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May 7, 2020

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

Re: Opioid Prescriptions for Medicaid Recipients in an Opioid Treatment Program
Report 2019-F-53

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, *Opioid Prescriptions for Medicaid Recipients in an Opioid Treatment Program* (Report 2017-S-66).

Background, Scope, and Objective

The Department of Health (Department) administers the State's Medicaid program, which provides a wide range of medical services, including substance use disorder treatment and medically appropriate pharmacy benefits. Medicaid recipients receive these services through either managed care organizations (MCOs) or fee-for-service (FFS) arrangements. Opioid treatment programs (Treatment Programs) provide medication-assisted treatment, which includes certain opioid medications and counseling and behavioral therapies for people diagnosed with an opioid use disorder.

The State maintains a database to monitor controlled substance prescription drug use, known as the Internet System for Tracking Over-Prescribing (I-STOP). The database contains records of all controlled substances (paid by Medicaid, other insurers, cash purchases, etc.) that were dispensed in New York State and reported by a pharmacy/dispenser. I-STOP is a tool to assist prescribers in determining the most appropriate treatment for an individual and can be used by Treatment Programs to identify undisclosed opioid prescriptions or drug abuse. Federal guidance suggests Treatment Programs consult I-STOP at admission, prior to ordering take-home doses, and at other important clinical decision points. Further, State law requires Treatment Programs to consult I-STOP when controlled substances are dispensed for off-premises use. Federal guidance also encourages Treatment Programs to coordinate care with patients' other prescribers of controlled substances. If a Treatment Program becomes aware

of outside prescriptions, patient consent to share treatment information with other practitioners can be requested and, if provided, the health care providers involved can discuss the patient's medical condition and situation, the prescribed medicine, and available alternatives to determine the best comprehensive plan.

We issued our initial audit report on November 20, 2018. The audit objective was to determine if the Department had taken sufficient steps to safeguard Medicaid recipients who were receiving opioids while also in a Treatment Program for opioid use disorder. The audit covered the period October 1, 2013 through September 30, 2017. For this four-year period, auditors identified 18,786 recipients who received 208,198 opioid prescriptions through the Medicaid program while also receiving opioids as part of a Treatment Program for opioid use disorder. These recipients may have received inappropriate, unnecessary, and/or dangerous prescriptions if Treatment Programs did not check I-STOP and, where authorized, coordinate care with other prescribers – auditors noted 493 of the 18,786 recipients required medical care as a result of opioid or narcotic overdoses that occurred within a month of receiving a prescription opioid, and 12 of those individuals died during the time of their medical care involving the overdose. Based on a review of medical records for a sample of 25 recipients who received 1,065 opioid prescriptions while also in a Treatment Program for their opioid use disorder, auditors determined Treatment Programs were not consistently checking I-STOP in accordance with requirements, and also found that care coordination occurred for only 59 of the 1,065 prescriptions (6 percent).

The objective of our follow-up was to assess the extent of implementation, as of January 17, 2020, of the three recommendations included in our initial audit report.

Summary Conclusions and Status of Audit Recommendations

Department officials made significant progress in addressing the problems identified in the initial audit report. Of the initial report's three audit recommendations, two were implemented and one was partially implemented.

Follow-Up Observations

Recommendation 1

Evaluate the benefits of the following actions to improve scrutiny over opioid prescriptions for Medicaid recipients who are being treated for opioid use disorder:

a. Developing a report that can be used to notify Treatment Programs when I-STOP indicates recipients are receiving potentially dangerous prescriptions (such as opioids);

b. Taking steps to ensure Treatment Programs are aware of the option to upload patient information when querying I-STOP;

c. Taking steps to ensure Medicaid MCOs have controls requiring medical appropriateness reviews prior to dispensing opioids to recipients with opioid use disorder consistent with Medicaid FFS controls; and

d. Including a risk assessment within the Recipient Restriction Program that is specific to individuals receiving medication-assisted treatment for opioid use disorder concurrently with opioid prescriptions.

Status – Implemented

Agency Action – The Department evaluated the benefits of the recommended actions and has taken steps to strengthen scrutiny over opioid prescriptions for Medicaid recipients with opioid use disorder. This includes working to incorporate clinical decision-making tools into the I-STOP program through an "Overdose Data to Action" grant funded by the federal Centers for Disease Control and Prevention. These tools will enable Treatment Programs and other prescribers to more quickly identify clinical issues and potential opioid abuse and allow for easier patient history review in I-STOP. In addition, in November 2019, the Department published a webinar that provided an overview of the I-STOP program and included instruction on the multi-patient search feature. This feature allows Treatment Programs and other prescribers to upload information to I-STOP and perform queries on up to 30 patients at one time.

The Department has been working with MCOs to require medical appropriateness reviews prior to dispensing opioids to patients with opioid use disorder. Department officials provided MCOs with the criteria used in Medicaid FFS controls, and instructed them to develop and implement a plan to identify and review the data on patients who meet the criteria. At the time of our follow-up review, the Department was in the process of collecting and reviewing data received from the MCOs.

The Office of the Medicaid Inspector General's (OMIG) Restricted Recipient Program includes a risk assessment based on overutilization, duplicative or conflicting services, and/or abuse of the Medicaid benefit. At the time of our initial audit, we found that this assessment did not look for individuals receiving medication-assisted treatment for opioid use disorder concurrently with opioid prescriptions. According to OMIG officials, they have determined there is limited benefit to implementing this criterion due to patient privacy regulations, which prevent OMIG from disclosing a patient's participation in a Treatment Program to prescribers or pharmacies.

Recommendation 2

Issue guidance to remind Treatment Programs of the statutory and regulatory requirement to check I-STOP when Treatment Programs dispense take-home doses of opioid medications. Evaluate the benefits of establishing additional guidance for Treatment Programs to make other checks of I-STOP when clinically appropriate.

Status – Partially Implemented

Agency Action – Our initial audit found that I-STOP was underutilized by the Treatment Programs we visited. For example, we did not find evidence that Treatment Programs were checking I-STOP prior to every instance a medication-assisted opioid was dispensed for take-home use, as required by State law. After our initial audit, the Office of Addiction Services and Supports (OASAS) issued guidance reminding Treatment Programs to comply with statutory requirements to check I-STOP. However, the guidance does not provide a clear explanation of the Treatment Programs' statutory obligation to check I-STOP each time a medication-assisted opioid is dispensed for take-home use. Instead, it recommends that opioid treatment providers consult I-STOP when a patient becomes eligible for take-home doses of medication, whenever a patient on take-home medication has a dosage change, and as otherwise clinically appropriate. In addition, the guidance makes no reference to certain conditions under the current

law that may exempt Treatment Programs from the requirement to check I-STOP each time they dispense for take-home use, such as when it is not reasonably possible for the practitioner to access the registry in a timely manner or when no other practitioner or authorized designee is reasonably available to check the registry.

We note that the guidance includes instructions to Treatment Programs to make additional checks of I-STOP where clinically appropriate, such as upon admission and at regular intervals during treatment.

Recommendation 3

Formally remind Treatment Program providers of the importance of seeking to coordinate care with prescribers of opioids outside of the Treatment Programs.

Status – Implemented

Agency Action – Per the New York Codes, Rules and Regulations, Title 14, providers shall seek to obtain consent from the patient so that the provider practitioner may consult with the prescribing practitioner and discuss: the patient's total medical condition and situation; the prescribed medicine and available alternatives; and the best plan of services to be rendered by each practitioner, given the patient's concurrent treatment. In March 2019, OASAS issued guidance formally reminding Treatment Programs of their obligation to try to coordinate care with their patients' other prescribers. The guidance included a reminder that Treatment Programs are expected to make diligent efforts to obtain consent from patients to allow care coordination, regularly discuss other medications and prescriptions taken by the patient, and document this information in the patient's record.

Major contributors to this report were Thomas Sunkel, Timothy Garabedian, and Emily Schwartz.

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,

Christopher Morris
Audit Manager

cc: Thomas McCann, Department of Health
Dennis Rosen, Medicaid Inspector General