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September 5, 2018

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

Re: Reducing Medicaid Costs for Recipients  
With End Stage Renal Disease  
Report 2018-F-8

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, *Reducing Medicaid Costs for Recipients With End Stage Renal Disease (2015-S-14)*.

**Background, Scope, and Objectives**

The Department of Health (Department) administers the State's Medicaid program, which provides a wide range of health care services to individuals who are economically disadvantaged and/or have special health care needs. End stage renal disease (ESRD) is a medical condition in which a person has permanent kidney failure and requires dialysis or a kidney transplant to stay alive. Medicaid recipients with ESRD may be eligible for Medicare coverage if they receive regular dialysis treatments or a kidney transplant, and meet one of the following requirements: (1) have worked the required amount of time under Social Security, the Railroad Retirement Board, or as a government employee; (2) are already receiving or are eligible for Social Security or Railroad Retirement Board benefits; or (3) are the spouse or dependent child of a person who meets either of the aforementioned requirements. When Medicaid recipients with ESRD are enrolled in Medicare, Medicare is the primary insurer (payer) and Medicaid the secondary. As a secondary payer, rather than pay for the medical service itself, Medicaid pays the recipient's Medicare premiums, deductibles, and coinsurance amounts, which allows for a significant cost avoidance for the Medicaid program.

We issued our initial audit report on March 1, 2017. The audit objective was to determine

whether the Department took sufficient steps to control the Medicaid costs of recipients diagnosed with ESRD who were eligible for, but not enrolled in, Medicare. The audit covered the period from January 1, 2010 through December 31, 2015. Our audit determined the Department did not effectively control the Medicaid costs of recipients diagnosed with ESRD. For example, the Department did not identify Medicaid recipients diagnosed with ESRD, notify ESRD recipients of their entitlement to Medicare, or take actions to help (or encourage) them to apply and enroll in Medicare. As a result, we identified 3,015 Medicaid recipients with ESRD who met the Medicare eligibility criteria, but who were not enrolled in Medicare at the time their medical services were provided. Had the Department informed the recipients about their entitlement to Medicare and helped them enroll, the Medicaid program could have saved as much as \$146 million over the six-year audit period. Furthermore, we estimated the Medicaid program could have saved as much as \$69 million over the next three years subsequent to the initial audit period.

The objective of our follow-up was to assess the extent of implementation, as of August 7, 2018, of the five recommendations included in our initial audit report.

### **Summary Conclusions and Status of Audit Recommendations**

Department officials have made progress addressing the problems identified in the initial audit. For instance, the Department now identifies and notifies Medicaid recipients diagnosed with ESRD about their potential eligibility for Medicare. Additionally, the Department contracted with enrollment facilitators to provide education and outreach to ESRD recipients to aid them in applying for Medicare. The Department also updated its website to include several resources for individuals with ESRD, including information on Medicare eligibility and enrollment.

Of the initial report's five audit recommendations, one was implemented, three were partially implemented, and one was not applicable during the time of our follow-up.

### **Follow-Up Observations**

#### **Recommendation 1**

*Implement a process to identify and notify recipients with an ESRD diagnosis to apply for Medicare coverage. Instruct the recipients on how and where to apply for Medicare.*

Status - Implemented

Agency Action - Since December 2017, the Department has produced monthly reports that identify Medicaid recipients with ESRD. The Department sends letters to these recipients informing them of their potential eligibility for Medicare based on their ESRD diagnosis and treatment. The letters inform recipients of where and how to apply for Medicare, what documentation is required for the application, and the differences between Medicare and Medicaid.

## **Recommendation 2**

*Develop an outreach program that educates and encourages ESRD-related providers and other stakeholders to proactively inform Medicaid recipients with ESRD about Medicare benefits, inform recipients about State MSP opportunities, and actively assist recipients apply for Medicare.*

Status - Partially Implemented

Agency Action - In March 2017, the Department updated its website to include several resources for individuals with ESRD, including information on potential eligibility for Medicare based on their ESRD diagnosis. The website also includes links to the Social Security Administration's (SSA) website for applying for Medicare, links for local SSA offices and information from the Centers for Medicare & Medicaid Services (CMS), and links to the State's Medicare Savings Program (MSP), which offers additional assistance by paying for Medicare Part B premiums.

However, the Department did not inform ESRD-related providers or other stakeholders about the improved website and resources. For example, the Department has not issued a Medicaid update referencing its improved website. As a result, providers are not encouraged to inform recipients of their potential eligibility or State MSP opportunities.

## **Recommendation 3**

*Monitor and follow up with recipients who do not apply for Medicare and facilitate their enrollment by developing and implementing processes that include, but are not limited to:*

- *Identifying recipients' qualifying relations (spouse, parent),*
- *Obtaining recipients' qualifying credits (QCs) data from SSA,*
- *Ascertaining whether Medicaid recipients diagnosed with ESRD are potentially eligible for Medicare, and*
- *Sending follow-up notifications to recipients informing them of their apparent Medicare eligibility.*

Status - Partially Implemented

Agency Action - The Department contracted with enrollment facilitators familiar with Medicare and Medicaid rules to provide education and outreach to assist individuals identified as ESRD Medicaid recipients in applying for Medicare. While the determination of Medicare eligibility is the responsibility of SSA, the contractors are to monitor and track progress and report Medicare application outcomes to the Department. According to Department officials, contractors completed training by the end of July 2018, and on August 3, 2018, contractors were sent their first list of Medicaid recipients diagnosed with ESRD. The contractors were expected to report Medicare application outcomes beginning on September 15, 2018.

#### **Recommendation 4**

*If SSA clarifies or amends its rules for uncooperative individuals to include ESRD recipients:*

- *Collect and submit the documentation required for SSA to make an ESRD Medicare eligibility determination for recipients with the necessary QCs who do not apply for Medicare, and*
- *Design and implement new processes to effectuate Department requests for Medicare enrollment and buy-in for eligible ESRD recipients who do not apply for Medicare.*

Status - Not Applicable

Agency Action - At the time of our follow-up review, SSA had not amended its rules that pertained to uncooperative individuals to include ESRD recipients.

#### **Recommendation 5**

*Recover claims paid for any retroactive Medicare enrollments of Medicaid recipients diagnosed with ESRD.*

Status - Partially Implemented

Agency Action - The Office of the Medicaid Inspector General (OMIG) investigates and recovers improper Medicaid payments of behalf of the Department. We found that the OMIG has taken steps to recover claims paid for Medicaid recipients diagnosed with ESRD. At the time of our follow-up review, OMIG had recovered \$55,049 in paid Medicaid claims and an additional \$491,853 in paid claims were voided. OMIG officials informed us they plan to continue to review claims paid for any retroactive Medicare enrollments of ESRD recipients, and pursue recoveries where appropriate.

Major contributors to this report were Gail Gorski, Joe Paduano, and Karen Ellis.

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