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STATE OF NEW YORK  
OFFICE OF THE STATE COMPTROLLER

September 23, 2016

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

Re: Improper Payments for Controlled  
Substances That Exceed Allowed  
Dispensing Limits  
Report 2016-F-6

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 (Department) to implement the recommendations contained in our audit report, *Improper Payments for Controlled Substances That Exceed Allowed Dispensing Limits* (Report 2013-S-59).

**Background, Scope, and Objectives**

The Department administers the State's Medicaid program, which provides a wide range of health care services, including prescription drugs, to individuals who are economically disadvantaged and/or have special health care needs. Effective October 1, 2011, most pharmacy benefits were covered by managed care. Under managed care, Medicaid pays managed care organizations (MCOs) a monthly premium for each recipient enrolled in the MCO. The MCO then arranges for the provision of services its members require and reimburses health care providers directly for services provided to enrollees. Prior to October 1, 2011, pharmacy benefits were covered by the fee-for-service method, in which Medicaid paid pharmacy providers directly for drugs dispensed to Medicaid recipients.

The New York State Controlled Substances Act (Act) was enacted to combat illegal use of controlled substances. The Act limits the quantities of controlled substances that pharmacies can dispense when prescriptions are ordered by telephone or fax, due to the inherent risk that drugs ordered in this manner can be diverted for inappropriate or unauthorized use. The limits that the Act imposes vary depending on the classification of the controlled substance. Generally, drugs

that are highly prone to abuse are limited to a five-day supply, and others that carry less risk are limited to a 30-day supply.

We issued our initial audit report on February 6, 2015. The audit objective was to determine whether the Department paid pharmacy providers for controlled substances in compliance with the Act. The audit covered the period January 1, 2009 through December 31, 2013. We concluded that Medicaid overpaid pharmacies \$1,183,601 for 13,705 fee-for-service claims, in which quantities of controlled substances exceeded the supply limits allowed by the Act. We further identified 3,323 managed care claims for controlled substances in which the quantities dispensed exceeded the limits set by the Act. In addition, we determined the Department's eMedNY claims processing system did not contain controls (eMedNY edits) to deny claims from pharmacies for controlled substances that exceeded supply limits allowed by the Act and thus prevent improper payments. We recommended that the Department review the improper pharmacy claims we identified and make recoveries. We also recommended that the Department and the MCOs implement certain controls to prevent further improper payments.

The objective of our follow-up was to assess the extent of implementation, as of August 31, 2016, of the six recommendations included in our initial audit report.

### **Summary Conclusions and Status of Audit Recommendations**

Department officials made progress in addressing the problems we identified in the initial audit report. This included implementing controls to prevent the payment of pharmacy claims for quantities of controlled substances that exceed supply limits allowed by the Act (which has resulted in the denial of approximately \$3.3 million in claims through July 2016), as well as formally reminding pharmacies of the supply limits on controlled substances. However, further actions are still needed. In particular, only \$49,600 of the \$1,183,601 in improper payments we identified in the initial audit has been recovered. Of the initial report's six audit recommendations, five were implemented and one was partially implemented.

### **Follow-Up Observations**

#### **Recommendation 1**

*Review the 13,705 fee-for-service pharmacy claims totaling \$1,183,601 in improper payments and make recoveries, as appropriate.*

Status – Partially Implemented

Agency Action – The Office of the Medicaid Inspector General (OMIG) investigates and recovers improper Medicaid payments on behalf of the Department. OMIG officials informed us they reviewed the pharmacy claims we identified and initiated audits to begin the recovery of overpayments made to providers. As of August 8, 2016, OMIG completed seven audits that requested the repayment of \$71,150 in overpayments. According to OMIG officials, \$49,600 in overpayments has been recovered.

In addition, as of August 1, 2016, approximately \$311,000 in potential overpayments may no longer be recoverable under federal look-back rules that prohibit the Department from recovering a payment more than six years after the date the corresponding claim was filed. To avoid further loss of recoverable overpayments, we encourage OMIG to place an appropriate priority on the remaining overpayments that are still recoverable.

### **Recommendation 2**

*Instruct MCOs to review the 3,323 improper managed care claims and take corrective actions, as necessary.*

Status – Implemented

Agency Action – The Department instructed the MCOs to review the improper managed care claims we identified. The MCOs indicated that they reviewed or planned to review the claims and would take corrective actions. In particular, certain MCOs indicated they were implementing controls to prevent payment of the improper claims identified by our report, and many had notified their network pharmacy providers of the supply limits required by the Act.

### **Recommendation 3**

*Implement eMedNY edits to prevent the payment of fee-for-service pharmacy claims for quantities of controlled substances that exceed supply limits allowed by the Act.*

Status – Implemented

Agency Action – In August 2015, the Department implemented eMedNY edit 2193. The edit prevents the payment of fee-for-service pharmacy claims for quantities of controlled substances that exceed the supply limits allowed by the Act. From August 27, 2015 through July 31, 2016, 10,449 pharmacy claims totaling approximately \$3.3 million were denied payment by the new edit.

### **Recommendation 4**

*Instruct MCOs to implement similar edit controls to prevent the payment of pharmacy claims for quantities of controlled substances that exceed supply limits allowed by the Act.*

Status – Implemented

Agency Action – As mentioned previously, the Department instructed the MCOs to review the improper managed care claims identified by our audit (see Recommendation 2, Agency Action). The Department also corresponded with the MCOs about implementing system changes to prevent the payment of pharmacy claims for quantities of controlled substances that exceed supply limits allowed by the Act. Most MCOs indicated they would

implement system edits to prevent the payment of these claims. Other MCOs informed the Department they were not going to implement system edits due to low claim volume; instead, they would implement other controls to monitor controlled substance claims for compliance.

#### **Recommendation 5**

*Formally remind pharmacies of the supply limits on controlled substances.*

Status – Implemented

Agency Action – In the August 2014 edition of *Medicaid Update* (the Department’s official publication for Medicaid providers), the Department reminded pharmacies of the supply limits on controlled substances.

#### **Recommendation 6**

*Establish consistent guidelines regarding the use of Rx Serial Numbers on pharmacy claims.*

Status – Implemented

Agency Action – In our initial audit, we determined the Department provided conflicting guidelines on how Rx Serial Numbers for certain prescriptions for controlled substances should be reported to the Department. For instance, Department guidelines instructed pharmacies to enter a series of “E’s” on claims for faxed prescriptions in lieu of the Rx Serial Number from the official State prescription form. However, this conflicted with the New York Codes, Rules and Regulations, which requires (with certain exceptions) that claims for faxed prescriptions contain the Rx Serial Number.

Since the initial audit, in the August 2014 edition of *Medicaid Update*, the Department instructed pharmacies on how to correctly report the Rx Serial Number for prescriptions that are not ordered using the official New York State prescription form, including telephone, fax, electronic, and other types of prescriptions.

Major contributors to this report were Sal D'Amato, David Schaeffer, and Linda Thipvoratrum.

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.

Sincerely,

Dennis Buckley  
Audit Manager

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