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OFFICE OF THE STATE COMPTROLLER

August 27, 2009

Richard F. Daines, M.D.
Commissioner
Department of Health
Corning Tower
Empire State Plaza
Albany, NY 12237

Re: Report 2009-F-12

Dear Dr. Daines:

Pursuant to the State Comptroller's authority as set forth in Article V, Section 1 of the State Constitution; and Article II, Section 8 of the State Finance Law, we have followed up on the actions taken by officials of the Department of Health (Department) to implement the recommendations contained in our audit report, *Inappropriate Medicaid Payments for Durable Medical Equipment While Recipients Reside in Nursing Homes* (Report 2007-S-18).

Background, Scope and Objective

The Department administers the Medicaid program, which was established under Title XIX of the federal Social Security Act to provide needy people with medical assistance. The program is funded jointly by the federal, State, and local governments. Its management information and claims processing functions are handled through the State's eMedNY system, which the Department implemented on March 24, 2005.

For Medicaid purposes, items such as canes, crutches, hearing devices, diapers, gauze and gloves are classified as durable medical equipment (DME). Such items are not custom-made for any particular Medicaid recipient. Rather, they are commonly needed to serve Medicaid recipients in general, and Medicaid routinely pays for them. The Department establishes comprehensive Medicaid rates for nursing homes that include the costs of commonly used DME items, and therefore, DME providers should not bill Medicaid for them. Instead, they should bill nursing homes directly, unless the DME item is part of a recipient's continuation of care upon discharge from a nursing home.

Our initial audit report, which was issued on January 17, 2008, examined Medicaid claims

submitted by DME providers and processed by the Department, to determine whether the State's Medicaid program made inappropriate payments for DME items while recipients were in nursing homes. Our report identified about \$3.1 million in inappropriate Medicaid payments for DME items while recipients were in nursing homes. The objective of our follow-up was to assess the extent of implementation, as of July 6, 2009, of the three recommendations included in our initial audit report.

Follow-up Observations

Department officials made progress in addressing the matters included in our initial report. Of the three prior audit recommendations, two recommendations have been implemented, and the remaining recommendation has been partially implemented.

Recommendation 1

Review the \$3.1 million in payments we identified and recover inappropriate payments.

Status - Partially Implemented

Agency Action - After our initial report was issued, Department officials began to review the payments in question, with the intention of recovering those that were inappropriate. However, officials have temporarily suspended their review and recovery efforts because of a review by the Office of the Medicaid Inspector General (OMIG) that questioned payments to a DME provider for items provided to recipients in assisted living facilities. According to OMIG officials, the Medicaid regulations for DME items for recipients in nursing homes are very similar to the regulations for DME items for recipients in assisted living facilities. Moreover, OMIG's review resulted in a legal challenge that remains unresolved pending the completion of a formal hearing, administered by the Department, which includes representatives of assisted living facilities and the DME provider. According to Department and OMIG officials, the outcome of this hearing could impact efforts to recover the payments identified in our report. Department and OMIG officials intend to resume efforts to review and recover the payments in question after the aforementioned hearing process has been completed and the matters in question resolved.

Recommendation 2

Implement appropriate edits to the eMedNY system to prevent future overpayments from occurring.

Status - Implemented

Agency Action - The Department's Office of Health Insurance Programs (OHIP) developed and implemented updated system controls in the eMedNY system that reject payments for non-custom DME items if a recipient resides in a nursing home.

Recommendation 3

Remind DME providers on the appropriate way to bill Medicaid for services provided to recipients in nursing homes.

Status - Implemented

Agency Action - OHIP officials sent a formal reminder to DME providers regarding the proper billing practices for non-custom DME items for recipients residing in nursing homes. In addition, OHIP posted a reminder, in the DME Provider Communication section of the eMedNY website, of the proper way to bill for such DME items. Also, at the time of our follow-up review, OHIP was drafting language for the monthly Medicaid Update to remind providers of the appropriate billing practices for DME items for nursing home recipients.

Major contributors to this report were Robert Wolf, Brian Krawiecki, and Arnold Blanck.

We would appreciate your response to this report within 30 days, indicating any actions planned to address the unresolved issues discussed in this report. We also thank the management and staff of the Department for the courtesies and cooperation extended to our auditors during this review.

Very truly yours,

Brian E. Mason
Audit Manager

cc: Mr. Thomas Lukacs, DOB
Mr. Stephen Abbott, DOH