

THOMAS P. DINAPOLI  
COMPTROLLER



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STATE OF NEW YORK  
OFFICE OF THE STATE COMPTROLLER

January 10, 2013

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

Re: Report 2012-F-26

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 Out-of-State Ambulatory Surgery Services* (Report 2009-S-29).

**Background, Scope and Objective**

In the New York State Medicaid program, recipients may obtain ambulatory surgery services from out-of-state medical providers. Ambulatory surgery services are performed in an operating room on anesthetized patients. These services are done on an outpatient basis with the patient returning home the same day as the surgery.

According to NYCRR Title 18, Section 527.1, out-of-state providers of ambulatory surgical services should be reimbursed using rates applicable to New York State providers of similar services if the providers are within the usual medical marketing area of the community where the patient resides. During the period April 16, 2004 through June 30, 2009, the State's Medicaid program paid out-of-state providers \$20.7 million for ambulatory surgery services to New York Medicaid recipients.

Our initial audit report, which was issued on May 3, 2010, examined whether the Department was appropriately paying out-of-state providers for ambulatory surgery services to New York State Medicaid recipients. For the period from April 16, 2004 through June 30, 2009, we identified \$1,513,329 in actual overpayments and an additional \$10.7 million in potential overpayments to out-of-state providers. The objective of our follow-up was to assess the extent

of the implementation, as of September 30, 2012, of the two recommendations included in our initial 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 \$1,309,960. Of the two prior audit recommendations, both have been implemented.

### **Follow-up Observations**

#### **Recommendation 1**

*Recover the \$1,513,329 in overpayments to out-of-state providers for the claims that we reviewed and re-priced from the ten counties we contacted during our audit.*

Status - Implemented

Agency Action - The Office of the Medicaid Inspector General (OMIG) investigates and recovers improper Medicaid payments on behalf of the Department. The OMIG conducted audits of two providers who received a total of \$1,486,130 (98.2 percent) of the overpayments identified in our initial audit. As a result of its audits, the OMIG recovered \$510,973. Based on a legal assessment, OMIG officials determined that further recoveries from the two providers in question were unlikely if subjected to litigation. In addition, OMIG officials did not recover the remaining overpayments (totaling \$27,199) due to legal concerns and the relative immateriality of the payments to the multiple providers who received them.

#### **Recommendation 2**

*For the remaining claim payments (to out-of-state providers) that we did not review and re-price, formally assess those payments and identify any overpayments. As appropriate take actions to recover overpayments.*

Status - Implemented

Agency Action - The OMIG formally assessed the remaining claim payments and as a result, recovered an additional \$798,987 from one out-of state provider. Based upon a legal review of the remaining payments, OMIG officials determined further collection was unattainable. As well, OMIG officials stated they will not be completing any further out-of-state ambulatory service audits since the Medicaid claims processing and payment system now limits out-of-state provider payments to the reimbursement rates received by New York State providers.

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

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

Very truly yours,

Andrea Inman  
Audit Manager

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