



Department of Health

ANDREW M. CUOMO
Governor

HOWARD A. ZUCKER, M.D., J.D.
Commissioner

SALLY DRESLIN, M.S., R.N.
Executive Deputy Commissioner

March 14, 2016

Ms. Andrea Inman, Audit Director
Office of the State Comptroller
Division of State Government Accountability
110 State Street – 11th Floor
Albany, NY 12236-0001

Dear Ms. Inman:

Enclosed are the Department of Health's comments on the Office of the State Comptroller's Follow-Up Audit Report 2015-F-25 entitled, "Payments for Fraudulent and Improper Claims Submitted by Davis Ethical Pharmacy." (2012-S-11)

Thank you for the opportunity to comment.

Sincerely,

A handwritten signature in cursive script, appearing to read "Sally Dreslin".

Sally Dreslin, M.S., R.N.
Executive Deputy Commissioner

Enclosure

cc: Michael J. Nazarko
Robert W. LoCicero, Esq.
Jason A. Helgersen
Dennis Rosen
James Dematteo
James Cataldo
Ronald Farrell
Brian Kiernan
JoAnn Veith
Elizabeth Misa
Ralph Bielefeldt
Marci Natale
Diane Christensen
Lori Conway
OHIP Audit SM

**Department of Health
Comments on the
Office of the State Comptroller's
Follow-Up Audit Report 2015-F-25 entitled,
Payments for Fraudulent and Improper Claims Submitted by
Davis Ethical Pharmacy (Report 2012-S-11)**

The following are the Department of Health's (Department) comments in response to the Office of the State Comptroller's (OSC) Follow-Up Audit Report 2015-F-25 entitled, Payments for Fraudulent and Improper Claims Submitted by Davis Ethical Pharmacy (Report 2012-S-11).

Background

New York State is a national leader in its oversight of the Medicaid Program. With the transition to care management, the Office of the Medicaid Inspector General (OMIG) continues to improve upon our processes and direct our resources to match this changing direction in the Medicaid program. In conjunction with the Department, NYS will continue its focus on achieving improvements to the Medicaid program and aggressively fighting fraud, waste and abuse wherever it exists.

Under Governor Cuomo's leadership, the Medicaid Redesign Team (MRT) was created in 2011 to lower health care costs and improve quality of care for its Medicaid members. Since 2011, Medicaid spending has remained under the Global Spending Cap, while at the same time providing health care coverage to an additional 1,405,500 fragile and low income New Yorkers. Additionally, Medicaid spending per recipient has decreased to \$7,868 in 2014, consistent with levels from a decade ago.

Recommendation #1

Coordinate with the NCDA, DFS and other authorities as requested in any further investigation and recover the \$94,460 in improper payments made to Davis Ethical, as identified by this audit.

Status - Implemented

Agency Action - The Department coordinated with authorities and on December 10, 2015, William Davis pleaded guilty to Grand Larceny in the Second Degree in Nassau County District Court. William Davis was sentenced on February 9, 2016, and made restitution of \$231,919 to the State, of which \$94,460 was paid to the Medicaid program for the improper payments identified in the initial audit report.

In addition to our audit of claims submitted by Davis Ethical under the Medicaid program, the State Comptroller concurrently audited claims submitted by Davis Ethical under the New York State Health Insurance Program (NYSHIP). A separate report (2012-S-10), addressed to United HealthCare, includes details of improper claims submitted by Davis Ethical under the NYSHIP program. Accordingly, the remaining restitution of \$137,459 (\$231,919 - \$94,460) was paid to the NYSHIP program in satisfaction of OSC audit report 2012-S-10.

Response #1

The Department confirms our agreement with this report.

Recommendation #2

Formally assess the \$632,549 in prescription payments we did not test and determine the extent to which Davis Ethical submitted other fraudulent or improper claims. Recover improper payments, as warranted.

Status - Partially Implemented

Agency Action - The Office of the Medicaid Inspector General (OMIG) investigates and recovers improper Medicaid payments on behalf of the Department. In coordinating with the NCDA, the OMIG was awaiting the outcome of the criminal case against William Davis before making a determination on additional recoveries. The OMIG completed a preliminary review of Davis Ethical's claim payments and will make additional recoveries where appropriate.

Response #2

The Department confirms our agreement with this report.

Recommendation #3

Formally assess the conduct of William Davis and determine if he should be allowed to continue to participate in the Medicaid program or face other sanctions. Consider referring William Davis to the State Education Department for assessment of his professional conduct.

Status - Partially Implemented

Agency Action - The OMIG was awaiting the outcome of the criminal case against William Davis before taking action regarding William Davis' participation in the Medicaid program and a referral to the State Education Department. William Davis was sentenced on February 9, 2016. As a result, the OMIG has begun its process to evaluate whether William Davis should be excluded from the Medicaid program and the propriety of referring William Davis to the State Education Department for an assessment of his professional conduct. We note that, according to the State Education Department's records, William Davis no longer has an active license to practice in New York State.

Response #3

William Davis was sentenced on February 9, 2016. Subsequently, OMIG obtained the Certificate of Disposition from Nassau County Court and excluded William Davis and Davis Ethical Pharmacy from participating in the New York State Medicaid program under 18 NYCRR 515.7(c). As part of its normal procedure, OMIG notified the State Education Department of these exclusions. According to the State Education Department's records, William Davis does not currently have an active license to practice in New York State.