March 12, 2018

Mr. Kenneth Shulman
Assistant Comptroller
New York State Office of the State Comptroller
110 State Street, 10th Floor
Albany, New York 12236

Dear Mr. Shulman:

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 2016-S-67 entitled, "Appropriateness of Payments to Transportation Management Contractors and Providers."

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

Sincerely,

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

Enclosure

cc: Estibaliz Alonso

Department of Health
Comments on the
Office of the State Comptroller's
Final Audit Report 2016-S-67 entitled,
Appropriateness of Payments to Transportation Management Contractors and Providers

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The following are the Department of Health's (Department) comments in response to the Office of the State Comptroller's (OSC) Final Audit Report 2016-S-67 entitled, "Appropriateness of Payments to Transportation Management Contractors and Providers."

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:

Ensure that the nine Medicaid coverage groups continue to be excluded from the monthly recipient counts that are used as the basis for paying transportation managers.

Response #1:

This recommendation has been addressed. Prior to OSC's preliminary audit findings, the Department was in the process of examining which coverage codes should be included in the Standard Query Language (SQL) that determines the monthly enrollee eligibility report due to uncertainties some of the codes presented. The Department identified nine coverage codes that were included in error. These coverage codes were excluded from the monthly enrollee counts effective January 2017. OSC, during its review, confirmed that the nine coverage codes identified in their preliminary audit findings were included on the Department's exclusion list. The exclusion of these codes was a permanent change to the SQL that generates the monthly enrollee eligibility report.

Recommendation #2:

Review and recover the $6.2 million in contract overpayments to the transportation managers for the period January 2013 to December 2016.

Response #2:

The Department will review the payments made to the transportation managers and the work they performed relevant to the coverage codes identified by the audit, and take any appropriate action.

The Department will determine any appropriate recovery amounts by examining several relevant areas including: (1) Whether the work performed by the transportation managers as demonstrated by Medicaid claims data for arranging trips for enrollees with the 06 Provisional Eligibility and 09 Medicare Savings Program coverage codes warrants being reimbursed for enrollees with these codes. For example, Department claims data indicates that there were many Fee-For-Service (FFS) Medicaid transports arranged by the contractor for enrollees with these codes due to an impending spenddown consideration that resulted in a transport for an enrollee during the same month when they have a different coverage code on the service date of the trip. Arranging trips for such enrollees is consistent with Department policy, and necessary to ensure continuity of the transportation benefit to access a covered Medicaid service; (2) An analysis of unique enrollee Medicaid CIN#s that have the 06 and 09 coverage codes indicating trips arranged by the transportation managers (in the thousands) for these enrollees; (3) Whether the payment logic of the eMedNY system for the 09 coverage code includes dual-eligible enrollees in Qualified Medicare Beneficiary with full Medicaid (QMB Plus) and other dual-eligible programs, not just Medicare-only qualifiers; (4) The implications of the awarded vendors having based their financial "cost" bid on the Medicaid enrollee volume estimates provided in the Department's procurement documents that included the OSC identified coverage codes; and (5) The legal and practical implications of making any recoveries from awarded contracts after effective contract terms have expired.

As previously indicated to OSC, before their audit began, the Department's Bureau of Medicaid Transportation was examining the issue of determining which Medicaid coverage codes were appropriate to include in the SQL that is used to generate the monthly eligibility reports. As a preventative measure, pending a review of the work performed by the transportation management contractors under the identified codes, as noted in the audit, the Department removed the identified codes from the SQL effective January 1, 2017. The Department is currently validating the SQL being used to determine contractor reimbursement to avoid future potential payment issues.

Because of the uncertainties presented by some of the codes, including two of the coverage codes originally identified by OSC's audit, a decision was made to reimburse its Medicaid transportation managers per an inclusive volume of enrollees likely to be eligible for FFS transportation, while accounting for clearly determined exclusions such as those enrollees in Managed Long-Term Care. For example, in January 2016, for coverage code 09, in the Medicare Savings Program, there were 1,072 FFS claims for transportation. Further, the Department's decision concerning enrollee volume was also reflected in the enrollment estimates provided to perspective bidders for the transportation manager procurement documents to make certain they did not underestimate the population their business model was likely to serve. The awarded vendors bids were based upon the enrollee volume estimates provided in the procurement documents.

The Department believes the exigencies of fulfilling the Medicaid Redesign and Medicaid Administration Reform directives and ensuring the success of these important savings initiatives, warranted its discretion concerning calculation of the volume of enrollees determined necessary to reimburse the transportation managers. There are no statutory requirements concerning the calculation of eligible enrollees used to reimburse contractors regarding the FFS transportation management contracts. This decision has contributed to the viability of the transportation management contracts and has resulted in considerable savings to the Medicaid program. It should be noted that the cost of the re-procured New York City Medicaid transportation

management contract (which began in April 2017) is half the cost of the previous contract value, resulting in a $16 million annual savings.

Recommendation #3:

Review and recover contract payments to the transportation managers for ineligible coverage groups for the period prior to the scope of this audit, as warranted.

Response #3:

The Department disagrees with this recommendation. A Department review of coverage codes related to contract payments made prior to the scope of this audit, back to 2011, to both previous and current transportation managers, would be difficult and cumbersome to adequately conduct, particularly due to the complexities associated with the transportation management start-up process. This administrative takeover from the 62 counties included a phased-in approach of specific counties at different time periods within the different contractual regions, and the carving out of managed care enrollees into FFS management during different time periods. Also, the Department likely may not be able to reconstruct the payment logic used to determine the enrollee volume for the initial management contracts.

Furthermore, the awarded transportation management contractors developed their procurement bids and resulting infrastructure, that achieved significant Medicaid savings for the state, based on the Department's enrollment projections. These projections may have included the coverage codes referenced in this audit, and may have been eliminated from the payment calculation by the Department in January 2017.

Recommendation #4:

Determine the appropriateness of the $2.4 million in Medicaid payments to the provider with unsupported transportation claims for the period August 18, 2014 to December 31, 2015 and recover overpayments as warranted.

Response #4:

The Department will research claims submitted by the provider identified in this report, and will consult with OMIG to determine whether recoupment is necessary for the claims identified. OMIG has initiated a review and will pursue recovery of any payment determined to be inappropriate.

Transportation providers will be reimbursed only when contemporaneous, complete, acceptable, and verifiable records are available to the State, upon request, in connection with an audit, investigation or inquiry. Non-Emergency Medical Transportation providers are required to document every leg of the trip with acceptable trip verification which includes: the Medicaid enrollee's name, date of transport, origination and destination of trip along with the time of pick up and drop off, vehicle license plate number, and driver's license plate number. Effective March 1, 2016, the record keeping requirements were updated to include the driver's signature and an attestation from the driver that the trip was completed. A driver or vehicle dispatch sheet, a prior authorization with checkmarks, an authorization roster, or an attendance log from a day program is not considered acceptable supporting documentation for the trip. A printed Medical Answering Services roster with initials or names next to each trip would not meet the Departments record keeping requirements.

Recommendation #5:

Ensure the inappropriate payments to the provider for tolls are recovered through the self-disclosure process.

Response #5:

OMIG has recovered $28,663, and will continue to pursue recovery of any payment determined to be inappropriate.

Recommendation #6:

Determine the appropriateness of the $162,401 in Medicaid payments to the four ALSFR providers and recover overpayments as warranted.

Response #6:

Advanced Life Support First Response (ALSFR)-only providers are not permitted to enroll and bill the Medicaid program. The Department's Medicaid Transportation Policy Unit will work with the Department's Bureau of Provider Enrollment to determine the appropriateness of the payments to the four identified providers, and OMIG will pursue recovery of any inappropriate payments.

After such review, the Department will ensure appropriate action is taken if necessary, regarding the enrollment status of these providers in the Medicaid program.

Recommendation #7:

Review the enrollment status of the four ALSFR providers and take the necessary corrective steps regarding their future participation in the Medicaid program.

Response #7:

In conjunction with the Department, OMIG will review the four providers, and take appropriate action.

Recommendation #8:

Take steps to ensure that ALSFRs are not enrolled as Medicaid providers.

Response #8:

The Department's Medicaid Transportation Policy Unit has worked with the Department's Bureau of Emergency Medical Services and the Bureau of Provider Enrollment to create a process to verify that ambulance companies applying to become Medicaid Providers are not ALSFR only. Provider Enrollment has expanded the ambulance enrollment procedures to identify the type of certificate held by the enrolling ambulance company and deny any ALSFR-only ambulances. Additionally, all enrollment staff that handle ambulance enrollment have been trained with examples on the difference between an ambulance certificate and an ALSFR-only certificate. The

changes in the enrollment process should eliminate improper enrollment of ALFSR-only ambulance companies.

State Comptroller's Comments:

OSC Comment #1:

The Department's response is misleading. Prior to issuing our preliminary audit findings, we provided Department officials with information that specified the needed improvements to the methodology the Department used to determine Medicaid recipients eligible for non-emergency fee-for-service transportation. In fact, as indicated on page 7 of our audit report, Department officials stated that, because of their uncertainty regarding the appropriateness of certain coverage groups, the Department decided to reimburse transportation managers according to the total volume of Medicaid recipients and allow for only obvious exceptions, such as recipients enrolled in managed long-term care plans. Furthermore, it was not until after we provided Department officials, in January 2017, with a list of specific Medicaid coverage groups we believed should not be included in their methodology that the Department excluded the coverage codes from the Structured Query Language. We are pleased the Department took the steps necessary to fix its computer programs used to calculate the monthly volume of Medicaid recipients eligible for non-emergency transportation. Left unaddressed, these errors would have caused additional overpayments to the Department's transportation management contractors in the future.

Response to Comment #1:

The Department disagrees with OSC's comment #1. The Department was not misleading. To fulfill objectives of the Medicaid Redesign initiatives, including successfully achieving the considerable cost savings targets, the Department included a comprehensive volume of enrollees both in the projected estimates contained in the procurement documents used to solicit potential contractor bids, and in the Query Language used to reimburse the awarded transportation managers. When the Department later determined that the use of certain codes might be problematic, it suspended their inclusion in the Query Language pending further investigation, to not compound any potential future overpayments. As the Department's audit response indicates, its review includes, among other relevant areas, verifying the work performed by the transportation managers to arrange trips for enrollees with the Provisional Eligibility and Medicare Savings Program codes, for the purpose of providing timely and seamless transportation to approved medical services in Medicaid spenddown situations.

OSC Comment #2:

On page 1 of the Department's response, officials acknowledge that the nine coverage codes in question were included in error, and on page 2 indicate they will work with OMIG to review the overpayments we identified that occurred during the scope of this audit (January 1, 2013 through December 31, 2016) and take appropriate action. As stated on page 8 of our audit report, in January 2017 the Department updated its processes for calculating the monthly volume of recipients eligible for non-emergency transportation and removed the nine coverage groups from the monthly counts. We commend the Department for promptly correcting these errors. We believe the Department can realize further recoveries if it and OMIG review the contract payments to transportation managers for ineligible coverage groups for the period prior to the scope of this audit. Given the current fiscal stress on state Medicaid programs, we strongly urge the

Department to reconsider and review contract payments made during the period we did not review, and recover overpayments as warranted.

Response to Comment #2:

The Department disagrees with OSC's comment #2. A Department review of coverage code-related contract payments made prior to the scope of this audit dating back to 2011, the taking of any appropriate action with regard to both previous and current transportation managers would be very difficult, if not impossible, to adequately conduct. In particular, this difficulty is due to the complexities associated with the transportation management start up process. This administrative takeover from the counties included a phased-in approach of specific counties at different times periods within the different contractual regions, and the carving out of managed care enrollees into Fee-For-Service management during different time periods. The Department may likely not be able to reconstruct the payment logic determining the enrollee volume for the initial management contracts. There is also the issue of the fluidity of coverage codes assigned to enrollees. Enrollees' coverage codes can change at any time during the month based on many variables, making it very difficult to re-create the report captured at another time.

Furthermore, the awarded transportation management contractors developed their procurement bids. The resulting infrastructure achieved significant Medicaid savings for the State, and was based on the Department's enrollment projections which may have included the coverage codes referenced in this audit. It should also be recognized that a significant volume of enrollees with the coverage codes in question, prior to the audit period, were managed in contracts which have expired, therefore making any determined recoveries problematic.