

H. CARL McCALL
STATE COMPTROLLER



110 STATE STREET
ALBANY, NEW YORK 12236

STATE OF NEW YORK
OFFICE OF THE STATE COMPTROLLER

December 24, 2002

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

Re: Report 2002-F-52

Dear Dr. Novello:

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 reviewed the actions taken by officials of the Department of Health (Health) as of December 6, 2002, to implement the recommendations contained in our audit report, *Administration of The Medicaid Drug Rebate Program* (Report 2000-S-33) and the recommendations in a related letter containing matters of lesser significance. Our report, which was issued on June 27, 2001, addressed selected practices that Health officials used in the administration of the Medicaid Drug Rebate Program.

Background

To reduce the cost of drugs prescribed for Medicaid recipients, the federal government established the Medicaid Drug Rebate Program (Program), overseen nationally by the Federal Centers for Medicare and Medicaid Services (CMS), formerly the Health Care Financing Agency (HCFA), and administered in New York State by Health. Since January 1, 1991, state Medicaid programs have recovered a portion of their prescription drug costs by requesting rebates from drug manufacturers, which review and pay any undisputed amounts. All prescription drugs are eligible for Program rebates, except for those dispensed at certain entities which pay discounted prices for drugs and then pass on the savings to Medicaid. States are responsible for collecting and accounting for rebates owed by manufacturers. During the 29-month period ended November 30, 2002, Health reported collecting approximately \$1.5 billion in Program revenue, and about \$3.5 billion since the Program began.

Summary Conclusions

In our prior audit, we found that Health had not maximized Program revenues owed to Medicaid. Health did not properly track or pursue rebate revenues, and had essentially relied on drug manufacturers to remit the rebates they owe. We determined that during the two and one-half year period January 1, 1998 through June 30, 2000, Health did not recoup between \$14.1 million and \$19.6 million in monies it should have collected.

In addition to the matters discussed in Report 2000-S-33, we provided Health officials with a letter containing matters of lesser significance, in which we recommended that officials take further steps to improve the efficiency of the Medicaid drug rebate program.

In our follow-up review, we found that Health officials have made progress in implementing the recommendations contained in our prior audit report and letter of lesser significant matters. According to Health officials, they devoted additional resources to identify, track, resolve, and collect drug rebates and discounts. Health officials stated that existing and planned computer systems are being reviewed to address audit-identified deficiencies.

Summary of Status Prior Audit Recommendations

Of the seven prior audit recommendations, we found that Health officials have implemented six recommendations and partially implemented one recommendation. In addition, Health officials have implemented all five recommendations contained in the letter of lesser significant matters.

Follow-up Observations re: Report 2000-S-33

Recommendation 1

Investigate pharmacy claims for covered entities where Medicaid did not receive either a full discount or a rebate, and recover the appropriate rebate or discount.

Status – Partially Implemented

Agency Action – According to Health officials, Health has collected over \$200,000 in rebates and/or discounts. Health needs to continue to investigate the remaining \$7 million to \$10.4 million in discounts or rebates identified in the report.

Recommendation 2

Evaluate the potential of identifying and recovering additional rebates or discounts before and after the audit period addressed in this report.

Status – Implemented

Agency Action – Health officials state they continually investigate claims before and after the period addressed in this report.

Recommendation 3

Develop a process to identify whether covered entities appropriately billed Medicaid at the discount rate and identify claims that should be included in the rebate process.

Status – Implemented

Agency Action – Health officials have developed a new process to review pharmacy claims billed by covered entities. Health officials state this research to identify covered entities is a labor-intensive process but will continue these reviews as time and resources permit. Health officials report that web sites containing discounted prices are no longer available, but are researching alternative pricing resources.

Recommendation 4

Devote adequate resources to ensure the proper and timely resolution of all outstanding disputes with manufacturers.

Status – Implemented

Agency Action – According to Health officials, additional resources have been allocated to investigate and collect disputed rebates. Health staff members now attend the CMS (formerly HCFA) Drug Dispute Resolution Project in an effort to resolve disputes on a more timely basis.

Recommendation 5

Routinely follow up with manufacturers with disputed rebate amount balances.

Status – Implemented

Agency Action – Health officials report that staff members now routinely follow up with manufacturers on disputed rebate amount balances, including outstanding balances dating back to 1991.

Recommendation 6

Allocate sufficient resources to ensure that, at a minimum, existing and planned systems provide Health with the ability to:

- *compute interest on unpaid balances;*
- *research disputed rebates;*
- *properly track pricing and rebate per unit changes;*
- *reconcile current quarter activity with prior quarters; and*
- *record, track and age rebates owed by drug manufacturers.*

Status – Implemented

Agency Action – Health officials report that they have improved the existing rebate accounting system. Health officials stated that Pharmacy and Accounting staff members have been actively involved in the development and review of the MMIS replacement system, eMedNY, to ensure that resources are directed to disputes and rebate collection.

Recommendation 7

Investigate and recover identified rebates owed.

Status – Implemented

Agency Action – Health officials report they resolved disputes totaling over \$4 million. Health officials stated they now collect 97.8 percent of all rebates identified, with the remaining 2.2 percent in dispute.

Follow-up Observations re: Letter of Lesser Significant Matters

Recommendation 1

Improve the coordination of efforts between the Accounting and Pharmacy groups.

Status – Implemented

Agency Action – Health officials stated they developed a centralized tracking system shared by the Accounting and Pharmacy groups.

Recommendation 2

Reevaluate the cost-effectiveness of using a service provider to resolve rebate disputes.

Status – Implemented

Agency Action – Health officials evaluated using a service provider and concluded the service is not cost-effective for rebate resolution. Health officials report their collection rate is higher than that of the service provider.

Recommendation 3

Evaluate the feasibility of participating in the HCFA Drug Dispute Resolution Project.

Status – Implemented

Agency Action – As noted in the Agency Action section of Recommendation 4, staff members now attend the CMS (formerly HCFA) Drug Dispute Resolution Project in an effort to resolve disputes on a more timely basis.

Recommendation 4

Monitor bills containing zero rebates per unit to ensure manufacturers pay or dispute the rebates.

Status – Implemented

Agency Action – Health officials report that the Accounting group now routinely verifies and resolves bills with zero rebates per unit.

Recommendation 5

Ensure all relevant information is maintained in the manual rebate records.

Status – Implemented

Agency Action – Health officials report that the Accounting and Pharmacy groups have improved the manual records and are converting to an electronic rebate accounting system.

Major contributors to this report were Ken Shulman, Bill Clynes, Sheila Emminger and Leo Shaw.

We would appreciate your response to this report within 30 days, indicating any actions planned or taken to address any unresolved matters discussed in this report. We also thank the management and staff of the Department of Health for the courtesies and cooperation extended to our auditors during this review.

Very truly yours,

Kevin M. McClune
Audit Director

cc: Deirdre A. Taylor