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April 14, 2011

Nirav R. Shah, M.D., M.P.H.
Commissioner
Department of Health
Corning Tower
Empire State Plaza
Albany, NY 12237

Re: Report 2010-F-42

Dear Dr. Shah:

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 Payments for Diabetic Testing Supplies* (Report 2008-S-123).

Background, Scope and Objective

Diabetes is a major chronic disease in the United States. According to Department information, about 5 to 10 percent of all diabetics statewide are insulin-dependent due to a loss of insulin-producing cells in the pancreas. Insulin-dependent diabetics require daily insulin injections. The Department information characterizes the remaining 90 to 95 percent of diabetics as generally non-insulin dependent. These diabetics can control the disease by managing their weight, choosing healthier foods, exercising, and, in some cases, taking insulin.

While there is no known cure for diabetes, it can be controlled by keeping the level of glucose (sugar) in the blood within a normal range. This is accomplished through testing of blood glucose levels. People who take insulin usually need to test blood glucose levels more often than those who do not take insulin. According to the American Diabetes Association and Department information, diabetics who use insulin generally should check blood glucose levels between four to seven times per day. For diabetics who do not use insulin, if the blood sugar is very well controlled, a diabetic may only need to check blood glucose levels once in a while. According to the American Academy of Family Physicians, many non-insulin dependent diabetics start by checking their blood glucose levels two times a day. After a few weeks, some are able to measure their blood glucose levels only two or three times a week.

Medicaid provides diabetic recipients with supplies for testing blood glucose levels. These supplies include test strips used to read blood sugar levels and lancets, which are devices used to obtain a drop of blood for testing. For the five year period ended January 31, 2011, Medicaid spent about \$185 million on test strips and \$12 million on lancets provided to Medicaid recipients.

Our initial audit report, which was issued on March 18, 2009, determined whether the Department's Medicaid limits for diabetic testing supplies are excessive when compared to the limits for diabetic testing supplies used by similar health care programs. We determined the limits exceeded those of Medicare and a sample of ten other states. In fact, New York State's Medicaid program has the highest limits of all ten states we reviewed, allows more than double the amount of supplies Medicare allows, and allows more supplies than the average of the ten other states. If the Department had used the same limits as Medicare, the Medicaid program could have saved nearly \$13.8 million on diabetic testing supplies during the five year period. We recommended the Department consider lowering the number of diabetic testing supplies Medicaid recipients are allowed to obtain each year, modify claims processing controls to prevent Medicaid recipients from receiving excessive diabetic testing supplies, and investigate those recipients that appear to be receiving excessive diabetic testing supplies. The objective of our follow-up was to assess the extent of implementation as of March 9, 2011 of the five 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 in the initial report. However, improvements are still needed. Of the five prior audit recommendations, two recommendations have been implemented, two recommendations have been partially implemented, and one recommendation has not been implemented.

Follow-up Observations

Recommendation 1

Consider changing the diabetic testing supply limits within the New York State Medicaid program to: lower the number of test strips and lancets that recipients are allowed to obtain each year without prior-approval, establish different limits for insulin and non-insulin dependent diabetics, and make the limit on test strips equal to the limit on lancets.

Status - Partially Implemented

Agency Action - Effective April 1, 2009, Department officials lowered the diabetic testing supply limits within the New York State Medicaid program from 3,000 to 2,400 test strips and from 6,000 to 2,400 lancets per year. This change equalized the amount of test strips and lancets available to a recipient. Recipients can obtain orders for test strips and lancets exceeding the new maximum monthly quantities with prior approval. However, the Department has not established different diabetic testing supply limits for insulin and non-insulin dependent diabetics. Department officials stated it is not practical to separate recipients by insulin and non-insulin dependency for there is no difference between the diagnosis codes for either condition. The Department is planning to adopt the International Classification of Diseases (ICD) ICD10 codes in two years. This version of the ICD has more codes, which may allow a distinction between insulin and non-insulin dependent diabetics and would make it possible to implement this aspect of the recommendation. In the interim, the only other way to implement this would be to review documentation of medical necessity on a post payment basis. Officials contend this is impractical due to the size and composition of the Medicaid population. Department officials maintain that their new supply limits encompass the range of testing needs for both types of diabetics. However, we believe the range is wide enough so that a distinction could be made between

the test supply needs of the two diabetic groups, as is done on a post payment basis for the Medicare program.

Recommendation 2

Communicate the new diabetic testing supply limits to providers and recipients.

Status - Implemented

Agency Action - Department officials informed Medicaid providers of the new diabetic testing supply limits in an April 2009 Medicaid Update article. The article states effective April 1, 2009, the limit on diabetic testing supplies is 200 test strips and lancets per month, or 2,400 per year. Testing supply prescriptions may be refilled up to five times and may be dispensed when the recipient has a one week supply or less remaining on the current month's supply. Furthermore, the article notes that Department allows an override of the testing supply limits to allow up to 350 per month, or 4,200 per year, with prior approval based on the provider's determination of need. Department officials stated the Department will rely on Medicaid providers to inform recipients of the limits when the recipient visits the provider for treatment.

Recommendation 3

Modify the eMedNY edits on test strips and lancets to prevent recipients from receiving more than the new Department limits and consider limiting supplies by recipient rather than by provider.

Status - Partially Implemented

Agency Action - Department officials modified the eMedNY edits on test strips to prevent recipients from receiving more than the new Department limit in a month. The modification was made on March 3, 2011, nearly two years after the original audit was issued. This edit precludes a recipient from filling a second prescription for test strips filled when the strips have already been provided for that month. Prior to this change a recipient was only restricted from getting a second prescription filled at the same pharmacy, but there was no restriction to preclude the recipient from going to a different pharmacy to get more test strips with a different prescription. However, the edit was not modified for lancets for Department officials did not feel a change was necessary. We continue to maintain that the officials should develop edits to limit testing supplies by recipient to prevent paying claims for excessive testing supplies as identified in our original audit report.

Recommendation 4

Evaluate the feasibility of implementing eMedNY edit controls to limit supplies based on insulin dependency.

Status - Not Implemented

Agency Action - Department officials have not established different diabetic testing supply limits for insulin and non-insulin dependent diabetics. Department officials believe that each diabetic patient must be clinically evaluated to determine their individual testing frequency needs.

Officials indicated they may be in a better position to implement this form of edit controls once ICD10 is in place, but this will not occur for another two years. This version of the ICD has more codes and may allow a distinction between insulin and non-insulin dependent diabetics. Until then, Department officials believe it is not feasible to implement edit controls of this nature within eMedNY.

Recommendation 5

Follow-up on the amount of test strips and lancets obtained by Medicaid recipients that appear excessive which were identified in our audit to determine if discrepancies are an indication of abuse of the Medicaid program and take action, as appropriate.

Status - Implemented

Agency Action - The Office of the Medicaid Inspector General (OMIG) investigates and recovers inappropriate Medicaid payments on behalf of the Department. To identify recipients who may be abusing the Medicaid program, OMIG's Recipient Restriction Program Unit staff run computer-generated control files every three months to identify those recipients who appear to be receiving more of a medical supply than allowed by Medicaid guidelines. OMIG uses a risk based approach when performing this analysis which takes into consideration the medical necessity to exceed established limits. OMIG looks at recipients with excessive quantities and multiple providers to determine if they warrant further scrutiny for exceeding the limits for test strips and lancets. When such recipients are identified, a nurse reviews the related patient files to determine if abuse has occurred. Restrictions are placed on a recipient only if there is a pattern of abuse. OMIG staff reviewed the 65 recipients identified in our original audit report who exceeded 4,500 test strips per year for the one year period of August 2007 to August 2008. Officials concluded that 61 recipients' use of test strips was justified by their medical condition. OMIG officials restricted the remaining four recipients as to where they could obtain their diabetic test supplies, thus limiting the opportunity to obtain excessive amounts.

Major contributors to this report were Karen Bogucki and Don 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 Durocher, CIA
Audit Manager

cc: Stephen Abbott, Department of Health
Stephen LaCasse, Department of Health
Thomas Lukacs, Division of the Budget