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STATE OF NEW YORK  
OFFICE OF THE STATE COMPTROLLER

March 11, 2013

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

Re: Report 2012-F-25

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 (Department) to implement the recommendations contained in our audit report, *Medicaid Overpayments for Non-Emergency Out-of-State Inpatient Services* (Report 2009-S-35).

**Background, Scope and Objective**

The Department administers the New York State Medicaid program, which generally requires recipients to obtain non-emergency hospital inpatient services within the State. However, in some cases recipients may obtain services from hospitals outside New York. At the time of our initial audit, payments for out-of-state inpatient services should have been limited to the lesser of: the hospital's customary charge for similar services to public beneficiaries; the amount payable under the Medicare program; the amount payable under the Medicaid program in the hospital's home state; or the maximum amount payable for similar in-State care under New York's Medicaid program. In addition, Medicaid required a recipient's physician to obtain the Department's formal prior approval to obtain inpatient services outside the State, if the hospital was not within the recipient's usual medical marketing area (where residents of a particular region customarily receive care or utilize medical facilities). During the period May 2002 through April 2009, the Department paid out-of-state hospitals over \$116 million for non-emergency inpatient services to New York Medicaid recipients.

Our initial audit report, which was issued on May 3, 2010, examined whether the Department paid out-of-state hospitals properly for non-emergency services for New York Medicaid recipients. For the period May 1, 2002 through April 30, 2009, Medicaid made potential overpayments totaling \$9,225,198 (on 164 claims) to out-of-state hospitals because the Department did not use the payment method that yielded the lowest Medicaid payment.

We further identified 269 claim payments totaling \$10.8 million for which the Department had not granted the required prior approvals. The objective of our follow-up was to assess the extent of the implementation, as of September 30, 2012, of the four recommendations included in our initial audit report.

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

Department officials made progress in addressing the issues we identified in the initial audit. This included the recovery of \$292,342. However, further actions are still needed. Of the four prior audit recommendations, two were implemented and two were partially implemented.

### **Follow-up Observations**

#### **Recommendation 1**

*Review the 164 claims we identified as overpayments (approaching \$9.2 million) and recover funds, as appropriate.*

Status - Partially Implemented

Agency Action - The Office of the Medicaid Inspector General (OMIG) investigates and recovers improper Medicaid payments on behalf of the Department. With the assistance of a consultant, the OMIG reviewed 110 (of the 164) questionable claim payments we identified. The 110 payments were made to three out-of-state hospitals. Based on the review, the OMIG concluded that two of the hospitals overcharged Medicaid on certain claims and recovered \$292,342 from them. Further, the OMIG concluded that claim payments to the third hospital were correct. OMIG officials did not review the remaining 54 claims (from 33 out-of-state hospitals) with potential overpayments totaling over \$2.1 million. According to OMIG officials, other priorities and a lack of resources precluded review of these claims.

#### **Recommendation 2**

*Management should formally assess the level of risk of the out-of-state inpatient claim payments we did not review. For claims at higher risk, identify overpayments and make recoveries.*

Status - Implemented

Agency Action - The OMIG formally assessed the level of risk of the out-of-state inpatient claim payments that we did not review and concluded no further review actions were warranted.

#### **Recommendation 3**

*Management should adhere to Department regulations by reimbursing out-of-state hospitals using the calculation method that will result in the lowest reimbursement amount.*

Status - Implemented

Agency Action - Presently, the Department reimburses most out-of-state hospitals at New York Medicaid rates, using the Diagnosis Related Group (DRG) methodology. This has helped minimize the risk of excessive payments to out-of-state hospitals for inpatient services rendered to New York Medicaid recipients. In addition, an out-of-state hospital must obtain prior approval from the Department to receive reimbursements exceeding those derived from the DRG methodology. Often, the higher reimbursements pertain to services that are specialized and/or not readily available in New York State.

#### **Recommendation 4**

*Management should require prior approvals to be obtained for services rendered to New York State Medicaid recipients by out-of-state healthcare providers.*

Status - Partially Implemented

Agency Action - The Department requires prior approval for a service rendered by an out-of-state hospital, if the hospital will not accept a DRG-based payment. When granting a prior approval, the Department issues a Letter of Agreement to the out-of-state hospital which specifies the service to be provided and the amount of reimbursement Medicaid will pay. The Department, however, no longer requires a prior approval if an out-of-state hospital accepts a DRG-based payment.

Major contributors to this report were Paul Alois, Theresa Podagrosi and Rebecca Tuczynski.

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,

A handwritten signature in dark ink, reading "Andrea M. Inman". The signature is fluid and cursive, with the first name "Andrea" being the most prominent part.

Andrea Inman  
Audit Manager

cc: Mr. James Cox, Medicaid Inspector General  
Mr. Stephen Abbott, Department of Health  
Mr. Thomas Lukacs, Division of the Budget