

NEW YORK
state department of
HEALTH

Nirav R. Shah, M.D., M.P.H.
Commissioner

Sue Kelly
Executive Deputy Commissioner

November 5, 2013

Mr. Brian Mason
Acting Assistant Comptroller
NYS Office of the State Comptroller
110 State Street, 10th Floor
Albany, New York 12236

Dear Mr. Mason:

Pursuant to the provisions of Section 170 of New York State Executive Law, I hereby transmit to you a copy of the New York State Department of Health's comments related to the Office of the State Comptroller's final audit report 2012-S-11 entitled, "Payments for Fraudulent and Improper Claims Submitted by Davis Ethical Pharmacy."

Please feel free to contact James Clancy, Assistant Commissioner, Office of Governmental and External Affairs at (518) 473-1124 with any questions.

Sincerely,



Nirav R. Shah, M.D., M.P.H.
Commissioner of Health

Enclosure

**Department of Health
Comments on the
Office of the State Comptroller's
Final Audit Report 2012-S-11 Entitled
Payments for Fraudulent and Improper Claims
Submitted by Davis Ethical Pharmacy**

The following are the Department of Health's (Department) comments in response to the Office of the State Comptroller's (OSC) Final Audit Report 2012-S-11 entitled, "Payments for Fraudulent and Improper Claims Submitted by Davis Ethical Pharmacy (Davis Ethical)."

Recommendation #1:

Coordinate with the Nassau County District Attorney (NCDA), New York State Department of Financial Services (DFS) and other authorities as requested in any further investigation and recover the \$94,460 in improper payments made to Davis Ethical, as identified by this audit.

Response #1:

In coordination with the NCDA and other authorities as necessary, the Office of Medicaid Inspector General (OMIG) will review the \$94,460 in improper payments and recover overpayments as appropriate.

Recommendation #2:

Formally assess the \$632,549 in prescription payments we did not test and determine the extent to which Davis Ethical submitted other fraudulent or improper claims. Recover improper payments, as warranted.

Response #2:

The OMIG will assess the \$632,549 in prescription payments not tested and determine the extent of any additional fraudulent or improper claims. In coordination with the NCDA and other authorities as necessary, the Office of Medicaid Inspector General (OMIG) will recover any additional improper payments as warranted.

Recommendation #3:

Formally assess the conduct of William Davis and determine if he should be allowed to continue to participate in the Medicaid program or face other sanctions. Consider referring William Davis to the State Education Department for assessment of his professional conduct.

Response #3:

The OMIG is working collaboratively with the NCDA and is assessing the claims of Davis Ethical Pharmacy, Inc. Pending any potential criminal action the NCDA may take against the provider and its owner, the OMIG will seek to recover all overpayments, penalties (if applicable) and exclude or censure this provider, its owner and any of its affiliates, if warranted.