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OFFICE OF THE STATE COMPTROLLER

December 15, 2016

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

Re: Medicaid Payments Made Pursuant to
Medicare Part C
Report 2016-F-16

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, *Medicaid Payments Made Pursuant to Medicare Part C* (Report 2012-S-133).

Background, Scope, and Objective

The Department of Health (Department) administers the State's Medicaid program, which provides a wide range of medical services to those who are economically disadvantaged and/or have special health care needs. Many of the State's Medicaid recipients are also enrolled in Medicare, the federal health insurance program for the elderly and disabled. Such recipients are commonly referred to as "dual-eligible." In 1997, Congress established Medicare Part C, also known as Medicare managed care or Medicare Advantage. Under Medicare Part C, private managed care companies administer Medicare benefits and offer different health care plans tailored to the specific needs of Medicare beneficiaries. Medicare pays a fixed amount for each Medicare Part C beneficiary every month to companies offering Medicare Advantage Plans. Plans typically have networks of participating health care providers that they reimburse directly for services provided to enrollees. For dual-eligible persons, the plan providers bill Medicaid directly for the enrollee's Part C cost-sharing liabilities (deductibles, coinsurance, and copayments).

We issued our initial audit report on May 9, 2014. The audit objective was to determine if Medicaid made excessive payments for Medicare Part C cost-sharing liabilities. The audit covered the period January 1, 2008 through November 30, 2012. Our initial audit found that the State's Medicaid program did not have limitations on the amounts it paid for Part C cost-sharing

liabilities. Instead, Medicaid paid the entire cost-sharing liability billed by a provider, regardless of the amount requested. Our audit determined Medicaid could have saved up to \$69 million if it limited payments of Medicare Part C cost-sharing liabilities such that the total Medicare and Medicaid payment for a service did not exceed Medicaid's normal service fee. Other states use this approach and New York uses this approach to limit payments for certain other Medicare cost-sharing liabilities (for example, Medicare Part B coinsurance on certain services).

The audit also identified several scenarios under which Medicare Part C cost-sharing liabilities were improperly paid. We sampled 55 claims (from six providers) totaling Medicaid payments of \$273,876 and, based on the supporting documentation, found 37 of the claims were overpaid by \$70,594. Additionally, we identified \$1.6 million in overpayments for Medicare Part C cost-sharing liabilities that were paid on behalf of recipients who were not enrolled in Medicare Part C on the date of the medical service. We lastly determined Medicaid paid \$94,306 for 1,259 Medicare Part C cost-sharing claims during the same months that Medicaid made Medicaid Advantage Plan premium payments of \$552,327 for the same recipients. (Note: People who enroll in a Medicare Advantage Plan have the option to enroll in the same organization's Medicaid Advantage Plan, which is a Medicaid managed care plan for dual-eligible people.) Because a Medicaid Advantage Plan's premium payment typically covers the recipient's Medicare Part C cost-sharing liabilities, Medicaid should not pay providers for these costs.

We recommended that the Department: re-evaluate the reimbursement methodology for Medicare Part C cost-sharing; review and recover the improper payments for Medicare Part C cost-sharing; and correct the eMedNY Medicaid payment system that allowed concurrent payments of Medicare cost-sharing liabilities and Medicaid Advantage premiums on behalf of the same recipient.

The objective of our follow-up was to assess the extent of implementation, as of October 21, 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 developing controls to limit the amounts paid for Medicare Part C cost-sharing liabilities and preventing improper concurrent payments of Medicare cost-sharing liabilities and Medicaid Advantage premiums on behalf of the same recipient. However, further actions are still needed. The Office of the Medicaid Inspector General (OMIG) investigates and recovers improper Medicaid payments on behalf of the Department. Although more than two years had passed since our initial report was issued, none of the \$1,707,885 in improper Part C payments identified in that report had been recovered (including \$70,594 in excessive payments for Medicare Part C cost-sharing liabilities and \$1,637,291 paid on behalf of recipients who were not enrolled in Medicare Part C).

Additionally, the OMIG had not recovered overpayments where the Department confirmed Medicaid incorrectly paid for Medicare Part C cost-sharing and a Medicaid Advantage premium on behalf of the same recipient in the same month. Also, the OMIG had not reviewed

the appropriateness of certain high-risk Medicare Part C claim payments, as was recommended.

Of the initial report's six audit recommendations, one was implemented, two were partially implemented, and three were not implemented.

Follow-Up Observations

Recommendation 1

Formally re-evaluate the existing methodology for processing and paying claims for Medicare Part C cost-sharing liabilities. Include reviews of other states' policies in performing the evaluation.

Status – Implemented

Agency Action – At the time of our initial audit, New York's Medicaid program paid the entire cost-sharing liability billed by a provider, regardless of the amount requested. Effective July 1, 2016, the New York State Social Services Law was changed to limit Medicaid reimbursement of Medicare Part C coinsurance and copayments to 85 percent of the coinsurance and copayment liability reported by the provider. The Department is currently implementing eMedNY system changes that, when completed, will allow the Department to reprocess all relevant claims retroactively to July 1, 2016 and recover any Medicaid dollars incorrectly paid based on the new reimbursement methodology.

Recommendation 2

Recover the \$70,594 in Medicaid overpayments from the six providers who misreported Medicare Part C cost-sharing data.

Status – Not Implemented

Agency Action – In the Department's formal response to our initial audit, officials stated, "The Office of the Medicaid Inspector General (OMIG) is reviewing the overpayments identified, and will pursue recoveries where appropriate and as resources permit." At the time of our follow-up review, OMIG officials stated their Recovery Audit Contractor was in the preliminary stages of auditing the providers. However, the OMIG could not provide evidence to support that the contractor had reviewed the improper payments, and no recoveries had been made.

Recommendation 3

As resources and priorities permit, review payments for high-risk Medicare Part C claims, such as those that exceed certain pre-determined dollar limits. Recover any overpayments that are identified.

Status – Not Implemented

Agency Action – OMIG officials stated they were exploring the possibility of acquiring access to Medicare Part C payment data to identify pilot projects that would address billing inconsistencies between the Medicare Part C payment data and the corresponding information reported on Part C claims submitted to Medicaid. However, officials could not provide evidence to support their stated efforts or that high-risk Medicare Part C claims had been reviewed for recovery purposes.

Recommendation 4

Review the \$1,637,291 in overpayments for Medicare Part C cost-sharing liabilities that providers billed incorrectly and recover funds where appropriate.

Status – Not Implemented

Agency Action – Our initial audit found that Medicaid overpaid nearly 115,000 claims by \$1,637,291 because providers billed Medicare Part C coinsurance for recipients who were actually enrolled in Medicare Part B (not Part C) at the time the services in question were provided. At the time of our initial audit, the Social Services Law limited Medicaid payments of Medicare Part B coinsurance for many common services to 20 percent of the coinsurance charge when Medicare’s payment exceeded Medicaid’s normal fee. If the providers had correctly submitted these claims, seeking reimbursement for Part B coinsurance, eMedNY would have limited the payments to 20 percent of the coinsurance charges. Therefore, we determined 80 percent of the coinsurance charged on these claims was overpaid.

In the Department’s formal response to our initial audit, officials stated “The OMIG is reviewing the overpayments identified, and will pursue recoveries where appropriate and as resources permit.” In 2013, the OMIG’s third-party recovery contractor determined 313 providers received over \$1,000 in overpayments (totaling over \$1.1 million) and recommended a plan to pursue these recoveries. However, at the time of our follow-up review, OMIG officials indicated that they had not reviewed or recovered any of the overpayments due to the time and resources needed to fully evaluate the audit findings. While we understand the OMIG’s need to evaluate the findings, we note that on January 22, 2013 – in response to our initial audit – the Department implemented an eMedNY edit (i.e., a payment control in the Department’s eMedNY Medicaid claims processing and payment system) to deny claims for Medicare Part C cost-sharing when eMedNY indicated the recipient did not have Part C coverage. Therefore, if the claims we identified in the initial audit had been submitted after implementation of the edit, they would not have been paid.

Further, as of September 19, 2016, approximately \$872,000 in potential overpayments may no longer be recoverable under regulatory 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 strongly encourage the OMIG to place an appropriate priority on the remaining overpayments that are still recoverable.

Recommendation 5

Review the 1,259 instances when Medicaid made a Medicare Part C cost-sharing payment and paid a Medicaid Advantage premium for the same recipient in the same month. As warranted, recover any overpayments identified.

Status – Partially Implemented

Agency Action – Department officials analyzed the instances when Medicaid made a Medicare Part C cost-sharing payment and paid a Medicaid Advantage premium for the same recipient in the same month and made a determination on the appropriateness of the payments (see “Agency Action” for Recommendation 6). Despite the Department’s review, however, OMIG officials stated it is not feasible to pursue recoveries due to the time and resources needed to fully evaluate the original audit’s findings. Consequently, no recoveries were made. Again, we encourage OMIG officials to pursue recoveries based on the Department’s conclusions.

Recommendation 6

Assess eMedNY functionality that allows concurrent payments for Medicaid Advantage premiums and Medicare cost-sharing liabilities on behalf of the same recipient and correct the eMedNY system as necessary.

Status – Partially Implemented

Agency Action – The Department reviewed the instances where Medicaid made a Medicaid Advantage premium payment and a Medicare Part C cost-sharing payment for the same recipient in the same month and determined the claims fell into three categories, as follows:

- Family planning services that were carved out of a particular Advantage Plan’s contract;
- Premiums for recipients who were retroactively disenrolled from their Medicaid Advantage Plan; and
- Pharmacy services.

The Department determined claims for cost-sharing liabilities pertaining to family planning services and the corresponding Medicaid Advantage premiums paid correctly. Regarding the remaining two categories, the Department is in the process of developing eMedNY changes that will help prevent improper payments of premiums for retroactively disenrolled recipients and cost-sharing liabilities for pharmacy services.

Major contributors to this report were Christopher Morris, Theresa Podagrosi, and Natesha Salmon.

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