

Thomas P. DiNapoli  
COMPTROLLER



110 STATE STREET  
ALBANY, NEW YORK 12236

STATE OF NEW YORK  
OFFICE OF THE STATE COMPTROLLER

April 19, 2010

Richard F. Daines, M.D.  
Commissioner  
NYS Department of Health  
Corning Tower Building  
Empire State Plaza  
Albany, NY 12237

Re: Report 2009-F-39

Dear Dr. Daines:

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 (Department) to implement the recommendations contained in our audit report, *Medicaid Payments for Human Immunodeficiency Virus (HIV) Drug Resistance Testing* (Report 2007-S-137).

**Background, Scope and Objective**

The Department administers the Medicaid program. Medicaid provides medical assistance to recipients with Human Immunodeficiency Virus (HIV) and Acquired Immunodeficiency Syndrome (AIDS), a more advanced stage of the HIV disease. As of December 2007, the Department reported 119,929 known cases of HIV and AIDS in New York State. HIV is characterized by high replication, typically with billions of HIV particles produced daily. Further, the virus has a high mutation rate, which often results in the production of new strains that might be resistant to one or more antiretroviral drugs (the medications used to treat the virus).

Drug resistance tests help determine an individual's resistance to antiretroviral drugs in order to establish more effective treatment plans. Two types of drug resistance tests are available to HIV-infected persons: genotypic and phenotypic tests. Beginning October 1, 2002, genotypic and phenotypic resistance tests were no longer included in the benefit package of Managed Care Plans; they are now separately reimbursable by Medicaid on a fee-for-service basis.

Our initial audit report, which was issued on September 8, 2008, determined whether Medicaid providers billed for HIV drug resistance tests in accordance with Department regulations and whether overpayments were made for such services during the five years ended December 31, 2007. We identified more than \$1.27 million in inappropriate Medicaid payments for HIV drug resistance tests for the five year audit period. Our review of Medicaid claims data

showed drug resistance tests were billed by providers more frequently than the allowable maximum of three tests per recipient per year. The overpayments occurred because providers did not comply with Department guidelines. In addition, eMedNY, the claims payment and information reporting system for Medicaid, lacks the controls necessary to detect and prevent these overpayments. The objective of our follow-up was to assess the extent of implementation as of April 1, 2010, of the three recommendations included in our initial report.

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

We found that Department officials have made no meaningful progress in correcting the problems we identified. Of the three prior recommendations, one recommendation has been partially implemented, and two recommendations have not been implemented.

### **Follow-up Observations**

#### **Recommendation 1**

*Review the \$1.27 million in payments we identified and recover inappropriate payments.*

Status - Partially Implemented

Agency Action - The Office of the Medicaid Inspector General (OMIG) reviewed a sample of payments from the provider who incurred the majority of the potential overpayments identified in our original audit. As a result of their review, OMIG recovered \$78,000. However, OMIG's review only covered two of the five years (calendar years 2004 and 2005) covered by the original audit, and OMIG's work did not include all of the providers we identified in the original audit.

#### **Recommendation 2**

*Implement the appropriate combination edit to the eMedNY system to prevent overpayments from occurring.*

Status - Not Implemented

Agency Action - Department officials did not implement an edit to prevent the continued overpayments that are occurring during the eighteen month period since our original audit report was issued. Department officials have established a new policy, effective January, 2010, which increases the frequency of HIV drug resistance testing. The new policy permits up to four tests (three types of phenotype tests and one type of genotype test) three times in a year. The Department plans to implement a new combination edit that will deny payment for claims for more than four tests a year or for tests that should not be combined. The new policy has been provided to the Office of Health Insurance Programs who will write the appropriate edits, however as previously stated this edit has not yet been developed.

**Recommendation 3**

*Remind providers of the appropriate way to bill Medicaid for HIV drug resistance tests.*

Status - Not Implemented

Agency Action - Department officials did not remind providers of appropriate Medicaid billing for HIV drug resistance tests under its existing policy. Officials plan to include an article in the Medicaid Update monthly provider publication to remind providers of the appropriate way to bill Medicaid for HIV drug resistance testing, but this has not yet been done.

Major contributors to this report were Karen Bogucki and Donald Collins.

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 also thank the management and staff of the Department for the courtesies and cooperation extended to our auditors during this review.

Very truly yours,

Edward J. Durocher, CIA  
Audit Manager

cc. Mr. Stephen Abbott, Department of Health  
Mr. Thomas Lukacs, Division of the Budget