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December 8, 2016

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

Re: Improper Payments to a Physical Therapist
Report 2016-F-7

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, *Improper Payments to a Physical Therapist* (Report 2013-S-15).

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 physical therapy services, to individuals 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. Individuals enrolled in both programs are commonly referred to as "dual-eligible." Medicare is generally the primary payer for medical services provided to dual-eligible people. As the secondary payer, Medicaid generally pays balances, including deductibles and coinsurance, not paid by Medicare.

Our initial audit focused on Medicaid payments made to Mark Amir, a physical therapist who owned and operated Madison Physical Therapy located in Brooklyn, New York. Mr. Amir's patients were primarily "dual-eligible" beneficiaries who were enrolled in both Medicare and Medicaid. In December 2009, the Department implemented an automated crossover process whereby Medicare sends claim data electronically to eMedNY, the Department's Medicaid claims processing and payment system. The crossover system improved the accuracy of Medicaid payments for dual-eligible recipients. Prior to the implementation, providers reported Medicare payment information on claims to Medicaid. This often resulted in significant Medicaid

overpayments when providers misreported pertinent Medicare claim payment data. Despite the implementation of the new system, providers, including Mark Amir, were still able to report Medicare payment information directly to Medicaid instead of using the crossover system.

We issued our initial audit report on December 15, 2014. The audit objectives were to determine whether Mark Amir billed Medicaid in accordance with its policies and guidelines and whether Medicaid made improper payments. The audit covered the period April 1, 2010 through September 30, 2013. During this period, Medicaid paid Mr. Amir $305,215. Our initial audit found that Medicaid overpaid Mr. Amir $146,225 for 3,837 claims that were submitted to the Medicaid program with incorrect Medicare payment information. Auditors determined he avoided Medicaid's automated claims processing controls by submitting Medicare claims using the National Provider Identifier (NPI) for his group practice and the related Medicaid claims using his NPI as an individual provider. Specifically, his practice billed the Medicare program as "Madison Physical Therapy" and the Medicaid program as "Dr. Mark Amir." Madison Physical Therapy was not enrolled as a Medicaid provider and Dr. Mark Amir was not enrolled as a Medicare provider. Because the provider did not comply with certain regulations and administrative procedures, the claims did not trigger the automated crossover system. In addition, our audit questioned the propriety of 5,634 claims totaling $158,990 because Mr. Amir submitted claims – as an individual provider using his NPI – for services rendered by other clinicians working for Madison Physical Therapy. We recommended that the Department review the improper claims and recover Medicaid overpayments.

The objective of our follow-up was to assess the extent of implementation, as of September 8, 2016, of the two recommendations included in our initial audit report.

Summary Conclusions and Status of Audit Recommendations

Department officials made some progress implementing the recommendations we made in the initial audit report. Their efforts included certain steps to recover $116,298 in overpayments made to Mr. Amir. However, at the time we completed our follow-up fieldwork, none of the overpayments were actually recovered, and additional actions are still needed. Of the initial report's two audit recommendations, one was partially implemented and one was not implemented.

Follow-Up Observations

Recommendation 1

Recover Medicaid overpayments totaling $146,225 for the 3,837 improper claims.

Status – Partially Implemented

Agency Action – In our initial audit, we reported that Mr. Amir submitted claims with incorrect Medicare payment information. The Office of the Medicaid Inspector General (OMIG) investigates and recovers improper Medicaid payments on behalf of the Department.

At the conclusion of the initial audit, the OMIG referred Mr. Amir's claims to the State Attorney General's Medicaid Fraud Control Unit (MFCU) for further review. MFCU staff performed their own review of both Medicare and Medicaid claims from Mr. Amir during our audit period and identified overpayments of $116,298. Based on MFCU's review, the OMIG sent a letter, dated July 6, 2016, to Mr. Amir seeking recovery of the $116,298. However, as of August 2016, the OMIG had not yet recovered the overpayments. OMIG officials stated they will continue their efforts to recover amounts due from Mark Amir.

Recommendation 2

Review the remaining 5,634 claim payments totaling $158,990 and determine if recoveries and/or sanctions are warranted.

Status – Not Implemented

Agency Action – In our initial audit, we reported that Mr. Amir submitted claims as an individual Medicaid provider using his NPI for services performed by other physical therapists at his practice, which is not allowed under Medicaid rules. We recommended that the Department and the OMIG review Mr. Amir's claims and records to determine the appropriateness of these payments to Mr. Amir and take any necessary actions. As of August 2016, the OMIG had not reviewed Mr. Amir's claims or records to determine the extent that Mr. Amir submitted claims as an individual Medicaid provider for services performed by others. We strongly encourage the Department and the OMIG to review Mr. Amir's claims and determine if recoveries and/or sanctions are warranted.

Major contributors to this report were Brian Krawiecki, Theresa Podagrosi, and Lauren Bizzarro.

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