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October 15, 2019

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

Re: Medicaid Payments to Medicare
Advantage Plan Providers
Report 2019-F-29

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 to Medicare Advantage Plan Providers* (Report [2016-S-54](#)).

Background, Scope, and Objective

The Department of Health (Department) administers the State's Medicaid program, which provides a wide range of health care services to individuals who are economically disadvantaged and/or have special health care needs. Many of the State's Medicaid recipients are also enrolled in Medicare, the federal health insurance program for people age 65 and older and people under 65 who have certain disabilities. Under Medicare Part C, private managed care companies administer Medicare benefits and offer different health care plans ("Medicare Advantage plans") tailored to the specific needs of beneficiaries. Plans typically have networks of participating health care providers that the plans reimburse for services provided to enrollees. For individuals enrolled in Medicaid and Medicare, the plan providers bill Medicaid for the enrollee's Part C cost-sharing liabilities (deductibles, coinsurance, and copayments).

We issued our initial audit report on September 10, 2018. The audit objective was to determine whether Medicaid inappropriately paid for recipients' Medicare Part C cost-sharing liabilities. The audit covered the period January 1, 2012 through December 31, 2016. Our initial audit identified \$770,935 in Medicaid overpayments for Medicare Part C cost-sharing on 7,072 sampled claims. We determined the overpayments occurred

because providers reported inflated Part C cost-sharing amounts on claims, and the Department lacked sufficient controls to detect and prevent such claims. Three providers in our review received significant overpayments. Therefore, we analyzed all other Part C cost-sharing claims billed by these providers during the audit period and identified potential additional overpayments of \$562,356. We recommended the Department review and recover the inappropriate payments identified, advise the three high-risk providers how to properly bill Medicaid for Medicare Part C cost-sharing, and develop a risk-based approach to identify and prevent inappropriate claims going forward.

The objective of our follow-up was to assess the extent of implementation, as of September 23, 2019, of the three recommendations included in our initial audit report.

Summary Conclusions and Status of Audit Recommendations

Department officials made some progress in addressing the problems we identified in the initial audit report; however, additional action is needed. Of the initial report's three audit recommendations, one was not implemented and two were partially implemented.

Follow-Up Observations

Recommendation 1

Review the actual (\$770,935) and potential (\$562,356) Medicaid overpayments we identified and recover as appropriate.

Status – Not Implemented

Agency Action – The Office of the Medicaid Inspector General (OMIG) investigates and recovers improper Medicaid payments on behalf of the Department. OMIG's Work Plan states it will safeguard Medicaid resources by responding to external audits from the Office of the New York State Comptroller and it will analyze the external audit data and work to recover inappropriately paid claims. At the conclusion of the initial audit, we provided OMIG with a file containing details of the actual overpayments we identified, including, but not limited to, the Medicaid payment, the Part C claims payment data received from the plans, and the calculated overpayment.

OMIG was unable to provide evidence that it took action to recover any of the overpaid claims identified in the initial audit. Further, OMIG could not demonstrate that it contacted any of the three providers that received significant overpayments. At the conclusion of our follow-up review, OMIG stated it plans to pursue recovery of any payment determined to be inappropriate. We encourage OMIG officials to expedite its review and recovery of the overpayments we identified in the initial audit. We remind OMIG officials that the audit covered the period January 2012 through December 2016 and overpaid claims from earlier years may be at risk of non-recovery due to federal look-back provisions.

Recommendation 2

Formally instruct the three providers identified in this report to bill Medicare Part C claims in accordance with existing requirements.

Status – Partially Implemented

Agency Action – The Department drafted an article formally instructing providers how to properly bill Medicaid for claims containing Medicare Part C cost-sharing liabilities. According to Department officials, the article will be part of a future edition of the Department’s official publication for Medicaid providers, *Medicaid Update*. We also encourage Department officials to reach out to the three providers directly and provide instruction.

Recommendation 3

Develop a risk-based approach to identify and prevent inappropriate Medicaid claims for Medicare Part C cost-sharing liabilities.

Status – Partially Implemented

Agency Action – In January 2016, the Department implemented an edit to its claims processing system, eMedNY, that compares cost-sharing liability amounts to other payment information on Medicare Part C claims. However, we determined this edit would not have prevented all the inappropriate claims identified in the initial audit. In March 2019, the Department held internal discussions to review the edit for possible improvements. We encourage the Department to continue this review and to strengthen the edit to prevent future Medicaid overpayments for Medicare Part C cost-sharing liabilities.

Major contributors to this report were Benjamin Babendreier, Jonathan Brzozowski, and Daniel Towle.

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: Ms. Jessica Lynch, Department of Health
Mr. Dennis Rosen, Medicaid Inspector General