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STATE OF NEW YORK
OFFICE OF THE STATE COMPTROLLER

August 16, 2013

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

Re: Under Reporting of Net Available
Monthly Income for Nursing
Home Residents Causes Medicaid
Overpayments
Report 2013-F-11

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, *Under Reporting of Net Available Monthly Income for Nursing Home Residents Causes Medicaid Overpayments* (Report 2010-S-17).

Background, Scope and Objective

Medicaid recipients with income from Social Security, pensions, or other sources are required to pay for some of the cost of their nursing home care. The amount they pay is net available monthly income, or NAMI. New York's 58 localities (county social service offices throughout the State and the Human Resources Administration in New York City) are responsible for determining NAMI amounts for their Medicaid nursing home recipients. Localities are also responsible for updating the Department's Medicaid claims processing system (eMedNY) with recipients' NAMI. During claims processing, eMedNY deducts NAMI from the amount that Medicaid pays each month to nursing homes. From January 1, 2007 through August 31, 2010, eMedNY paid nursing homes \$26.6 billion after deducting \$3 billion of NAMI.

We issued our initial audit report on September 28, 2011. Our objectives were to determine if eMedNY accurately processed NAMI when paying Medicaid claims for nursing home residents and if NAMI updates to eMedNY were completed in a timely manner. For the period January 1, 2007 through August 31, 2010, we estimated that Medicaid made overpayments of about \$42 million to nursing homes. Specifically, we determined eMedNY failed to deduct NAMI from nursing home claims whenever a provider excluded the first day of the month from its claim. This caused \$34.5 million in overpayments. Also, Medicaid overpaid nursing homes an additional \$7.5 million because localities were not determining and updating NAMI timely. The objective of our follow-up was to assess the extent of the implementation, as of May 31, 2013, of the five recommendations included in our initial audit report.

Summary Conclusions and Status of Audit Recommendations

Department officials made progress in addressing some of the problems we identified. This included the recovery of \$46 million. However, further actions are still needed. Of the initial report's five recommendations, three were implemented and two were not implemented.

Follow-up Observations

Recommendation 1

Design and implement controls in the Medicaid claims processing systems to properly apply residents' NAMIs towards the cost of their nursing home care.

Status - Not Implemented

Agency Action - The Department did not design and implement controls that would properly apply NAMI towards the cost of nursing home care. When processing monthly nursing home claims, eMedNY automatically reduces payments to nursing homes by the amount of Medicaid recipients' NAMI. However, eMedNY does not deduct NAMI from a claim when a nursing home does not bill for the first day of the month. During our initial audit, the typical daily Medicaid rate for nursing home care was about \$200 per resident, while the amount of NAMI retained by a nursing home was about \$1,000 per resident when the home did not bill for the first day of the month. Thus, nursing homes could generate material amounts of additional net income by not claiming the first of the month. Whenever eMedNY processed such claims, substantial overpayments resulted. Our initial audit identified \$34.5 million in Medicaid overpayments due to this processing deficiency. Until the proper controls are in place, there is significant risk that certain nursing homes will forego billing for the first day of the month to preclude the deduction of NAMI from their claims.

Recommendation 2

Analyze the instances of under-applied NAMI and the overpayments identified by our audit. Recover overpayments as appropriate.

Status - Implemented

Agency Action - The Office of the Medicaid Inspector General (OMIG) investigates and recovers improper Medicaid payments on behalf of the Department. With a consultant's assistance, OMIG analyzed the instances of under-applied NAMI. The consultant visited the nursing homes that received overpayments, inspected their records, and identified additional instances of under-applied NAMI. At the time of our follow-up, OMIG's consultant had recovered \$30 million in overpayments and expected to recover additional overpayments totaling about \$16 million.

Recommendation 3

Examine the overpayments resulting from untimely posting of NAMI as identified in this report and make recovery where appropriate.

Status - Implemented

Agency Action - As noted previously, OMIG and their consultant analyzed the overpayments we identified and made recoveries where appropriate.

Recommendation 4

Enhance Department oversight through such techniques as data analysis to identify and assist localities that may not be posting NAMI timely to eMedNY.

Status - Not Implemented

Agency Action - The Department did not develop new techniques such as data analysis to identify and assist localities that may not be posting NAMI timely to eMedNY.

Recommendation 5

Advise localities to review residents' NAMI at time intervals sufficient enough to avoid overpayments that cannot be recovered.

Status - Implemented

Agency Action - In December 2012, the Department issued a General Information System message (GIS 11 MA/029: OSC Audit – Reminder of Correct Procedures for NAMI Adjustments) to

remind localities to adhere to correct procedures when updating a nursing home resident's NAMI. In particular, the Department informed localities of our audit and called attention to the potential consequences of untimely NAMI updates – including overpayments that cannot be recovered. During our initial audit, we identified numerous instances of untimely NAMI updates. Some updates were a year or more late. Hence, eMedNY did not automatically make the appropriate NAMI reductions for certain nursing home claims. This caused \$7.5 million in overpayments, some of which might not be recoverable because federal regulations preclude the retroactive recovery of NAMI funding beyond six months.

Major contributors to this report were Warren Fitzgerald, Daniel Towle, Stanley Goodman, and Stephen Berniker.

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,

Andrea Inman
Audit Manager

cc: Mr. James Cox, Medicaid Inspector General
Ms. Diane Christensen, Department of Health
Mr. Thomas Lukacs, Division of the Budget