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STATE OF NEW YORK
OFFICE OF THE STATE COMPTROLLER

March 29, 2005

Antonia C. Novello, M.D., M.P.H., Dr. P.H.
Commissioner
Department of Health
Corning Tower
Empire State Plaza
Albany, NY 12237

Re: Oversight of Medicaid Third-Party Recovery Activities
Report 2004-S-16

Dear Dr. Novello:

According 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 audited the Department of Health's oversight of a contractor (the Public Consulting Group) responsible for making Medicaid third-party recoveries for the period January 1, 2002 through July 15, 2004.

A. Background

The Department of Health administers the State's Medical Assistance Program (Medicaid), in which medical assistance is provided to needy people. Under law, Medicaid is the payer of last resort. Thus, when medical services are provided to Medicaid recipients, the providers should determine whether the recipients have any other health insurance coverage (termed third-party insurance coverage) for the services provided. Third-party coverage may be provided by a recipient's own private insurer, an employer-sponsored insurer, or other federal insurance programs. When a recipient has third-party insurance coverage, the provider should bill the third-party insurer first and later bill Medicaid for any amount not paid by the insurer.

Providers bill Medicaid by submitting a claim to the Department's fiscal agent. In processing these claims, the Department uses a "pay and chase" method to ensure Medicaid is the payer of last resort. That is, the Department pays the provider's claim, and if it is later determined that a third-party insurer should have paid some or all of this amount, the Department seeks to recover the amount that should have been paid by the third-party insurer.

To facilitate third-party recoveries, the Department contracts with private firms. The firms are expected to identify recoverable amounts not paid by third-party insurers and collect these amounts. The firms are then paid fees based on the amounts that are recovered.

One such firm, the Public Consulting Group (Group), has had three third-party recovery contracts with the Department since 1996. In the first two contracts, the Group was to be paid various contingent fees, ranging from 1.2 to 8.9 percent, depending on the type of recovery made. The terms of both contracts were extended to December 31, 2001 to enable the Group to complete recovery activities that had been initiated under these contracts. Between March 1998 and December 2001, the fees paid to the Group under these two contracts totaled $2.8 million.

The Group's third contract covers the period January 7, 2002 through March 31, 2005. In this contract, the Group's recovery activities have been expanded, and the Group is to be paid a flat fee of 5.45 percent for each recovery realized. Between January 2002 and February 2004, the fees paid to the Group under this third contract totaled nearly $6.1 million.

To recover unpaid amounts from third-party insurers, the Group either bills the insurers directly or instructs the medical providers to bill the insurers. The amounts may be recovered through one of the following three mechanisms:

- **Checks Deposited -** If a check is received through the efforts of the Group, the check is to be deposited into a designated Department bank account. In these instances, the Group can claim the total amount deposited as a Medicaid recovery.
- **Void or Adjustment Transactions -** If no payment or a partial payment is received through the efforts of the Group and the unpaid amount is determined to be a valid insurer liability, this amount can be offset against the medical provider's subsequent payments from Medicaid. Such offsets are called void or adjustment transactions. These transactions are prompted by the Group, but are processed by the Department on its Medicaid claim adjudication and payment system. The Department then reports the results of the transactions to the Group, which can claim the offset amounts as Medicaid recoveries.
- **Credit History -** The Department sometimes discovers that a void or adjustment transaction requested by the Group cannot be processed, because the provider has already offset the amount against a subsequent payment from Medicaid. In such instances, the Department reports the amount and date of the provider's offset transaction to the Group. The Group compares the date of this transaction to the date it first notified the provider about the need to make a third-party recovery. If the Group's notification date is earlier than the provider's transaction date, the Group can claim the amount as a Medicaid recovery. If the provider's transaction date is earlier, the Group cannot claim any part of the offset amount as a Medicaid recovery.

To receive its fee for a Medicaid recovery, the Public Consulting Group submits an invoice to the Department along with appropriate supporting documentation. The invoice and supporting documentation are to be reviewed and approved by the Department before payment can be made. Generally, several Medicaid recoveries are claimed on each invoice.

B. Audit Scope, Objectives and Methodology

We audited the Department's oversight of the Medicaid third-party recovery activities performed by the Public Consulting Group for the period January 1, 2002 through July 15, 2004. The objectives of our performance audit were to determine whether this oversight provided Department management with sufficient assurance fee payments to the Group were accurate. To accomplish our objective, we interviewed Department and Public Consulting Group officials, reviewed Department procedures, reports and electronic data files; and reviewed Public Consulting Group invoices and supporting documentation for claimed Medicaid recoveries. As part of our review, we selected certain of the Medicaid recoveries claimed by the Group and compared these claims to Department reports and data to determine whether the claims were appropriate and properly supported.

We did our audit according to generally accepted government auditing standards. Such standards require that we plan and do our audit to adequately assess the Department operations within our audit scope. Further, these standards require that we understand the Department's internal control structure and compliance with those laws, rules and regulations that are relevant to the operations included in our audit scope. An audit includes examining, on a test basis, evidence supporting transactions recorded in the accounting and operating records and applying such other auditing procedures as we consider necessary in the circumstances. An audit also includes assessing the estimates, judgments and decisions made by management. We believe our audit provides a reasonable basis for our findings, conclusions and recommendations.

In addition to being the State Auditor, the Comptroller performs certain other constitutionally and statutorily mandated duties as the chief fiscal officer of New York State, several of which are performed by the Division of State Services. These include operating the State's accounting system; preparing the State's financial statements; and approving State contracts, refunds, and other payments. In addition, the Comptroller appoints members to certain boards, commissions and public authorities, some of whom have minority voting rights. These duties may be considered management functions for purposes of evaluating organizational independence under generally accepted government auditing standards. In our opinion, these management functions do not affect our ability to conduct independent audits of program performance.

C. Results of Audit

We found the Department's oversight was generally appropriate to ensure the accuracy of the fees paid to the Group for certain types of Medicaid recoveries (recoveries claimed through checks deposited and recoveries claimed through void/adjustment transactions). Together, these two recovery mechanisms accounted for about 95 percent of the fee payments made to the Group between January 2002 and February 2004.

However, substantial improvements are needed in the Department's oversight of recoveries claimed through the credit history process. Because of weaknesses in this oversight, the Group was paid fees for duplicate claims, improper claims and claims for incorrect amounts. At least half the fees paid to the Group in our random sample of credit history recoveries related to such claims. A total of about $332,000 in fees was paid to the Group for credit history recoveries under the current

contract, and according to Department officials, all improper fee payments will be identified and corrected in a planned reconciliation of the Group's claimed recoveries. Since this reconciliation is to be performed by the Group, we recommend that the Department verify the accuracy and validity of the review. We also recommend that certain actions be taken by the Department to strengthen its control over credit history recoveries in the future.

Department Management Oversight of Medicaid Third-Party Recovery Activities

The Public Consulting Group's third party recovery activities are overseen by the Department's Bureau of Revenue Initiatives and Fraud Detection Systems (Bureau). When the Group claims fees for Medicaid recoveries, its invoices are submitted to the Bureau. Bureau management has established a process for verifying the accuracy of recoveries claimed through checks deposited and void/adjustment transactions. We examined this process and found that, in general, it provides reasonable assurance fee payments are accurate. However, we found the controls Bureau management has in place over the credit history recoveries need substantial improvement.

At the time of our audit, the Public Consulting Group had submitted under its current contract four invoices for recoveries claimed through the credit history process. The four invoices contained 16,619 credit history recoveries totaling $6,091,814, and the Group claimed, and was paid, about $332,000 in fees for these recoveries. We randomly selected 140 of these recoveries for verification. The 140 recoveries in our sample totaled $372,578, for which the Group was paid a total of $20,305 in fees.

To determine whether the fees paid to the Group for these recoveries were accurate and appropriate, we reviewed the supporting documentation submitted with the invoices and compared this documentation to Department reports and data. We found that 127 of the 140 recoveries were either improper or questionable, as follows:

- 23 of the recoveries were improper because, according to Department data, the providers had offset the amounts to be recovered against subsequent Medicaid payments before the Group notified the providers about the need to make a recovery. Therefore, none of these recoveries could properly be claimed by the Group. The fees paid to the Group for these 23 recoveries totaled $7,693.

- Nine of the recoveries were improper because they duplicated other recoveries claimed by the Group. The fees paid to the Group for these nine duplicate recoveries totaled $1,771.

- Eight of the recoveries claimed an incorrect dollar amount. Since the Group's claimed recovery amounts exceeded the actual recovery amounts according to MMIS, the fees paid to the Group for these eight recoveries were overstated by a net amount of $1,473.

- 87 of the recoveries were questionable because they related to provider claims that were paid by the Department during the Group's two prior contracts. In fact, some of

these claims were paid as early as 1996. Any recoveries made on these claims should have been covered by the first two contracts, and any fees paid on these recoveries should have been paid on the basis of the fee schedules in those contracts. We note that some of these 87 recoveries were, in fact, offset during the period covered by the first two contracts (the Group claimed credit history recoveries under those contracts), and thus may represent additional duplicate recoveries and additional duplicate fee payments. However, Department management does not have control mechanisms in place to identify recoveries that were claimed under a previous contract.

Thus, more than half of the fees in our random sample ($10,937 of $20,305) were paid for recoveries that were invalid, duplicate or incorrect, and additional amounts may have been paid for duplicate recoveries from the first two contracts. We therefore conclude that fee payments to the Group for credit history recoveries were often inaccurate or inappropriate. Department officials stated that a comprehensive reconciliation is planned that will examine all the credit history recoveries claimed by the Group under its current contract. The officials expect all improper fee payments will be identified and corrected as a result of this reconciliation.

We also note that during our review of supporting documentation, we identified 25 additional recoveries, not included in our sample, which duplicated other recoveries claimed by the Group. These 25 additional duplicate claims are not included in our sample results, but are a further indication duplicate claims are a problem.

Improper and questionable recovery claims should be detected by the Bureau during its review of the invoices and supporting documentation submitted by the Group. We identified a number of reasons why such claims were not detected by the Bureau. First and foremost, Bureau management do not control a critical aspect of the credit history process, because they allow the Public Consulting Group to determine whether it is entitled to a recovery when a medical provider has offset a recoverable amount against a Medicaid payment. Since Bureau management does not independently verify the Group's determination and claimed recovery amount, the contractor controls this critical aspect of the credit history recovery process. We recommend the Department modify the credit history recovery process to give the Bureau independent control over this aspect of the process. To strengthen this control, we recommend that a process be developed for identifying duplicate recovery claims on an ongoing basis.

In addition, Bureau officials have not reviewed the relevant computerized operations of the Department and the Public Consulting Group to determine whether these operations effectively meet the objectives of the Medicaid third-party recovery process. Bureau officials told us they have not reviewed these computerized operations because they are not computer programmers. However, we note that Bureau officials could seek the assistance of Department staff who have this expertise.

In the absence of this expertise, Bureau officials rely on verbal assurances from the Group. While the Group relies on a computer program that was provided by the Department under the previous contracts, the program may not necessarily function as currently intended. When we reviewed the Bureau's computer programs, we found errors that caused the Department to give inaccurate claim identifier information to the Group. After we brought this matter to the Bureau's attention, the Bureau worked with Department Information Support Services staff to correct the computer processing errors. We further note that, when we did a limited test of a computerized

claim tracking data base developed by the Group, we found some claim identifiers were duplicated. A thorough review of all relevant computer systems, both at the Department and at the Public Consulting Group, is therefore needed.

We also found that Bureau management knowingly allowed the Group to claim old recoveries under the existing contract. According to officials of both the Bureau and the Public Consulting Group, this arrangement was the result of negotiations between the Bureau and the Group. However, neither the negotiations nor the agreement were documented. In the absence of such documentation, there is less assurance upper management has been fully informed of modifications to a State contract. We recommend that a formal contract amendment reflecting the new agreement be developed and approved by the appropriate officials.

Officials at the Group acknowledged they may have unintentionally submitted duplicate recovery claims because of their transition from one claim tracking system to another. According to Department officials, all improper fee payments will be identified and corrected in the planned reconciliation of the credit history recoveries claimed by the Group. The reconciliation is to be done by the Public Consulting Group, which will compare its recovery files to the Department's corrected files. The Group will determine what adjustments need to be made to its fees for credit history recoveries and report the total net adjustment amount to the Department. The details supporting this total net adjustment amount will not be provided.

While we agree that a reconciliation must be performed, the reconciliation process planned by the Department is not appropriate because the process and results are controlled by the Public Consulting Group. We recommend that the Department obtain detailed documentation to support the adjustments identified by the Group and verify the accuracy and validity of the information in this documentation.

Recommendations

1. *Obtain detailed documentation to support the fee adjustments identified by the Public Consulting Group in its reconciliation of credit history recoveries. Verify the accuracy and validity of the information in this documentation.*

2. *Modify the credit history recovery process to give the Department independent control over the process. At a minimum, this should include determining entitlement to a recovery, calculating the recovery amount and developing controls to identify and prevent duplicate recovery claims on an ongoing basis.*

3. *Review all computerized systems used by the Department and the Public Consulting Group in the credit history recovery process to ensure that they are performing as intended.*

4. *Formally amend the contract with the Public Consulting Group to specify time periods for which third party recoveries can be claimed.*

We provided draft copies of the matters discussed in this report to Department officials for their review and comment. We considered the Department's comments in preparing this report and have included the comments as Appendix A. Department officials generally agree with the

recommendations made in this report and indicated the steps they have taken or will take to implement them. Appendix B contains State Comptroller's Notes, which address matters contained in the Department's response.

In addition to the findings discussed in this report, we identified other matters that needed improvement. Although these matters are of lesser significance, Department officials should take the necessary corrective actions to address these issues. Any follow-up review or ensuing audit will include review of the extent to which Department officials have addressed the matters of lesser significance.

Within 90 days after final release of this report, as required by Section 170 of the Executive Law, the Commissioner of the Department of Health shall report to the Governor, the State Comptroller, and the leaders of the Legislature and fiscal committees, advising what steps were taken to implement the recommendations contained herein, and where recommendations were not implemented, the reasons therefor.

Major contributors to this report include Ken Shulman, William Clynes, Ed Durocher, Gail Gorski, and Dana Newhouse.

We wish to thank the management and staff of the Department of Health for the courtesies and cooperation extended to our auditors during this audit.

Yours truly,

David R. Hancox
Director
State Audit Bureau

cc: Robert Barnes, Division of the Budget

STATE OF NEW YORK
DEPARTMENT OF HEALTH

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Antonia C. Novello, M.D., M.P.H., Dr.P.H.
Commissioner

Dennis P. Whalen
Executive Deputy Commissioner

February 4, 2005

David R. Hancox
Audit Director
Office of the State Comptroller
110 State Street
Albany, NY 12236

Dear Mr. Hancox:

Enclosed are the Department of Health's comments on the Office of the State Comptroller's (OSC) draft audit report (2004-S-16) entitled "Oversight of Medicaid Third Party Recovery Activities."

Thank you for the opportunity to comment.

Sincerely,

Dennis P. Whalen
Executive Deputy Commissioner

Appendix A

cc: Mr. Griffin
Mr. Howe
Ms. Kuhmerker
Mr. Reed
Mr. Seward
Mr. Van Slyke

Department of Health
Comments on the
Office of the State Comptroller's
Draft Audit Report 2004-S-16
Entitled "Oversight of Medicaid
Third Party Recovery Activities"

The following are the Department of Health's (DOH) comments concerning the recommendations contained in the Office of the State Comptroller's (OSC) draft audit report (2004-S-16) entitled "Oversight of Medicaid Third Party Recovery Activities."

OSC Statement:

Page 5 of the report states "...a comprehensive reconciliation is planned that will examine all the credit history recoveries claimed by the Group under its current contract". Also, "Improper and questionable recovery claims should be detected by the Bureau during its review of the invoices and supporting documentation submitted by the Group. We identified a number of reasons why such claims were not detected by the Bureau".

DOH Comment:

These statements are misleading and incorrect. In fact, Bureau staff detected problems with the credit history process and instructed the Public Consulting Group (PCG) to stop all credit history processing in August 2003, six months prior to OSC's audit. Documentation of our instructions to the contractor regarding the discontinuation of credit history vouchering was provided to the OSC.

* Note 1

Bureau staff was already engaged in the reconciliation process at the time of the audit. Two main issues were addressed through this reconciliation – correction of a flaw in the Department's computer program used by PCG which left the Department and the contractor unable to account for all claims which failed the credit history edit, and a new agreement with respect to the "credit date" (date after which the contractor is eligible to earn a fee for the provider initiated activity). The reconciliation is now complete. The Department realized additional recoveries due to the computer program correction; however, due to the agreed upon change in the "credit date" the contractor has actually repaid the Department $115,470.

Recommendation #1:

Obtain detailed documentation to support the fee adjustments identified by the Public Consulting Group in its reconciliation of credit history recoveries. Verify the accuracy and validity of the information in this documentation.

Response #1:

The credit history report provides the necessary information to support the fee calculations. Department staff has developed an independent computer program to aid in the review and verification of the PCG generated credit history reports prior to the submission of a voucher.

* See State Comptroller's Notes, p.12

Recommendation #2:

Modify the credit history recovery process to give the Department independent control over the process. At a minimum, this should include determining entitlement to a recovery, calculating the recovery amount and developing controls to identify and prevent duplicate recovery claims on an ongoing basis.

Response #2:

The credit history process has been retooled. The Office of Medicaid Management now requires an electronic file of the credit history results. This file is used as the feed to an independent computer program that has been developed to review and verify the PCG generated credit history reports prior to the submission of a voucher.

Recommendation #3:

Review all computerized systems used by the Department and the Public Consulting Group in the Medicaid third-party recovery process to ensure that they are performing as intended.

Response #3:

It is not a reasonable expectation that program staff "review all computerized systems..." and we will assume this comment is related to the credit history processing function only. The new programming used by PCG to derive the credit history report was shared with the OSC during the audit. As previously mentioned, an independent computer program has been developed to review and verify the PCG generated credit history reports prior to the submission of a voucher.

* Note 2

Recommendation #4:

Formally amend the contract with the Public Consulting Group to specify time periods for which third party recoveries can be claimed.

Response #4:

There is no need to amend the contract. The Department does not wish to limit its ability to identify and make recoveries where appropriate. In general, the scope of work under this contract is determined by federal claiming limitations and insurance industry claims processing protocols.

* Note 3

* See State Comptroller's Notes, p.12

State Comptroller's Notes

1. We maintain that the statements contained in the report are correct. We acknowledge Bureau officials began to take action prior to our audit because of discrepancies they identified in the Public Consulting Group's billings. However, our audit discovered additional discrepancies and found errors in the Department's computer programs. Throughout the audit, Bureau officials stated to us their intentions to perform a comprehensive reconciliation of the credit history recovery process. We were not certain that this reconciliation would address the additional discrepancies we identified during the audit. We are pleased to see that the reconciliation has been completed, but we still maintain that responsible Department officials need to implement independent controls to preclude erroneous payments from being made in the future.

2. We modified recommendation 3 to address issues raised in the Department's response that they review the relevant operations in place for the credit history recovery process. We do acknowledge Department officials made us aware of the new programming used by the Public Consulting Group during the audit. However, this programming was in development at the time of our audit, and as such we did not review this programming to determine whether it would address the deficiencies we identified.

3. We do not agree with Department management's assertion regarding the need to amend the contract with the Public Consulting Group. As documented in our report, we identified 87 questionable recoveries because they related to provider claims that were paid during the Public Consulting Group's two prior contracts. We noted that some of these recoveries were offset during the period covered by the first two contracts and as such these payments may represent duplicate fee payments. We noted that Department management did not have control mechanisms in place to identify recoveries that were claimed under a previous contract. Absent such controls, we recommended Department management specify the time period in its contract with the Public Consulting Group for which third party recoveries can be claimed.