NEW YORK
STATE OF
OPPORTUNITY.

Department
of Health

ANDREW M. CUOMO
Governor

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

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

November 14, 2018

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 2018-F-14 entitled, "Errors in Identification of 340B Providers in the Medicaid Drug Rebate Program" (Report 2016-S-6).

Thank you for the opportunity to comment.

Sincerely,

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

Enclosure

cc: Marybeth Hefner
Donna Frescatore
Dennis Rosen
Erin Ives
Brian Kiernan
Timothy Brown
Elizabeth Misa
Geza Hrazdina
Daniel Duffy
Jeffrey Hammond
Jill Montag
Ryan Cox
James Dematteo
James Cataldo
Diane Christensen
Lori Conway
OHIP Audit SM

Department of Health
Comments on the
Office of the State Comptroller's
Follow-Up Audit Report 2018-F-14 entitled, Errors in Identification of 340B Providers in the Medicaid Drug Rebate Program (2016-S-6)

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 2018-F-14 entitled, "Errors in Identification of 340B Providers in the Medicaid Drug Rebate Program" (2016-S-6).

Recommendation #1

Review the remaining $6 million in drug rebates identified for the 13 providers and seek retroactive rebates where appropriate.

Status – Partially Implemented

Agency Action – The Department invoiced about $1.9 million of the $6 million in drug rebates. Department officials stated they will work with their new rebate vendor to review the remaining claims and seek rebates where appropriate.

Response #1

The Department has secured an independent contractor and is actively working to resolve all partially addressed actions identified in this audit. The results of the remaining claims will be fully documented and those found to be rebate eligible will be processed appropriately.

Recommendation #2

Determine whether the $531,650 in drug rebates can be collected for the 26 providers who were not on the MEF and seek retroactive rebates where appropriate.

Status – Partially Implemented

Agency Action – The Department invoiced $146,613 of the $531,650 in drug rebates. Department officials stated they will work with their new rebate vendor to review the remaining claims and seek rebates where appropriate.

Response #2

The Department has secured an independent contractor and is actively working to resolve all partially addressed actions identified in this audit. The results of the remaining claims will be fully documented and those found to be rebate eligible will be processed appropriately.

Recommendation #3

Ensure that rebates from July 1, 2015 and thereafter are appropriately claimed and collected for the providers we identified, including the two providers with service locations that did not administer 340B drugs to Medicaid recipients.

Status – Implemented

Agency Action – As a result of the initial audit, the Department improved the process used to develop its 340B provider list. Additionally, beginning on April 1, 2017, the Department began solely relying on 340B drug claim identifiers to identify which claims to exclude from rebates. Subsequently, for the period from July 1, 2015 to December 31, 2017, the Department invoiced a total of $13.6 million in drug rebates for 34 providers identified in the initial audit. According to Department officials, rebates were not invoiced for the remaining providers because 340B drug claim identifiers were present or there was no drug claim activity.

Response #3

The Department confirms agreement with this report.

Recommendation #4

Monitor providers' use of 340B claim level identifiers to ensure they properly identify 340B drugs. If errors are detected (i.e., providers inaccurately identified 340B drugs on claims and encounters), ensure providers correct their submissions of such information and retroactively invoice manufacturers for the corresponding rebates.

Status – Implemented

Agency Action – The Department contracted with a vendor to perform rebate invoicing, monitor discrepancies in the data used in the rebate process, identify outliers (providers using 340B claim identifiers who are not on HRSA's list of eligible 340B providers), and report to the Department with recommendations on how to correct errors. Department officials stated they will refer any outliers to the Office of the Medicaid Inspector General (OMIG) for further review. At the time of our review, the Department had not made any referrals to OMIG because the Department recently moved into the contract's implementation phase, and the first invoices were released on August 29, 2018.

Department officials have instructed providers on Medicaid's requirements for identifying 340B drugs with claim identifiers. The Department has also informed providers that if a rebate is received by the Department for a drug obtained via the 340B program due to incorrect claim-level identifiers, then the provider will be responsible for reimbursing the manufacturer for the 340B discount.

Response #4

The Department confirms agreement with this report.