THOMAS P. DiNAPOLI
COMPTROLLER

110 STATE STREET
ALBANY, NEW YORK 12236

STATE OF NEW YORK
OFFICE OF THE STATE COMPTROLLER

July 1, 2020

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

Re: Medicaid Overpayments for Medicare Part B Services Billed Directly to eMedNY
Report 2020-F-4

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, *Medicaid Overpayments for Medicare Part B Services Billed Directly to eMedNY* (Report 2017-S-36).

Background, Scope, and Objective

The Department of Health (Department) administers the State's Medicaid program. Many Medicaid recipients are also enrolled in Medicare Part B, which provides supplemental insurance coverage for outpatient medical services, physician services, and medical supplies. As the secondary payer, Medicaid generally pays the Part B cost-sharing amounts (e.g., deductibles and coinsurance) for these "dual-eligible" individuals.

In December 2009, the Department implemented its automated Medicare/Medicaid crossover system. Under this system, providers submit medical claims for dual-eligibles to Medicare. After Medicare processes the claims, they are automatically transferred to the Department's eMedNY claims processing system for payment of deductibles and coinsurance. The intent of the automated crossover system was to minimize the need for providers to self-report Medicare payment data to eMedNY and thereby improve the accuracy of Medicaid payments for dual-eligibles. In certain instances, providers may still submit these claims directly to eMedNY for payment (i.e., self-report Medicare data). In these situations, the claims bypass the payment controls enforced by the crossover system.

We issued our initial audit report on December 11, 2018. The audit objective was to determine whether Medicaid made improper payments to providers who submitted Part B cost-sharing claims directly to eMedNY. The audit covered the period June 1, 2012 through May 31, 2017 and identified up to $8.7 million in overpayments for Part B deductibles and coinsurance.

The payments included: $5.3 million in potential overpayments on claims that providers billed directly to Medicaid (circumventing the controls of the automated crossover system), which had Part B coinsurance amounts that were much higher than the typical coinsurance amounts billed to Medicaid for the services rendered; $2.3 million in overpayments to providers for Part B coinsurance on services that Medicaid did not cover; and $1.1 million in overpayments to providers for Part B deductibles that exceeded dual-eligibles' yearly limits.

The objective of our follow-up was to assess the extent of implementation, as of May 14, 2020, of the five recommendations included in our initial audit report.

Summary Conclusions and Status of Audit Recommendations

Department officials made some progress in addressing the problems identified in the initial audit report; however, additional action is needed. In particular, the Office of the Medicaid Inspector General (OMIG) recovered about $325,000 of the overpayments identified; however, about $8.4 million of those overpayments still need to be reviewed and recovered from providers. Of the initial report's five audit recommendations, one was implemented and four were partially implemented.

Follow-Up Observations

Recommendation 1

Review the $46,030 for the 240 claims we tested and make recoveries, as appropriate.

Status – Partially Implemented

Agency Action – OMIG investigates and recovers improper Medicaid payments on behalf of the Department. OMIG's Work Plan states it will safeguard Medicaid resources by responding to external audits from the Office of the New York State Comptroller, analyzing the external audit data, and working to recover inappropriately paid claims.

In the initial audit, we found that 15 providers were responsible for more than $600,000 of the $5.27 million in potential overpayments (Recommendation 2), and we requested documentation for 240 claims from five of these top providers whose coinsurance charges appeared to be excessive. We reviewed the documentation and confirmed that Medicaid made overpayments totaling $46,030 for the 240 direct-billed claims. At the conclusion of the initial audit, we provided OMIG with files containing details of the overpayments identified, including, but not limited to, the Medicaid payment and the calculated overpayment. As of April 6, 2020, OMIG had recovered about $1,380 of the $46,030 in overpayments, leaving about $44,650 yet to be recovered. Due to federal look-back restrictions, OMIG may have lost the opportunity to recover over $25,000 of the identified overpayments. According to OMIG officials, additional recoveries will be made through its ongoing Part B projects. We encourage OMIG officials to take prompt action on the remaining overpayments, in accordance with its Work Plan, to prevent further loss of recoveries.

Recommendation 2

Using a risk-based approach, assess the remaining $5.27 million in potential overpayments made to providers for Part B coinsurance, and recover overpayments, as appropriate. Ensure prompt attention is paid to those providers who received the largest dollar amounts of the payments.

Status – Partially Implemented

Agency Action – The initial audit identified potential overpayments totaling $5.27 million to providers who claimed excessive Part B coinsurance amounts. Providers submitted coinsurance amounts that were higher than the amounts typically billed to Medicaid for the services rendered. For instance, coinsurance amounts are generally 20 percent of Medicare's approved amount for a service; however, we found several providers who billed Part B coinsurance amounts that exceeded 40 percent or more of the Medicare-approved amount. At the conclusion of the initial audit, OMIG officials stated they would review and pursue recovery of any payment determined to be inappropriate. As of April 6, 2020, OMIG had recovered about $281,000 of the $5.27 million. Of the remaining $4.98 million in payments, OMIG may have lost the opportunity to recover about $3.5 million due to federal look-back provisions. According to OMIG officials, additional recoveries will be made through its ongoing Part B projects. We encourage OMIG officials to take prompt action on the remaining overpayments, in accordance with its Work Plan, to prevent further loss of recoveries.

Recommendation 3

Review the $3.4 million in overpayments and make recoveries, as appropriate.

Status – Partially Implemented

Agency Action – The $3.4 million in overpayments found in the initial audit consisted of $2.3 million in Part B coinsurance for non-covered services and $1.1 million for Part B deductibles that had exceeded the annual allowance. eMedNY controls were not in place to prevent the payment of coinsurance for non-covered services as well as excessive annual deductibles. During our follow-up review, OMIG officials expressed concern that some of the services identified as non-covered potentially may have been covered by Medicaid. As was the case when this concern was raised in the initial audit, officials did not provide documentation to substantiate their concern or govern the payment of such scenarios, nor has a process been developed to address these concerns for the purpose of payment. In addition, the Department listed each of the procedure codes identified in the $2.3 million of paid claims as non-covered. Furthermore, regarding the payment of deductibles, during our follow-up review, we found Medicaid paid an additional $300,000 on approximately 23,900 claims for Part B deductibles in excess of the annual allowance for the calendar years 2018 and 2019.

As of April 6, 2020, OMIG had recovered $42,245 of the $3.4 million in overpayments, leaving about $3.3 million to be recovered. Due to federal look-back provisions, OMIG may have lost the opportunity to recover about $2.16 million of the remaining overpayments. We encourage OMIG officials to expedite its review and recovery of the remaining overpayments identified in the initial audit to prevent further loss of recovery, and to review and recover the additional overpayments identified in this review.

Recommendation 4

Formally remind providers who received overpayments to report accurate claim information when billing Medicaid for Part B deductibles and coinsurance on direct-bill claims to ensure claims are paid appropriately.

Status – Implemented

Agency Action – The Department reissued its Medicare and Third Party Insurance Primary Submission policy in August 2018, reminding providers of the requirements specifically related to accurately billing Medicaid for Medicare-related claims. The policy requires all such claims to accurately reflect payments received from other insurers to allow correct calculation of Medicaid reimbursement amounts.

Recommendation 5

Enhance system controls to identify and prevent overpayments of Part B deductible and coinsurance amounts.

Status – Partially Implemented

Agency Action – On April 23, 2020, the Department enhanced an existing system edit designed to identify and prevent overpayment of Part B coinsurance. On May 14, 2020, we tested all Part B claims submitted since the enhancement was implemented and found no inappropriate payments had been made for excessive coinsurance. We also found no claims were denied as a result of the enhancement; however, we attribute this to the limited information available for testing.

The Centers for Medicare & Medicaid Services establishes the annual Part B deductible for each calendar year. On September 25, 2019, the Department implemented a new system edit to prevent payment of Part B deductibles in excess of the annual allowance. However, we identified four overpayments totaling approximately $125 for dates of service after September 25, 2019. Department officials stated they will review these claims to determine the cause.

Major contributors to this report were Laurie Burns, Francesca Greaney, and Fiorella Seminario.

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