

THOMAS P. DiNAPOLI
STATE COMPTROLLER



110 STATE STREET
ALBANY, NEW YORK 12236

STATE OF NEW YORK
OFFICE OF THE STATE COMPTROLLER

September 13, 2007

Richard F. Daines, M.D.
Commissioner
Department of Health
Corning Tower
Empire State Plaza
Albany, NY 12237

Re: Report 2007-F-20

Dear Dr. Daines:

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 HIV Pre-test Counseling Services* (Report 2006-S-34).

Background, Scope and Objective

The Department of Health (Department) administers the medical assistance program (Medicaid) in New York State (State), which was established under Title XIX of the federal Social Security Act to provide needy people with medical assistance. In New York, this program is funded jointly by the federal, State, and local governments. Its management information and claims processing functions are handled through the State's eMedNY system, which the Department implemented on March 24, 2005.

On June 1, 2000, the Department established an integrated HIV/AIDS surveillance system to monitor cases of HIV infection, HIV-related illness and AIDS. According to Department guidelines, providers may be reimbursed for HIV pre-test counseling provided to any Medicaid recipient whose HIV status is unknown or in question, even if the recipient declines testing for HIV. The purpose of pre-test counseling is to provide Medicaid recipients with information on the benefits of HIV testing so the recipient can make an informed choice about whether or not to have the test. If a recipient declines testing, the provider is still entitled to reimbursement for the HIV pre-test counseling visit as long as the provider has complied with Article 27-F of the Public Health Law and the Department's regulations, Part 63 of Title 10 NYCRR, which require providers to document the recipient's declination of the testing in the recipient's medical record.

Our initial audit report, which was issued on September 7, 2006, determined if Medicaid clinics billed HIV pre-test counseling services according to the billing policy set forth in the Department's guidelines. Contrary to Department regulations, we identified 122 clinics billing Medicaid for more than two HIV pre-test counseling visits for a recipient in a year and found

Medicaid may have overpaid as much as \$4.2 million to these clinic providers. These potential overpayments occurred because the providers did not comply with Department billing guidelines for HIV pre-test counseling services and eMedNY lacked the controls necessary to detect and prevent these overpayments.

The objective of our follow-up, which was conducted in accordance with generally accepted government auditing standards, was to assess the extent of implementation, as of August 31, 2007, of the three recommendations included in our initial audit report.

Summary Conclusion and Status of Audit Recommendations

We found that Department officials have implemented all three recommendations from our initial audit report.

Follow-up Observations

Recommendation 1

Investigate and recover the \$4.2 million potential overpayments we identified.

Status - Implemented

Agency Action - The Department, through the Office of the Medicaid Inspector General (Office) conducted an audit of the largest provider identified in our initial audit; this represented approximately \$1.8 million of the \$4.2 million potential overpayments we identified. The Office determined \$1.7 million was in fact inappropriately paid to the provider. The Office is in the process of issuing a draft report to the provider. Once the report is issued as a final report, the collection process will begin 20 days thereafter, unless the Office and the provider make a different arrangement to recoup the overpayments. The Office is in the process of investigating the remaining \$2.3 million we identified in our initial audit.

Recommendation 2

Instruct providers on the proper way to bill and document HIV pre-test counseling visits.

Status - Implemented

Agency Action - The Department instructed providers on the proper way to bill and document HIV pre-test counseling by issuing updated regulations in a September 2006 Department Memorandum and November 2006 Medicaid Update. One such change included a decrease to the HIV pre-test counseling reimbursement structure by allowing providers to bill HIV counseling without testing visits only once per patient per year. The Department Memorandum also informed providers of the necessary documentation needed in a recipient's medical record to justify HIV counseling without testing.

Recommendation 3

Determine if edits could be designed and added to eMedNY to prevent these types of overpayments from occurring.

Status - Implemented

Agency Action - The Department developed and implemented a frequency edit on November 1, 2006 that works in conjunction with an existing system edit to deny reimbursement for more than one HIV pre-test counseling visit per recipient within a 350 day span. The Department's edit has denied 2,708 claims totaling approximately \$232,000 since its implementation. However, we did identify a design weakness in the edit programming which allowed reimbursement for 106 inappropriate claims on behalf of 102 recipients totaling approximately \$10,000. We notified the Department of the design flaw and the Department responded promptly by fixing the problem to prevent any future overpayments.

Major contributors to this report were Andrea Inman, Daniel Towle and Wendy Matson.

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

Very truly yours,

Sheila A. Emminger
Audit Manager

cc: Lisa Ng, Division of the Budget
Steve Abbott, Department of Health
Steven Sossei, OSC Division of State Government Accountability