Auditor Comment: In its Speech Therapy UDO pilot project report DOE stated that certain UDO requirements, among other things, contributed to the pilot's failure. However, in its pilot project report, DOE also stated that "DOE's share of Medicaid reimbursements generated from the UDO program was lower than expected" because "[t]he number of encounters entered by UDO providers was lower than expected." Additionally, DOE stated that staff supervisor shortages and providers' failure to timely record service encounters had a significant impact on the pilot results by stating,

New York State Medicaid policy requires that supervisors approve session notes within 45 days of the service being provided.

When a supervisor is not active, the supervisor is not able to review encounters within 45 days of the service date and complete the other UDO documentation requirements.

During the pilot period, four supervisors were inactive due to leave or resignation, resulting in one to three months of work missed.

In its Speech Therapy UDO pilot project report, DOE reported that it expected providers to record 22,703 service encounters within 40 days. However, providers timely recorded only 9,207 service encounters—40.6 percent. However, in its response, DOE acknowledges only that 451 service encounters were not able to be claimed due to late entry.

Furthermore, as previously stated, DOE has submitted Medicaid reimbursement claims for UDO services provided to students in NYSED-approved schools since School Year 2013-2014. Since DOE did not ensure that staff recorded encounters timely and did not ensure that the pilot was adequately staffed, DOE did not fully realize its Medicaid reimbursement potential. Consequently, it appears that DOE cannot make an informed decision on whether the UDO program is cost effective. Therefore, we reiterate our recommendation that DOE should reconsider the feasibility of submitting Medicaid reimbursement claims for Speech Therapy services provided under the supervision of a licensed provider and provided to students in all public and non-public schools, including but not limited to, running a pilot with adequate staffing levels and compliance with timely and complete session notes.

DOE Does Not Submit Medicaid Reimbursement Claims for Special Transportation Services

The NYS Medicaid Handbook states,

Special transportation is provided when a student requires specialized transportation equipment because of his/her disability as cited in 34 CFR §300.34(c)(16)(iii). [Specialized equipment (such as special or adapted buses, lifts, and ramps), if required to provide special transportation for a child with a disability.]

With some exceptions, Medicaid reimbursable special transportation is limited to those situations where the student receives transportation in a vehicle modified to accommodate the student's disability to obtain a Medicaid-covered service (other than transportation), or returns from a Medicaid-covered service.⁷

The SSHSP Q&A states that “[t]o be Medicaid reimbursable, special transportation services must be provided by a qualified Medicaid provider and attendance documentation (bus/transportation logs) is required.” Further, the SSHSP Q&A Question #72 states that

The transportation log must include the following elements for each trip:

- The student's name;
- Both the origination of the trip and time of pickup . . .
- Both the destination of the trip and time of drop off . . .
- Bus number or the vehicle license plate number; and,
- The full printed name of the driver providing the transportation.

Accordingly, the NYCDOE Medicaid Billing Policy & Procedure Manual states that

The DOE will submit claims only for transportation where transportation log information is available. . . .

records of bus transportation either from paper invoices (by ambulance companies) or data entry by bus companies (for school busing) are matched to

⁷ The exceptions include when a student: (1) resides in an area that does not have school bus transportation; or (2) is transported from school or home directly to and/or from a provider to receive a covered service.

records of Medicaid-claimable services and, where appropriate, claims are made for special transportation.

However, DOE did not submit any Medicaid reimbursement claims for Special Transportation.

On March 28, 2014, DOE entered into a contract with Navman Wireless to assist DOE with claiming Medicaid reimbursement for Special Transportation. According to a Special Commissioner of Investigation for the New York City School District report issued in September 2019 (the SCI Report), this contract “specified that Navman GPS tracking devices be placed on 6,000 special education school buses for the purpose of collecting electronic data such as the bus operator, the bus attendant, and the entrance and exit times of student ridership.”⁸ However, the SCI Report found that “[a]pproximately 75-80% of the time, drivers failed to ‘log onto’ the Navman system whether through mechanical or driver error, rendering the Navman devices in these instances useless” and therefore, “to date no money - none - was ever reimbursed to the DOE for Medicaid reimbursement for transportation, which was the original purpose of the contract.”

DOE informed us that in August 2013, the State changed the claiming rules for Special Transportation and as a result, the number of potential Medicaid reimbursement claims for Special Transportation is very limited. On April 20, 2021, we requested that DOE provide us with students’ IEP data for Special Transportation to enable us to independently quantify the number of students mandated to receive Special Transportation services and estimate potential Medicaid reimbursement revenue for Special Transportation.

On June 8, 2021, DOE provided us with Special Transportation IEP mandates and stated that this data is for

students who has or has had a special transportation recommendation on their IEP. . . . Like skilled nursing, this is output from SESIS that will need work from the DOE, if/when transportation claiming rules get expanded.

The Medicaid Handbook states that Special Transportation services included on students’ IEPs “may only be billed at the rate for each one-way trip.” However, the Special Transportation IEP mandates data generally does not include the service start and end dates and does not include the recommended frequency for each student (i.e., number of one-way trips). Since we generally could not determine when or how often Special Transportation services were mandated to be provided, we could not reliably estimate potential Medicaid reimbursement revenue for Special Transportation services. However, the SCI Report stated “[w]hile the exact amount the DOE could have recouped is unclear, Executive Director of Medicaid . . . told SCI investigators that from 2013 to present the DOE potentially could have recouped \$500,000 to \$1 million annually in Medicaid reimbursement for transportation.”

⁸ In September 2019, the Special Commissioner of Investigation for the New York City School District issued a report entitled *Taken for a Ride: An Examination of the DOE’s Office of Pupil Transportation Contract for Medicaid Reimbursement for Transportation*.

Recommendation

DOE should:

28. Ensure that contracted providers maintain electronic transportation logs which include Medicaid required elements for each trip and submit Medicaid reimbursement claims for Special Transportation services where appropriate.

DOE Response: “The Department agrees with this recommendation in as much as the Department has already shared with the Comptroller our plan to begin claiming for special transportation services.”

Auditor Comment: Contrary to DOE’s assertion, DOE did not provide us with information or documentation about its plan to begin claiming for Special Transportation services.

DOE Does Not Submit Medicaid Reimbursement Claims for Skilled Nursing Services

The NYS Medicaid Handbook states,

Skilled nursing services include but are not limited to:

- Health assessments and evaluations;
- Medical treatments and procedures;
- Administering and/or monitoring medication needed by the student during school hours; and
- Consultation with licensed physicians, parents and staff regarding the effects of the medication.

Skilled nursing services eligible for Medicaid reimbursement only include those medically necessary services the student requires to remain in school in order to benefit from special education services.

DOE informed us that it does not submit Medicaid reimbursement claims for Skilled Nursing services because it only provides a small number of Skilled Nursing service encounters and the Medicaid reimbursement rate is very low. However, DOE stated that it is considering claiming for Skilled Nursing services and further that “[t]his project is still in the exploratory phase. We anticipate prioritizing it during the 2021-22 school year.”

DOE provided us with Skilled Nursing IEP mandates. However, the majority of those mandates state that the frequency and duration is “as needed.” Therefore, we could not reliably estimate potential Medicaid reimbursement revenue for Skilled Nursing services.

Recommendation

DOE should:

29. Immediately start claiming for Skilled Nursing services which meet federal and State requirements.

DOE Response: “The Department agrees with this recommendation to the extent that the Department has already shared that it intends to begin development of Skilled Nursing claiming program in School Year 2021-2022.”

DOE Does Not Submit Medicaid Reimbursement Claims for Covered Services Provided to All Pre-School Students

As previously noted, the NYS Medicaid Handbook states that “[s]pecific services provided to school-age students from five years up to 21 years of age and to preschool students ages three to five years may be covered . . . if all Medicaid requirements are met.” DOE submits Medicaid reimbursement claims only for covered services provided to pre-school students who attend private NYSED-approved preschool special education programs operated pursuant to section 4410 of the New York State Education Law.

However, DOE does not submit Medicaid reimbursement claims for covered services provided to pre-school students who attend traditional public schools, Charter schools, and private schools other than NYSED-approved preschool special education programs, and pre-school students who receive instruction at home. DOE generally does not submit Medicaid reimbursement claims for such covered services provided to those pre-school students because it does not comply with Medicaid documentation requirements including, among other things, the requirements to:

- Obtain written orders or referrals which document the medical necessity for services;
- Document and certify service provision; and
- Obtain parental consent to bill Medicaid.

DOE stated that it previously prioritized other Medicaid claiming efforts. DOE stated “[t]he provision of services through Universal Pre-K, DOE Pre-K Centers, and community organizations is a recent effort by the DOE and developing the necessary supports to allow for claiming for Medicaid enrolled students receiving related services in these locations is underway.” Further, DOE stated that it “enacted the necessary protocols to support claiming for pre-K services provided in public schools, and the DOE is currently working towards solutions that will allow for the claiming of services provided to students attending pre-K through a community organization.” Specifically, in March 2019, DOE stated that

For students attending [Universal Pre-Kindergarten] UPK in a DOE school, the DOE has enacted protocols in the current school year to allow for collection of parental consent forms for pre-K students, as well as directed DOE physicians to include pre-K students for observations in consideration of a referral. We are beginning to see these students appear in our claims, and anticipate this will continue to grow.

For students attending pre-K at a [community-based organization] CBO or a Pre-K Center, the DOE is working on a project plan that will allow the special education providers to enter session notes for these students in SESIS. We are currently developing a level of effort and a project plan; we hope to have implementation for the next school year.

In April 2021, DOE stated that they are still working on a plan to allow special education providers for preschool-age students at CBO’s or preschool centers to enter session notes in SESIS. DOE stated that it expects to implement this plan later in the year.

Based on students' IEPs and the Medicaid reimbursement rates, we calculated that DOE could have received, *at maximum*, combined gross Medicaid reimbursements of \$5,653,628 for School Year 2018-2019.⁹

DOE Response: “The report assumes \$5.6 million in potential gross reimbursements for services delivered to preschool students who do not attend State Approved Non-Public Schools. This estimate is based solely on IEP mandate data without a comparison to placement data, making the assumption that every IEP recommendation leads to placement and service delivery; parents have the right to refuse placement. It also does not consider mandates for three-year-old students whose parents chose to extend Early Intervention services through the Department of Health and Mental Hygiene rather than moving forward with IEP services, and therefore not claimable by the Department.”

Auditor Comment: DOE did not provide us with information and supporting documentation that would allow us to identify and verify that preschool students were not placed and provided mandated services. Therefore, we had no basis to modify our finding. As previously stated, a preliminary draft report was sent to DOE and discussed at an exit conference on May 17, 2021. Further, on June 1, 2021, we shared the results of our analysis of Pre-K active mandates (other than NYSED-approved schools) and identified active mandates for each month within the school year.

Recommendation

DOE should:

30. Take all necessary steps to ensure that Medicaid documentation claiming requirements are met for covered services provided to preschool-age students and submit Medicaid reimbursement claims for those services where appropriate.

DOE Response: “The Department agrees with this recommendation to the extent that it has shared multiple documentations with the Comptroller of the Department’s efforts to document services to preschool students in public and private preschools, as well as the technical and operational challenges involved. The Department has also shared its success in overcoming those challenges to ensure that the Department can collect consents, obtain orders and referrals, and document SESIS session notes for these students in School year 2021-2022.”

⁹ For the period September 2018 through June 2019, we identified active IEP mandates for Medicaid eligible students who did not have a refused Parental Consent. For each month, we estimated potential Medicaid reimbursement revenue based on: (1) the service type, group size, frequency, and duration of the service encounters mandated by students' IEPs; (2) a sample 2018-2019 pre-school calendar; and (3) the applicable Medicaid reimbursement rates.

DETAILED SCOPE AND METHODOLOGY

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. This audit was conducted in accordance with the audit responsibilities of the City Comptroller as set forth in Chapter 5, §93, of the New York City Charter.

The scope of this audit covered the period of July 1, 2017 through June 30, 2019.

To gain an understanding of the rules, regulations, policies and procedures for which DOE must comply with when administering its program to seek Medicaid reimbursements for the provision of related services provided to special education students, we reviewed the following: Title 20 Subchapter 33: Individuals with Disabilities Act; the New York State SSHSP Medicaid-In-Education Medicaid Provider Policy and Billing Handbook, the New York State SSHSP Medicaid-In-Education Alerts; New York State SSHSP Questions and Answers; the New York City Department of Education Special Education Standard Operating Procedures Manual; the New York City Department of Education School and Preschool Supportive Health Services Medicaid Billing Policy and Procedures Manual; and the New York City Department of Education Current Claiming Rules.

To gain an understanding of DOE's Medicaid claiming process, we interviewed OMO officials including the Executive Director of Medicaid Operations, the Director of Project Management, the Operations Manager, and the Medicaid Compliance Officer. We also conducted a walkthrough of the Medicaid claiming process with officials from the DOE Financial Systems and Business Operations Office who are responsible for processing the data and transmitted the claim files. We also requested and obtained from OMO a flowchart of the DOE's Medicaid claiming process. We reviewed the flowchart to identify the various data sources, systems, and files, being used as part of the DOE's Medicaid claiming process.

To gain an understanding of DOE's controls over the monitoring of the provision of related services and documenting of related services, we interviewed the Executive Director of the Office of Related Services. We also conducted a walkthrough and observation of the Weekly Mandated Services Report with the Director of Reporting and Analytics.

To gain an understanding of the systems that DOE used to document the provision of related services, we conducted a walkthrough and observation of SESIS with DOE employed SESIS trainers. We also conducted a walkthrough and observation of EasyTrac with representatives from the vendor with whom DOE contracted with for the system.

To determine which systems are used to maintain encounter records, we provided DOE with an Encounter Service Table containing each type of school setting, provider, and age of the student (i.e., preschool or school age), and requested that DOE indicate for each category, which system the encounter records are maintained in and if those encounters are included in the claiming process. DOE provided the requested data, which indicated how encounter records are maintained and if the encounters are included in DOE's claiming process or not. We reviewed the Encounter Service Table and identified any areas in which: (1) providers are not required to enter encounters into SESIS or EasyTrac and instead maintain paper records; and (2) encounters which are entered into SESIS or EasyTrac are not included in DOE's Medicaid claiming process.

To determine which types of services DOE submits Medicaid reimbursement claims for we reviewed the New York City Department of Education School and Preschool Supportive Health Services Medicaid Billing Policy and Procedures Manual. We also reviewed this manual to identify any services which are Medicaid covered services, but DOE categorically does not submit Medicaid reimbursement claims for. For Psychological Counseling services, we reviewed IEP, encounter, and provider data to determine if the services provided would be eligible for Medicaid reimbursement based on the provider license type.

We judgmentally selected the months of March 2018 and March 2019 for our testing because of the following reasons: (1) the month of March generally does not have any scheduled days off for schools. This should mean that there will be the most school days available for related services to be provided and recorded by providers; (2) the month of March generally does not have any scheduled NY State exams which could potentially interrupt the provision of related services and the ability for providers to enter their encounters in a timely manner; (3) the month of March is not particularly close to the beginning or the end of the school year. This should mean that students have been assigned to providers and have been receiving their mandated related services regularly; and (4) the months of March 2018 and March 2019 were selected to determine if there has been any improvements over the period of a year.

We requested and obtained all data required to perform DOE's Medicaid claiming process for March 2018 and March 2019. Specifically, we requested the following data files: encounters records, encounter records with CPT codes, IEP, parental consent, written order/referrals, student Medicaid eligibility, and DOE employee and vendor provider licenses and NPI. Encounter data files are maintained in SESIS for students who attend public schools, Charter Schools, private and religious schools, and home and hospitals. Encounter data files are maintained in EasyTrac for students who attend New York State Approved Non-public schools. We also requested and obtained DOE's claim processing files for March 2018 and March 2019, including the potential claims file, suppressed claims files, claim files, and summary claim file including the remittance codes.

In addition to the data files requested and obtained for March 2018 and March 2019, we later expanded the scope of our testing based on preliminary findings and requested and obtained encounter and CPT code data for all services provided from July 1, 2018 through June 30, 2019.

To identify a population of encounters that DOE could potentially claim for School Year 2018-2019, we first identified all Speech Therapy, OT, and PT encounters entered into SESIS and EasyTrac from July 1, 2018 through June 30, 2019. We separated encounter data for each month during that period and identified unique service encounters provided to students who were under 21 years old at the date of service, did not have a refused parental consent status within 15 months of the service date, and who were Medicaid eligible and did not have a lapse in Medicaid coverage for that month in the associated Medicaid claim file. To eliminate any potential duplicate encounters entered by providers, we only used the most recent encounter record on file for each student based on the Student ID, service type, group type, service date, and Provider ID. We identified all CPT Codes recorded for this population of unique encounters by joining with the SESIS and EasyTrac encounter CPT Code data files. We applied service units to OT and PT individual encounters based on the service encounter duration, but not to exceed the IEP mandated duration. Based on this population of encounters, for each month we estimated total potential gross Medicaid reimbursement revenue based on the CPT Code recorded by the provider, the most recent IEP mandate on file for that student, service units, and the applicable Medicaid reimbursement rates. If a provider did not record a CPT Code, we applied the relevant CPT Code based on the service type, group size, and duration recorded by the provider. We then compared the total potential gross Medicaid reimbursements and the unique number of service

encounters for this population to the actual number of service encounters and gross Medicaid reimbursement amount claimed by DOE based on claim remittances and calculated the difference for each month.

To identify a population of encounters that DOE could potentially claim, we first identified all Speech-Language Therapy, Occupational Therapy, and Physical Therapy encounters entered into SESIS and EasyTrac in March 2018 and March 2019. Next, we identified those services which were provided to Medicaid eligible students (who did not have a lapse in Medicaid coverage for that month in the associated Medicaid claim file), who were under 21 years old at the date of service and did not have a refused parental consent status within 15 months of the date of service. To eliminate any potential duplicate encounters entered by providers, we only used the most recent encounter record on file for each student based on the Student ID, service type, group type, service date, and Provider ID. Using this methodology, we identified 737,066 encounters for March 2018 and 734,277 encounters for March 2019 for which DOE could potentially claim. We then used this population of encounters to test whether each encounter had the required documentation to submit a claim for Medicaid reimbursement. We further analyzed the encounters from this population which did not have the required documentation and were not claimed by DOE, to determine why and to what extent services were lacking the required documentation to be eligible for Medicaid reimbursement.

We reviewed the population of potential Speech-Language Therapy, Occupational Therapy, and Physical Therapy encounters for the months of March 2018 and March 2019 to determine if students had a signed parental consent on file within 15 months of the date of service. To identify the most recent parental consent status on file for each student for March 2018 and March 2019, we used the SESIS and EasyTrac parental consent files and filtered all consents within 15 months of the date of service. We then summarized the data by Student ID to get the most recent record for each student. For March 2018, we matched the most recent consent record for each student within 15 months of the date of service to the encounter data file based on the Student ID field. For March 2019, we matched the most recent consent record for each student within 15 months of the date of service, to the encounter data file based on the Student ID field. To identify the encounters which did not have a parental consent, we reviewed the consent status of the student for each encounter and considered the student to be lacking consent if it met one of two conditions: (1) the Student ID appeared in the consent file, but the student's consent status was blank (meaning a letter was printed but the parent never returned it); or (2) the Student ID and consent status were both blank (meaning the student does not appear in the consent data file at all and no letter was ever printed by DOE). We quantified our results by school setting for each year.

We reviewed the population of potential Speech-Language Therapy, Occupational Therapy, and Physical Therapy encounters for the months of March 2018 and March 2019 to determine if students had a written order/referral on file. To identify the most recent written order/referral on file for each student for March 2018 and March 2019, we used the Referrals and OTPT Orders files for SESIS and the EasyTrac Orders file for EasyTrac. We filtered all written orders/referrals prior to April 1, 2018 and April 1, 2019. For March 2018, we matched the most recent written order/referral record for each student and service type prior to April 1, 2018 to the encounter data file based on the Student ID and Service Type fields. For March 2019, we matched the most recent written order/referral record for each student and service type prior to April 1, 2019 to the encounter data file based on the Student ID and Service Type fields. When joining the records from the encounter file and the written order/referral files, we joined the most recent referral on file if the Student ID and Service Type matched and if the date of the written order was prior to the date of service. To identify the encounters which did not have a written order/referral, we

reviewed the written order status of the student for each encounter and considered the student to be lacking a written order/referral if it met one of two conditions: (1) the student did not have a written order/referral on file for the service type they are receiving; or (2) the student had a written order/referral on file for the service type but it was more than one year old and would not meet the claiming requirements. We quantified our results by service type and by school setting for each year.

We reviewed the population of potential Speech-Language Therapy, Occupational Therapy, and Physical Therapy encounters for the months of March 2018 and March 2019 to determine if providers were licensed and had a valid National Provider Identification (NPI) on file. To identify the provider license type and NPI for each encounter in SESIS, we used the DOE provider and vendor data files, the New York State license data files, and the NPI file. Using the Provider ID field from the encounter files, we first joined to the DOE provider and vendor files and then matched the provider information with the New York State license data files and NPI files. We also determined if the Provider ID field in the encounter data was blank and, therefore, were not able to verify the provider credentials. To identify the provider license type and NPI for each encounter in EasyTrac, we used the EasyTrac Potential Claims file and joined it with the EasyTrac encounter file based on the unique Internal ID. After joining the files, we were able to identify if the provider for each service had a license, the start and end date of their license, and if the provider had an NPI. For each encounter in March 2018 and March 2019 in SESIS and EasyTrac, we determined if the provider: (1) had a license; and (2) if the license was valid at the date of service by comparing the service date to the license start and end dates. For each encounter in March 2018 and March 2019, we determined if the provider: (1) had an NPI; and (2) if the NPI was 10 digits as required. We quantified our results by service type and by school setting for each year.

We reviewed the population of potential Speech-Language Therapy, Occupational Therapy, and Physical Therapy encounters for the months of March 2018 and March 2019 to determine if providers recorded adequate session notes to document the services they provided. For SESIS encounters we used a computed field to count the number of characters in the Session Note field. For EasyTrac we used the field Comment Length to identify the number of characters in each session note. For SESIS and EasyTrac, we identified all session notes that were 20 characters or less and did not meet DOE's requirement in its Current Claiming Rules. We quantified our results by school setting for each year.

We reviewed the population of potential Speech-Language Therapy, Occupational Therapy, and Physical Therapy encounters for the months of March 2018 and March 2019 to determine if providers certified the encounters they entered into SESIS. For EasyTrac, providers must certify the encounter record for each service they provided and do not have the ability to save the encounter record without certifying the session. For SESIS, providers can save the encounter record without certifying it. In the SESIS encounter data a value of "1" in the Service Delivery Confirm field would indicate that the provider certified the encounter, while a value of "0" would indicate that the encounter was not certified by the provider. We reviewed the SESIS encounter files for March 2018 and March 2019 and identified all encounters with a value of "0" in the Service Delivery Confirm field. We quantified our results by school setting for each year.

We reviewed the population of potential Speech-Language Therapy, Occupational Therapy, and Physical Therapy encounters for the months of March 2018 and March 2019 to determine if providers recorded logical CPT codes for the services they provided. We first identified all CPT codes entered for each encounter in SESIS and EasyTrac. For SESIS encounters, we joined the encounter file with the encounter CPT code file using the unique Encounter ID field. For EasyTrac, we joined the EasyTrac encounter file with the encounter CPT code file using the unique Internal ID field. For SESIS and EasyTrac encounters, we reviewed the CPT codes associated with each

encounter and determined if the codes met the claiming logic set by DOE's Current Claiming Rules. We identified encounters which did not meet DOE's Current Claiming Rules and reviewed to see if any CPT codes were eligible for claiming. We identified any encounters which DOE providers recorded CPT Code 92526 (i.e., treatment of swallowing dysfunction and/or oral function for feeding). We quantified the potential gross Medicaid reimbursement revenue available to DOE if CPT Code 92526 was included in their claims by calculating the number of services provided by eligible providers to Medicaid eligible students, under the age of 21 at the date of service, who did not have a refused parental consent status within 15 months of the date of service, and multiplied those services by the payment rate for the CPT Code. We also identified all encounters in which the provider selected a CPT code that did not match the group size as indicated on the encounter record. Lastly, we identified any instances in which the provider did not select a CPT Code for the encounter at all. We quantified our results by service type and by school setting for each year.

To determine if all Medicaid eligible students under the age of 21 who had an active IEP during March 2018 and March 2019 were receiving services and had associated encounter records in the encounter files, we first reviewed the IEP data to identify a population of IEP's which had recommendations for Speech Therapy, OT, and PT. Next, we identified all IEP's from that population who were for Medicaid eligible students by matching the CIN data file to the IEP file based on Student ID and ensured that the students did not appear as having a lapse in Medicaid coverage for that month in the associated Medicaid claim file. We then determined which IEP's from that population were for students who did not have a refused parental consent status on file within 15 months by linking the parental consent data file to the IEP file based on Student ID. Lastly, we used the student Birth Date field to identify any students who were over the age of 21 and eliminated those students' IEP's from our population. Using this population of IEP's, we summarized the data by Student ID and Document ID to obtain the most recent IEP record for each student. We then used the Student ID and service type fields from the population of active IEP's and performed a join with the encounter data in SESIS and EasyTrac to identify which IEP's did not have any associated encounter records at all. For each IEP that we identified that did not have any associated encounter data, we verified if the student had a "first encounter date" in the Weekly Mandated Services Report, which would indicate that the provider has begun providing the services recommended in the IEP. To obtain the "first encounter date", we joined the IEP data with each of the Weekly Mandated Services Reports for March 2018 and March 2019. We then added the "first encounter date" field from the Weekly Mandated Services Report to the IEP table for each respective year. Lastly, we isolated all IEP records which had a value in the "first encounter date" field and did not have any encounter records at all in the SESIS and EasyTrac encounter files. To quantify the potential gross Medicaid reimbursement revenue associated with the encounters that were never entered by the provider, we calculated the frequency of the service based on the IEP recommendation. We then applied the CPT code and service units applicable to the service recommended in the IEP (based on service type, group size, and duration) and quantified the potential gross Medicaid reimbursement revenue based on potential number of encounters provided during the months of March 2018 and March 2019. For students who did appear in the SESIS and EasyTrac encounter data files, we compared the number of mandated service sessions required by the students' IEP to the number of service sessions recorded in SESIS or EasyTrac for March 2018 and March 2019. For March 2018, we compared students' IEP mandates and SESIS and EasyTrac encounter data for four weeks of service provision as follows: week of March 4, 2018 through March 10, 2018, week of March 11, 2018 through March 17, 2018, week of March 18, 2018 through March 24, 2018, and week of March 25, 2018 through March 31, 2018. For March 2019, we compared students' IEP mandates and SESIS and EasyTrac encounter data for four weeks of service provision as follows: week of March 3, 2019 through March 9, 2019, week of March 10, 2019 through March 16, 2019, week of March 17, 2019 through

March 23, 2019, and week of March 24, 2019 through March 30, 2019. If a provider reported in SESIS or EasyTrac that a session did not take place because the provider or the student was absent or the session was canceled for some other reason, we did not cite providers for not recording session notes. We identified any instances in which the number of services encounters recorded for a student was less than the number of mandated service sessions required by the students' IEP. We quantified the potential gross Medicaid reimbursement revenue associated with the encounters not recorded based on the service recommended in the IEP (service type, group size, and duration) and quantified the potential gross Medicaid reimbursement amount revenue. We quantified our results by service type and by school setting for each year.

To estimate the number of evaluations and reevaluations performed by DOE, we reviewed the Annual Special Education Data Report for School Year 2018-2019 and identified the number of "classified" initial evaluations, all reevaluations, and all three year reevaluations.

To estimate potential Medicaid reimbursement revenue for Special Transportation, we reviewed the Special Commissioner of Investigation for the New York City School District report issued in September 2019.

To identify all pre-school age student mandates for students who did not attend NYSED-approved schools, we reviewed the pre-school IEP data file. For the period September 2018 through June 2019, for each month we separately identified active IEP mandates for Medicaid eligible students (who did not have a lapse in Medicaid coverage for the associated month in the Medicaid claim file) and who did not have a refused parental consent within 15 months from the date of service. We removed any students who appeared in the EasyTrac encounter data or who appeared in the Medicaid claim files. Based on this population of active mandates, for each month we estimated potential Medicaid reimbursement revenue based on: (1) the service type, group size, frequency, and duration of the service encounters mandated by students' IEPs; (2) a sample 2018-2019 pre-school calendar to identify the number of service weeks within each month (not to exceed 36 service weeks within the school year); and (3) the applicable Medicaid reimbursement rates.

The above tests, while not projectable to their respective populations wherever a sample was used, provided a reasonable basis for us to evaluate DOE controls over its Medicaid claims to maximize its Medicaid reimbursement revenue for special education services.



June 14, 2021

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The City of New York
Office of the Comptroller
One Centre Street
New York, NY 10007-2341

**Re: Audit Report on the Department's Efforts to Maximize
Medicaid Reimbursement Claims for Special Education Services
(FK18-111A)**

Dear Ms. Landa:

This letter constitutes the formal response of the New York City Department of Education (Department) to the recommendations made by The City of New York Office of the Comptroller (Comptroller) in its draft audit report on the Department's Efforts to Maximize Medicaid Reimbursement Claims for Special Education Services (Report).

For services delivered to our students with disabilities, the Department is committed to maximizing Medicaid reimbursement claims. This commitment includes ensuring that to the greatest extent possible, services for students with Individualized Education Programs (IEP) are provided in accordance with New York State (NYS) Medicaid claiming guidelines. Since the outset of our claiming program in Fiscal Year (FY) 13, the Department has increased net reimbursements each year prior to the onset of the global COVID-19 pandemic, sometimes doubling net revenue from the previous year. In review of the Comptroller's audit and recommendations, the Department offers responses focused on the following issues:

- The Report neither follows established frameworks for the stated objective, "to determine if the Department of Education has adequate controls over its Medicaid claims to maximize its Medicaid reimbursement revenue for special education services" nor does it establish reasonable baselines or benchmarks.
- The Report uses inflated figures and unfounded assumptions to overstate the amount of unclaimed potential revenue. By only sharing gross claim estimates, the Comptroller overstates them by at least 100%. The Report suggests that Medicaid reimbursement should be prioritized over student needs in the development of IEPs and coordination of service delivery.
- In development of the Report, the Comptroller made significant errors in their data evaluations and ignored Department responses and interviews for many of their findings.

Background

In 2013, the Department began the development and implementation of an encounter-based claiming program for allowable services that are provided and documented according to the State Plan Amendment. The Office of Medicaid Operations (OMO) is tasked with the coordination of programmatic and administrative efforts to maximize claims for Medicaid reimbursements of related services. Since its inception in 2013 OMO has worked to identify, prioritize, and implement projects to expand the Department's Medicaid revenue, based on analysis that weighs potential Medicaid reimbursement revenue against costs and efforts of implementation, which may include technological development, labor negotiations, increased staff, and contracting of vendors.

Based on these analyses, the Department's Medicaid program first began claiming Occupational and Physical Therapy services for students in Department schools in districts 1 through 32 and 75. Since then, the program has grown to include services for students in state approved non-public schools, and speech services for students in district schools who are served by a provider with the Speech Language Pathology (SLP) license. Through a process of analysis and prioritization, the Department's Medicaid reimbursements have increased significantly each year until the pandemic in 2020. It is worth noting that this audit did not include testing of claims submitted and paid under the Medicaid programs and it focused on estimating additional services that could have been claimed. Additionally, the Department's Medicaid claiming program has been audited multiple times by New York State Office of the Medicaid Inspector General as well as had claims reviewed by the federal Payment Error Rate Measurement program. Each of these audits and reviews have produced at most negligible findings, results which the Department attributes to the strength of our Medicaid claiming controls and compliance program.

Specific Responses

Report does not follow established frameworks for the stated objective, “to determine if the Department of Education has adequate controls over its Medicaid claims to maximize its Medicaid reimbursement revenue for special education services.”

The Report's stated audit objective was to determine if the Department has adequate controls over its Medicaid claims to maximize its Medicaid reimbursement revenue for special education services. However, instead of evaluating the controls that were in place—controls that were discussed at length with the auditors on several occasions and evidenced through written documentation—the audit solely focused on identifying instances where particular elements required for a Medicaid claim were missing from the Comptroller's formulated encounter data files¹ and arrived at the conclusion that the elements should have been present and were missing because the Department's controls must have failed. The auditors' approach and the related conclusions are incorrect and lacked foundation for multiple reasons noted below.

¹ The Comptroller's auditors combined March 2018 and March 2019 SESIS's certified encounter data file and SESIS's uncertified entries file provided by the Department to create two formulated data files (Encounter files) used to test other Medicaid requirements (*e.g.*, Referrals, Parent Consent). As noted in other part of this response, the uncertified entries are not encounters and in many instances do not reflect services delivered. These are therefore not claimable.

Although the Report claims that the auditors' objective was to evaluate the *adequacy* of the Department's controls over the maximizing of Medicaid revenue, the auditors did not establish reasonable criteria or evaluate the Department's controls. The Department strongly disagrees that the adequacy of our controls are only achieved when every service, delivered or not, is included in a claim and without assessing whether delivered services meet the requirement for a Medicaid claim. Further the Report presents in isolation a selective group of records (*e.g.*, Parent consent, Orders/Referrals) that are required for a valid Medicaid claim, and it then offers individual counts of missing records as if each individual record on its own can result in a Medicaid claim. Thus, it failed to assess these records as a set that must all be complete in order to submit a claim—which would be the correct approach to estimate potential revenue. This flawed methodology² was used by the auditors to formulate an expected number of records to be collected; and any instance where the collection did not achieve 100 *percent*, it was reported as a failure of the control. This is neither fair nor reasonable.

In developing controls, the Department is guided by the Committee of Sponsoring Organizations of the Treadway Commission which defines internal control as, "a process effected by an entity's oversight body, management, and other personnel that provides reasonable assurance that the objectives of an entity will be achieved." It further states that an effective system provides *reasonable* assurance regarding achievement of an entity's objectives. Generally Accepted Government Standards, which the Report indicated that the auditors have followed, echoes the same sentiment. In evaluating the adequacy of the Department's controls, the auditors neither formulated reasonable benchmarks nor tested the operation of the controls that were in place; as a result, the Department finds the assertions made in the Report inaccurate and the corresponding recommendations lacking appropriate support.

The Department also notes that the auditors' assessment of our efforts in maximizing revenue should have been evaluated in the context of costs and resources that would need to be devoted to achieving any additional revenue. The Report offers recommendations without including such cost/benefit analysis and discounts the explanation of the work done by the Department to prioritize resources to process claims of related services that offer positive revenue streams and are cost efficient. Our processes are constantly evolving; as the Department continues enhancing procedures and data collection practices, related services that currently may be cost-prohibitive or present challenges in collecting data, can become part of the claiming process in the future.

Report uses inflated figures and unfounded assumptions to overstate the amount of unclaimed potential revenue.

In the background section of the Report, the Comptroller shows the Department's Medicaid revenue for fiscal years 2016 – 2020 as net reimbursements and acknowledges that "the state and City share of total Medicaid reimbursements is 50 percent each." However, throughout the body of the document the Comptroller uses gross revenue amounts in their estimations of unclaimed revenue.

² The auditors designed several methodologies to estimate the number of records that should have been created, however, the methodologies had several flaws—which will be discussed further in this response—resulting in inflated numbers and unreasonable expectations. For example, in calculating the number of parental consents that were missing for the months of March 2018 and 2019, the auditors considered the lack of a refusal for parental consent as an indication that one should be present. As a result, the auditors failed to exclude students for which the Department has attempted to obtain the parental consent but the parent did not return a response to the request. Further, the Department is not aware of any tests conducted that evaluate the validity of those sessions.

In addition to the misleading gross figure of \$154 million for documented services, the Comptroller's estimate includes 750,036 services that would not have been eligible for Medicaid reimbursement in any case. The Department reached this conclusion by using the universe of services data that the Comptroller included in their calculation, and then identified services that would not qualify for reimbursement under the Medicaid program. A common example which was shared with the auditors is when a student is recommended in a group setting of two or more students but the student is served individually (group of one) – Medicaid will not reimburse a service provided to a student with a group recommendation on their IEP when only one student was present for the service. Notwithstanding this shortcoming, these services were included in the Comptroller's calculation of potential revenue. Included in the Comptroller's estimate are also services for students who may not have been enrolled in Medicaid on the date of service. While the Comptroller did attempt to address this by only including services for students who, "did not have a lapse in Medicaid coverage for that month in the associated Medicaid claim file," the estimate includes services for 16,219 students for whom the Department has not yet submitted a claim for reimbursement. Therefore, any lapses in Medicaid coverage for those students are unknown, as NYS informs the Department of a lapse in coverage only after a claim is submitted and subsequently not reimbursed. Considering that in FY19, this process resulted in denials totaling \$15 million in net claims due to lapses in student Medicaid coverage, it is an impossibility that 100% of claims for services to these students would have been paid.

This Report also assumes a value of \$25 million in gross reimbursements for, "any instances in which the number of services encounters recorded for a student was less than the number of mandated service sessions required by the students' IEP." To arrive at this number, the Comptroller assumed that any mandated session for which they did not find a documented session note in a specific week must have been fully delivered in accordance with all Medicaid guidelines but not entered by the provider. However, without assessing the validity of these entries, it is impossible for the auditors to know whether these entries reflect sessions delivered or not. This assumption is unrealistic and suggests a lack of effort in developing an accurate estimate of potential revenue on the part of the auditors since no tests of the underlying data was even attempted. Any attempt for a projection using this data would have required statistical and objective testing, which the auditors did not conduct.

The report assumes \$5.6 million in potential gross reimbursements for services delivered to preschool students who do not attend State Approved Non-Public Schools. This estimate is based solely on IEP mandate data without a comparison to placement data, making the assumption that every IEP recommendation leads to placement and service delivery; parents have the right to refuse placement. It also does not consider mandates for three-year-old students whose parents chose to extend Early Intervention services through the Department of Health and Mental Hygiene rather than moving forward with IEP services, and therefore not claimable by the Department.

The Report assumes \$2.8 million in gross reimbursements for services provided pursuant to an IEP recommendation of Counseling services on an assumption that the student could have been recommended for Psychological Counseling. As discussed with the auditors, Counseling (which is not Medicaid reimbursable) is a different service recommendation than Psychological Counseling. Services for students who do not have a Psychological Counseling recommendation on their IEP should not have been included in the estimate of potential revenue. The Department discussed the inappropriateness of this recommendation further below.

Finally, the Report estimates a potential gross revenue of \$1.4 million for services documented as Treatment of swallowing dysfunction and/or oral function for feeding. While the Department is currently taking steps to begin claiming for these services, the \$1.4 million figure appears to have been included in the auditor's \$10 million gross estimate of potential reimbursements for "Psychological Counseling, certain Speech Therapy services, and covered services provided to pre-school public and non-public school students," as well as the \$154 million gross Medicaid reimbursements for services that did not pass the Department's claiming validation process. The Department believes these services have been included twice in the Comptroller's revenue estimates.

The Report suggests that Medicaid reimbursement should be prioritized over student needs in the development of IEPs and coordination of service delivery.

The Department's first and foremost responsibility is to provide mandated special education services to students in compliance with the U.S. Department of Education's Individuals with Disabilities Education Act (IDEA). IDEA have specific requirements for the development of an IEP which includes strict timelines for the arrangement and provision of related services. Notwithstanding this federal law, the Report suggests that Medicaid reimbursement should be prioritized over student needs in the development of IEPs and coordination of service delivery in the manner provided below.

The Report includes four recommendations related to the Comptroller's insistence that the Department should immediately begin claiming for Psychological Counseling services despite the Department's explanation that very few students have recommendations for psychological counseling. In fact, the majority of students receiving counseling services have a recommendation for school Counseling Services, which does not qualify for Medicaid reimbursement. The resulting recommendations from the Comptroller seem to suggest that the Department should take steps to increase the number of students who are recommended for psychological counseling. They seem to justify their recommendation on the observation that some of the staff who provided school Counseling Services are licensed to provide psychological counseling, and in some instances the services were coded with a psychological counseling Current Procedural Terminology (CPT) code. This is another clear example of the auditor's lack of understanding of the Special Education program. The development of a student's IEP reflects recommendations that best serve the needs of the student and are developed by a team of trained professionals, including a psychologist, with input from the parent who are guided by the students' needs. Staff who holds the appropriate license can do the provision of the recommended service, but it neither changes the recommendation nor its intent. The implementation of the Comptroller's recommendation may be an IDEA violation, and it would encourage the Committee on Special Educations to make recommendations that are focused on revenue rather than the student's needs. In fact, the Report also includes multiple suggestions that service providers be assigned based on Medicaid reimbursement criteria ahead of the needs of students. Another example is the Comptroller's failure to disaggregate services by providers who do not hold a Speech Language Pathology (SLP) license in estimating unclaimed Medicaid revenue for FY19. As a result, services provided in full compliance with IDEA, but that do not meet the Medicaid claiming requirements due to legitimate reasons unrelated to Medicaid records, are inaccurately reported by the Comptroller as potential missed revenues for the Department.

Finally, in 2018 the Department began a pilot program for claiming services for speech teachers who do not have the SLP license and were assigned to work "under the direction of" (UDO) an SLP licensed supervisor. Ultimately, the Department concluded that the costs outweighed the potential Medicaid

revenue derived from those services. However, the Report includes a recommendation to claim UDO speech in district schools despite the Department explaining to the auditors that it conducted this pilot to analyze the feasibility of such claim and the results were not as expected. Therefore, the Department prioritized claiming of other related services that offered a greater revenue potential. The justification from the auditors is that they were not satisfied with the results due to some of the challenges that occurred during the pilot, namely session notes not entered timely and supervisors resigning or taking leave. However, as the Department shared with the auditors in multiple interviews, these two challenges did not have a significant impact on the pilot results. As stated in the pilot summary report shared with auditors, only 451 (2%) of session notes were not able to be claimed due to a late entry by the provider; and, even when the Department analyzed months where all supervisors worked, it was not cost effective to proceed with the UDO program. The primary cause for the failure of this pilot came from other UDO requirements - such as an in-person observation by the supervisor for each student on the providers' caseload - which caused the labor costs of the program to exceed the realized Medicaid revenue. The Department also shared with auditors that even if the salaries for the four supervisors who resigned or took leave during the course of the pilot were eliminated from the cost calculations, realized revenue would not have outpaced costs.

The Comptroller made errors in its data evaluations and ignored Department guidance provided both in writing and during interviews, which resulted in inaccurate findings and recommendations.

As discussed above, the Report presents potential unrealized revenue in gross amounts instead of the actual potential revenue, which overstates the potential benefits and can mislead the reader. Further, the Department disagrees with these estimates and how they were formulated. A case in point, the Report alleges that the Department missed on claiming an estimate of \$179.69 million in gross revenue (actual estimate is \$89.84 million). The Report indicates in the Methodology section that prior to formulating the estimate for the \$179 million, the population of Special Education Students Information System's (SESIS) certified encounters and uncertified entries and EasyTrac encounters were filtered to only include (1) students with unique service encounters, (2) students that did not have a refused parental consent status within 15 months of the service date; and, (3) student that were Medicaid eligible and did not have a lapse in Medicaid coverage for that month in the associated Medicaid claim file. The Report is lacking specific context on each of this item as follows:

- The unique service encounters described by the auditors are made up of both certified sessions, and uncertified entries that are not considered encounters, and as stated in another part of this response, were not evaluated to determine whether they reflected services provided to a student.
- The condition that a student did not have a refused parental consent status for the applicable period may lead to the belief that the lack of refusal status is a requirement to submit a claim. However, parental consent must be obtained prior to submitting a claim, and parents have no obligation to return a response accepting or refusing the request for consent sent by the Department. The percentage of parental consent for the months of March 2018 and 2019 was above 90% and 88% respectively, which is testimony of the outreach and efforts devoted by the Department to this task. Further, in many instances, a lack of a parental consent refusal status as defined in the Report just means that the Department sent one or more parent consent requests to the parent and the parent never returned it.

- Although the Department makes every effort to get the most current and reliable data, the Medicaid coverage status can change at any time and such conditions may not be captured by the steps described by the auditors. For example, for a student for whom a claim is submitted for the first time, the Department can only be certain of its Medicaid coverage status once the claim for the student's services has been successfully processed by the state.

In addition to the shortcomings listed above, the analysis also fails to account for instances where services were provided in accordance with IDEA, but the service does not qualify for reimbursement under the Medicaid program. A common example which was shared with the auditors is when a student is recommended in a group setting of two or more students and the student is served individually (group of one).

Although the Department understands that the auditors have made some attempt to correct their analysis through our input, resulting in considerably adjusted estimates, it is disappointing that final estimates were formulated with a flawed methodology and were not made in an objective and realistic manner.

The Comptroller misunderstood the purpose of uncertified session entries, leading to a finding, two recommendations, and inclusion of uncertified entries in analysis of all other records.

Since the onset of this audit over three years ago, there have been multiple interviews and emails between the Comptroller's staff and the Department regarding what an uncertified session entry represents. On August 7, 2019, the Department provided an explanation that accompanied a data report on uncertified SESIS entries which stated:

This report is being provided. Please be advised that these records, by definition, have not been certified by the provider as complete or accurate. As such, they should not be relied upon for claiming or any other purpose. Uncertified records may exist in SESIS for any number of reasons, including but not limited to records that were pre-scheduled by the provider but never deleted when schedules changed; records that were not deleted when a provider entered and certified the correct encounter, etc.; draft records awaiting revision/certification, etc.

The Department has shared that either pre-scheduling a session in SESIS by completing some but not all of the fields in a note **and/or** starting a **draft** note that is not complete is an **optional and useful** tool available to related service providers. There is no requirement to remove uncertified entries or to complete one at all. As stated to the Comptroller, this is the equivalent of auditing scrap paper. Most concerning regarding the process used by the Comptroller is that they included the uncertified notes in their analysis without making any attempt to assess the legitimacy of any of these entries. As pointed out, this leads to inaccurate analysis and incorrect findings of failures to the areas tested by the Comptroller.

The Report includes the finding "Department Did Not Ensure That Providers Selected Appropriate CPT Codes."

The Department has reviewed the supporting data provided by the auditors in support of this finding and note that the auditors either disregarded Medicaid claiming guidance that was shared with them during interviews and in writing, and/or made several errors in analyzing the data.

- As outlined in the *Preschool/School Supportive Health Services Program (SSHSP) Questions and Answers guide* (page 35), services delivered individually to a student who is mandated for group therapy are not reimbursable. This instance often occurs when a student is scheduled for group therapy and the other members of the group are absent or when the students can only be served individually because of the lack of other students to be grouped with. In these instances, the Department counsels providers to record the session with a CPT code for group therapy, which is consistent with the recommended service, and the actual group size of one. As explained to the auditors, **Medicaid will not reimburse a service provided to a student with a group recommendation on their IEP when only one student was present for the service.** Despite this explanation, the Report incorrectly counts 2,678 of these services as they did not have the group CPT code. Using an individual CPT code in those cases would have been wrong.
- The Department noted 10,825 uncertified entries, which as discussed above, are not confirmed encounters, and should not be considered as evidence of service delivery.
- As noted in the Report, the Department provided documentation for the SESIS edit to restrict CPT codes based on the identified service and group type, which was implemented in 2017. The information was shared based on a request made by the Comptroller. An edit for the EasyTrac system was implemented in August 2020, which was not shared with the auditors at that time because it was not part of their request, and the Department was not aware of any findings or issues with the EasyTrac data at that time.

The Report ignores the Department’s feedback on auditor’s analysis of the State License File.

The Report includes a finding that “Department should review the NYSED Office of the Professions license data and inform NYSED Office of the Professions about data integrity issues, including but not limited to, social security numbers which include alpha characters and social security numbers which were reported as “000000000.” This recommendation remained in the Report despite the auditors knowing the data represented all the entries housed in that data system covering all licensees in New York State some of whom might not even reside in the country. A review of the perceived erroneous data noted the following: 492 licensees had residences outside of the United States; 389 had residences within the United States, but outside of the tristate area; and 567 had profession codes outside of ones used by the Department in the Medicaid claiming program. The Comptroller had ample time to confirm with the NYSED Office of the Professions whether there was reasonable explanation for the perceived data errors. Instead, they choose to make a recommendation that expands on the responsibility of the Department on data that we have no control over, and the data obviously covers more than the related service providers serving Department’s students.

[Response to Recommendations](#)

Many recommendations are unfounded and disregard existing Department practices.

As the Department has detailed in our response above, the Report fails to provide substantive evidence of failure in our controls and the analysis presented is erred due to flawed methodologies, lack of understanding of the data, or error in formulating the estimates. The Comptroller would agree that an

agency should not be updating processes based on recommendations that are lacking the appropriate evidentiary foundation.

Of the thirty recommendations in this Report, seventeen describe an existing Department process that has been shared with the Comptroller through interviews and documentation requests. Many of those processes, such as follow up with schools that have not printed Medicaid consent letters and edits in SESIS to limit CPT codes available to a provider, are referenced in this Report.

A problem with the remaining recommendations is that the Comptroller offers no suggestion for improving specific processes beyond vague suggestions that the Department should hold schools and providers “fully accountable” and ensure documentation for “all students.” The lack of specificity makes it impossible for the Department to properly consider such recommendation.

Recommendation 1. *Perform a systematic analysis of those OT, PT, and Speech Therapy service encounters that do not pass the claim validation process to determine why those encounters did not meet Medicaid claiming requirements and to identify and prioritize corrective actions to maximize future Medicaid reimbursement revenues.*

Response. The Department agrees with this recommendation to the extent that it already analyzes encounters that do not pass the claim validation process and identifies and prioritizes programs to maximize Medicaid reimbursement revenue. These actions have led to a steady increase of Medicaid reimbursement revenue in each year of our program’s existence.

Recommendation 2. *Engage additional qualified Medicaid providers to write orders and referrals for OT and PT service encounters for which DOE could potentially submit Medicaid reimbursement claims.*

Response. The Department agrees with this recommendation to the extent that our process and resources are evaluated periodically, and with respect to this particular resource, the Department has already taken steps to increase physician work hours.

Recommendation 3. *Enforce the Memorandum of Agreement between the DOE and the UFT and ensure that DOE SLPs write referrals for Speech Therapy services which they provide or supervise within 10 school days of first serving a student.*

Response. The Department agrees with this recommendation, which is consistent with its practice and longstanding policy. However, the Department is not clear what enforcement is recommended by the Comptroller beyond the measures, consistent with the Agreement, that have already been shared in the course of this audit.

Recommendation 4. *Enforce contract requirements and hold contracted vendors and NYSED- approved schools fully accountable for obtaining written orders or referrals.*

Response. The Department agrees with this recommendation to the extent that it does hold contracted vendors and NYSED-approved schools accountable for obtaining written orders and referrals. As to the NYSED-approved schools, the Department is unclear from this recommendation what is meant by contract enforcement as the current contract does not allow for withholding payment, but other measures that the Department uses in our enforcement of the Agreement. These are reimbursable programs that are

operated by agencies approved and funded through state regulations. Any recommendation related to their operation should be implemented with the approval of NYSED and changes in the law, when applicable.

Recommendation 5. *Contractually require independent providers who have an SLP to write referrals for Speech Therapy services.*

Response. The Department agrees with this recommendation and will take steps toward updating the Independent Provider Agreement to reference speech referrals. However, the Department expects that this action will have minimal impact on increasing revenue as independent speech providers already create referrals for the students on their caseload, as outlined in yearly communications they receive from the Department and reflected in the data shared with the auditors.

Recommendation 6. *Conduct a comprehensive review of provider license and NPI data to identify providers, including DOE employees, who do not have a valid license and NPI on file.*

Response. The Department agrees with this recommendation, which is consistent with its practice and longstanding policy, as has been shared with the Comptroller in the course of this audit.

Recommendation 7. *Follow up with providers to obtain current license and NPI data.*

Response. The Department agrees with this recommendation, which is consistent with its practice and longstanding policy, as has been shared with the Comptroller in the course of this audit.

Recommendation 8. *Enforce contracted vendor, independent provider, and NYSED-approved school contract terms to ensure that services are provided by appropriately credentialed individuals.*

Response. The Department agrees with this recommendation, which is consistent with its practice and longstanding policy. It is worth noting that these contracts are for the provisions of special education services recommended in an IEP, and they are to be delivered, first and foremost, consistent with the IDEA.

Recommendation 9. *Ensure that it exercise its contractual right to withhold payments from contracted vendors that fail to submit NPI data.*

Response: The Department agrees with this recommendation inasmuch as it reflects current practice, since our payment system prevents contract providers from being paid unless they submit NPI data.

Recommendation 10. *Review DOE provider and NPI data to ensure that it is accurate and complete and properly identifies appropriately credentialed providers.*

Response. The Department agrees with this recommendation, which is consistent with its practice and longstanding policy, as has been shared with the Comptroller in the course of this audit.

Recommendation 11. *Review the NYSED Office of the Professions license data and inform NYSED Office of the Professions about data integrity issues, including but not limited to, social security numbers which include alpha characters and social security numbers which were reported as “00000000.”*

Response. The Department disagrees with this recommendation. The Department already has a mechanism in place to prevent any missing data or not conforming entry to be transferred to a Medicaid claim. As to the reporting to NYSED Office of the Professions, as the Department noted in the detailed response above (page 8), the state’s use and purpose of the data was never evaluated by the auditors, so the recommendation is made without any evidence of whether these are purposeful entries in the state data system.

Recommendation 12. *Ensure that Parental Consent Forms are distributed to and tracked for all public and non-public school students who are mandated to receive special education services.*

Response. The Department agrees with this recommendation, which is consistent with its practice and longstanding policy, as has been shared with the Comptroller during this audit.

Recommendation 13. *Continue its efforts to work with Charter Schools to obtain Parental Consent Forms and prioritize efforts for those Charter schools with poor collection rates.*

Response. The Department agrees with this recommendation since it is consistent with the information already shared with the auditors and has no plans to discontinue these efforts.

Recommendation 14. *Determine whether it is feasible to employ system edits in SESIS to ensure that providers certify session notes.*

Response. The Department disagrees with this recommendation as it completely disregards the explanation for the use and purpose of uncertified or “draft” session notes that has been shared with the Comptroller in numerous interviews and communications. Draft session notes are a valuable tool for providers in scheduling and caseload management, and this Report provides no explanation for how the removal of this tool would lead to an increase in Medicaid reimbursement revenue.

Recommendation 15. *Review uncertified session notes and follow-up with those providers who partially completed session notes and providers who completed but did not certify session notes.*

Response. The Department disagrees with this recommendation for reasons already stated in recommendation 14 above.

Recommendation 16. *Implement a system edit which prepopulates applicable and appropriate CPT code options for the provider to select based on service type and group size selected by the provider.*

Response. The Department agrees with this recommendation, as this system edit has already been implemented as noted in the Comptroller’s Report.

Recommendation 17. *Implement a system edit which requires providers to select an applicable and appropriate CPT code for covered services which were rendered and recorded.*

Response. The Department agrees with this recommendation, as this system edit has already been implemented as noted in the Comptroller's Report.

Recommendation 18. *Review SESIS encounter descriptions of students' progress to ensure they are adequate (i.e., greater than 20 characters) or add a system edit to SESIS which requires the provider to enter at least 20 characters in the session note when describing the student's progress for all therapy sessions.*

Response. The Department will take this recommendation under advisement, inasmuch as the Department has released an RFP for a new special education data management system.

Recommendation 19. *Regularly compare students' IEP mandates and SESIS and EasyTrac provider assignment and encounter data to identify schools and providers that are not recording session notes as required.*

Response. The Department agrees with this recommendation, which is consistent with its practice and longstanding policy, as has been shared with the Comptroller in the course of this audit.

Recommendation 20. *Follow up with those schools and providers that are not recording session notes as required and take appropriate corrective action.*

Response. The Department agrees with this recommendation, which is consistent with its practice and longstanding policy, as has been shared with the Comptroller in the course of this audit.

Recommendation 21. *Provide guidance and training to staff responsible for developing IEPs as to the types of related services--i.e., Counseling and Psychological Counseling--, the types of services which fall within the description of Counseling and Psychological Counseling services, and when Counseling should be recommended by the IEP team and when Psychological Counseling should be recommended by the IEP team.*

Response. The Department agrees with this recommendation, which is consistent with its practice and longstanding policy as generation of appropriate recommendations on an IEP are both professional standards and IDEA requirements. However, as this was an area not tested or evaluated by the Comptroller, the Department disagrees with the formulation of this recommendation.

Recommendation 22. *Ensure that staff include Psychological Counseling on IEPs when determined to be clinically appropriate.*

Response. The Department disagrees with this recommendation as it suggests that IEP teams should consider Medicaid reimbursement rather than student needs in development of counseling recommendations. The Department does not see cause to question the appropriateness of IEP counseling recommendations.

Recommendation 23. *Ensure that IEPs which include Psychological Counseling services and other student records identify the specific behavioral and emotional problems, describe them as severe or as requiring treatment where appropriate, and in such cases, specify that they are to be provided by a service provider type identified in SPA #09-61.*

Response. The Department agrees with this recommendation, which is consistent with its practice and longstanding policy.

Recommendation 24. *Ensure that NYSED-approved schools document Psychological Counseling service encounters in EasyTrac.*

Response. The Department will take this recommendation under advisement.

Recommendation 25. *Submit Medicaid reimbursement claims for Psychological Counseling service encounters which meet State and federal requirements.*

Response. The Department will take this recommendation under advisement.

Recommendation 26. *Ensure that evaluations are conducted and documented in a way that allows DOE to claim for covered services and submit Medicaid reimbursement claims for those services where appropriate.*

Response. The Department will take this recommendation under advisement.

Recommendation 27. *Reconsider the feasibility of submitting Medicaid reimbursement claims for Speech Therapy services provided under the supervision of a licensed provided and provided to students in all public and non-public schools, including but not limited to, running a pilot with adequate staffing levels and compliance with timely and complete session notes.*

Response. The Department disagrees with this recommendation as it has already run an intensive pilot program for UDO speech services in public schools and determined that the labor costs for this program outweighed the benefits. Nothing in the Comptroller's Report provides substantive support for questioning that determination.

Recommendation 28. *Ensure that contracted providers maintain electronic transportation logs which include Medicaid required elements for each trip and submit Medicaid reimbursement claims for Special Transportation services where appropriate.*

Response. The Department agrees with this recommendation in as much as the Department has already shared with the Comptroller our plan to begin claiming for special transportation services.

Recommendation 29. *Immediately start claiming for Skilled Nursing services which meet Medicaid claiming requirements.*

Response. The Department agrees with this recommendation to the extent that the Department has already shared that it intends to begin development of Skilled Nursing claiming program in School Year 2021-2022.

Recommendation 30. *Take all necessary steps to ensure that Medicaid documentation claiming requirements are met for covered services provided to preschool-age students and submit Medicaid reimbursement claims for those services where appropriate.*

Response. The Department agrees with this recommendation to the extent that it has shared multiple documentations with the Comptroller of the Department's efforts to document services to preschool students in public and private preschools, as well as the technical and operational challenges involved. The Department has also shared its success in overcoming those challenges to ensure that the Department can collect consents, obtain orders and referrals, and document SESIS session notes for these students in School year 2021-2022.

Conclusion

The goal of the Department has been, and will continue to be, maximizing claiming for reimbursements for services provided that can be claimed under the NYS Medicaid plan. Every claimable service goes through a thorough review of costs and efforts associated in designing the claiming protocols for specific service, and the Department prioritizes the claims that will provide the highest revenue. The Comptroller did not consider the costs and efforts of Medicaid claiming during the audit and makes recommendations that the Department immediately start claiming for services while ignoring the Department's assertions that these claim areas were not cost effective at this time. As evidenced by OMO's ability to increase revenue year to year over the course of the program, the Department is confident in our ability to continue to maximize Medicaid revenue.

Sincerely,



Lauren Siciliano
Chief Administrative Officer