

THOMAS P. DINAPOLI
COMPTROLLER



110 STATE STREET
ALBANY, NEW YORK 12236

STATE OF NEW YORK
OFFICE OF THE STATE COMPTROLLER

February 18, 2016

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

Re: Payments for Fraudulent and Improper
Claims Submitted by Davis Ethical
Pharmacy
Report 2015-F-25

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, *Payments for Fraudulent and Improper Claims Submitted by Davis Ethical Pharmacy* (Report 2012-S-11).

Background, Scope, and Objective

The Department of Health (Department) administers the State's Medicaid program, which provides a wide range of health care services, including prescription drug coverage, to individuals who are economically disadvantaged and/or have special health care needs.

In October 2011, the Office of the State Comptroller received allegations of improper billing practices by Davis Ethical Pharmacy (Davis Ethical), an independently owned pharmacy located in Rockville Centre, New York. In particular, it was alleged that Medicaid had paid Davis Ethical for medications that were neither prescribed nor dispensed. At that time, we learned that the Nassau County District Attorney (NCDA) and the New York State Department of Financial Services (DFS) had received similar allegations and had initiated an investigation of Davis Ethical. We coordinated our audit and investigative work with the NCDA and DFS.

From January 1, 2008 through December 13, 2011, Medicaid paid Davis Ethical \$776,849 for 7,053 pharmacy claims. During this period, William Davis owned Davis Ethical and worked there as a practicing pharmacist. In December 2011, William Davis sold Davis Ethical. We limited

our audit to claim payments made to Davis Ethical during the time it was owned by William Davis.

We issued our initial report on August 13, 2013. The objective of the audit was to determine if Davis Ethical inappropriately billed Medicaid for prescription medications. The audit covered the period from January 1, 2008 through December 13, 2011. Our initial audit found that Medicaid made improper payments totaling \$94,460 for 169 (63 percent) of 267 prescriptions we selected for testing. Based on information obtained from the prescribers (the physicians indicated on the claims), auditors determined that Davis Ethical likely fabricated nearly all of the improper claims. Auditors found the improper claims included: prescriptions for medications purportedly dispensed to Medicaid recipients who, at the time the medications were prescribed, were not patients of the purported prescribing physicians; prescriptions that were not authorized by the purported prescribing physicians; and quantities billed for medications that were in excess of prescribed amounts. Auditors determined Davis Ethical processed many of the improper claims well outside of normal business hours and often lacked records verifying that patients received the drugs billed to Medicaid.

As a result of our audit, we concluded that Davis Ethical routinely submitted fraudulent claims to Medicaid and received payments for those claims. We recommended that the Department: coordinate with the NCDA, DFS, and other authorities as requested in any further investigation and recover the \$94,460 in improper payments; formally assess the \$632,549 in prescription payments we did not test; and formally assess the conduct of William Davis to determine whether he should be allowed to continue to participate in the Medicaid program.

The objective of our follow-up was to assess the extent of implementation, as of February 9, 2016, of the three recommendations included in our initial audit report.

Summary Conclusions and Status of Audit Recommendations

Department officials made progress implementing the recommendations we made in the initial audit report. At the time of our follow-up review, William Davis pleaded guilty to Grand Larceny in the Second Degree and made full restitution of the \$94,460 identified in our initial audit report. Of the initial report's three audit recommendations, one was implemented and two were partially implemented.

Follow-Up Observations

Recommendation 1

Coordinate with the NCDA, DFS and other authorities as requested in any further investigation and recover the \$94,460 in improper payments made to Davis Ethical, as identified by this audit.

Status - Implemented

Agency Action - The Department coordinated with authorities and on December 10, 2015, William Davis pleaded guilty to Grand Larceny in the Second Degree in Nassau County

District Court. William Davis was sentenced on February 9, 2016, and made restitution of \$231,919 to the State, of which \$94,460 was paid to the Medicaid program for the improper payments identified in the initial audit report.

In addition to our audit of claims submitted by Davis Ethical under the Medicaid program, the State Comptroller concurrently audited claims submitted by Davis Ethical under the New York State Health Insurance Program (NYSHIP). A separate report (2012-S-10), addressed to United HealthCare, includes details of improper claims submitted by Davis Ethical under the NYSHIP program. Accordingly, the remaining restitution of \$137,459 (\$231,919 - \$94,460) was paid to the NYSHIP program in satisfaction of OSC audit report 2012-S-10.

Recommendation 2

Formally assess the \$632,549 in prescription payments we did not test and determine the extent to which Davis Ethical submitted other fraudulent or improper claims. Recover improper payments, as warranted.

Status - Partially Implemented

Agency Action - The Office of the Medicaid Inspector General (OMIG) investigates and recovers improper Medicaid payments on behalf of the Department. In coordinating with the NCD, the OMIG was awaiting the outcome of the criminal case against William Davis before making a determination on additional recoveries. The OMIG completed a preliminary review of Davis Ethical's claim payments and will make additional recoveries where appropriate.

Recommendation 3

Formally assess the conduct of William Davis and determine if he should be allowed to continue to participate in the Medicaid program or face other sanctions. Consider referring William Davis to the State Education Department for assessment of his professional conduct.

Status - Partially Implemented

Agency Action - The OMIG was awaiting the outcome of the criminal case against William Davis before taking action regarding William Davis' participation in the Medicaid program and a referral to the State Education Department. William Davis was sentenced on February 9, 2016. As a result, the OMIG has begun its process to evaluate whether William Davis should be excluded from the Medicaid program and the propriety of referring William Davis to the State Education Department for an assessment of his professional conduct. We note that, according to the State Education Department's records, William Davis no longer has an active license to practice in New York State.

Major contributors to this report were Daniel Towle, Emily Proulx, and Innocentia Freeman.

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,

Warren Fitzgerald
Audit Manager

cc: Ms. Diane Christensen, Department of Health
Mr. Dennis Rosen, Medicaid Inspector General