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STATE OF NEW YORK
OFFICE OF THE STATE COMPTROLLER

December 30, 2015

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

Re: Suspicious and Fraudulent Medicaid
Payments to Affiliated Brooklyn Dentists
Report 2015-F-24

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, *Suspicious and Fraudulent Medicaid Payments to Affiliated Brooklyn Dentists* (Report 2010-S-64).

Background, Scope, and Objectives

The Department of Health (Department) administers the State's Medicaid program, which provides a wide range of health care services, including dental services, to individuals who are economically disadvantaged and/or have special health care needs. Dental care in the Medicaid program is intended only for essential services (medically necessary services like cleanings, fluoride treatments, and x-rays) and must conform to acceptable standards of professional practice.

Our initial audit identified a dentist, Lawrence Bruckner, whose Medicaid billing pattern was highly unusual. Lawrence Bruckner operated two office locations in Brooklyn, NY: his primary office at 1155 Broadway Street (Broadway) and his secondary office at 1218 Remsen Avenue (Remsen). Other dentists who reportedly practiced at these offices included: David Bruckner (Lawrence's brother); Joseph Bruckner (Lawrence's son); Arthur Bruckner (Lawrence's father); Allan Lebovitz; and Robert Thaler. From January 1, 2007 through June 8, 2011, Medicaid paid about \$6.9 million for services purportedly performed by the six dentists at these Brooklyn addresses.

We issued our initial audit report on April 4, 2013. The audit objectives were to determine

if the six affiliated Brooklyn dentists billed Medicaid for services that were not medically necessary or were not provided, and whether the affiliated dentists used illegal tactics to solicit Medicaid recipients. The audit covered the period January 1, 2007 through June 8, 2011. Our initial audit found that Medicaid paid about \$2.3 million in highly suspicious and possibly fraudulent claims that were submitted by the six dentists. Auditors determined that the affiliated dentists created false entries in medical records to support claims and that it was not possible to perform all of the procedures the dentists billed in relation to the hours their offices were open. Auditors also found that the dentists routinely certified claims for services that were purportedly provided by another affiliated dentist. In addition, the dentists paid staff to recruit Medicaid recipients to their offices. The audit also found questionable sanitary conditions at the two offices used by the dentists.

We referred our findings to the State Attorney General's Office for further investigation. In August 2012, Lawrence Bruckner pleaded guilty to multiple criminal charges (including felonies) for his conduct. Lawrence Bruckner was sentenced in Kings County Supreme Court and received a state prison term of one to three years. We recommended that the Department determine if additional recoveries should be made, determine whether the dentists should be allowed to participate in the Medicaid program, monitor the dentists' claims, direct the dentists to cease improper solicitation practices, and inspect the two office locations for unsanitary conditions.

The objective of our follow-up was to assess the extent of implementation, as of November 25, 2015, of the five 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. At the time of our follow-up review, Lawrence Bruckner paid restitution of \$681,336 to the State. Additionally, Lawrence Bruckner and three other dentists were removed from the Medicaid program and the remaining two dentists were prohibited from receiving Medicaid payments. Of the initial report's five audit recommendations, three were implemented and two were partially implemented.

Follow-Up Observations

Recommendation 1

Determine if additional recoveries should be made of claim payments made to the other affiliated dentists involved in the activities described in this report.

Status - Partially Implemented

Agency Action - The Office of the Medicaid Inspector General (OMIG) investigates and recovers improper Medicaid payments on behalf of the Department. The OMIG is coordinating with the State Attorney General's Medicaid Fraud Control Unit (MFCU) and is awaiting the outcome of MFCU's ongoing investigation of the affiliated dentists before determining if additional recoveries of claim payments should be made. In the interim, the OMIG has

reviewed the affiliated dentists' claim payments and, upon completion of the investigation, will make additional recoveries where appropriate.

Recommendation 2

Determine whether the dentists should be allowed to continue to participate in the Medicaid program. The assessment should also address the propriety of referring the dentists to the State Education Department's Office of the Professions.

Status - Partially Implemented

Agency Action - Four of the six dentists have been removed from the Medicaid program. Of the four dentists:

- One was excluded from the Medicaid program because he pleaded guilty to health care fraud and his license to practice dentistry was surrendered;
- Two were terminated from the Medicaid program because their professional licenses expired; and
- One voluntarily withdrew from participating in the Medicaid program; however, at the time of our follow-up review, his license to practice dentistry was still registered with the State Education Department's Office of the Professions.

The remaining two dentists are still licensed to practice dentistry and can participate in the Medicaid program; however, the Department is withholding all payments to the two dentists. Once MFCU's investigation is completed, the Department will evaluate whether the two dentists should continue to participate in the Medicaid program and the propriety of referring the two dentists, as well as the dentist who voluntarily withdrew from the Medicaid program, to the State Education Department's Office of the Professions.

Recommendation 3

Actively monitor the claims of the dentists identified in this report. Deny or pend claims for excessive numbers of services (particularly within certain time intervals).

Status - Implemented

Agency Action - Four of the dentists were removed from the Medicaid program and, therefore, they can no longer submit claims to Medicaid for payment. The remaining two dentists can submit claims to Medicaid; however, controls are in place to prevent the two dentists from receiving any payments. Since January 2013, the Department has withheld 91 claims representing \$3,052 in payments to one of the two dentists, and the remaining dentist has not submitted any claims to Medicaid.

Recommendation 4

Direct the dentists to cease improper recipient solicitation practices. Notify the dentists of the regulations that prohibit certain practices to solicit recipients.

Status - Implemented

Agency Action - In response to our recommendation, the OMIG conducted surveillance of the dentists' office locations and did not observe any further solicitation of recipients. Based on the results of the OMIG's surveillance activities, the subsequent removal of the four dentists from the Medicaid program, and the controls in place to monitor the remaining two dentists' claims (one of whom stopped submitting claims and the other who has only submitted 91 claims over the past three years), the Department determined the dentists do not need additional notification of the regulations prohibiting the solicitation of recipients.

Recommendation 5

Inspect the Broadway and Remsen office locations for unsanitary conditions and take appropriate actions.

Status - Implemented

Agency Action - OMIG officials conducted on-site inspections at the Broadway and Remsen office locations and determined that each location appeared to have several health and safety issues. Based on the results of these inspections, the OMIG consulted with the New York City Department of Health to determine the appropriate actions to take. Thereafter, the OMIG attempted to conduct follow-up inspections at the two locations; however, the Broadway office closed and the Remsen office no longer accepted Medicaid.

Major contributors to this report were Daniel Towle, Theresa Podagrosi, and Christian Butler.

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