Report to the Legislative Fiscal Analyst

Status on Recommendations from the Office of the Legislative Auditor General's Performance Audit of Medicaid's Pharmacy Benefit Oversight

Prepared by the Division of Medicaid and Health Financing

July 15, 2021

Legislative Requirement

This report is submitted in response to the following intent language passed by the Social Services Appropriations Committee during the 2021 Legislative Session:

> The Legislature intends that the Department of Health in coordination with the Utah Office of Inspector General of Medicaid Services report to the Office of the Legislative Fiscal Analyst by July 15, 2021 on the status of all recommendations from "A Performance Audit of Medicaid's Pharmacy Benefit Oversight" and include an estimate of savings for each recommendation where applicable.

Executive Summary

In 2020, the Utah Office of the Legislative Auditor General (OLAG) performed an audit on the Medicaid pharmacy program. The audit and recommendations were presented to the Utah Legislature in a report titled "A Performance Audit of Medicaid's Pharmacy Benefit Oversight". The Utah Department of Health (UDOH) was asked to report on the recommendations of this audit and to prepare a response for the Utah Legislature for July 2021.

This report provides a status update on the five recommendations from the audit.

Recommendations and Status Updates

OLAG Recommendation #1

We recommend the Department of Health research and provide a report to the Social Services Appropriations Subcommittee and any other pertinent legislative committees regarding the potential savings, benefits, and costs from creating a statewide preferred drug list.

Status Update:

UDOH concurred with this recommendation.

In May 2020, UDOH conducted a study to analyze the potential savings, benefits, and costs of creating a statewide preferred drug list. This was a complex task with multiple factors to be considered, including impacts on Medicaid members, pharmacy rebates, finance, rates paid to accountable care organizations (ACOs), and operations. To conduct a fiscal impact analysis, UDOH engaged an external consultant. In addition, UDOH convened a stakeholder workgroup comprised of Pharmacy Directors and representatives from the four ACOs and Fee for Service Pharmacy Programs to identify and assess operational impacts, as well as potential impacts to providers, pharmacies, and members.

While this study was being performed, the following intent language was passed in **H.B. 6002 Supplemental Budget Balancing and Coronavirus Relief Appropriation** by the 2020 Sixth Special Session of the Utah Legislature:

"Notwithstanding the intent language in Item 144 of Chapter 8 of Laws of Utah 2020 Fifth Special Session, The Legislature intends that the Department of Health start a statewide preferred drug list in Medicaid beginning no sooner than July 1, 2021."

The results of the study concluded in late 2020 showed that implementing a statewide preferred drug list (PDL) would not only result in significant administrative complexity, disruption to Medicaid members drug regimens, recalculating and increasing ACO rates, but also, in limited general fund savings: Range of potential savings: $0 to $900,000.

UDOH submitted a report titled "Recommendation Regarding Implementation of a Medicaid Statewide Preferred Drug List" to the Social Services Appropriation Committee on January 18, 2021 which made the following two recommendations.

1. Based on the study conducted by UDOH, the Department recommends not moving to a statewide PDL effective July 1, 2021.
2. In addition, the Department recommends permanent restoration of the ongoing funding reduction that was taken and restored one time for SFY 2021.

The Legislature accepted the recommendation to not move forward with a statewide PDL, but the previous funding reduction was not restored to the UDOH budget.

Recommendation #2

We recommend the Department of Health create a process to review lesser-of logic to ensure pricing is correct.

Status Update:

UDOH partially concurred with this recommendation.

Medicaid drug pricing, which is governed by federal and state law, is highly complex. Multiple factors contribute to the complexity of Medicaid drug pricing including that drug prices change frequently, sometimes as often as daily. Next, multiple drug pricing methodologies may be assigned to a drug as the drug moves through the supply chain and these different pricing metrics may be present on claim adjudication.[1] For example, the "wholesaler acquisition cost" or WAC, is the estimate of the manufacturer's list price for a drug to wholesalers before rebates. Pharmacy systems are programmed to evaluate selected drug prices (as generated by these different methodologies) and pay pharmacy claims according to a specified pricing logic, often referred to as "lesser of" because the logic selects the "lesser of" the prices as listed by different pricing methodologies.

To address the rising cost of pharmaceuticals in Medicaid Programs, the Federal Covered Outpatient Drug Final Rule (2016)[2,3] assists states and the federal government in managing rising drug costs. The Rule mandated Medicaid Programs define and implement a pharmacy reimbursement methodology that optimizes savings and promotes the best possible pricing for covered outpatient drugs. To comply with the Rule, in 2016, UDOH submitted a State Plan

Amendment to CMS and received approval to adopt a "lesser of" reimbursement methodology for brand and generic covered outpatient drugs.

The CMS-approved pricing indices used by Medicaid are outlined in the Utah State Plan Attachment 4.19B and include nationally published metrics such as estimated acquisition cost (EAC), ingredient cost, National Actual Drug Acquisition Cost (NADAC), wholesaler acquisition cost (WAC), and federal upper limit (FUL), as well as state-established methodologies such as Utah-specific maximum allowable cost (UMAC). When a claim for a drug is processed the claims processing system sorts through prices assigned to that drug by these different methodologies and applies a "lesser of" logic to select the lowest price to reimburse the pharmacy.

It is important to note that none of the pricing indices used by UDOH reflect our actual net-of-rebates drug cost. "Lesser of" logic seeks to accurately reimburse pharmacies for their true cost of the drugs they dispense (a value that is often very opaque) but this logic has no relationship to Medicaid's net cost of drugs. To obtain the highest value/best pricing for drugs, UDOH uses a number of tools, in addition to lesser of logic, including a Preferred Drug List, drug rebates, and robust formulary management edits. Medications that result in highest value/best pricing for Medicaid may or may not be the lowest net cost medications available when looking at pricing available to the public.

The Department has developed a standard operating procedure (SOP) to ensure that claims are appropriately adjudicated based on "lesser of" methodology. A sample of claims are evaluated weekly by UDOH to ensure that the pharmacy claims system is appropriately applying the "lesser of" methodology. If any discrepancies are identified, UDOH works with the pharmacy point of sale vendor to identify the root cause. UDOH reviews and records the results of this internal audit process. To date, no issues of inappropriate adjudication have been identified.

As noted previously, various drug pricing metrics exist and pricing can be updated as often as daily. The Medicaid pharmacy claims system, however, updates pricing once per week. This "time lag" between published pricing changes and when prices are updated in the Medicaid pharmacy system has existed for some time and was identified in the recent audit findings.

To address this "time lag", the OLAG auditors recommended that UDOH investigate whether the pharmacy point of sale vendor could receive published pricing file updates on a daily basis. UDOH researched this option with the pharmacy point of sale vendor. The pharmacy vendor reported that daily file updates are not an option and the current platform is only able to accommodate weekly file updates because of system programming limitations. As of this report, there are no savings to report.

References:

1. https://www.uspharmacist.com/article/understanding-drug-pricing
2. https://www.govinfo.gov/content/pkg/FR-2016-02-01/pdf/2016-01274.pdf

3. Implementation of the Covered Outpatient Drug Final Regulation Provisions Regarding Reimbursement for Covered Outpatient Drugs in the Medicaid Program

Recommendation #3
We recommend the Department of Health create a process to review claim-level rebate information to ensure rebates are processed correctly.

Status Update:

UDOH concurred with this recommendation.

UDOH contracts pharmacy rebate services with an external vendor, Change Healthcare. In response to this audit, UDOH developed a SOP to provide reasonable assurance the outside pharmacy rebate vendor is accurately preparing and billing the quarterly pharmacy rebate invoices. UDOH evaluates a sample of invoices quarterly to review claim-level rebate information and to ensure rebates are processed correctly. If any discrepancies are identified, UDOH works with the pharmacy rebate vendor to identify the root cause of any inappropriate rebate invoicing. UDOH reviews and records the results of this internal audit process. In addition, UDOH met with the Office of Inspector General to clarify their role in assisting UDOH with this activity. The Office of Inspector General has access to all reviewed claim-level rebate information, documentation on findings, additional research, and correspondence with the vendor. The Office of Inspector General will be notified of pharmacy findings that may warrant further review. As of this report, there are no savings to report.

Recommendation #4
We recommend the Department of Health take steps to provide better oversight of the Accountable Care Organizations and review cost trends and contract changes.

Status Update:

UDOH concurred with this recommendation.

Utah's actuarial contractor, Milliman Inc., through their rate-setting processes, develops cost trends. Those trends are reviewed with Department staff on a regular basis to determine if they are reasonable. In addition, the Department discussed this recommendation with the Office of Inspector General as part of the monthly Program Integrity Committee (PIC.) The OIG stated that this issue can be incorporated in their routine data mining queries to look for any trends that seem concerning. Any identified concerns will be brought to the attention of the Department. The OIG and the Department will develop a joint plan of action to further investigate the data and then take action, if appropriate. The Department will modify our memorandum of

understanding with the OIG to reflect this discussion. As of this report, there are no savings to report.

<u>Recommendation #5</u>
We recommend the Department of Health provide oversight of contract compliance between Accountability Care Organizations and their Pharmacy Benefit Managers.

Status Update:

UDOH partially concurred with this recommendation.

While it is the primary responsibility of the Contractor to have oversight of its subcontractors, the Department concurs that UDOH has oversight responsibility for its contracts. Currently, two of the four Medicaid ACOs (Molina Healthcare of Utah and Health Choice) contract with a PBM. Select Health and Healthy U administer their own pharmacy benefit.

The OIG will coordinate with the Department for access to data sources necessary to identify patterns that seem concerning.

The OIG will incorporate this issue in their routine data mining queries to look for any patterns that seem concerning. Any identified concerns will be brought to the attention of the Department. The OIG and the Department will develop a joint plan of action to further investigate the data and take action, if appropriate. The Department will modify our memorandum of understanding with the OIG to reflect this discussion. In addition, the Department will conduct a review of language in the ACO contract to determine if contract language needs to be modified regarding the relationship between a Utah Medicaid ACO and any contracted PBM. As of this report, there are no savings to report.