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OFFICE OF THE STATE COMPTROLLER

July 31, 2019

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

Re: Inappropriate Payments Related to
Procedure Modifiers
Report 2019-F-10

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, *Inappropriate Payments Related to Procedure Modifiers* (Report [2016-S-63](#)).

Background, Scope, and Objective

The Department of Health (Department) administers the State's Medicaid program, which provides a wide range of health care services to individuals who are economically disadvantaged and/or have special health care needs. Per State Medicaid policies, payment for a surgical procedure includes all services normally performed during the preoperative, intraoperative, and postoperative periods, commonly known as the global surgery period. All routine services related to the surgery, such as evaluation and management (E/M) services, are included in Medicaid's payment for the procedure. E/M services unrelated to the original procedure that occur during the global surgery period may be reported, and reimbursed, by adding the appropriate modifier code to the E/M service.

We issued our initial audit report on April 17, 2018. The audit objective was to determine whether Medicaid made inappropriate payments to providers that failed to use modifier codes properly. The audit covered the period January 1, 2012 through March 31, 2017. We identified \$2.6 million in inappropriate Medicaid payments for E/M services that were not billed with modifier codes that indicated the E/M services were separately reimbursable services during global surgery periods. We determined the inappropriate payments occurred because the Department did not correctly implement claims processing

system controls to prevent these types of payments. The Department corrected the system controls during our initial audit fieldwork. We recommended the Department review and recover the inappropriate payments we identified and advise providers to report accurate claim information when billing Medicaid for E/M services during global surgery periods.

The objective of our follow-up was to assess the extent of implementation, as of July 10, 2019, of the two recommendations included in our initial audit report.

Summary Conclusions and Status of Audit Recommendations

Department officials made some progress in addressing the problems we identified in the initial audit report. Of the initial report's two audit recommendations, one was implemented and one was not implemented.

Follow-Up Observations

Recommendation 1

Review the \$2.6 million in inappropriate payments made to providers for E/M services and recover overpayments, as appropriate.

Status – Not Implemented

Agency Action – The Office of the Medicaid Inspector General (OMIG) investigates and recovers improper Medicaid payments on behalf of the Department. As of July 10, 2019, OMIG had not made any recoveries based on a review of our audit findings. According to OMIG officials, they are finalizing their audit process and still plan to pursue these recoveries.

Recommendation 2

Formally advise providers that received inappropriate payments to report accurate claim information when billing Medicaid for E/M services during global surgery periods to ensure claims are paid appropriately.

Status – Implemented

Agency Action – In the January 2018 edition of the *Medicaid Update* (the Department's official publication for Medicaid providers), the Department issued billing guidance and instructed all Medicaid providers how to properly bill Medicaid for E/M services during global surgery periods.

Major contributors to this report were Jonathan Brzozowski and Gail Gorski.

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,

Christopher Morris
Audit Manager

cc: Ms. Jessica Lynch, Department of Health
Mr. Dennis Rosen, Medicaid Inspector General