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January 17, 2020

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

Re: Maximizing Drug Rebates for Health
and Recovery Plans
Report 2019-F-41

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 *Maximizing Drug Rebates for Health and Recovery Plans* (Report [2017-S-61](#)), which was issued June 22, 2018.

Background, Scope, and Objective

The Department of Health (Department) administers the State's Medicaid program. In October 2015, adult Medicaid recipients with significant behavioral health needs began to be enrolled into Health and Recovery Plans (HARPs). HARPs are a type of managed care program that provides specialized care, including prescription drugs, to Medicaid recipients age 21 or older with serious mental illness and/or substance use disorders.

In 1990, Congress created the Medicaid Drug Rebate Program to reduce state and federal expenditures for Medicaid prescription drug costs. Accordingly, states recover a portion of their Medicaid prescription drug costs by requesting rebates from drug manufacturers. The Affordable Care Act, enacted in 2010, extended prescription drug rebates to cover medications dispensed to enrollees of Medicaid managed care organizations (MCOs), including pharmacy-dispensed drugs and physician-administered drugs (administered by a medical professional in an office setting). MCOs are required to submit encounter claims to the Department that detail the health care services, including drugs, provided to Medicaid recipients.

The objective of the initial audit was to determine whether the Department took appropriate steps to collect all available drug rebates for HARPs. The audit covered the

period October 1, 2015 through December 31, 2017. We determined the Department failed to collect rebates for HARP-related drugs since the program's inception. We notified Department officials of this and, in response, the Department promptly updated its procedures and invoiced \$425.9 million in HARP drug rebates during the initial audit. We also identified an additional \$1.2 million in rebates that could be collected with further efforts by the Department. We recommended the Department regularly monitor the activities of its new rebate contractor to help ensure the accuracy of the drug rebate function and that all HARP rebates are collected from drug manufacturers.

The objective of our follow-up was to assess the extent of implementation, as of December 13, 2019, of the two recommendations included in our initial audit report.

Summary Conclusions and Status of Audit Recommendations

Department officials made significant progress in addressing the problems we identified in the initial audit report. Since the audit, we estimated the Department was able to collect over \$570 million in HARP rebates. Of the initial report's two audit recommendations, one was implemented and one was partially implemented.

Follow-Up Observations

Recommendation 1

Regularly monitor the activities of the new rebate contractor to ensure the accuracy of the drug rebate function, including:

- *Ensuring all appropriate HARP drug encounters are included in the rebate process;*
- *Ensuring all new programs eligible for rebates are included in the rebate process; and*
- *Independently verifying the accuracy of the final rebate invoices.*

Status – Implemented

Agency Action – Our initial audit found the Department's drug rebate unit was unaware of the new managed care plan type, HARP, and available rebates on HARP drug encounter claims were not collected from drug manufacturers. To prevent this, the Department's drug rebate unit has since been added to an oversight list and those on the list are notified of any changes related to managed care plans. Additionally, beginning in January 2020, the drug rebate unit will begin reaching out to Department Bureau Directors quarterly to determine if there is new Medicaid spending in their respective areas that may affect the rebate process. In addition, the Department and its rebate contractor hold bi-weekly meetings to discuss changes that may impact the rebate process. For instance, since our initial audit, new service billing codes were added to the process so that appropriate rebates could be collected.

The Department performs a review of the accuracy of rebates before and after sending the quarterly invoices to drug manufacturers. Every quarter, Department

pharmacists are given five days to complete a pre-review of the invoices, while post-review is done on a continual basis. Various tests are performed during the reviews, such as comparing invoices to previous quarters and reviewing National Drug Codes (a universal product identifier for each medication that is the basis of rebates) with an abnormal rebate percentage. If at any point invoices are found to be incorrect, the rebate contractor is made aware of the issue and re-creates the invoice. The Department tracks the issues identified during the reviews and the contractor's responses to ensure the contractor is addressing the problems.

Recommendation 2

Take appropriate steps, including working with the new contractor, to invoice any remaining uncollected drug rebates from HARP encounters, including the \$1.2 million in physician-administered drug rebates identified.

Status – Partially Implemented

Agency Action – Our initial report identified 78,168 physician-administered drug encounter claims totaling \$1.2 million in rebates that the Department excluded from the rebate process. Department officials stated a change request was recently completed that will enable the rebate contractor to process older un-invoiced claims. As such, the 78,168 claims will be transmitted to the rebate contractor for processing and all rebate-eligible claims will be invoiced.

During our follow-up review, the Department was able to provide evidence it invoiced over \$80.3 million in HARP drug rebates for the second quarter of 2019. Based on this amount, we analyzed HARP drug encounter claims for the period January 1, 2018 through November 30, 2019 and estimated the Department invoiced \$570.2 million in HARP drug rebates since our initial audit.

Major contributors to this report were Thomas Sunkel, Kimberly Geary, and Jeremy Glazer.

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: Thomas McCann, Department of Health
Dennis Rosen, Medicaid Inspector General