NEW YORK STATE OF OPPORTUNITY. Department of Health

ANDREW M. CUOMO
Governor

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Commissioner

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Executive Deputy Commissioner

December 27, 2017

Mr. Thomas P. DiNapoli
New York State Comptroller
Office of the State Comptroller
110 State Street
Albany, New York 12236

Dear Comptroller DiNapoli:

Pursuant to the provisions of Section 170 of New York State Executive Law, I hereby transmit to you a copy of the New York State Department of Health's comments related to the Office of the State Comptroller's final audit report 2015-S-30 entitled, "Medicaid Program – Managed Long Term Care Premium Rate Setting."

Please feel free to contact Estibaliz Alonso, Acting Assistant Commissioner, Office of Governmental and External Affairs at (518) 473-1124 with any questions.

Sincerely,

Howard Zucker M.D.

Howard A. Zucker, M.D., J.D.
Commissioner of Health

Enclosure

cc: Estibaliz Alonso

Department of Health
Comments on the
Office of the State Comptroller's
Final Audit Report 2015-S-30 entitled,
Managed Long Term Care Premium Rate Setting

The following are the Department of Health's (Department) comments in response to the Office of the State Comptroller's (OSC) Final Audit Report 2015-S-30 entitled, "Managed Long Term Care Premium Rate Setting."

Background

New York State (NYS) is a national leader in its oversight of the Medicaid Program. The Office of the Medicaid Inspector General (OMIG) conducts on-going audits of the Medicaid program and managed care plans. The Department and OMIG will continue to focus on achieving improvements to the Medicaid program and aggressively fighting fraud, waste and abuse.

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 1,276,304 fragile and low income New Yorkers. Additionally, Medicaid spending per recipient decreased to $8,609 in 2016, consistent with levels from a decade ago.

Recommendation #1

Review and reassess the appropriateness of the $82.3 million in reported medical costs associated with services purchased from the MCOs' affiliated providers and recover overpayments as warranted.

Response #1

The Department has reviewed the appropriateness of the $82.3 million and has confirmed that it was correctly reported as medical. Furthermore, the Department assessed whether the findings associated with the reporting of medical costs in relation with affiliated providers would impact premium rates in a substantive manner and determined that it would not have a material effect on rate ranges or premium rates.

Recommendation #2

Review the MMCOR and its instructions and, as necessary, revise them to ensure MCOs accurately capture their costs for situations such as the atypical affiliations we identified, in a manner that allows for consistent reporting of costs across all MCOs.

Response #2

The Managed Long Term Care (MLTC) Medicaid Managed Care Operating Reports (MMCORs) are updated and amended each time new populations and/or benefits are added into MLTC. The MMCOR instructions are considered a "living document", one that is updated with the policy and programmatic changes impacting MLTC. Additionally, the MMCOR instructions are revised on a quarterly basis to reflect changes in reporting tables as necessitated by the programmatic and

policy changes impacting health plans service provision and the MLTC MMCOR reporting financial reporting requirements.

The Department is working with the NYS-ITS on converting and modernizing the MLTC MMCOR operating software from the VB.6 platform to the VB.Net operating platform. The upgrade will allow the Department to change and modify the MLTC-MMCOR software in a more efficient manner. As part of this software conversion process, the Department will revise the MLTC MMCOR instructions to add clearer guidance and more specificity to the proper and accurate reporting of medical costs and corresponding member months as per OSC's recommendation.

Recommendation #3:

Routinely review the underlying transactions reported on the MMCORs to identify situations, such as the atypical affiliations we identified, that would warrant adjustments to the rate-setting calculation.

Response #3

The Department, in conjunction with OMIG, reviews processes to monitor and ensure plan compliance. The Department will continue to provide guidance to managed care organizations (MCO)s and review compliance/reporting issues when necessary.

The OMIG issued its Work Plan on April 1, 2016; on page 11, OMIG references the audits that will be conducted of Managed Care Cost Reporting. These audits include MLTC plans. Additionally, OMIG has initiated four MLTC MMCOR audits, to determine compliance with reporting requirements.

Recommendation #4

Review the $2,810,875 in inappropriately reported medical costs to determine the amount of incorrect premium payments, and recover where appropriate.

Response #4

The Department has assessed whether the findings associated with the reporting of inappropriate medical costs will impact the rates in a substantive manner. For the period in question, the Department has the flexibility, based on Centers for Medicare & Medicaid Services (CMS) policy, to pay within the actuarially certified premium rate ranges produced by the State's actuary. Correcting for this finding would not move rate ranges or premium rates in a substantive manner, one way or the other, towards the lower or upper bounds of the actuarially certified rate range. Additionally, the cost of engaging the actuary in a complete recertification of the rates should be considered in relation to this recommendation. It is estimated the recertification cost would range between $28,000 and $35,000. Finally, any recalculation of these premiums would need the approval of CMS and the NYS Division of the Budget.

Recommendation #5

Issue instructions for the proper reporting of medical costs and member months on the MCOR, including costs incurred without a corresponding member month.

Response #5:

Please see the Department's response to recommendation #2.

Recommendation #6

Ensure the MLTC MCOs timely recover the inappropriate payments and properly account for the recoveries on their MMCORs.

Response #6

The State Fiscal Year 2016-17 Budget included an administrative action that has been implemented that reduces managed care premiums by $30 million to incentivize MCOs to improve their fraud, waste and abuse recovery process, including identifying and recovering potential duplicate and excessive claims. This budget action requires plans to increase their provider audit/fraud efforts to recover the targeted amount, and provide quarterly updates to OMIG on these recovery efforts. It is anticipated that these coordinative efforts between the Department, OMIG, and the Plans will continue to ensure the integrity of the Medicaid program.

Recommendation #7

Ensure the MLTC MCOs take corrective actions to remedy the internal system control weaknesses that allowed the improper claims.

Response #7

Please see the Department's response to recommendation #6.

OSC Comment #1:

We disagree with the Department's assertion that the $82.3 million in reported costs associated with services purchased from the MCOs' affiliated providers were correctly reported as medical costs. As indicated on page 7 of our report, we reviewed the costs in question and found they were administrative in nature. In fact, as stated on page 8, according to the MMCOR instructions, the costs that we identified – such as claims processing, I&E, and staff recruitment and retention – are administrative expenses. Furthermore, at the time the MCOs submitted their MMCORs, the Department did not review the details of the expenses we identified; rather, officials left it up to the MCOs to decide where to report the costs. Therefore, we urge the Department to perform a thorough assessment of the costs, and reconsider their determination on the $82.3 million and recover overpayments as warranted. Lastly, contrary to the Department's response, reassigning $82.3 million in costs as administrative would materially affect the premium rates.

Response to OSC Comment #1:

When MCOs contract with service providers, the amount of the payment to the provider covers the provider's direct care personnel cost, as well as the provider's incurred administrative costs. The providers in question are affiliates of the MCO's parent company and incur administrative expenses no differently than if they were non-affiliated providers. MCO payments to providers in whole are treated as a medical expense in the cost report. The MMCOR instructions defines "Allowable Administration" as *costs associated with the overall Statewide management and*

operations of the plan. The Department disagrees with the audit recommendation that the Department should treat a provider's administrative costs as an administrative cost of the MCO.

The MMCORs are an important source of cost information that the Department utilizes for MMC regional rate setting. Accordingly, the Department issues instructions for MCOs to accurately record both medical and administrative costs.

Maintaining the accuracy of cost reporting by all MCOs is critical for developing accurate MMC rates. The Department suggests it may be appropriate to convene a meeting with the MCO in question and OSC to discuss the reported costs and if necessary, appropriate steps for financial remediation that does not impact other MCOs.

OSC Comment #2:

The Department does not necessarily have to recalculate the premiums paid, and engage its actuary and recertify the premium rates, in order to recover the $2,810,875 in inappropriately reported medical costs. Instead, at the Department's discretion, the inappropriately reported costs can be directly recovered from the MCOs that reported them. Therefore, we urge the Department to seek recoveries as warranted.

Response to OSC Comment #2:

As stated previously, the Department goes through an extensive process of setting MMC rates, which results in regional MCO rates adjusted for MCO-specific acuity. OSC is recommending that the Department recover amounts related to reported medical expenses, which is not the same as premium payments. The Department does not advise taking this approach because there is not a one-for-one relationship between reported medical expenses and premium payments.

However, as stated in the Department's response to OSC's Comment #1, maintaining the accuracy of cost reporting by all MCOs is critical for developing accurate MMC rates. The Department suggests it may be appropriate to convene a meeting with the MCO in question and OSC to discuss how the error was made and appropriate steps for financial remediation.