NEW YORK
state department of
HEALTH

Nirav R. Shah, M.D., M.P.H.
Commissioner

Sue Kelly
Executive Deputy Commissioner

April 24, 2013

Andrea Inman, Audit Manager
Office of the State Comptroller
Division of State Government Accountability
110 State Street, 11th Floor
Albany, New York 12236

Dear Ms. Inman:

Enclosed are the Department of Health's comments on the Office of the State Comptroller's Follow-up Report 2012-F-9 on Department actions relative to the recommendations contained in earlier OSC Report 2010-S-22 entitled, "Medicaid Payments to Selected Providers for Services to Recipients with Medicare Part C Coverage."

Thank you for the opportunity to comment.

Sincerely,

Sue Kelly
Executive Deputy Commissioner

Enclosure

cc: Nirav R. Shah, M.D., M.P.H.
Jason Helgerson
James C. Cox
Michael Nazarko
Stephen Abbott
Diane Christensen
Stephen LaCasse
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Department of Health
Comments on the
Office of the State Comptroller's
Follow-Up Report 2012-F-9 on
Medicaid Payments to Selected
Providers for Services to Recipients with
Medicare Part C Coverage (2010-S-22)

The following are the Department of Health's (Department) comments in response to the Office of the State Comptroller's (OSC) Follow-Up Report 2012-F-9 on "Medicaid Payments to Selected Providers for Services to Recipients with Medicare Part C Coverage (2010-S-22)."

Recommendation #1:

Recover the $757,738 we identified as overpayments due to the 221 errant claims submitted by the three providers as detailed in our report.

Status – Partially Implemented.

Agency Action – The Office of the Medicaid Inspector General (OMIG) investigates and recovers improper Medicaid payments on behalf of the Department. At the time of our follow-up, the OMIG had reviewed one provider's Code 16 claims (for the period January 29, 2007 through March 31, 2010) pertaining to the actual and potential overpayments we identified in the initial audit. The OMIG recovered $279,500 from that provider. Recoveries from the other two providers, however, have not been made. OMIG officials have contacted both providers and anticipate recoveries from them.

Recommendation #2:

Review the $1.4 million we identified as potential overpayments for the 19,401 Code 16 claims that we did not examine in detail. Recover any overpayments as appropriate.

Status – Partially Implemented.

Agency Action – As noted previously, the OMIG reviewed actual and potential overpayments of one provider's Code 16 claims and recovered $279,500. A portion of that recovery pertained to the potential overpayments we identified. In addition, the OMIG has negotiated self-disclosure agreements with the other two providers. One provider has agreed to review all of its Code 16 claims for the six years ending December 31, 2010, report (to the OMIG) the overpayments it received, and reimburse the State, as appropriate. Regarding the remaining provider, the OMIG is determining if the agreement covers the claims we identified in our audit.

Response to #1 and #2:

The OMIG has negotiated a self-disclosure agreement with one provider. As of 08/01/12, the amount recovered is $706,471. As noted by OSC, recoveries from another provider totaled $279,500. Regarding the remaining provider, the OMIG is determining if a self-disclosure agreement covers the claims identified in the audit. Once this analysis is complete, the OMIG will pursue recoveries.

Recommendation # 3:

Formally remind providers of the requirements for the proper preparation and processing of Code 16 claims.

Status – Implemented.

Agency Action – The Department reminded providers of the requirements for the proper preparation and processing of Code 16 claims in the June 2010 edition of Medicaid Update, the Department's official publication for Medicaid providers. The update included formally reminding providers to bill Medicare prior to Medicaid. In addition, OMIG instructed two of the providers, identified in our initial audit, on the proper way to bill Medicaid for Code 16 claims. OMIG officials also plan to advise the third provider of corrective actions it should take to ensure its Code 16 claims are prepared properly.

Response #3:

The Department confirms implementing the corrective action for this recommendation.

Recommendation # 4:

Design and implement eMedNY system edits, with particular focus on excessive charges for coinsurance or co-payments, to detect and prevent overpayments for Code 16 claims.

Status – Partially Implemented.

Agency Action – In March 2012, the Department initiated a project to design an edit to prevent Medicaid payments of Code 16 claims when the recipient is not enrolled in a Plan. Once activated, the edit will prevent some of the overpayments identified in our initial audit. However, the Department has not established a control to prevent Medicaid overpayments for excessive charges on claims for recipients who are enrolled in a Plan. According to Department officials, this type of control is not feasible because of the large variances in charges for coinsurance and other patient liabilities existing among the many different Plans offered in the State.

OSC Comment- In general, a Plan's base payment amount should exceed the amount of coinsurance (and other patient liability) paid by Medicaid. However, many of the overpayments we identified resulted from claims with coinsurance charges that exceeded the amounts of a

Plan's base payments. Thus, we maintain that the Department should develop a control to detect excessive claims, particularly when charges for coinsurance exceed a Plan's base payments, to prevent Medicaid overpayments.

Response #4:

The Department implemented Evolution Project (EP) 1685 on 7/26/2012, which will deny any claim that uses the Code 16 where, on the date of service, there is not at least one active Medicare Advantage Plan in the Third Party Liability (TPL) subsystem. Since this will ensure that providers bill correctly, edits already in place will address most of these claims.

Recommendation # 5:

Consider requesting providers to submit Explanation of Benefits (EOB), on a sample basis and/or for claims exceeding a certain dollar threshold, to help verify the propriety of Code 16 claims.

Status – Not Implemented.

Agency Action – The Department had not taken action on this recommendation.

Response #5:

The OMIG is in the process of determining where the EOB procedure stands.