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Yi's Comments and OSC's Responses

Yi, through counsel, submitted a response to the Draft Audit Report (DAR) that took issue with OSC's sampling and extrapolation methodology as well as the audit findings. Yi also provided OSC with a corrective action plan, but did not address whether he would repay the identified overpayment. OSC summarizes each comment and provides a response to each below. Upon review of Yi's objections, OSC did not find any basis to revise its extrapolation or audit results.

I. Yi's Objections to the Extrapolation Methods Used in the DAR

Yi's Comment

"Mr. Yi objects to the sampling method and proposed extrapolation. As a preliminary matter, the Draft Audit Report does not explain the process used to identify the appropriate size of the sample, how the sample days were selected, nor the steps taken to ensure that the sample was representative of the universe as a whole. Without an explanation of those steps, it is impossible to determine the validity of the sample and whether it is appropriate for extrapolation."

OSC's Response

OSC's DAR, which OSC sent to Yi for review and formal response, included a Random Sampling and Extrapolation file (RS&E file) that contained all of the information Yi needed to review, reproduce, and validate OSC's statistical sample and extrapolation. Specifically, the RS&E file contained a Sampling Plan that referenced the software utilized for sample size calculations (RAT-STATS), the variables used to calculate the sample sizes at the probe and full sample stages, and the sample sizes that were selected. The Sampling Plan also explained how the sample days were selected. Furthermore, using the referenced software, RAT-STATS, and the seed numbers provided, Yi could have replicated the exact sample. Finally, using the information provided, Yi could have verified that the sample was representative of the universe. OSC ensures the sample is representative of the universe by using statistical sampling. The process of selecting a statistical sample, from choosing an appropriate sampling design and sample sizes to the random selection of sampling units, provides assurance that a representative sample is selected in terms of the characteristic of interest.

Here, the characteristic of interest is the paid amounts at the sampling stage, since the error dollars are not known until after the sample is selected and reviewed. OSC verifies that the paid amounts in the sample are comparable to the universe by using hypothesis testing (i.e., t-tests, f-tests, chi-square tests, etc.). OSC also extrapolates the paid amounts in the sample to confirm that the total universe dollars are captured in the confidence intervals. These tests and checks combine to provide further support that the sample is representative of the universe.

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Yi's Comment

"In order for extrapolation to be valid, the sample size must be reasonably representative of the universe of claims."

OSC's Response

Sample size, by itself, is not what determines the validity of an extrapolation. The validity of an extrapolation is determined by numerous factors, most notably the extrapolation method utilized. Sample size, does however impact the precision of the extrapolation. Accordingly, OSC properly utilized the error dollars from the probe sample to determine the full sample size necessary to achieve a suitable precision level.

Yi's Comment

"In the sample there are 37 service dates with 963 claims, or 26 claims per day. In the entire universe there are 25,350 claims over 1,164 service dates or approximately 21 claims per day. This means that the average day in the universe has 20% fewer claims than the days in the sample. The average sample day is erroneously not representative of the average universe day. Looking at a sample with more claims than average raises many issues, including whether the existence of the high level of claims in any given day has erroneously led to a greater number of exceptions."

OSC's Response

Given the variance of the service dates in the universe, for both dollars and claims, OSC appropriately utilized a stratified cluster sampling design. The purpose of stratifying is to separate the service dates into homogenous groups, which subsequently reduces variance within each stratum. Using this approach, one can determine whether the average number of claims in a sample is representative of the average claims in the universe, by comparing the mean, or average, in each stratum to the universe.

Stratum	Universe Claim Average	Sample Claim Average	|Difference|
S1	5.11	5.44	0.33
S2	16.09	15.56	0.54
S3	31.03	31.20	0.17
S4	49.59	51.33	1.75
Total	**21.78**	**26.03**	**4.25**

From the above chart, one can visually confirm that the sample means in each stratum are comparable to the universe means. Using a t-test, OSC verified that there was no evidence that the means differed significantly in each stratum. Taking it one step further, OSC applied the t-test to the overall sample and universe averages that Yi argues is "erroneously not

representative." The conclusion of this test was the same – that there is no evidence that the means differ significantly.

With that being said, the average claims per service date was not a characteristic of interest in the sample and is not the variable that needs to be representative of the universe. However, by selecting a statistical sample, the average claims per day were still well represented.

Yi's Comment

"There is also a large variance between the observed errors as a percentage of claims related to a legitimate percentage of dollars received. While the observed claims errors of 518, or 54% of the claims may seem high, the actual dollar amount of error was only 37.5 percent of the sample. This suggests that the error rate itself was not representative of the actual errors, but that perhaps the errors were more likely to occur with smaller claims. There was no showing that the variance in claim size in the sample was similar to the universe as a whole and this raises questions as to the appropriateness of extrapolation."

OSC's Response

The difference between the claim error rate and the dollar error rate is due to partial credit being provided for claims where an incorrect number of units or an incorrect procedure code was billed. Accordingly, the difference between the two error rates has no impact on the validity of the sample or the results of the extrapolation.

Yi then suggests that "perhaps the errors were more likely to occur with smaller claims," which is also incorrect. As one can verify through the RS&E file that OSC provided to Yi along with the DAR, the recovery summary tab shows that the error rates increase in each stratum from one to four. Specifically, the first stratum (S1), which contains the service dates with the lowest dollars, only has an error rate of 16.96%, whereas the fourth stratum (S4), which contains the service dates with the highest dollars, has an error rate of 42.33%. This data demonstrates that Yi's assertion regarding the import of the variance between the error rates and dollars in error is incorrect.

Yi's Comment

"As will also be discussed below, it appears that the providers in this sample were not distributed evenly among the claims. Rather, nearly forty percent of the providers accounted for only two percent of the claims in the sample. This suggests that the remaining sixty percent of providers are exerting an outsized influence on the sample. The Draft Audit Report does not explain whether any analysis was undertaken to determine if the providers in the sample appeared in the same proportion in the universe of claims. Nor does it appear that any analysis was done to determine if any error rates correlate with any particular provider, which might invalidate the sample and any extrapolation. Because the inconsistencies in the sample raise questions about its representativeness extrapolation of the data appears inappropriate."

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OSC's Response

No analysis was done to determine the "servicing providers in the sample" since that was not a relevant variable or characteristic of interest. Therefore, the natural proportion of servicing providers in the universe would be represented in the sample since that variable was not controlled. In other words, if a provider had a low number of claims in the universe for a particular stratum, then a low (or even zero) number of claims would be expected in the sample for that particular stratum. On the other hand, if a provider had a high number of claims in the universe for a particular stratum, then a large number of claims would be expected in the sample for that stratum.

Additionally, OSC does not have access to the "servicing providers in the sample" data until after the sample is drawn. That information, which is submitted by Yi as part of its billing, does not appear in the Servicing Provider fields in OSC's data. Yi is listed as the billing and the servicing provider for all claims.

Yi's Comment

"Further, the relatively low financial error rate suggests that extrapolation is inappropriate because it does not evidence a continuing and high rate of error. While the Medicare system has propagated rules that only permit extrapolation when an error rate is above 50%, the OSC has proffered no similar standard for when extrapolation is inappropriate. Here, the financial error rate was substantially below 50%. Accordingly, absent explanation from OSC, it appears that extrapolation under such circumstances is statistically unsupported and inappropriate."

OSC's Response

This argument is not supportable for many reasons. First, more than half of the claims in the sample were found to be in error (518 of 963), which is, by any professional definition, "a continuing and high rate of error."

Second, Yi states, "the Medicare system has propagated rules that only permit extrapolation when an error rate is above 50%." Since Yi does not specifically state what the "propagated rules" are for the "Medicare system", MFD is assuming that Yi is referring to the Centers for Medicare and Medicaid Services (CMS) Medicare Program Integrity Manual (MPIM). Although the MPIM previously referenced a 50% suggested error rate threshold, the current MPIM does not contain such a suggested threshold (Rev. 11797, 01-19-23). Moreover, it is worth emphasizing that the prior versions only listed the 50% error rate as a possible threshold, not a firm rule.

Third, while OSC agrees with much of the current CMS MPIM, OSC does not follow, and is not bound by, the procedures outlined in the manual. The MPIM was created for CMS contractors and thus has no controlling authority over OSC's oversight of the New Jersey Medicaid program.

Last, and perhaps most importantly, there is no rule in statistics that establishes a threshold error rate that must be met to extrapolate. Therefore, any argument that OSC's extrapolation is "statistically unsupported and inappropriate" based on the error rate is unsupportable.

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II. Yi's Objections to OSC Including Specific Errors In Its Extrapolation

OSC's Response

In Section II, A through K below, Yi repeatedly states that extrapolating a particular error is inappropriate because the identified error only occurs a small percentage of times in the sample. In essence, Yi highlights each of these errors as if it occurred in a vacuum, and that OSC is performing separate extrapolations for each. Yi's position is not supported by the principles underlying OSC's extrapolation approach.

Contrary to Yi's assertion, an extrapolation does not project the number of times a particular error reason could be found in the universe. Rather, the goal of an extrapolation is to determine the total overpayment for a given universe of claims, which is accomplished by determining the error dollars and projecting that figure to the universe. To perform this analysis, OSC must review the entire sample, determine the error dollars associated with each sampling unit, and then collectively extrapolate all error dollars identified in the sample back to the universe, which is exactly what OSC did in this case.

Yi's Comment Regarding Audit Finding A – Maintained Inaccurate and Incomplete Records

"In the sample set OSC identified 265 instances in the 963 claims where it asserts that Mr. Yi failed to maintain accurate and complete records. This relates specifically to the maintenance of a two-page SDED form. Nearly half of those exceptions resulted from Mr. Yi's inability to locate both pages of the two-page form. The majority of others resulted from service dates on the forms which were outside of the prior authorization date. There is no allegation, however, that the claim is otherwise improper or that the service was not performed. Mr. Yi believes that the claims are valid, even if the SDED form could not be located at the time of the audit and that only authorized services were performed. These claims should not form the basis for any extrapolated repayment amount."

OSC's Response

Yi's assertion that because the claims at issue are "valid" he has met the regulatory requirements is inaccurate. Yi provides no factual basis for his argument. OSC provided Yi multiple opportunities spanning the duration of this audit to produce required SDED forms, yet he could not and many of the SDED forms he did provide were incomplete and inaccurate. Based on these identified deficiencies, OSC found that Yi failed to maintain true, accurate, and complete records necessary to disclose the full extent of services provided. Yi's response herein does not provide any basis for OSC to modify these findings.

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Yi's Comment Regarding Audit Finding B – Yi Billed for Unsubstantiated Services

"In the sample of 963 claims, OSC determined that slightly less than one-third of those claims included billing errors in which the time billed did not match the hours of service on the SDED form. These were coding errors due to high volume of claims. Mr. Yi does not dispute the accuracy of the finding, but that does not render the extrapolation appropriate. The idiosyncratic nature of the errors, and the relatively low percentage of errors compared to the sample size, contribute to the illegitimacy of the conclusions drawn from the data."

OSC's Response

Yi does not dispute OSC's finding that Yi billed for services that were not reflected in Yi's SDED forms for almost a third of the sampled claims, yet he attempts to minimize this finding by stating that it was "due to high volume of claims." That excuse is not valid because there is no exception in the Medicaid program, based on the volume of claims submitted or otherwise, that allows a provider to submit deficient claims. Yi then argues that OSC should discount this finding because his almost 33 percent error rate constitutes a "relatively low percentage of errors compared to the sample size…." This position is at odds with any objective understanding of an acceptable error rate for health care claims. Moreover, Yi's position fails to address the core Medicaid program requirement that applies to all providers – the requirement to submit and maintain true, accurate, and complete records for claims. Finally, as explained above, Yi's position ignores the principles underlying OSC's extrapolation approach. As such, OSC will not modify these findings.

Yi's Comment Regarding Audit Finding C – Yi Upcoded Services Provided

"In the sample of 963 claims, OSC determined that in 18 instances, or 1.9% of claims services were upcoded to services with a higher reimbursement rate. These were inadvertent coding mistakes attributable to human error. Mr. Yi does not dispute their accuracy. However, Mr. Yi disputes that such a small error rate is suitable for extrapolation to the entire universe of claims."

OSC's Response

Yi does not dispute that he inappropriately billed services using a higher reimbursement rate (upcoding), which resulted in Yi receiving overpayments. Rather, Yi attributes such mistakes to human error and disputes that this error rate is suitable for extrapolation. As explained above, Yi was required to maintain and submit true, accurate, and complete records for claims, but failed to do so. Moreover, Yi's position ignores the principles underlying OSC's extrapolation approach. As such, OSC will not modify these findings.

Yi's Comment Regarding Audit Finding D – Yi Billed for Services Provided to Different Beneficiaries at the Same or Overlapping Times

"In the sample of 963 claims, OSC identified 9 instances where Mr. Yi billed for overlapping time for the work of the same servicing provider. These instances represent less that one percent of the claims in the sample. While the billed time overlaps with the information on the SDED forms, Mr. Yi disputes that any of the billed work was not provided. These errors almost certainly arose from incorrect dating on either the SDED form or on the claim itself. There is no suggestion that the billed services were not actually provided, and Mr. Yi maintains that they were in fact provided. Additionally, only nine instances is too few to support extrapolation to the entirety of claims."

OSC's Response

OSC's review of Yi's records, including the SDED forms, identified nine instances where Yi billed for services provided by the same servicing provider to several beneficiaries at the same or overlapping time(s). In short, Yi's own documentation showed that these claims were insupportable. Yi now attempts to explain the nine failed claims as errors that "almost certainly arose from incorrect dating on either the SDED form or on the claim itself." Yi offered no evidence that would dispute OSC's determination. In fact, Yi acknowledges that the "billed time overlaps with information on the SDED forms," which is what OSC found. Finally, as stated above, Yi's position ignores the principles underlying OSC's extrapolation approach. As such, OSC will not modify these findings.

Yi's Comment Regarding Audit Finding E – Yi Improperly Billed for Travel Time

"OSC identified 24 instances in the sample where it believes Mr. Yi billed for travel time for his providers. Mr. Yi disputes this determination. The OSC assumes travel time where a provider provided services to two different clients in two different locations, but in a time frame that does not permit for travel. This method is flawed. There are numerous typographic and practical issues that could result in an incorrect determination. As with Item D above, an incorrectly dated SDED form suggests the need for travel time that was not actually present if the encounters occurred on different days. Similarly, the encounter might have occurred in a public location where the provider might have met with clients one after the other without the need to travel, despite different locations inadvertently listed on the SDED form. Mr. Yi disputes that he billed for any travel time for his providers. Likewise, only 24 instances, less than 3% of the sample in insufficient to support an extrapolation."

OSC's Response

In essence, Yi is arguing that notwithstanding that his own records contain "typographical" errors, including "incorrectly dated" information, OSC should remove these travel time deficiencies from its findings because the underlying SDED information may have been incorrect. OSC audited Yi's claims using his own documentation and cannot ignore instances when it found discrepancies that constitute regulatory violations, which is what happened in

these 24 instances. As with the findings noted above, OSC afforded Yi ample opportunity to provide documentation to support these claims, but he failed to do so. He now raises possible reasons for these deficiencies, but offers no evidence in support of such position. Finally, his effort to call the extrapolation into question ignores the principles underlying OSC's extrapolation approach. As such, OSC will not modify these findings.

Yi's Comment Regarding Audit Finding F – Yi Failed to Document Services with Progress Notes

"The OSC determined that for 37 claims out of the sample no progress note was recorded. Again, there is no suggestion that the services were not provided. Rather, Mr. Yi was unable to locate the progress notes for those instances. As previously discussed, the incorrect dating of such a note, or inadvertent mislabeling otherwise would render the note difficult to find and identify, but the services in question still occurred. Mr. Yi disputes this purported error for that reason. Additionally, an error rate of 37 claims representing less than 4% of the sample is inappropriate for extrapolation."

OSC's Response

OSC rejects Yi's explanation for claims unsupported by a progress note. Yi states that "incorrect dating" or "inadvertent mislabeling" explains the undocumented progress notes for claims, but he fails to provide any documentation supporting such assertion. As explained above, Yi's position also ignores the principles underlying OSC's extrapolation approach. As such, OSC will not modify these findings.

Yi's Comment Regarding Audit Finding G – Yi Failed to Maintain Behavioral Assistance Training Certification for Behavioral Assistants

"The OSC identified 10 claims from four behavioral assistants where Mr. Yi failed to provide certifications of appropriate training for the assistants. This small number is not evidence of a trend, but an aberrant result. Despite identifying over one quarter of the providers in the sample as not having certification, these four providers only accounted for 1 % of the claims in the sample. This shows that any improper provision of services by these providers was inadvertent and should not be the basis for any extrapolation to the greater set of claims. Additionally, there is no assertion or information that suggests that the assistants identified were insufficiently trained, nor that they provided any services that fell below the accepted standards for such assistants."

OSC's Response

OSC identified 10 claims from four BAs where Yi was unable to provide training certifications. The lack of certifications in itself demonstrates that these four BAs were providing services without being properly trained, which constitutes a regulatory violation. Regardless of whether these BAs provided services in an appropriate or inappropriate manner, there is no dispute that Yi failed to maintain proof of certification, which is what OSC found here. Finally, Yi's claim that "this small number is not evidence of a trend, but an aberrant result" and "these four providers

only accounted for 1% of the claims in the sample" is misguided. Once again, Yi's position ignores the principles underlying OSC's extrapolation approach. As such, OSC will not modify these findings.

Yi's Comment Regarding Audit Finding H – Yi Failed to Maintain Proof of Education for Behavioral Assistants

"The OSC identified 19 claims from six behavioral assistants out of the sample where Mr. Yi failed provide proof of education. As with the objection to Item G, the small numbers here suggest an anomaly, not a trend. Here forty percent of the behavioral assistants in the sample account for only two percent of the claims. This again suggests a brief tenure and provides a reason that any such documentation may have been inadvertently lost. Further, the very low percentage in question suggests that extrapolation is not appropriate. In any event, Mr. Yi disputes that any of the assistants did not have the necessary education for the position, and that all assistants provided the appropriate levels of service to their clients."

OSC's Response

Yi does not dispute OSC's finding that Yi lacked proof of education for 6 of the 15 BAs in the audit sample selection. By regulation, BAs must possess a high school diploma, or equivalent, to perform behavioral assistant services and Yi is required to maintain proof of same, which he did not do in these instances. Finally, as explained above, Yi's position ignores the principles underlying OSC's extrapolation approach. As such, OSC will not modify these findings.

Yi's Comment Regarding Audit Finding I - Yi Failed to Maintain a Criminal Background Check for a Behavioral Assistant Prior to Rendering Services

Yi's Comment Regarding Audit Finding J - Yi Failed to Maintain a Current and Valid Driver's License for a Behavioral Assistant

Yi's Comment Regarding Audit Finding K - Yi Failed to Maintain Proof of Minimum Age Documentation for a Behavioral Assistant

"Issues I, J, and K raised by the OSC all arise from one service provider accounting for one claim out of the entire sample. The behavioral assistant only briefly worked for Mr. Yi and left soon after. There is no indication that the behavioral assistant did not meet any of the standards required, and Mr. Yi contends that she did meet all necessary criteria. In any event, one instance is not a trend to extrapolate but an aberration. It is not likely that the one individual was anything but a one off occurrence with respect to a short-lived employee. One such instance should not form the basis for extrapolation to a larger pool."

OSC's Response

Although Yi contends that the BA met "all necessary criteria," the documentation does not support that position. Despite having ample opportunity to do so through the course of this audit, Yi failed to provide a background check, a current and valid driver's license, and proof of age for this BA. Finally, Yi characterizes these exceptions as a "one off occurrence" as a means to excuse his failure to have satisfied the regulatory requirement that he maintain documentation showing a successful background check, current and valid driver's license, and proof of age. The fact that OSC found this set of deficiencies with regard to one BA does not excuse Yi's failure to satisfy the regulatory requirements. Finally, Yi's position ignores the principles underlying OSC's extrapolation approach. As such, OSC will not modify these findings.