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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-40

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, *Potential Overpayments Of Medicaid Provider Claims For Human Immunodeficiency Virus Primary Care Services* (Report 2008-S-5).

Background, Scope and Objectives

The Department of Health (Department) administers the State's 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.

The Department's HIV Primary Care Medicaid Program (HIV Program) helps ensure early diagnosis and access to care for persons with HIV infection. Three primary care services provided to recipients through the HIV Program include an annual evaluation, periodic testing and monitoring. Medicaid providers participating in the program must comply with Department rules and regulations which specify the type and frequency of each of these three services. The Department also establishes yearly limits for each type of HIV visit and contracts with a peer review agent to identify inappropriate payments for claims exceeding the Department's frequency limits for one of the HIV primary care services; monitoring.

Our initial audit report, which was issued on September 25, 2008, determined whether the Department's eMedNY system accurately paid Medicaid claims for HIV primary care services. We determined eMedNY lacked the controls necessary to detect and prevent inappropriate Medicaid claims for HIV primary care services. As a result, eMedNY potentially overpaid 174

Medicaid providers \$2.4 million for these services during our three year audit period ended December 31, 2007. 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 some progress in correcting the problems we identified. However, additional improvements are needed. Of the three prior audit recommendations, two recommendations have been implemented, and one recommendation has not been implemented.

In the original audit, we concluded that Medicaid inappropriately paid \$2.4 million for three HIV primary care services. These overpayments occurred because providers billed for services that exceeded Department frequency limits. We recommended that the Department investigate and recover the inappropriate payments. In conducting their recovery efforts, the Department's peer review contractor, Island Peer Review Organization (IPRO), expanded the scope of the review to include one other service that we did not test in our original audit. As a result, IPRO identified an additional \$300,000 of inappropriate payments. As such, we now estimate \$2.7 million as the overpayment attributable to our audit findings.

Follow-up Observations

Recommendation 1

Investigate and recover the \$2.4 million overpayments we identified during our audit.

Status - Implemented

Agency Action - The Department's peer review contractor, IPRO, reviewed Medicaid claims for the three HIV primary care services we reviewed in our original audit (annual evaluations, periodic testing and monitoring) to identify Medicaid payments for services that exceeded Department frequency limits. IPRO also reviewed these claims for one other service that we did not test in our original audit; intermediate visit outlier review. For the three year period ended December 31, 2007, IPRO identified \$2.7 million in overpayments. IPRO has recovered \$1.8 million of the overpayments identified and was in the process of recovering the remaining \$900,000 as of April 2010.

Recommendation 2

Develop eMedNY controls to prevent inappropriate Medicaid payments for HIV primary care services.

Status - Not Implemented

Agency Action - Department officials have not developed eMedNY controls to prevent inappropriate Medicaid payments for HIV primary care services. The officials indicated that instead, they rely on a review of paid claims, performed by IPRO, in order to recover inappropriate payments. Department officials require IPRO's system to

automatically identify and then review claims for more than one annual evaluation in a 305 day period. For monitoring visits, IPRO identifies claims that have exceeded more than three such visits per year. IPRO then reviews these claims and determines if the extra visits were medically necessary, based on IPRO's review of medical records. However, IPRO's review processes are not designed to prevent inappropriate payments from occurring.

Recommendation 3

Continue efforts to resolve IPRO's technical difficulties with eMedNY.

Status - Implemented

Agency Action - Department officials advised that steps were taken to address the eMedNY technical difficulties discussed in our original audit report. The Department modified payment settings for 13 eMedNY edits to permit IPRO to process or recover overpayments for HIV provider claims for monitoring services. The payment settings for nine of the edits are in place and claims have been processed through these nine edits. The payment settings for the remaining four edits were being tested as of the end of our fieldwork.

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