



Auditor General
MANITOBA

Report to the Legislative Assembly

Physicians' Billings

Independent Audit Report

Website Version



January 2021

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Auditor General
MANITOBA

January 2021

Honourable Myrna Driedger
Speaker of the Legislative Assembly
Room 244, Legislative Building
450 Broadway
Winnipeg, Manitoba R3C 0V8

Dear Madam Speaker:

It is an honour to submit my report titled, *Physicians' Billings*, to be laid before Members of the Legislative Assembly in accordance with the provisions of Section 28 of *The Auditor General Act*.

Respectfully submitted,

Original Signed by:
Tyson Shtykalo

Tyson Shtykalo, CPA, CA
Auditor General

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Table of contents

Auditor General's comments	1
Report highlights	3
Main points	5
Response from Manitoba Health, Seniors and Active Living	7
Background	9
Audit objective, scope and approach	13
Findings and recommendations	15
1 Department has a process for ensuring compliance with fee-for-service rules	15
1.1 Department has a process for physician's to claim payment for services provided	15
1.1.1 Fee-for-service process is understood by physicians	16
1.1.2 No training sessions offered by the Department to explain specifics of Physician's manual or the billing process; contact points provided to physicians when they have questions	16
1.1.3 No structured training program for Department staff on fee-for-service process	17
1.2 The Department does not have a risk-based process in place to select physicians and tariffs for file audits	17
1.2.1 Areas should be identified where anomalies, errors and inconsistencies may occur	17
1.2.2 A strategy should be developed, focusing on areas identified above	19
1.2.3 Effectiveness of the strategy to prevent and detect inappropriate payments not measured or reported publicly	20
2 Process in place to recover monies overbilled by physicians, but recoveries mostly not pursued	21
2.1 The Department has a process to recover monies overbilled by physicians	21
2.1.1 Audits performed to determine if claims are submitted in accordance with Physician's Manual	21
2.1.2 Physicians given opportunity to respond and provide additional information	21
2.1.3 Overpayments should be communicated to physicians in a timely manner	21
2.2 The Department recovers very few overpayments	22
2.2.1 Overpayments rarely collected and enforcement measures not used where necessary	22
2.2.2 Proposed legislation strengthens the audit and oversight function	23
Conclusion	25
Additional information about the audit	27
Summary of Recommendations	29
Appendix	33

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Auditor General's comments

Over 3,000 physicians in Manitoba are paid through a fee-for-service process when eligible services are performed on Manitobans. Physicians are paid by Manitoba Health, Seniors and Active Living (the Department) with the assumption that these billings are accurate, legitimate and can be supported by records and documents held by the physician.

The process of billing for services is complicated. There are hundreds of tariffs and precise circumstances under which they are allowed. Navigating this can be a challenge, so it is important that both physicians and government staff understand what is allowable and what is not. Prompt communication and correction of errors is key to improving future performance.

Payments to physicians totaled over \$930 million in the 2020 fiscal year. It is understandable that errors might be made. The fee-for-service process allows for physicians to provide supporting documentation when the Department has questions about the service performed. However, in situations where it is confirmed that a physician was overpaid, it is important that the Department undertakes a prompt recovery of the overpayment. This important step is not being taken by the Department.

The current economic climate requires, more than ever, that public funds are spent carefully and in accordance with program guidelines. During the 5-year period covered by our audit, the Department's Audit and Investigation Unit identified over \$1 million in potential overbillings by physicians. In almost all instances, the Department did not pursue recovery. In fact, we found that just over \$10,000 was recovered during that period.

I note that new legislation for physician billing has been proposed, and the province is moving the Audit and Investigations Unit under the Department of Finance. These changes should not diminish the importance of recovering the full amount of overpayments made to physicians.

This report contains 6 recommendations. I am pleased that the Department agrees with the recommendations and is committed to resolving the issues identified in this report. Our first follow-up will be as at September 30, 2022.

It is important to acknowledge that most of the audit work for this report was performed during the COVID-19 pandemic. I would like to thank Department staff for their cooperation and accommodation as we navigated through the uncertainty together. I would also like to thank my audit team for their dedication and hard work.

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Tyson Shtykalo

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Audit of Physicians' Billings



Fee-for-service-model:
Physicians bill the
Department of Manitoba
Health, Seniors and
Active Living for services
provided to patients

\$938 million

Total fees paid out in 2019/20

3,000+

Fee-for-service
physicians in Manitoba:

What we found:

Processes are in place for physicians to claim eligible expenses, and for the province to recover overbilling—but these systems are not used effectively.



Department rarely collects overpayments from physicians, and enforcement measures are not used where necessary.

\$1 million⁺

Overbillings during the period looked at

1%

Percentage of overbillings collected by the province



Inadequate process to select physicians and tariff files for audits:

Selected randomly instead of on a higher risk-basis.

4%

Percentage of physicians audited in 5 years



Department staff not trained on fee-for-service process.

6 Recommendations in report

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What we examined

We assessed whether Manitoba Health, Seniors and Active Living (the Department) had systems and procedures in place to ensure fees paid to and recovered from physicians are in accordance with applicable legislation, regulation and agreements.

We examined the work performed by the Department. This included reviewing:

- The methodology used to select physicians for audits.
- The audit work performed on physicians' files.
- The process used to recover any overpayments to physicians.

What we concluded

We concluded that the Department has systems and procedures in place to ensure that fees paid to and recovered from physicians are in accordance with applicable legislation, regulations and agreements. However, those systems are not being used effectively to ensure that all overbillings are recovered.

What we found

Our report includes 6 recommendations. An overview of our major findings follows:

The Department has a process in place for ensuring compliance with fee-for-service rules (section 1)

The Physician's Manual outlines the process for physicians to claim for eligible services provided to Manitobans. The Department is given the power to audit these claims through *The Health Services Insurance Act* (the Act). The Department's Audit and Investigation Unit is charged with performing these audits. Specifically, we found that the Department:

- Has a process for physicians to claim payment for services provided.
 - Physicians in Manitoba understand this process.
 - Although there are no formal training sessions offered on the billing process, there are several contact points provided to physicians who have questions.
 - There is no structured training program for Department staff on the fee-for-service process.

- Does not have a risk-based process in place to select physicians and tariff files for audits.
 - Areas should be identified where anomalies, errors and inconsistencies may occur.
 - A strategy should be developed to focus on these identified areas.
 - The effectiveness of the strategy to prevent and detect inappropriate payments is not reported publicly

There is a process in place to recover monies overbilled by physicians, but recoveries are not pursued in most cases (section 2)

The Act provides clear authority for the Department to recover overpaid amounts to physicians. The Act also allows the Department to offset the amounts owing by the practitioner against their future billings.

In the majority of the audits where the Department determined that an overbilling occurred, recoveries were not pursued. During the period under audit, the Department's Audit and Investigations Unit identified overbillings of \$1.039 million, but only \$10,822 or about 1% of these overpayments were collected. The Department focused on educating physicians to ensure future overbillings are minimized. However, the Department did not go back to verify its efforts around education resulted in decreased overbilling.

We found that:

- Audits are performed to determine if claims are submitted in accordance with the Physician's Manual.
- Physicians are given the opportunity to respond to audit findings and provide additional information to the auditors.
- Overpayments are not always communicated to physicians in a timely manner.
- Overpayments are rarely collected and enforcement measures are not used where necessary.
- Proposed legislation will strengthen the audit and oversight function.

Response from Manitoba Health, Seniors and Active Living

We requested a response from officials of the Department of Manitoba Health, Seniors and Active Living. They provided a summary, which is included below, and specific responses to each recommendation which are included in the **SUMMARY OF RECOMMENDATIONS** section of the report.

The OAG's Audit of MHSAL's Medical Remuneration Audit function is a retrospective review, as significant changes in the leadership, governance, methodology, and organizational alignment of the audit function as well as changes in legislative and contractual framework in relation to Physicians Billings are currently underway. In December 2020, the Audit and Investigation Unit (AIU) in HSAL has moved to the Treasury Board Secretariat into a new unit in the Office of the Provincial Comptroller: Comptrollership and Compliance Unit (CCU). The Unit will have a renewed focus on the development and management of the financial control environment associated with fee-for-service medical expenditures and plans to address the recommendations in this report.

In addition to the organizational realignment of the responsibility, legislative amendments contemplated in Bill 10 are fundamentally aligned with the recommendations made by the OAG in its report.

Significant changes to the medical remuneration audit function have been initiated in relation to the following:

- Improved legislative provisions to clarify the parameters governing the medical audit process, and the authority to make recoveries on the basis of an audit finding;
- An arbitration process specific to the review of audit results, to ensure that physicians' rights are preserved in accordance with principles of procedural fairness and natural justice;
- Increased focus on risk based audits to ensure appropriate oversight and fiscal accountability for over \$930 million in fee-for-service medical expenditures;
- Investment in increased audit resources to expand the capacity of the Government of Manitoba to audit medical remuneration, recover overpayments, review and make recommendations to improve processes related to medical remuneration funding; and
- A renewed focus on consistency in the methodology and administration of audits, to ensure that audits are fair and accurate, and that there is no perception of bias.

In general, Management agrees with and embraces the recommendations in the OAG's Report. The response is provided by the Office of the Provincial Comptroller, in consultation with the Department.

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When a resident of Manitoba visits a physician, the physician bills Manitoba Health, Seniors and Active Living (the Department) for the services provided to the patient. This is known as the fee-for-service model. Physicians in Manitoba, except for salaried doctors, are paid using this model.

Fee-for-service payments are made through the Department's Insured Services Division, which reports to the Assistant Deputy Minister of Insurance. Through the claims program, the Department pays physicians based on their fee-for-service billings. Preliminary checks are performed electronically to catch incorrect claims. The system looks for things like wrong Personal Health Identification Number (PHIN) or sex. Otherwise, physician claims are paid assuming that they are made in good faith, in accordance with legislation, and for procedures and services that have actually been performed.

Fees paid under this program totaled approximately \$938 million for the 2019-2020 fiscal year.

LEGISLATION AND REGULATIONS

Through the *Canada Health Act*, provincial governments are given the responsibility for providing insured health services to the eligible residents of their province. In Manitoba, Section 74 of *The Health Services Insurance Act* (the Act) provides that the Department may enter into an agreement with Doctors Manitoba respecting a schedule of fees to be paid to medical practitioners for medical services rendered to insured persons. The Payments for Insured Medical Services Regulation states that "*the amounts payable by the minister for insured medical services on or after February 1, 2003 are the amounts set out in the Schedule.*" This schedule is known as the Physician's Manual and is negotiated as part of the Master Agreement between Doctors Manitoba and the Department. The most recent agreement is dated April 2019 and expires on March 31, 2023.

The Act allows the Minister to appoint inspectors to enter the offices of medical practitioners to examine books and records that relate to benefit claims for insured services.

The Act also allows the Minister to recover money paid to practitioners:

- a) for amounts claimed where services were not rendered;
- b) where the nature or extent of services rendered are misrepresented; or
- c) where the practitioner has failed to provide information about the services rendered that has been requested by the minister.

On December 2, 2019, Bill 10, *The Regional Health Authorities Amendment Act* (Health System Governance and Accountability) was introduced in the Manitoba Legislature. The Department's expectation is that the changes will strengthen oversight and the process to recover overpayments to physicians.

Doctors Manitoba initiated a process to dispute some of the changes proposed by the new legislation. In particular, concerns were raised about dispute resolution when a physician disagreed with the Department's conclusions regarding overpayments.

On January 28, 2020, the Department and Doctors Manitoba agreed to an amendment to the Physicians' Manual that gives physicians or Doctors Manitoba the right to dispute an amount resulting from an audit and refer it to an arbitration board. If disputed, the Minister may not recover any funds from the physician until either the 90-day referral time limit has elapsed or until the dispute has been resolved either through decision of the board or agreement between the 2 parties.

ROLES AND RESPONSIBILITIES

The Department pays physicians based on the claims submitted for services rendered according to the fee structure negotiated in the Physician's Manual. The Department has an Audit and Investigations Unit (AIU) which conducts random audits each year. These audits usually focus on a certain type of practice or prescribed fee code. If, as a result of the audit, it is determined that a physician has overbilled the Department, the physician is notified of the circumstance and the amount owing. Legislation allows for investigations of doctors files and for the Department to recover overbillings by offsetting the amounts against future claims of the physician.

Physicians are bound by the Canadian Medical Association's Code of Ethics. They are expected to act with honesty and integrity, as well as maintain an awareness of the legal and regulatory requirements for medical practice in their jurisdiction. To that end, they are expected to claim appropriate tariffs for services rendered to eligible Manitobans. The Physician's Manual states that, among other things, insured service claims may only be made for services rendered personally by the physician.

The College of Physicians and Surgeons of Manitoba (the College) is the regulatory body of physicians in Manitoba. The College licenses physicians, develops standards of practice, and holds physicians accountable to those standards. Its role is to protect the public as consumers of medical care and promote the safe and ethical delivery of quality medical care by physicians in Manitoba. The website of the College lists its 3 core functions as:

- Registration
- Standards
- Complaints and Investigation

Doctors Manitoba is an association of Manitoba's physicians and acts as an advocate for physicians in Manitoba. Its goal is to promote a social, economic, and political climate in which physicians can provide Manitobans with the highest standard of health care, while achieving maximum professional satisfaction and fair economic reward.

The Compensation and Advocacy section of the Doctors' Manitoba website goes on to explain that:
"A key objective of Doctors Manitoba is to safeguard and enhance physicians' economic interests. Doctors Manitoba provides individual physicians with:

- *Professional negotiation services;*
- *Advice related to compensation, contracts and billing;*
- *Representation in audits by Manitoba Health;*
- *Representation in disputes regarding fee-for-service billing or alternate funded agreements;*
- *Assistance in establishing New Fee Tariffs"*

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Audit objective, scope and approach

Audit objective

Our objective was to determine whether the Department of Health, Seniors and Active Living (the Department) has systems and procedures in place to ensure fees paid to and recovered from physicians are in accordance with applicable legislation, regulations and agreements.

Scope and approach

The audit examined the work performed by the Departments' Insured Services Division from January 2015 to May 2020. This included reviewing the methodology used to select physicians for audits, the audit work performed on the files and the process used to recover any overpayments to physicians.

We obtained the dataset of all claims submitted from January 1, 2015 to May 31, 2020. We stratified and summarized the data to look for anomalies in billing patterns. This included the new billing codes for virtual visits introduced due to the COVID-19 pandemic.

We interviewed Department management and staff, reviewed information provided by the organization, and documented processes. We also sent a survey to the 3,063 Manitoba physicians listed as currently practicing on the College of Physicians and Surgeons of Manitoba website. We received 649 responses to the survey, a response rate of 21.1%. A copy of the survey can be found in the appendix of this report.

We did not review patient files.

Criteria

To determine whether The Department has systems and procedures in place to ensure fees paid to and recovered from physicians are in accordance with applicable legislation, regulations and agreements, we used the following criteria:

Criteria	Sources
The Department should have a process in place for ensuring compliance with fee-for-service rules.	Physician Manual Claims Submission and Payment Procedures Committee of Sponsoring Organizations of the Treadway Commission (COSO)
The Department should have a process in place to recover monies overbilled by doctors and should ensure all monies are repaid.	95.1(4) of the <i>The Health Services Insurance Act</i> COSO Integrated Framework

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1 Department has a process for ensuring compliance with fee-for-service rules

The Physician's Manual outlines the process for physicians to claim for eligible services provided to Manitobans. Manitoba Health, Seniors and Active Living (the Department) is given the power to audit these claims through *The Health Services Insurance Act* (the Act). The Department's Audit and Investigation Unit (AIU) is charged with performing these audits. The AIU selects the majority of their physician audits randomly instead of using a risk-based methodology which would maximize the effectiveness of their limited audit resources.

1.1 Department has a process for physicians to claim payment for services provided

The Government of Manitoba provides insurance for residents, covering the costs of hospital services, medical services and other health services, and personal care. The Act also allows Manitoba to enter into an agreement with Doctors Manitoba respecting all matters relevant to a schedule of fees to be paid by the Minister of the Department to medical practitioners in respect of medical services rendered to insured persons. In practice, the Province and Doctors Manitoba negotiate a Master Agreement every 3 or 4 years. The current agreement runs from 2019 to 2023.

A key schedule to the agreement is the Schedule of Benefits (Fee-for-Service) which is commonly known as the Physician's Manual. The Physician's Manual contains a listing of fees (known as tariffs) for hundreds of medical services that can be provided by physicians. Physicians bill the Department for providing eligible services to Manitobans.

Physician claims are assumed to be based on services that were provided by physicians. The Physician's Manual states that the payment of claims is based on appropriate tariffs being claimed for insured services and appropriate billing practices being followed. It also states that the following principles apply to submitted claims:

- Claims made only be made for services rendered personally by the physician.
- Claims may not be made for services rendered to a family member or to the physician him or herself except in an urgent situation.
- With respect to billing multiple agencies (for example Manitoba Public Insurance and Workers' Compensation Board) generally, physicians may not bill 2 agencies for the same service.

The Department does a preliminary computerized check of claims submitted and will disqualify incorrect claims. For example, if the name and health number do not match, or where a procedure does not match the patient's sex—a prostate exam on a female patient. There are over 350 exception codes which result in claims not being paid, and returned to the submitting physician for correction. Other than this check, claims are paid as submitted, subject to audit by the Department at a later date.

1.1.1 Fee-for-service process is understood by physicians

The Master Agreement between Doctors Manitoba and the Province of Manitoba requires the Minister to make the Physician's Manual available on the Government's website for viewing and downloading. The Manual must also be updated quarterly.

The Physician's Manual is available on the Department's page of the province's website. It can be easily found with a simple search from any page on the provincial website. In addition to the Physician's Manual, there is a document which lists the changes made to the manual in the last quarterly update.

The fee-for-service process is outlined in the Physician's Manual. One of the first topics discussed in the manual is the "Claims Submission and Payment Procedures." This section explains that all physicians must submit fee-for-service claims electronically with an application called EPiCS (Electronic Practitioner Integrated Claims Submission) that transmits files between physicians and the Department. Non-electronic paper based claims are only allowed with permission from the Department. A telephone number is also provided for physicians who need to set up and test claims submission.

The section also explains that the Department will remit payment to physicians twice monthly (on the 15th and 30th) and that there is a 6-month time limit for submitting claims.

While the Physicians' Manual outlines the fees that can be charged to the Department, the expectation for records management to support these charges is outlined in 2 documents. The College of Physicians and Surgeons of Manitoba Standards of Practice states that physicians must document the medical care given to a patient in a patient record and that the record contain enough information for another member to be sufficiently informed of the care provided. The Act also requires that Department staff (inspectors) have access to any records relevant to the submission of claims.

This finding was reinforced by our physicians' survey. Of the survey respondents, 70.9% agreed that the fee-for-service claims process was either somewhat clear, or very clear.

1.1.2 No training sessions offered by the Department to explain specifics of Physician's manual or the billing process; contact points provided to physicians when they have questions

The Department does not provide physicians with training on the Physician's Manual, or on the process for submitting fee-for-service claims. However, there are resources available to assist physicians with the fee-for-service billing system. Almost all the physicians that responded to our survey knew who to contact if they had questions about the fee-for-service process.

Independent from the Department, Doctors Manitoba has developed resources to help physicians. On the Fee-For-Service page of the Doctors Manitoba website there are numbers provided for Medical Remuneration Officers and Compensation Analysts that physicians can call for any fee-for-service questions or concerns they have.

1.1.3 No structured training program for Department staff on fee-for-service process

We were told by Department staff that there is no structured training provided to staff on the fee-for-service process. Staff are provided with time to review previous audits and given general discussion about fee-for-service. Almost all knowledge is gained while working on audits. The fee-for service process is rather complex and includes a lot of subjectivity.

In their response to our survey, some physicians told us that whether or not a claim is approved for payment by the Department appears to be arbitrary and unpredictable. There was also frustration that claims for identical work performed would be approved by the Department for one physician and denied for another.

It is important that Department staff are trained to ensure the decisions about claims are consistent between staff members. It is also imperative to be able to demonstrate that staff are experts in the fee-for-service process to support decisions to recover overpaid claims.



Recommendation 1

We recommend that the Department develop a structured training program for all staff involved in the fee-for-service process.

1.2 The Department does not have a risk-based process in place to select physicians and tariffs for file audits

For the most part, physicians in Manitoba are on the honour system when they submit claims to the Department for payment. Claims are paid assuming the information is correct and for services provided personally by the physician. The Department should have a robust auditing methodology that allows the Department to focus its resources on areas viewed to be of highest risk.

1.2.1 Areas should be identified where anomalies, errors and inconsistencies may occur

Initial audits of physicians are selected randomly using a statistics-based model. When more serious concerns arise in a physician's billing practices, AIU is directed to undertake a comprehensive audit. Serious concerns include:

- Highest number of tariffs claimed.
- Highest tariff dollar amount paid to the physician.
- Outliers from pattern of practice.
- Targeted tariffs (where certain services appear to be repeatedly billed incorrectly).
- Referrals from the College of Physicians and Surgeons and others.
- Complaints received through the fraud line.

We obtained and analyzed the fee-for-service claims data from the Department for 2015 to 2019. As part of our analysis, we focused on categories to be of interest, such as physicians who worked on statutory holidays or submitted claims daily. We found that there were:

- 6 physicians that billed for all 365 days in 2015.
- 8 physicians that billed for all 366 days in 2016 (a leap year).
- 7 physicians that billed for all 365 days in 2017.
- 10 physicians that billed for all 365 days in 2018.

Many physicians are included in more than one category above. For example, there are 2 physicians that billed every single day for all 4 years. Additionally, we found another 34 physicians that averaged less than 1 day off per month in one or more of the years between 2015 and 2018.

The data was also able to show us the physicians that billed substantially more than their colleagues who practice in the same specialty area. For example, the highest per claim biller for anesthesiology billed \$2,005 per claim. The next highest per claim anesthesiology biller billed \$1,210 per claim, or 40% less per claim. While this information itself is not indicative of overbilling practices, it highlights areas of higher risk that should be focused on when selecting audits.

We were told by Department staff that the issue is not one of expertise. They know to look for the risk factors outlined above. They told us the issue is that there are only 3 Claims Auditors with the AIU, and audits are focused on areas that are raised as system priorities. System priorities are audits that are directed by the Department's executive director or senior officials, such as tariffs with a history of incorrect billing rather than auditing individual physicians. Past audits on system priorities have focused on Optometry, Comprehensive Care Management, and Chronic Disease Management. These audits resulted in the identification of millions of dollars of potential overbilling and recommended changes to the billing system to stop these practices.

We asked whether staff presented senior officials with the potential audit work that could be done with additional staff. We were told they had discussions with an assistant deputy minister from the Department, and the Department of Finance, about the type of work that could be done with more audit staff.

This is one of the catalysts for AIU moving under the direction of the Department of Finance and having more auditors allocated to the unit. A submission was made under the Treasury Board's Idea Fund which suggested that a "more robust audit and investigation function would enable Manitoba to recover more funds improperly or inappropriately billed through fee-for-service" This change is expected in late 2020.

1.2.2 A strategy should be developed, focusing on areas identified above

There are over 3,000 fee-for-service physicians in Manitoba. In the 5-year period we reviewed, the AIU performed audits on 111 physicians—meaning that less than 4% of physicians were audited. This work translated to less than 2 audits per month. These numbers were reinforced by our survey results. Of the physicians that responded to our survey, 72% had never been audited, with an additional 24% that did not know if they had been the subject of an audit.

Audits should be selected using a risk-based method to maximize the effectiveness of the AIU staff. These risk-based selections should be supplemented with current practice of using randomly selected samples.

In 2019, the AIU shifted the focus of their audits (**FIGURE 1**). Under the previous methodology, audits were focused on maximizing the recovery of overpayments to physicians. Now with the new methodology, the goal is to ensure correct billing practices through education of physicians.

Figure 1: The Department's previous and current audit Methodology

Previous process	Current process
Audits selected using a statistically valid random sample	Audits selected using a statistically valid random sample
Audits focused on a 1-2 year period to determine compliance with the billing process	Audits focused on a smaller number of files over a shorter period of time – 1-2 weeks to identify trends
Goal is to maximize recoveries	Goal is to correct through education and ensure compliance with audit recommendations
Serious concerns result in a comprehensive audit of the practitioner.	Selected physicians will be revisited to ensure compliance

Source: MHSAL

The Department told us it analyzes billing data to determine areas of high risk. However, we did not see any evidence that the AIU focuses its audit work in these areas. Equally, we did not see any evidence that the AIU goes back to determine whether its efforts to educate physicians on correct practices has been successful – which is a key focus of the new methodology.



Recommendation 2

We recommend that the Department analyze billing data to determine highest risk physician or tariff codes and focus audit resources in this area. Random audits should be used to supplement the highest risk audits.

1.2.3 Effectiveness of the strategy to prevent and detect inappropriate payments not measured or reported publicly

Because of the high dollar value of fee-for-service billings (over \$930 million for the 2019-2020 fiscal year) it is important that the Department report on how it ensures fee-for-service claims are accurate and payments are for actual services provided. It is equally important to provide information to show how successful (or unsuccessful) the AIU audit process has been at collecting overpayments. Building a health care system that is more transparent is also a priority of the Department's minister.

The Department keeps a ledger of the audits it has performed. The ledger lists the name of the physician, the reason for the audit, and the outcome. This information is not made public and there is no other information available on the audits completed by AIU.

Publishing the results of physician audits will promote transparency. The Department can demonstrate its work is leading to greater compliance with fee-for-service rules and track progress over time.



Recommendation 3

We recommend that the Department publish results of physician audits performed by the Audit and Investigations Unit

2 Process in place to recover monies overbilled by physicians, but recoveries mostly not pursued

The Health Services Insurance Act (the Act) provides clear authority for Manitoba Health, Seniors and Active Living (the Department) to recover overpaid amounts to physicians. Specifically, the Act allows the Department to offset the amounts owing by the practitioner against their future billings.

In the majority of the audits where the Department determined that an overbilling occurred, recoveries are not pursued. Instead, the focus is on educating physicians to ensure future overbillings are minimized.

2.1 The Department has a process to recover monies overbilled by physicians

2.1.1 Audits performed to determine if claims are submitted in accordance with Physician's Manual

The Department's Audit and Investigation Unit (AIU) conducts audits of physician claims. This involves examining physician patient files and comparing the claims made to the services provided, as recorded in the patient's file. Any discrepancies between the tariffs claimed and the support in the patient's file, or subsequently provided by the physician, is considered to be an overpayment. The next step is to send an audit results letter to the physician explaining the overpayment in detail.

In all cases where inappropriate billings are found, a formal contract is signed by the physician, which commits the physician to change future billing habits to address the shortcomings found during the audit. A subsequent audit may be initiated to follow up with the physician. During the course of our audit work, we did not find any examples of follow-up audit by the AIU.

2.1.2 Physicians given opportunity to respond and provide additional information

Physicians are provided with the opportunity to explain and support any claims being audited. The AIU works with the physician to obtain the required evidence to demonstrate the service has been performed. The physician can provide additional information both during the audit and after receiving the audit findings letter.

2.1.3 Overpayments should be communicated to physicians in a timely manner

We reviewed the file of a physician who was alleged to have been overpaid by the AIU. Based on our analysis, the timeline of events was as follows:

- February 2019 – Physician's claim is selected randomly for audit
- March 2019 – Physician notified of audit and asked for records
- May 2019 – The Department notified by Doctors Manitoba that they are representing the physician
- June 2019 – Records received from the physician and returned to the physician for transcribing as AIU could not read the physician's handwriting.

- October 2019 – Audit completed and sent to AIU Executive Director
- December 2019 – Audit results sent to physician/representative

The physician was notified of the results of the audit within 2 months of the completion of the audit. However, some of the claims in question dated back to February 2017, which was almost three years before the date of the audit results letter sent by the AIU. Even with very good notes, which this physician did not have, it would be difficult to recall the particulars of a patient interaction from 3 years ago.



Recommendation 4

We recommend that the Department set a service standard or timeframe for communication with physicians regarding potential overpayments.

2.2 The Department recovers very few overpayments

Public funds are limited and so it is extremely important to ensure that they are spent efficiently and effectively. In cases where physicians have submitted inappropriate claims and have been overpaid, it is important to recover these overpayments in a timely manner.

When audits performed by the Department determine that a physician has billed for services that are ineligible for insurance payments, either through errors or intentionally, it is imperative that the Department recover those public funds. Recovery also serves as a deterrent for physicians to claim ineligible services in the future.

2.2.1 Overpayments rarely collected and enforcement measures not used where necessary

Our review of the audits related to physicians' billing showed that very few recoveries of overbillings have been made. Instead, the Department focusses on physician education to reduce future overbillings.

When the Department decides to pursue a recovery, it begins a negotiation process with the physician. In most cases, the physician has a representative that is usually Doctors' Manitoba, but sometimes it is a private lawyer. We were told that the Department starts by asking for 80% of the amount owing and the physician suggests a much smaller amount. Eventually an agreement is reached resulting in a repayment lower than the original overbilled amount.

We reviewed the ledger of audits performed by AIU for the period January 1, 2015 to September 2019, a total of 111 audits. These audits identified overpayments to physicians of \$1.039 million and resulted in recoveries of \$10,822, or about 1%.

The AIU has examined tariffs that have historically been billed incorrectly. These audits have resulted in the identification of millions of dollars of overbilling. It also led to recommendations to change the Physician's Manual to prevent future overbillings. Despite all of this, we found that the Department did not exercise its full authority and very few recoveries were received.

A strategy employed by the Department regarding overpayments is education. The Department explains the audit findings to the physician as well as the correct way the services should have been claimed, or not claimed. We were told that education is used instead of recovery by the Department in the hope that it will reduce the number of overbillings in the future. However, we did not find any evidence that AIU returns to those physicians to determine whether its efforts have been successful. Another drawback to the Department's current education approach is that it only involves the one physician. The audit findings and training are not communicated profession-wide.

It should be restated that the Department is not required to negotiate recovery amounts with physicians. The HSIA provides the Department with the authority to offset overpayments against future claims from the physician. This authority existed both in the original legislation as well as in the proposed changes to the HSIA.



Recommendation 5

We recommend that the Department use the powers of *The Health Services Insurance Act* and recover all overbilled amounts paid to physicians.

2.2.2 Proposed legislation strengthens the audit and oversight function.

During the course of our audit, the proposed Bill 10 — *The Regional Health Authorities Amendment Act (Health System Governance and Accountability)*, was introduced on December 2, 2019. Changes to the HSIA have been proposed that would introduce the word "audit" (instead of review and examine) physician's files to reinforce the responsibility to ensure the claims submitted by physicians are supported by appropriate documentation. The government also sought to further strengthen its authority to recover overpayments by deducting them from future claims—despite already having this power. The Department will also have the authority to specify the documentation required to file with the minister or provide to an inspector for the purpose of facilitating the assessment, payment and audit of claims.

We also noted some concern raised around dispute resolution and the removal of a physician's right to a fair process. Dispute resolution is a process to resolve disagreements outside of the court system. We found there was a clear process for dispute resolution outlined in the Physician's Manual. We also found that the proposed changes in Bill 10 — *The Regional Health Authorities Amendment Act (Health System Governance and Accountability)* do not extinguish this option.

While a dispute resolution mechanism can be helpful when parties are at an impasse, it may result in long delays and sometimes continued disagreement. Past audit work in this area has found this can happen when there are no set timeframes for the dispute resolution process. Benchmarking of other provinces found that some included defined timeframes for decision as part of the dispute resolution process. When we reviewed the dispute resolution provisions outlined in the Physician's Manual, we noted that there was no limit for how long a dispute could last. What this means is that every audit where it has been found that a physician overbilled for a service (or services), the matter could be referred to dispute resolution and tied up indefinitely—meaning no recoveries might ever be made.



Recommendation 6

We recommend that the Department set a time limit to reach a decision in the dispute resolution process.

Conclusion

We concluded that the Department of Health, Seniors and Active Living has systems and procedures in place to ensure fees paid to and recovered from physicians are in accordance with applicable legislation, regulations and agreements. However, those systems are not used effectively to ensure that all overbillings are recovered.

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Additional information about the audit

This independent assurance report was prepared by the Office of the Auditor General of Manitoba on Physicians' Billings. Our responsibility was to provide objective information, advice and assurance to assist the Legislature in its scrutiny of the government's management of resources and programs, and to conclude on whether Physicians' Billings complies in all significant respects with the applicable criteria.

All work in this audit was performed to a reasonable level of assurance in accordance with the Canadian Standard for Assurance Engagements (CSAE) 3001—Direct Engagements set out by the Chartered Professional Accountants of Canada (CPA Canada) in the CPA Canada Handbook—Assurance.

The Office applies Canadian Standard on Quality Control 1 and, accordingly, maintains a comprehensive system of quality control, including documented policies and procedures regarding compliance with ethical requirements, professional standards, and applicable legal and regulatory requirements.

In conducting the audit work, we have complied with the independence and other ethical requirements of the Rules of Professional Conduct of Chartered Professional Accountants of Manitoba and the Code of Values, Ethics and Professional Conduct of the Office of the Auditor General of Manitoba. Both the Rules of Professional Conduct and the Code are founded on fundamental principles of integrity, objectivity, professional competence and due care, confidentiality, and professional behavior.

In accordance with our regular audit process, we obtained the following from management:

1. Confirmation of management's responsibility for the subject under audit.
2. Acknowledgement of the suitability of the criteria used in the audit.
3. Confirmation that all known information that has been requested, or that could affect the findings or audit conclusion, has been provided.
4. Confirmation that the audit report is factually accurate.

Period covered by the audit

The audit covered the period between January 2015 to May 2020. This is the period to which the audit conclusion applies.

Date of the audit report

We obtained sufficient and appropriate audit evidence on which to base our conclusion on December 23, 2020 in Winnipeg, Manitoba.

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Summary of recommendations

RECOMMENDATION 1

We recommend that the Department develop a structured training program for all staff involved in the fee-for-service process.

Response of officials:

The Office of the Provincial Comptroller agrees that a structured training program for the Auditors in the Controllershship and Compliance Unit, is important and is implementing a training on the audit process.

The modernization of the tariff schedule that is currently being undertaken by the Master Agreement Governance Committee (MAGC) is intended, among other things, to eliminate complex claims where the tariffs are unclear.

Finally, the CCU staff will continue to have consultative access to the Physicians that adjudicate complex claims for the medical interpretation of billing irregularities identified.

HSAL has dedicated expert resources for claims adjudication and the physician's assertions that the claims payments are arbitrary and unpredictable and identical work performed would be approved by the Department for one physician and denied for another is not possible for the following reasons:

1. 99% of the Claims are processed automatically and generate consistent results.
2. 1% of the Claims are complex surgical claims and are adjudicated personally by appropriately trained medical doctors. There may be some variation in decisions due to the variation in the surgical services provided in relation to treatment of a specific condition.
3. The physicians are aware of the query process through which they can address any such inconsistency and consistently do so.

The audit training, modernization of the tariff schedule and the continued access to medical doctors that adjudicate complex claims in HSAL will ensure consistency in claims audits.

RECOMMENDATION 2

We recommend that the Department analyze billing data to determine highest risk physician or tariff codes and focus audit resources in this area. Random audits should be used to supplement the highest risk audits.

Response of officials:

The Office of the Provincial Comptroller agrees with the Recommendation. The CCU Unit will be using a risk based audit approach based on:

- Highest number of tariffs claimed.
- Highest tariff dollar amount paid to the physician.
- Outliers from pattern of practice.
- Targeted tariffs (where certain services appear to be repeatedly billed incorrectly).
- Referrals from the College of Physicians and Surgeons and others.
- Complaints received through the fraud line.

Due to limited resources, risk based audits will be the main focus and complementary random audits will be utilized as exception.

RECOMMENDATION 3

We recommend that the Department publish results of physician audits performed by the Audit and Investigations Unit.

Response of officials:

The Office of the Provincial Comptroller agrees with the recommendation and concurs that there is value in the results of audit findings be made public, and communicated to physicians profession-wide, for educational purposes. Consideration will be given to the appropriate level of disclosure necessary to ensure public accountability and transparency is balanced with the protection of the privacy of the physician and the physicians' practice and any non-disclosure clauses as a result of Arbitration process.

RECOMMENDATION 4

We recommend that the Department set a service standard or timeframe for communication with physicians regarding potential overpayments.

Response of officials:

The Office of the Provincial Comptroller concurs with the recommendation and have included service standard timelines to the audit process. The arbitration process negotiated with Doctors Manitoba also includes timelines for arbitration panel appointment, submissions and decisions.

RECOMMENDATION 5

We recommend that the Department use the powers of The Health Services Insurance Act and recover all overbilled amounts paid to physicians.

Response of officials:

The Office of the Provincial Comptroller agrees with the recommendation and the amendments through Bill 10 will further clarify the Minister's authorities.

The Department's authority to recover an assessed overpayment requires establishing that the assessment of a debt was appropriate. Bill 10 proposes to amend subsection 95.1(3) such that a determination of whether a debt is owed is made by the minister, which will allow the Department to recover overbilled mounts paid to physicians.

While Health Services Insurance Act 95.1(3) "*Recovery of money from practitioners*" provides clear authority to recover a debt owing to the Minister, it is the perspective of legal counsel representing the physicians, that the legislation does not provide clarity or certainty with respect to the grounds for establishing whether the criteria in 95.1(3) (a), (b) or (c) have been met, and a debt is owed.

The Minister currently has the authority to recover a debt owing to the Minister pursuant to section 95.1(3), which provides as follows:

Recovery of money from practitioners 95.1(3)

If the minister pays an amount under the plan to or on behalf of a practitioner in respect of a service, or to an insured person in respect of a service provided by a medical practitioner who has made an election under subsection 91(1), and

- (a) amount was claimed by the practitioner in respect of a service that was not rendered;
- (b) the practitioner misrepresented to the minister the nature or extent of the service rendered; or
- (c) the practitioner has failed to provide the information referred to in section 75.1.1 in respect of a service;

the amount so paid is a debt owed by the practitioner to the minister.

Bill 10 proposes to amend subsection 95.1(3) such that a determination of whether a debt is owed is made by the minister. By giving the minister the express authority to establish that a debt is owing, this legislative change will enable the provisions in the HSIA which permit setoff against future billings, and other mechanisms for recovery, authority which was previously challenged. Accordingly, once a Notice of Determination has been issued by the minister or delegate, advising of the audit result, the Auditee will have two alternatives – provide re-payment, or proceed to arbitration.

RECOMMENDATION 6

We recommend that the Department set a time limit to reach a decision in the dispute resolution process.

Response of officials:

Office of the Provincial Comptroller agrees with the recommendation. The proposed legislation contemplates an Arbitration Process specific to the review of audit results, to ensure that physicians' rights are preserved in accordance with principles of procedural fairness and natural justice. While the length of the hearings may vary, the Arbitration process has clear timelines on the appointment of the panel, submissions and the decision. We will monitor the Arbitration process and assess the need for any changes.

Office of the Auditor General survey of physicians

1. In your opinion, how clear is the fee-for-service claims process?

- Very clear
- Somewhat clear
- Not very clear
- Not at all clear
- Don't know

2. In the last five years, have you received training on the fee-for-service claims process?

- Yes
- No

3. Do you know who to contact if you have questions or concerns about the fee-for-service claims process?

- Yes, know who to contact at the MSHAL
- Yes, know who to contact at Doctors Manitoba
- Yes, know someone else
- No

4. Since January 2015, how many times has your practice been subjected to an audit by MHSAL?

Number of times: _____

- Never (GO TO QUESTION 9)
- Don't know (GO TO QUESTION 9)

5. As a result of any of these audits, were you ever assessed by MHSAL as being overpaid?

- Yes
- No (GO TO QUESTION 9)
- Don't know (GO TO QUESTION 9)

Thinking of your last assessment by the MHSAL, as a result,

6. Were you informed of the overpayment / assessment in a timely manner?

- Yes
- No
- Don't know

7. Were you made aware of dispute resolution mechanisms?

- Yes
- No
- Don't know

8. Was the matter concluded? (That is, did MHSAL collect the amount they deemed to be an overpayment?)

- Yes
- No
- Don't know

9. Are you aware of any physicians in Manitoba who have knowingly overbilled or incorrectly billed MHSAL under the fee-for-service process?

- Yes
- No
- Don't know

10. If you wanted to, do you know where to report individuals who knowingly overbill or incorrectly bill the MHSAL?

- Yes
- No
- Don't know

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» **Our Vision**

Valued for positively influencing public sector performance through impactful audit work and reports.

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To focus our attention on areas of strategic importance to the Legislative Assembly, and to provide Members of the Legislative Assembly with reliable and efficient audits.

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