

Thomas P. DiNapoli
COMPTROLLER



110 STATE STREET
ALBANY, NEW YORK 12236

STATE OF NEW YORK
OFFICE OF THE STATE COMPTROLLER

September 20, 2010

Richard F. Daines, MD
Commissioner
Department of Health
Corning Tower
Empire State Plaza
Albany, NY 12237

Re: Report 2010-F-20

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 recommendation contained in our audit report, *Medicaid Overpayments for Medicare Part B Beneficiaries* (Report 2008-S-63).

Background, Scope and Objective

The Department administers the Medicaid program in New York State. Many of the State's Medicaid recipients are also eligible for Medicare, referred to as "dual eligibles". Medicaid is the payor of last resort for medical claims, paying for any balance unpaid after all other insurance such as Medicare settles. Therefore, a medical provider should bill Medicare first for these dual eligible patients and bill Medicaid only after the amount to be paid by Medicare is known. On the Medicaid billing, the provider must report the amount received from Medicare. Medicaid will then typically pay an amount based upon the portion of the bill not covered by Medicare. Thus, it is critical that Medicare information be entered accurately on the Medicaid billing; otherwise, a Medicaid overpayment can occur.

Our initial audit report, which was issued on December 10, 2008, identified Medicaid overpayments made to providers who did not properly report Medicare Part B payments on their Medicaid claims for dual eligible patients. During the year ended December 31, 2006, our audit identified an estimated \$1.8 million in Medicaid overpayments to medical providers who received payment from Medicaid for services already paid for by Medicare's Part B coverage. We identified 50,090 claims submitted by physicians, durable medical equipment dealers, and laboratories who did not report payments received from Medicare when billing Medicaid. In each case, the provider billed Medicaid for the entire cost of each Medicare-approved service, without reducing the amount billed to Medicaid by the amount Medicare already paid toward the claim. The objective of our follow-up was to assess the extent of implementation as of

September 1, 2010, of the one recommendation included in our initial audit report.

Summary Conclusion and Status of Audit Recommendation

Department officials have not made progress in correcting the problem we identified in the initial report. Therefore, improvements are still needed. The one prior audit recommendation has not been implemented.

Follow-up Observations

Recommendation 1

Fully investigate the \$1.8 million in overpayments we identified and recover inappropriate payments.

Status - Not Implemented

Agency Action - The Office of the Medicaid Inspector General (OMIG) is responsible to investigate and recover improper Medicaid payments on behalf of the Department. When we completed our audit, we provided OMIG officials with the all of the claims information necessary to investigate and recover the \$1.8 million in overpayments identified in our original audit. However, to date, OMIG officials have not investigated any of the claims related to the \$1.8 million. OMIG officials advised that they are considering including these claims in their provider on site credit balance reviews to verify the overpayments and make the recoveries.

Major contributors to this report were Warren Fitzgerald and Karen Bogucki.

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