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OFFICE OF THE STATE COMPTROLLER

December 27, 2018

Howard A. Zucker, M.D., J.D.
Commissioner
Department of Health
Corning Tower
Empire State Plaza
Albany, NY 12237

Re: Medicaid Payments for Pharmacy
Claims – Joia Pharmacy and a Related
Prescriber
Report 2018-F-26

Dear Dr. Zucker:

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 to implement the recommendations contained in our audit report, *Medicaid Payments for Pharmacy Claims – Joia Pharmacy and a Related Prescriber* (Report 2013-S-4).

Background, Scope, and Objective

The Department of Health (Department) administers New York State's Medicaid program, which provides a wide range of medical services to those who are economically disadvantaged and/or have special health care needs. Pharmacies that are enrolled in the Medicaid program dispense prescription drugs to Medicaid beneficiaries. The pharmacists who fill the prescriptions must be licensed and registered with the State Education Department's (SED) Board of Pharmacy. Various laws, rules, regulations, and policies govern how pharmacies are reimbursed for prescription drugs under the Medicaid program. For example: drugs cannot be dispensed without a prescription ordered by a person legally authorized to issue prescriptions; prescription forms must have complete and accurate information before the drug is dispensed; and pharmacies are required to maintain prescriptions supporting Medicaid claims for a period of six years.

During our initial audit period, Joia Pharmacy, Inc. (Joia), doing business as Soho Pharmacy, was a privately owned pharmacy located in Lower Manhattan. For the period January 1, 2008 through December 31, 2012, the Department paid Joia more than \$7.7 million for 50,060 claims for 706 recipients. Soho Pharmacy has operated under different corporate ownership since 2014

and, as of April 1, 2014, was no longer enrolled in the Medicaid program as a fee-for-service provider (i.e., it no longer billed Medicaid fee-for-service claims). However, at the time of our follow-up review, Soho Pharmacy continued to bill claims to Medicaid managed care organizations on behalf of Medicaid recipients.

Our initial audit also found that a related prescriber (herein referred to as “the Doctor”) was listed as the prescriber on 31,351 (63 percent) of Joia’s 50,060 Medicaid claims.

We issued our initial audit report on June 27, 2017. The audit objective was to determine whether Medicaid made proper payments to Joia and the Doctor in compliance with applicable Medicaid laws and regulations, and the rules and policies set forth by the Department and SED. Our audit covered the period January 1, 2008 through December 31, 2012. We also reviewed updated information pertaining to the Doctor’s prescribing activity for the period January 1, 2013 through June 30, 2016.

Our initial audit found that, based on a statistical projection of the audit sample results, the Department made improper payments totaling approximately \$1.5 million to Joia for pharmacy claims that did not comply with Medicaid laws, rules, regulations, and policies. Further, our audit identified other practices of both Joia and the Doctor that warranted further review.

We recommended the Department review the Medicaid payments made to Joia and recover any improper payments, as warranted; formally review the factors that led to Joia’s submission of improper claims; follow up on all other matters we reported, including having a Department physician review the issues involving the Doctor; and assess the appropriateness of the providers’ future participation in the Medicaid program.

Summary Conclusions and Status of Audit Recommendations

Department officials made progress in addressing the problems we identified in the initial audit report. Of the report’s four audit recommendations, three were implemented and one was partially implemented.

Follow-Up Observations

Recommendation 1

Review the Medicaid payments made to Joia and recover any improper payments, as warranted.

Status – Implemented

Agency Action – The Office of the Medicaid Inspector General (OMIG) investigates and recovers improper Medicaid payments on behalf of the Department. According to OMIG officials, most of the Medicaid payments made to Joia during the audit scope were no longer recoverable due to regulatory look-back rules that prohibit the Department from recovering a payment more than six years after the claim was filed. Of the remaining claims that

OMIG reviewed, OMIG found minimal problems. As a result, OMIG determined that no recoveries were warranted.

Recommendation 2

Formally review and assess the factors that led to Joia's submission of the improper claims. Take actions, as warranted, to remediate any improper policies and practices that are identified. Such a review should include determining whether the pharmacy – under the new ownership – and its employees have corrected any such deficiencies.

Status – Implemented

Agency Action – As described in the Agency Action section of Recommendation 1, OMIG's review of the pharmacy's claims resulted in minimal findings. As such, OMIG determined no remediation actions were warranted.

Recommendation 3

Follow up on all other matters identified in this report, including having a Department physician review the issues involving the Doctor, and take appropriate action, as warranted.

Status – Partially Implemented

Agency Action – Our initial audit identified other practices of Joia and the Doctor that warranted further review. With Joia, we found: a lack of supporting documentation for claims billed; billing for controlled substances in quantities greater than allowed by the State Controlled Substances Act; questionable electronic pick-up signatures on prescriptions; and claims for medication that had labels with inaccurate directions. Regarding the Doctor, we found that some patients received a questionable volume of prescriptions and/or possible conflicting medications.

After our initial audit, OMIG reviewed a sample of patients with a high number of claims and prescriptions from the Doctor. The review, which was done by a Registered Nurse, focused on the appropriateness of care and looked for instances of patient harm. A report documenting the conclusions of the review was provided to our auditors. The report concluded that it was not unusual for the Doctor to prescribe numerous (20 or more) medications for patients in a single day, as many of them had severe health issues and/or were elderly.

OMIG officials also reviewed some of the other issues we identified at Joia. According to OMIG officials, they subpoenaed and reviewed a large number of prescriptions and pharmacy logs. Although OMIG's review did not result in findings, we note that its review did not include all of the other issues we identified in our initial audit. For example, OMIG did not perform a review of the controlled substances that we found were dispensed in quantities greater than allowed by the State Controlled Substances Act. Further, OMIG's

review did not determine if prescriptions with questionable pick-up signatures were actually picked up by the intended recipients. OMIG also did not review the medication labels with incorrect or incomprehensible directions, which could have a significant impact on patient health and safety.

Recommendation 4

Assess the appropriateness of the providers' (pharmacists and physicians) future participation in the Medicaid program. This assessment should also address the propriety of referring any of the providers to SED's Office of the Professions.

Status – Implemented

Agency Action – OMIG's review of Medicaid payments to Joia (see the Agency Action section of Recommendation 1) and the issues related to the Doctor (see the Agency Action section of Recommendation 3) resulted in minimal findings. Based on the claims that OMIG reviewed, it determined that no further action regarding the providers' participation in the Medicaid program was needed.

Major contributors to this report were Salvatore D'Amato, Misty Daiyan, and Nareen Jarrett.

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 thank the management and staff of the Department for the courtesies and cooperation extended to our auditors during this review.

Very truly yours,

Christopher Morris
Audit Manager

cc: Mr. Daniel Duffy, Department of Health
Mr. Dennis Rosen, Medicaid Inspector General