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**OFFICE OF THE STATE COMPTROLLER**

September 15, 2011

Nirav R. Shah, M.D., M.P.H.
Commissioner
NYS Department of Health
Corning Tower Building
Empire State Plaza
Albany, New York 12237

Re: Report 2011-F-11

Dear Dr. Shah:

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 Overpayments of Coinsurance Fees for Medicare Beneficiaries* (Report 2008-S-128).

## Background, Scope and Objective

The Department of Health (Department) administers the Medicaid program in New York State. Many of the State's Medicaid beneficiaries are also eligible for Medicare. Such beneficiaries are referred to as "dual eligibles." Medicaid is the payer of last resort for medical claims, paying for any balance unpaid after all other insurance, such as Medicare settles. Therefore, a medical provider should bill Medicare first for these dual eligible patients and bill Medicaid only after the amount to be paid by Medicare is known. Medicaid will typically pay an amount based upon the portion of the bill not covered by Medicare. Thus, it is critical that Medicare information be entered accurately on the Medicaid billing. Otherwise, a Medicaid overpayment can occur.

Our initial audit report was issued on January 16, 2009. Our objective was to identify Medicaid overpayments made to providers who did not properly report Medicare Part B information on their Medicaid claims. During the year ended December 31, 2006, our audit identified almost $2.7 million in Medicaid overpayments to physicians, durable medical equipment (DME) dealers, and laboratories who improperly recorded Medicare Part B information on their claims to Medicaid. The Office of the Medicaid Inspector General (OMIG) investigates and recovers improper Medicaid payments on behalf of the Department. We provided the details of the overpayments we identified to OMIG officials during the course of our audit. The objective of our follow-up was to assess the extent of implementation, as of August 1, 2011, of the two recommendations included in our initial report.

## Summary Conclusions and Status of Audit Recommendations

Department officials have made significant progress in correcting the problems we identified in the initial report. Of the initial report's two audit recommendations, one has been implemented, and the other has been partially implemented.

## Follow-up Observations

### Recommendation 1

*Recover the overpayments totaling $262,700 from the physician and laboratory we visited during our audit.*

Status - Partially Implemented

Agency Action - In our initial report, we concluded Medicaid overpaid the physician in question by $145,600 during 2006. In April 2008, OMIG officials started reviewing claims submitted by this physician from January 1, 2005 through December 31, 2007 (which includes 2006, our initial audit's scope period). At the time of our follow-up review, the $145,600 in overpayments had not yet been recovered. However, in April 2011, OMIG issued a draft audit report to the physician requesting the repayment of $796,000 in overpayments. After OMIG officials issue their final report, they will start the collection process. In addition, as of June 2011, OMIG officials have recovered $110,900 of the $117,100 in overpayments made to the laboratory we cited in our original audit. OMIG officials stated the remaining $6,200 in overpayments were either adjusted by the provider prior to OMIG's review or paid correctly.

### Recommendation 2

*Fully investigate the remaining $2.4 million in overpayments we identified and recover inappropriate payments.*

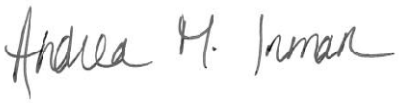
Status - Implemented

Agency Action - OMIG officials expanded the scope of their investigation beyond our original audit period (calendar year 2006) to review physician claims paid from January 1, 2005 through December 31, 2008. Officials identified physicians with the highest dollar amounts of potential Medicaid overpayments, due to misreported Medicare information, for further review. As a result, the OMIG identified $3.5 million in overpayments and has begun recovering them. Currently, more physician reviews are underway to recover additional overpayments. OMIG officials also reviewed claim payments to DME providers for the period January 1, 2006 through December 31, 2009. As of June 2011, they recovered $1.3 million in overpayments to DME providers. Officials further indicated that current audits of DME providers have identified overpayments totaling $1.5 million, and the OMIG will recover them.

Major contributors to this report were Karen Bogucki and Donald Collins.

We 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,



Andrea Inman
Audit Manager

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