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STATE OF NEW YORK
OFFICE OF THE STATE COMPTROLLER

June 4, 2009

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

Re: Report 2009-F-11

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 (Department) to implement the recommendations contained in our audit report, *Medicaid Payments for Pharmacy Service While Recipients Reside in Nursing Homes* (Report 2007-S-88).

Background, Scope and Objective

The Department administers the Medicaid program which was established under Title XIX of the federal Social Security Act to provide needy people with medical assistance. The 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.

The Department establishes all-inclusive rates that cover the costs of most basic services, including certain pharmaceuticals (or drugs), provided to Medicaid recipients that reside in nursing homes. However, separate Medicaid reimbursements can be made for drugs that are not included in the all-inclusive nursing home rates or for drugs provided to a recipient on the day he/she is discharged from a nursing home. The Department maintains a drug "carveout list" that identifies all drugs not included in basic nursing home rates, such as higher cost drugs for HIV patients.

Our initial audit report, which was issued on December 27, 2007, examined Medicaid claims submitted by pharmacy providers and processed by the Department to determine whether the Medicaid program made inappropriate payments to such providers while recipients were in nursing homes. Our report identified over \$2 million in inappropriate Medicaid payments for

pharmaceuticals for recipients who were in nursing homes. The objective of our follow-up was to assess the extent of implementation, as of April 28, 2009, of the two recommendations included in our initial audit report.

Summary Conclusions and Status of Audit Recommendations

We determined that the Department made limited progress in addressing the problems we identified in the initial report. Consequently, Department officials should take additional actions to address those issues. Of our prior report's two recommendations, we determined that one recommendation had been partially implemented, and the other recommendation had not been implemented.

In the course of our follow-up review, Department officials noted that the Medicare Part D benefit (that went into effect in January 2006) could reduce the amount of inappropriate Medicaid pharmaceutical payments for nursing home residents. The Medicare Part D program replaced Medicaid as the primary pharmaceutical coverage for recipients who are eligible for both Medicaid and Medicare. (Such recipients are also known as dual eligible beneficiaries.) Because many nursing home residents have dual eligibility, their pharmaceutical costs are now covered primarily by Medicare Part D. However, some residents are not eligible for Medicare. Consequently, there is still some risk of excessive pharmaceutical payments for nursing home residents who are eligible for Medicaid only.

Follow-up Observations

Recommendation 1

Review the \$2 million in payments we identified and recover inappropriate payments.

Status - Partially Implemented

Agency Action - At the time of our follow-up, the Department had recently started a review of Medicaid payments for pharmacy services for nursing home recipients. As part of this review, the Department sent letters to nursing homes requesting documentation pertaining to the propriety of certain payments for pharmaceuticals. However, because the review had only recently started, the Department had not yet recovered any inappropriate payments.

Recommendation 2

Work with the Local Department of Social Services Medicaid offices and nursing homes to ensure the timely updating of admission and discharge information in the Principal Provider file in eMedNY.

Status - Not Implemented

Agency Action - In their 90-day response to the initial report, Department officials outlined a plan to address this recommendation. Specifically, officials planned to use a General Information

System notice to remind local districts to promptly update admission and discharge information on the Principal Provider File. In addition, officials indicated that they would remind nursing homes to promptly notify local districts when Medicaid beneficiaries were admitted to or discharged from their facilities. However, there was no evidence that either of these planned actions were accomplished.

Major contributors to this report were Paul Alois, Brian Krawiecki, and Frank Commisso.

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 also thank the management and staff of the Department for the courtesies and cooperation extended to our auditors during this review.

Very truly yours,

Brian E. Mason
Audit Manager

cc: Mr. Stephen Abbott, DOH
Mr. Thomas Lukacs, DoB
Mr. Steven Sossei, OSC