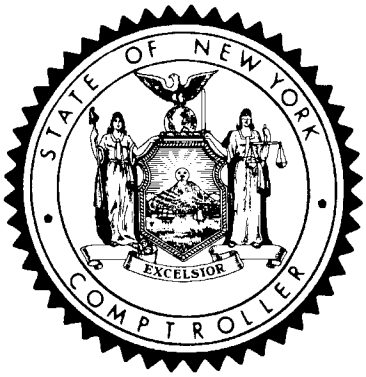
State of New York
Office of the State Comptroller
Division of Management Audit and State Financial Services

DEPARTMENT OF HEALTH

HEALTH CARE REFORM ACT SURCHARGE COLLECTIONS

REPORT 99-S-24



H. Carl McCall

Comptroller

State of New York
Office of the State Comptroller

Division of Management Audit and State Financial Services

Report 99-S-24

Antonia C. Novello, M.D., M.P.H.
Commissioner
Department of Health
Corning Tower
Empire State Plaza
Albany, New York 12237

Dear Dr. Novello:

The following is our report on the New York State Department of Health relating to the administration and oversight of the Health Care Reform Act surcharge collections.

We performed this audit according 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 list major contributors to this report in Appendix A.

Office of the State Comptroller
Division of Management Audit
and State Financial Services

May 10, 2000

Executive Summary

Department of Health
Health Care Reform Act Surcharge Collections

Scope of Audit

Prior to 1997, hospitals were reimbursed for services under the New York State Prospective Hospital Reimbursement Methodology based on rates set by the New York State Department of Health (Department). To fund bad debt, charity care and health initiatives, pools were established into which Medicaid and the Blue Cross plans paid a percentage of their hospital inpatient payments, and hospitals paid a percentage of their inpatient revenues received from all other payors as well as an assessment on their total inpatient revenues. Under this methodology, a total of 260 payors made payments into the pools.

Effective January 1, 1997, the New York State Health Care Reform Act (HCRA) changed the method of funding the pools. HCRA established three pools - Indigent Care, Health Care Initiatives and Professional Education - to fund public goods with a total expected funding of $1.9 billion per year. Payments to the pools, known as the HCRA surcharge, are based upon a percentage of net patient revenue and also the number of New York State residents insured by health insurance plans. Approximately 37,000 third party payors and about 2,000 New York State healthcare providers fund these pools. Blue Cross Blue Shield of Central New York, on behalf of the Department, is the Pool Administrator. It collects and distributes funds in the pools, as well as processes third party payor and healthcare provider monthly reports and delinquency notifications. HCRA expired on December 31, 1999. In December 1999, the Legislature passed HCRA 2000, which extends many of the provisions contained in the original HCRA through June 30, 2003.

Our audit addressed the following question relating to HCRA surcharge collections for the period January 1, 1997 through December 1, 1999:

- Does the Department have adequate controls over the collection of the HCRA surcharge and does the surcharge collection process operate efficiently?

Audit Observations and Conclusions

Establishing the systems to handle the increased number of payors making payments into the pools under HCRA represented a major undertaking for the Department, which the Department successfully accomplished. However, our audit work at the Department, the Pool Administrator and several hospitals disclosed that the Department's oversight efforts need improvement to ensure that surcharge payments are correct and timely. In addition, the processes for collecting and reporting public goods pools collections would be more efficient by making increased use of available technology.

We found that neither the Department nor the Pool Administrator has adequate procedures to ensure that healthcare providers and third party payors remit all monies due to the public goods pools. The Pool Administrator performs a clerical review of the monthly reports from the healthcare providers and third party payors for completeness, but does not verify the accuracy of the amounts remitted. In addition, we noted that the Department had initiated procedures to audit eight of the largest third party payors and two of the largest healthcare providers. The results of the one audit that was completed at the time of our audit identified a $993,000 overpayment and a $552,000 underpayment, indicating the need for enhanced oversight of surcharge collections. We also found that the Department does not assess penalties and interest on payors that are late or delinquent with their reports or surcharge payments. (See pp. 5-7)

To determine if healthcare providers have taken the steps necessary to comply with the provisions for the collection of the surcharge, we reviewed the remittance collection practices at six hospitals. At three hospitals, we determined that the hospitals underpaid the surcharge. For example, for one month, Bellevue Hospital understated revenue by $29,000 and underpaid the surcharge by $2,200. Because some of the hospitals we visited are affiliated with other hospitals in their regions which have the same accounting systems, there is a risk that the problems we identified may also be occurring at other hospitals. (See pp. 7-9)

The Pool Administrator receives approximately 39,000 reports monthly from healthcare providers and third party payors, detailing activities and any surcharge monies due. Processing these reports and the corresponding surcharge payments is a labor-intensive process. Data entry of the reports involves about 12 clerks at the Pool Administrator's office. In our judgment, the use of current technology, such as electronic data interchange and forms processing software, could result in more efficient report and monies processing. (See pp. 11-12)

We made three recommendations for improving the collection of HCRA surcharges.

Comments of Department Officials

In their response to our draft report, Department officials generally agree with the recommendations made in this report and indicated the steps they have taken or will take to implement them. A complete copy of the Department's response is included as Appendix B to this report.

Contents

Introduction

Background

Prior to 1997, hospitals were reimbursed for services under the New York State Prospective Hospital Reimbursement Methodology based on rates set by the New York State Department of Health (Department). To fund bad debt, charity care and health initiatives, pools were established into which Medicaid and the Blue Cross plans paid a percentage of their hospital inpatient payments, and hospitals paid a percentage of their inpatient revenues received from all other payors as well as an assessment on their total inpatient revenues. Under this methodology, a total of 260 payors made payments into the pools.

Effective January 1, 1997, the New York State Health Care Reform Act (HCRA) changed the method of funding the pools. HCRA established three pools - Indigent Care, Health Care Initiatives and Professional Education - to fund public goods with a total expected funding of $1.9 billion per year. Payments to the pools, known as the HCRA surcharge, are based upon a percentage of healthcare providers' net patient revenue and also the number of New York State residents insured by health insurance plans. Approximately 37,000 third party payors (e.g., private insurance companies, Medicaid, the Workers' Compensation Fund and self-insured employee benefit plans) and about 2,000 New York State healthcare providers fund these pools. As of August 31, 1999, the pools had received $1.7 billion, $1.7 billion and $1.0 billion for calendar years 1997, 1998 and 1999, respectively. HCRA expired on December 31, 1999. In December 1999, the Legislature passed HCRA 2000, which extends many of the provisions contained in the original HCRA through June 30, 2003.

Blue Cross Blue Shield of Central New York, on behalf of the Department, is the Pool Administrator. It collects and distributes funds in the pools, as well as processes third party payor and healthcare provider monthly reports and delinquency notifications. The Pool Administrator has approximately 35 employees performing these tasks. The Pool Administrator's reported operating costs were $1.3 million in 1997, $1.3 million in 1998, and $.8 million in 1999 through August 31, 1999.

Payments to certain providers of health services (general hospitals, diagnostic and treatment centers, free standing clinical laboratories, etc.) are subject to the HCRA surcharge. Disbursements for healthcare provided by physicians, as well as Medicare covered services, are exempt from the surcharge. The Pool Administrator receives the surcharge in one of two ways - (1) healthcare providers remit the surcharge for patients and for third party payors which have not voluntarily elected to pay the surcharges directly to the Pool Administrator or (2) third party payors elect to remit the surcharges directly to the Pool Administrator. A significantly reduced

surcharge rate is available to third party payors which voluntarily elect to pay directly to the Pool Administrator rather than through healthcare providers. Third party payors are required to file an application with the Department within prescribed statutory time frames in order to be eligible to pay surcharges directly to the Pool Administrator. This application is subject to approval by the Department. The Department maintains a list of all third party payors on its web site which have elected to pay directly to the Pool Administrator. Healthcare providers must access this information to determine whether they need to remit a surcharge for services rendered. Of the total pool monies, third party payors remit approximately 85 percent directly and healthcare providers remit the other 15 percent.

There are different surcharge rates depending upon the payor type. Medicaid is subject to a 5.98 percent surcharge. An 8.18 percent surcharge is applicable to uninsured patients and to patients covered by those insurance companies, health maintenance organizations and self-insured funds which have filed an election to remit the HCRA surcharge directly to the Pool Administrator. Non-electors (i.e., third party payors that remit the HCRA surcharge through healthcare providers rather than directly to the Pool Administrator) are liable for a 32.18 percent surcharge plus, for inpatient hospital service claims, an additional surcharge which ranges from 2.05 percent to 25.09 percent depending on the region.

Audit Scope, Objectives and Methodology

We audited the processes used by third party payors and healthcare providers to remit the HCRA surcharge to the Pool Administrator for the period January 1, 1997 through December 15, 1999. The objectives of our economy and efficiency audit were to determine whether the Department has adequate controls over the collection of the HCRA surcharge and whether the surcharge collection process is operating efficiently. To accomplish our objectives, we evaluated the Department's and the Pool Administrator's internal control framework, interviewed Department and Pool Administrator management, and reviewed and analyzed pertinent laws, policies, procedures, contracts, records and reports. We also reviewed, analyzed and tested the remittance collection process at six hospitals (Albany Medical Center, Bellevue Hospital Center, New York Downtown Hospital, Rochester General Hospital, St. Mary's Hospital of Brooklyn and Upstate Medical Center). These hospitals were selected because either (1) the amounts on the monthly reports sent to the Pool Administrator were unusual or varied significantly from other monthly reports or (2) the hospitals were located in a financially distressed area. (Department officials told us that hospitals located in financially distressed areas have a history of problems relating to overall bill collections, which also impacts surcharge collections.)

We focused our testing on hospitals for two reasons. First, surcharge payments relating to hospital claims comprise the vast majority of surcharge

payments made for all affected healthcare providers, and healthcare providers have an important role in the surcharge collection process. Healthcare providers must determine whether they need to remit a surcharge for services rendered or whether the payor of these services elected to pay the surcharge directly to the Pool Administrator. Part of our audit included an assessment of whether healthcare providers followed prescribed Department procedures for making this determination. This assessment included reviewing how hospitals determined whether a third party payor was an elector as well as determining if hospitals remitted the correct surcharge amount to the Pool Administrator. Second, the Department was in the midst of auditing eight of the largest third party payors during the course of our audit and we concluded there was no reason to duplicate their efforts by focusing our testing on such payors.

We conducted our audit in accordance with generally accepted government auditing standards. Such standards require that we plan and perform our audit to adequately assess those operations of the Department that are within our audit scope. Further, these standards require that we understand the Department's internal control structure and its compliance with those laws, rules and regulations that are relevant to the operations included in our audit scope. An audit includes examining, on a test basis, evidence supporting transactions recorded in the accounting and operating records and applying such other auditing procedures as we consider necessary in the circumstances. An audit also includes assessing the estimates, judgments and decisions made by management. We believe that our audit provides a reasonable basis for our findings, conclusions and recommendations.

We use a risk-based approach when selecting activities to be audited. This approach focuses our audit efforts on those operations that we have identified through a preliminary survey as having the greatest probability of needing improvement. Consequently, by design, we use our finite audit resources to identify where and how improvements can be made. Thus, we devote little audit effort to reviewing operations that may be relatively efficient and effective. As a result, our audit reports are prepared on an "exception basis." This report, therefore, highlights those areas needing improvement and does not address activities that may be functioning properly.

Response of Department Officials to Audit

We provided draft copies of this report to Department officials for their review and comment. Their comments have been considered in preparing this report and are included as Appendix B.

In response to our draft report, Department officials generally agreed with the recommendations made in the report and indicated the steps they have taken or will take to implement them. Department officials agreed that measures should be taken to ensure that correct amounts are reported timely. The officials indicated several measures they have taken to date to ensure correct amounts are reported on a timely basis. However, they questioned the benefits of an in-depth analysis of submitted monthly pool reports. Department officials agreed with our recommendation to devote sufficient resources to conducting audits of HCRA surcharge liabilities. The officials stated that under HCRA 2000, pool funds have been allocated to contract with an outside organization to conduct HCRA Pool Payment Compliance Audits. In addition, Department officials agreed with our recommendation to speed and simplify the surcharge reporting process through increased use of available technology. They also support our recommendation to increase use of wire transfers for the remittance of HCRA funds, but stated that mandatory use of wire transfers would require a statutory amendment, which may face some opposition.

As a result of our review of the Department's response to the draft report, we modified certain statements in the Background section of the report and made certain revisions to the body of the report. We deleted one component of recommendation 1 regarding refining the monthly surcharge reports, in recognition of the Department's position that a significant amount of detailed information would be required from the providers to substantially improve the utility of the desk audit function. In addition, we modified recommendation 3 regarding the use of wire transfers for the remittance of the HCRA surcharge, to reflect the Department's position that mandating use of wire transfers would require a statutory amendment.

Within 90 days after final release of this report, as required by Section 170 of the Executive Law, the Commissioner of the Department of Health shall report to the Governor, the State Comptroller, and the leaders of the Legislature and fiscal committees, advising what steps were taken to implement the recommendations contained herein, and where recommendations were not implemented, the reasons therefor.

Public Goods Pools Administration

The passage of HCRA changed drastically the way in which public goods pools are administered. The intent of HCRA was to continue providing care for the indigent and for the training of needed healthcare professionals. HCRA replaced the New York State Prospective Reimbursement Methodology, under which 260 payors made payments into the pools. Medicaid, the Blue Cross plans and hospitals remitted payments to the pools. In contrast, under HCRA approximately 37,000 payors make payments into the pools, all of which are required to submit monthly reports to the Pool Administrator whether a surcharge payment is due or not. Establishing the systems to handle the increased number of payors represented a major undertaking for the Department, which the Department successfully accomplished. However, our audit work at the Department, the Pool Administrator and several hospitals disclosed that the Department's oversight efforts need improvement to ensure that surcharge payments are correct and timely.

Department and Pool Administrator Oversight of the HCRA Surcharge Collection Process

Healthcare providers must determine which method of surcharge assessment the third party payor has chosen. To facilitate this determination, the Department's web site contains a listing of all organizations that voluntarily elected to make public goods payments directly to the Pool Administrator. Healthcare providers access this information to determine whether they need to remit the surcharge, or whether the surcharge will be paid directly by the third party payor.

The Department is responsible for overseeing the receipt of pool monies. We reviewed the Department's procedures for ensuring proper collections of funds into the pools. We determined that there are limited procedures in place to ensure that third party payors and healthcare providers report and submit the correct HCRA surcharge amount. We found the Department compares surcharge amounts received with estimates based upon past transactions. Although this procedure may be sufficient to ensure that overall pool collections are meeting Department expectations, it is not sufficient to ensure that healthcare providers and third party payors remit all monies that are due to the public goods pools.

The Pool Administrator, through a contractual arrangement with the Department, oversees much of the daily pool activities. The Pool Administrator collects, administers and distributes funds for the public goods pools. Each month, healthcare providers and third party payors submit reports to the Pool Administrator which detail total patient revenue, revenue subject to the HCRA surcharge and their HCRA surcharge liability. The Pool Administrator reviews this information to ensure that the submissions were properly completed. However, the Pool Administrator oversight efforts are clerical in nature and serve only to ensure that the information submitted was

correctly completed; there is no in-depth analysis to ensure that monies due to the pools are actually remitted. Consequently, neither the Department nor the Pool Administrator have adequate procedures in place to ensure that healthcare providers and third party payors are remitting all monies due to the public goods pools.

The monthly reports from the healthcare providers and third party payors contain information that could be utilized by the Department and/or the Pool Administrator as an analytical tool to assess the completeness of surcharge collections. For example, the Department and/or Pool Administrator could utilize information reported on the healthcare provider monthly reports to analyze whether the pools are receiving the appropriate level of surcharge payments from third party payors that elected to pay directly to the Pool Administrator. Analytical review procedures of this nature would enable the Department to target its oversight efforts on those areas with the greatest potential for return. However, the Department does not have procedures in place to conduct reviews of this nature.

Department Audits of HCRA Surcharge Collections

During our audit, the Department initiated procedures to audit eight of the largest third party payors and two of the largest healthcare providers. The Department devotes 10 auditors to this function. As of the end of our fieldwork, the Department had completed one audit. This audit, which covered Medicaid inpatient surcharges for the two year period ended December 31, 1998, disclosed a net overpayment to the HCRA pools of approximately $441,000. There were two major findings identified in this audit: an overpayment of approximately $993,000 and an underpayment of approximately $552,000. Findings of this magnitude (a $993,000 overpayment and a $552,000 underpayment) indicate the need for enhanced oversight of public goods pools surcharge collections.

Failure to Meet Monthly Reporting Requirements

The Department can assess interest and penalties if it determines that a surcharge payment is less than what is due. If a direct payor does not submit the required reports and surcharges timely to the Pool Administrator, it can lose its direct-pay status and may be forced to pay surcharges through healthcare providers at the significantly higher surcharge rate. The Pool Administrator sends late notices to healthcare providers and third party payors that do not submit their monthly reports and surcharges on time. However, monetary penalties and interest have never been assessed. Department officials stated their belief that the delinquent payors owe little money because about 90 percent are out-of-state self-insured funds with no liability to the pool. Department officials maintain that these third party payors simply do not bother filing monthly reports with zero liability. Although third party payors may not have a liability to the pool, the Department cannot be certain of this until a report is filed with the Pool

Administrator. Department officials stated that they plan to be more aggressive in taking action against delinquent, late or inaccurate filers.

Results of Hospital Reviews

To determine if healthcare providers have taken the steps necessary to comply with the provisions for the collection of the HCRA surcharge, we reviewed the surcharge collection practices at six hospitals (Albany Medical Center, Bellevue Hospital Center, New York Downtown Hospital, Rochester General Hospital, St. Mary's Hospital of Brooklyn and Upstate Medical Center). At each hospital, we judgmentally selected one monthly report sent to the Pool Administrator from the period January 1, 1997 through June 30, 1999. We selected the monthly reports in our sample because either 1) we identified possible reporting errors for a particular monthly submission when compared to other monthly submissions for that hospital or 2) in the absence of potential errors, we selected a monthly report which covered a period far enough into the implementation of HCRA where errors associated with the implementation should be minimal and documentation could be easily retrieved. Our objective was to determine if the proper surcharge was sent to the Pool Administrator when required. We also selected a judgmental sample of patients from hospital admission and discharge registers for the period January 1, 1997 through November 30, 1999 to test whether these admissions and discharges were accounted for on the monthly reports to the Pool Administrator and that the proper surcharge was remitted to the Pool Administrator as required. Our admissions sample included both inpatient and outpatient admissions that were selected at random from admission and discharge records at each hospital with the only criteria being that we would attempt to get a good mix of payors (i.e., Blue Cross, third party administrators, direct self pay, etc.).

At three hospitals, we determined that the surcharge amount remitted was less than what it should have been. In our judgment, the problems we identified may not be limited to the hospitals we visited, since some of the six hospitals we visited are affiliated with other hospitals in their regions which have the same accounting systems and perhaps the same surcharge problems. The deficiencies we identified follow:

1. Underreporting of Surcharges

Healthcare providers and other payors are required to maintain adequate documentation to support the patient revenues and surcharge collections recorded on the monthly reports submitted to the Pool Administrator. We found that Bellevue Hospital Center (Bellevue) did not have sufficient documentation to support the information reported. In its monthly report for October 1998, Bellevue reported that it collected revenue totaling $25,134 that was subject to the 8.18 percent surcharge rate. Bellevue sent the Pool Administrator a check for $1,901. We examined supporting documentation

for this report and found that Bellevue officials omitted $29,168 that was subject to the 8.18 percent rate. Consequently, Bellevue owed the Pool Administrator an additional $2,206. Bellevue officials stated that they intend to correct this error and plan to remit the underpayment to the Pool Administrator.

Like the 11 other New York City operated hospitals, Bellevue's financial reporting is handled by the New York City Health and Hospitals Corporation (HHC). The accounting practices appear to be similar for all New York City hospitals administered by HHC. Consequently, there is a risk that the problem we identified at Bellevue may also be occurring at other hospitals administered by HHC.

2. Timeliness of Surcharge Collections

HCRA requires healthcare providers to submit monthly reports and the corresponding surcharge liability to the Pool Administrator by the 30th day of the following month. We found one hospital is not reporting and transmitting its surcharge liability on time. We determined that the surcharge liability reported by St. Mary's Hospital of Brooklyn (St. Mary's) as well as the corresponding remittance for November 1998 were in fact October 1998 obligations. Consequently, this hospital is always one month behind in reporting and remitting its surcharge liability.

3. Surcharge Collections for Non-Electors

HCRA requires healthcare providers to remit a surcharge on revenue for those insurers and third party payors which have not elected to directly send surcharge monies to the Pool Administrator. We identified two hospitals that did not remit the HCRA surcharge for some non-electing payors. For example, at St. Mary's Hospital of Brooklyn we examined 50 incoming payments totaling more than $225,000 and determined that the hospital handled several incorrectly. There were eight payments from non-electing payors totaling approximately $34,000 for which the hospital did not remit a surcharge to the Pool Administrator. The corresponding surcharge would have totaled approximately $2,500. In addition, at Rochester General Hospital, we found one receipt for which a surcharge should have been submitted to the Pool Administrator was not. The surcharge would have been about $65.

Hospital officials indicated that they were not aware that the payors in question did not directly send surcharge monies to the Pool Administrator. In addition, they stated that some of the payors we considered non-electors, were, in fact, electors that were operating under a different name. However, officials were not able to provide adequate documentation to support their contention.

Recommendation

1. Implement the procedures necessary to provide a sufficient level of oversight over the public goods pools collections. At a minimum, these procedures should include, but not be limited to:

   - ensuring that third party payors and healthcare providers report and submit the correct HCRA surcharge amount on a timely basis;

   - devoting a sufficient level of resources to conduct audits of the HCRA surcharge liabilities reported by third party payors and healthcare providers; and

   - implementing procedures to assess penalties and interest on payors which are late or delinquent with their reports or surcharge payments.

   (Department officials agreed that measures should be taken to ensure correct amounts are reported on a timely basis. However, the officials stated that from a desk edit perspective, it is impossible to ascertain the correctness of reported surcharge liabilities, because there are too many intervening variables and there is no historical standard against which to measure the reasonableness of each payors reported amounts. They further stated that requiring a reporting of revenues received by each specific payor source and insurance organization is not practically feasible. Department officials stated their belief that the appropriateness of amounts reported can be verified only through audits; they stated that during the current year, they will be developing and releasing a request-for-proposal for an outside organization to conduct HCRA Pool Payment Compliance Audits.

Recommendation(Cont'd)

Department officials also provided an action plan for implementing pool delinquency enforcement actions, which they state they shared with us during the audit. In this regard, Department officials stated that they recognize that secondary action against non-compliant payors and providers is necessary, and that pursuant to their action plan, they have issued bills and initiated collection of amounts due by non-electing Medicaid providers. They further stated that they are in the process of developing estimated bills to be transmitted to delinquent hospitals and that the remaining steps will be implemented as sequenced by the action plan.)

Auditor's Comment: In recognition of the Department's stated position that a significant amount of detailed information would be required from the providers to substantially improve the utility of the desk audit function, we deleted the portion of this recommendation calling for the Department to refine the monthly reports so that they can be used as an analytical tool to detect under-reported surcharges. Further, we checked our working papers and do not have a copy of the action plan for implementing pool delinquency enforcement actions. Nevertheless, as stated on page 6 of this report, the Department has never assessed monetary penalties and interest on delinquent payors. The thrust of our recommendation is that the Department should implement such actions, where appropriate.

Use of Technology to Promote Efficiency

The Pool Administrator receives approximately 39,000 reports monthly from healthcare providers and third party payors, detailing activities and any monies due pursuant to HCRA. Initially, the reports are assessed for correctness and compared with the corresponding surcharge payment, if any. When errors are found, all documents included in the original mailing (including checks) may be sent back to the payor or provider, with a form letter indicating the error.

Processing these reports and the corresponding surcharge payments is a labor-intensive process. Data entry of the reports involves about 12 clerks at the Pool Administrator's office. Once a batch has been established, the clerks enter all the information from the reports onto a database. After the database numbers and check totals are compared at several different supervisory levels, the reports are filed by the batch number.

In our judgment, the use of current technology could result in more efficient report and monies processing. For example, electronic data interchange could be used for receiving the information on the monthly reports. Either the Pool Administrator or the Department could establish the forms on a web site and require that the providers and third party payors directly enter the information. In addition, forms processing software is available that may assist either the Pool Administrator or the Department in automating the entry of information, since the monthly reports are standardized. Then, through the use of a database program, which already exists, the information can be stored, summarized and analyzed. Such technology enhancement would reduce the need for the Pool Administrator to manually enter extensive data.

Department and Pool Administrator officials stated that they intended to utilize current technology to the fullest extent possible, but due to pressures of getting the HCRA legislation implemented in 1997, technology enhancements could not be readily accomplished at that time. The Pool Administrator has submitted a draft work plan to the Department detailing technology improvements that it expected to begin January 1, 2000. Complete implementation of all suggested improvements could take at least one year.

In addition, since wire transfers are not required, most providers and third party payors remit their surcharge liability using a paper check. Only about 30 to 40 wire transfers are received monthly for remittance of the HCRA surcharge. All other funds are submitted on paper checks and must be processed manually. To speed up the process and reduce labor costs, wire transfers should be required at specified dollar levels.

Recommendations

2. Determine how the use of technology such as electronic data interchange and forms processing software can speed up and simplify the HCRA surcharge reporting process.

   (Department officials stated that they agree with this recommendation and stated that they will be working with the Pool Administrator to develop procedures to support electronic filing capabilities.)

3. To the extent permitted by law take steps to encourage payors to increase the use of wire transfers for the remittance of the HCRA surcharge.

   (Department officials stated that they would support and facilitate the use of wire transfers on a voluntary basis. However, they expressed some reservation regarding the feasibility of wire transfers for certain third party administrators. Officials stated that such a requirement would be costly and administratively burdensome for many third party administrators. Officials further stated that mandating the use of wire transfers would require a statutory amendment, which may face some opposition.)

Major Contributors to This Report

Kevin McClune
Walter Mendelson
Edward Durocher
Gene Brenenson
Joanne Kavich
Brian Krawiecki
Evelyn Mangin
Alina Mattie
David Pleeter
Altagracia Rodriguez
Paul Bachman

STATE OF NEW YORK
DEPARTMENT OF HEALTH

Corning Tower The Governor Nelson A. Rockefeller Empire State Plaza Albany, New York 12237

Antonia C. Novello, M.D., M.P.H.
Commissioner

Dennis P. Whalen
Executive Deputy Commissioner

April 11, 2000

Kevin M. McClune
Audit Director
Office of the State Comptroller
Alfred E. Smith State Office Building
Albany, New York 12236

Dear Mr. McClune:

Enclosed are the Department of Health's comments on the Office of the State Comptroller's audit report 99-S-24 on "Health Care Reform Act Surcharge Collections".

Thank you for the opportunity to comment.

Very truly yours,

Dennis P. Whalen
Executive Deputy Commissioner

Department of Health
Comments on the
Office of the State Comptroller's
Draft Audit Report
99-S-24 Entitled
"Health Care Reform Act
Surcharge Collections"

The following are the Department of Health's (DOH) comments in response to Draft Audit Report 99-S-24 entitled "Health Care Reform Act Surcharge Collections". The following comments are provided in response to the observations identified by OSC in the Introduction section of the report.

Under "Background," in the "Introduction" section, the top of the second page states that "Third party payors are required to notify the Department of their intentions to pay the HCRA surcharges directly to the Pool Administrator." A reader may erroneously conclude that a payor's election to remit surcharges directly to the State is merely accomplished through notifying the Department of an intention to do so. It would be more accurate to state that, "Third party payors are required to file an application, within prescribed statutory timeframes, and subject to approval by the Department, in order to be eligible to pay surcharges directly to the Pool Administrator."

In the same section, the second sentence in the next paragraph on page 2 states that "An 8.18% surcharge is applicable to ... and self insured funds which have filed an annual election to remit...." It should be noted that there is no requirement to file elections annually as implied. An election, once made and accepted, continues until rescinded by either the payor or the Department.

In the same section, at the top of page 3, it is stated that "(Department officials told us that hospitals located in financially distressed areas have a history of problems related to overall collection of the surcharge)." We do not believe we made this statement. We may have indicated that these hospitals have a history of problems related to overall bill collection. Since surcharges are only payable by the providers on monies they actually collect from affected non-electing payors, the relevance of this distinction is significant.

In the next paragraph at the top of page 3, the statement is made that ...hospitals are the largest group of healthcare providers, and health care providers have an important role in the surcharge collection process." If this refers to the number of affected provider organizations, Freestanding Clinical Laboratories are the largest group of health care providers impacted by HCRA surcharge requirements. Provider and payor surcharge payments relating to hospital claims do however, comprise the vast majority of surcharge payments made for all affected provider services.

Finally, under the caption "Department Audits of HCRA Surcharge Collections," the net overpayment to the HCRA pools by Medicaid of $441,000 is used to support a statement that "Findings of this magnitude indicate the need for enhanced oversight of Public Goods Pools surcharge collections." To put this in a proper prospective, it should be noted that this overpayment represented only .06% (.0006) of the total surcharges paid by Medicaid over the two-year period covered by the audit.

The following are the Department's responses to OSC's recommendations.

RECOMMENDATION #1:

Implement the procedures necessary to provide a sufficient level of oversight over the public goods pools collections. At a minimum, these procedures should include, but not be limited to:

(a) ensuring that third party payors and healthcare providers report and submit the correct HCRA surcharge amount on a timely basis.

RESPONSE (a):

In the body of the report, the following statement is made: "There is no in-depth analysis of reports to ensure that monies due the pools are actually remitted. Consequently, neither the Department nor the Pool Administrator have adequate procedures in place to ensure that health care providers and third-party payors are remitting all monies due to the Public Goods Pools." It was also stated that "... the Department compares surcharge amounts received with estimates based on past transactions. Although this procedure may be sufficient to ensure that overall pool transactions are meeting Departmental expectations, it is not sufficient to ensure that health care providers and third-party payors remit all monies that are due the Public Goods Pools."

These statements infer that in-depth analysis of submitted monthly pool reports could reveal incorrect reporting of surcharges due. To the contrary, from a desk edit prospective, it is impossible to ascertain the correctness of reported liabilities because: (a) there are too many intervening variables; and (b) there is no historical standard against which to measure variances. As an example, hospitals are currently required to report total revenues, a segregation of non-surchargeable revenues, and the remaining assessable revenues segregated into revenue received from direct pay (electing) payors and other assessable revenue (for which the hospital remits surcharges). Based upon the information currently supplied in these monthly reports, the Department is not able to verify the proper segregation

RESPONSE (a) (cont'd):

of total hospital reported revenues under each of these various categories. This, at a minimum, would require a reporting of revenues received by each specific payor source and insurance organization. The Department does not believe that such a requirement would be practically feasible. Consequently, the appropriateness of amounts reported can only be accurately verified through audits.

To use another example, there is no way of knowing whether the volume of claims processed for surchargeable services, as reported by electing payors, are accurate. Again, audits would be necessary to properly verify these amounts. There is simply no historical basis to use as a standard against which to measure the reasonableness of each payor's reported amounts.

The Department does agree with the basic recommendation that measures should be taken to ensure correct amounts are reported on a timely basis. Measures taken to date include: (1) the use of a dedicated website to provide timely and detailed instructions on surcharge obligations and related administrative requirements; and, (2) the staffing of a "Help Unit" which provides individualized assistance to affected payors, providers and consumers through telephone contacts and correspondence.

Further, as noted in the report, the Department initiated a "Compliance Review" which involved eight large payors of HCRA surcharges and two hospitals. This review has been completed and the Department is proceeding to initiate follow-up action, as appropriate.

Finally, an action plan for implementing pool delinquency enforcement actions was shared with OSC auditors during the course of their fieldwork. This was not acknowledged in the preliminary report. Another copy of this plan has been attached and will be explained in more detail in comments to follow.

(b) devoting a sufficient level of resources to conduct audits of the HCRA surcharge liabilities reported by third party payors and health care providers.

RESPONSE (b):

The Department agrees with this recommendation. Under HCRA 2000, pool funds have been allocated to contract with an outside organization to conduct UCRA Pool Payment Compliance Audits. During the current year, the Department

RESPONSE (b) (cont'd):

will be developing and releasing an RFP for this purpose. It should be further noted that assurance of cooperation during these audits was fostered by HCRA 2000 through authorizing the Department to impose significant civil penalties for a payor's or provider's failure to supply adequate supporting data on a timely basis during the course of an audit.

(c) refining the monthly reports so that they can be used as an analytical tool to detect under-reported surcharges.

RESPONSE (c):

The Department believes this recommendation lacks the specificity required for its implementation. The report does not delineate suggested refinements which could be considered to feasibly transformed the monthly reports into a useful analytical tool.

During the course of the audit, it appeared that OSC staff attempted to reconcile the amounts reported by electing payors with amounts shown on provider reports as having been received from electing payors. This analysis is only useful from an overall summary perspective. Even if these numbers did not reconcile, the Department would be unable to determine who the offending payors were, based solely on the reports. OSC may be proposing that the Department require additional detailed information on provider reports breaking down revenue by each electing payor, or on payor reports to break down payments by individual provider. This would represent a level of reporting detail that would surely be considered overly burdensome by the health care industry and a volume of data that would be unmanageable on the part of the Department and the Pool Administrator.

(d) implementing procedures to assess penalties and interest on payors which are late or delinquent with their reports or surcharge payments.

RESPONSE (d):

Since the inception of the HCRA, the Department has devoted most of its efforts to establish the election process, providing guidance to affected parties, and developing and implementing a reporting, collection and distribution process for pooled funds. Providers and payors who fail to file monthly pool reports and payments currently receive an immediate formal delinquency notice. Additionally,

RESPONSE (d) (cont'd):

providers failing to file monthly reports and payments are deemed ineligible for Medically Indigent Pool distributions which are withheld until compliance is attained.

The Department recognizes that secondary action against non-compliant payors and providers is necessary and, as indicated previously, has developed and commenced implementation of the non-compliance action plan, which was shared with OSC auditors. This plan phases-in additional noncompliance enforcement procedures to address delinquency circumstances in the following order: (a) organizations which fail to file monthly reports and payments; (b) late filers; and, (c) entities filing inaccurate reports. Within each category of non-compliance, the attached plan provides a specific order for pursuing affected entities.

Pursuant to this action plan, the Department has issued bills and initiated collection of amounts due by non-electing Medicaid providers (step 1). We are also in the process of developing estimated bills to be transmitted to delinquent hospitals (step 2). The remaining steps will be implemented as sequenced by this plan.

RECOMMENDATION #2:

Determine how the use of technology such as electronic data interchange and forms processing software can speed up and simplify the HCRA surcharge reporting process.

RESPONSE #2:

The Department agrees with this recommendation and will be working with the Pool Administrator to develop procedures to support electronic filing capabilities. This may require the use of an outside vendor with the necessary expertise to setup and assist in the implementation of such a system. Any related costs for hardware, software and consulting services will be incorporated in the Pool Administration contract. We are also proceeding with the work necessary to define safeguards and security requirements established through Department and other related State protocols.

RECOMMENDATION #3:

Take the steps necessary to increase the use of wire transfers for the remittance of the HCRA surcharge.

RESPONSE #3:

The Department has some reservations regarding the feasibility of wire transfers for certain third party administrators (i.e., TPAs) who are required to keep client accounts segregated and not co-mingled. Under this circumstance, multiple small wire transfers would be necessary. This would create a costly and administratively burdensome requirement on many TPAs, which have elected to directly pay surcharges on behalf of their clients. Further, we have been advised by the Department's Division of Legal Affairs that mandating the use of wire transfers would require a statutory amendment which, due partially to the above stated reason, may face some opposition. We do believe however, that the use of wire transfers on a voluntary basis should be supported and facilitated by the Department.

STATE OF NEW YORK DEPARTMENT OF HEALTH

MEMORANDUM

TO: Mark H. Van Guysling, Assistant Director
Division of Health Care Financing

FROM: Richard Pellegrini, Director
Bureau of Financial Management and Information Support

SUBJECT: HCRA Pool Noncompliance Action Plan

DATE: July 28, 1999

The attached chart summarizes a proposed plan of secondary action against entities who have not met their public goods pool reporting and payment obligations under the Health Care Reform Act of 1996. Areas of noncompliance include failure to file, untimely filing, and inaccurate filing of monthly reports and payments. To date, the only action taken has been the issuance of monthly delinquency notices to non-filers and the withholding of BDCC pool distributions from delinquent hospitals and D&TCs.

Due to staffing constraints, you will note that we are proposing a phased approach wherein we prioritize areas of noncompliance and the entities to proceed against first. The attached further identifies the proposed action to be taken in each delinquency area which includes actions you previously approved for estimating liabilities and calculating interest and penalty for delinquent hospitals and D&TCs. If acceptable, we will commence development of individual work plans for each subject area.

In reference to issuing bills for penalty and interest, we suggest conferring with Counsel's Office on the possibility of waiving such amounts for the first year, or some other grace period, as well as not issuing bills if such amounts are extremely small.

We will proceed by scheduling a meeting with you to discuss these recommendations in further detail.

HCRA Pool Proposed Noncompliance Action Plan		
Prioritized Noncompliance Issues	**Proposed order of entities to be addressed**	**Proposed Action**
Failure to File Monthly Reports and Payments (Non-Filers)	Providers not electing to have Medicaid surcharges withheld and who failed to remit such surcharges	1) Based on MMIS information issue bills, including penalty and interest (P & I). 2) Allow another opportunity for direct Medicaid withholding. 3) If payment not made within a 14 to 30 day period, recoup liability from Medicaid claims.
	Providers failing to submit collected Non-Medicaid surcharges and related monthly reports in the following order: • Hospitals • Comprehensive D&TCs • Ambulatory Surgery Centers • Freestanding Clinical Laboratories	1) Estimate liability using cost reports and other available data and issue bills including P&I. 2) If payment not made within a 14 to 30 day period, recoup liability from Medicaid claims. 3) If Medicaid claim volume is insufficient to effectively recoup liability, use legal authority to recoup from Article 43 and 44 claims, or proceed with other collection options.

Prioritized Noncompliance Issues	Proposed order of entities to be addressed	Proposed Action
	Payors failing to submit surcharges and related monthly reports in the following order: • The top 1000 contributing payors • Any payor who never filed reports • All other payors	1) Issue notice that unless reports and required payments are submitted within 14 to 30 day period, payor's election status will be revoked effective the beginning date of the next month. 2) If payor remains noncompliant, issue a bill estimating their liability, with interest and penalty, based on information available from SID data and reports submitted from prior months and/or other payors. 3) If noncompliance persists, pursue necessary and appropriate collection options based on Office of Counsel advice.
Late Filers	In the following order: • The top 1000 contributing payors • Hospitals • Comprehensive D&TCs • Ambulatory Surgery Centers • Freestanding Clinical Laboratories • All remaining payors	1) Issue P&I bills with payment due within a 14 to 30 day period. 2) If a Provider fails to make payment, recoupment would be initiated through Medicaid and, if necessary, Article 43 and 44 claims. 3) If a Payor fails to make payment, available collection options would be evaluated with Counsel's Office and implemented where appropriate.

Prioritized Noncompliance Issues	Proposed order of entities to be addressed	Proposed Action
Entities Filing Inaccurate Reports	In the following order: • The top 1000 contributing payors • Hospitals • Comprehensive D&TCs • Ambulatory Surgery Centers • Freestanding Clinical Laboratories • All remaining payors	1) Automated error checks would be developed and run against the database of reports filed to disclose math and other types of apparent errors. 2) Generated error reports would be issued requesting corrections, clarifications, or explanations from the contributing entity. 3) Parameters of acceptable reporting could also be developed utilizing averages from the reported database. 4) Comparative analysis could be run of individual reports against such parameters to identify anomalies and to generate reports for further action. 5) Such reports could be sent to affected entities for explanation of anomalies.