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STATE OF NEW YORK
OFFICE OF THE STATE COMPTROLLER

May 16, 2002

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

Re: Report 2001-F-33

Dear Dr. Novello:

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 reviewed the actions taken by officials of the Department of Health (Department) as of April 2, 2002, to implement the recommendations contained in our audit report, *Health Care Reform Act Surcharge Collections (Report 99-S-24)*. Our report, which was issued on May 10, 2000, assessed the Department's controls over the collection of the Health Care Reform Act surcharge and assessed whether the surcharge collection process operated efficiently for the period January 1, 1997 through December 1, 1999.

Background

Prior to 1997, hospitals were reimbursed for services under the New York State Prospective Hospital Reimbursement Methodology based on rates set by the 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 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 42,000 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 make payments to fund these pools. The State Comptroller reported that for the fiscal year ended March 31, 2000, Public Goods Pool receipts totaled approximately \$1.9 billion and the disbursements from the pool totaled approximately \$1.8 billion. HCRA expired on December 31, 1999. However, in December 1999, the Legislature passed HCRA 2000, which extended many of the provisions contained in the original HCRA through June 30, 2003.

The Department delegated responsibility for administering the public goods pools (Pool) to Excellus Health Plan, Incorporated (Excellus), formerly known as Blue Cross Blue Shield of Central New York. As Pool Administrator, Excellus is responsible for collecting, administering, and distributing the funds in the Pool, in accordance with HCRA requirements. Excellus also processes third-party payor and healthcare provider monthly reports and delinquency notifications. Excellus employs approximately 36 individuals to perform these tasks. Excellus' reported operating costs were \$1.8 million in 2000.

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. Excellus 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 Excellus; or, (2) third party payors elect to remit the surcharges directly to Excellus. A significantly reduced surcharge rate is available to third party payors who voluntarily elect to pay directly to Excellus rather than through healthcare providers. Third party payors are required to file an application with the Department within prescribed statutory periods in order to be eligible to pay surcharges directly to Excellus. This application is subject to approval by the Department and the Department maintains on its website a list of all third party payors who have elected to pay directly to Excellus. 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 HCRA surcharge directly to Excellus. Non-electors (i.e., third party payors who remit HCRA surcharge through healthcare providers rather than directly to Excellus) are liable for a 32.18 percent surcharge plus an additional surcharge that ranges from 2.05 percent to 24.94 percent, depending on the region, for inpatient hospital service claims.

Summary Conclusions

In our prior audit, we noted several areas of the surcharge collection process that needed improvement. Specifically, our audit work at the Department, Excellus and several hospitals disclosed that the Department's oversight efforts needed improvement to ensure that surcharge

payments were correct and timely. In addition, we concluded that the processes for collecting and reporting public goods pools collections would be more efficient by making use of available technology.

In our follow-up review, we determined that Department officials have made substantial progress in implementing the recommendations contained in the prior audit report. The Department has initiated processes to increase the assurance that healthcare providers and third party payors are remitting all monies due to the public goods pool; however, independent audits of third party payors and healthcare providers have not begun. The Department has taken advantage of available technology to make the reporting process more efficient and has also taken steps to provide payors with the opportunity to use wire transfers for the remittance of the HCRA surcharge.

Summary of Status of Prior Audit Recommendations

Of the three prior audit recommendations, Department officials have implemented two recommendations, and have partially implemented one recommendation.

Follow-up Observations

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.*

Status – Partially Implemented

Agency Action – The Department has initiated compliance reviews to ensure that third party payors and healthcare providers submit the correct HCRA surcharge amounts. The reviews, which began in 2001 and were concluded as of January 2002, involved eight of the largest payors of HCRA surcharges and two additional hospitals. At the time of the reviews, the payments by the eight payors represented approximately 66 percent of the surcharge amounts contributed by all payors. The reviews included an assessment of claims processing procedures, tests of selected fiscal data and examination of a sample of paid claims. We examined the reports produced from these reviews and found that they were thorough and identified significant issues related to the process. As of January

2002, the Department was proceeding with its plans to initiate follow-up action, as appropriate.

In addition, at the time of our follow-up review, the Department developed and was in the process of implementing an electronic report filing system, which will assist third party payors and healthcare providers with reporting and submitting HCRA surcharges on a timely basis. This system will allow third party payors and healthcare providers to file reports via the Internet, which will be more efficient than the paper reporting process currently in use. Department officials stated that this option will be available for use by the entire third party administrator, payor and provider population by July 2002.

The Department has also completed a competitive procurement process and has finalized the required contract terms for audits of HCRA surcharge liabilities reported by third party payors and healthcare providers. However, at the time of our follow-up review, the contract between the Department and the independent audit contractor had not been finalized. According to Department officials, the independent audit contractor has endorsed the contract, which as of April 2, 2002 was in executive clearance within the Department. Once cleared, the Department will transmit the contract to the Attorney General and the State Comptroller for approval. According to Department officials, they anticipate the audits will commence within 30 days of approval. The audits will be designed to determine payor and provider compliance with the Public Health Law. Department officials stated that the audits will target third party payors and a smaller number of selected providers.

There are two distinct audit phases (Stage I and Stage II) that will be used to determine payor and provider compliance with the Public Health Law. Stage I audits are broad; the primary purpose of the Stage I audit is to identify any areas of risk for underpayment of surcharge obligations. The auditors will then prepare an interim report of findings and conclusions for the Department to review. If, upon review of the interim report of findings and conclusions, the Department determines that a significant risk exists, a Stage II audit will commence. The Stage II audits encompass a review of the non-compliant, exception and incorrect surcharge/assessment determinations identified in Stage I. In this stage, the auditors will determine surcharge underpayments for the full calendar year being audited and report these amounts to the Department.

At the time of our follow-up review, the Department had also begun to implement procedures to assess penalties and interest on payors that are late or delinquent with their reports or surcharge payments. As of January 2002, the Department had issued 25 bills to delinquent hospitals. Of the 25, five filed delinquent reports and made payments directly to the Pool. Thirteen hospitals established payment agreements with the Department. Of the remaining seven hospitals, payments for six hospitals have been recouped from the provider's Medicaid claims payments and one provider was referred to Department Counsel due to closure or bankruptcy.

Pursuant to Federal law, the State of New York may not withhold the HCRA surcharges in Medicaid claims without the expressed voluntary consent of providers. The

Department developed a consent form for this purpose and the Medicaid system withholds the applicable surcharges on Medicaid claims from provider payments and pays such amounts directly to the Pool Administrator on a monthly basis. However, for those providers failing to provide such consent, HCRA provides that such amount must be paid by the provider to the HCRA pools within 5 days of receipt. As of January 2002, the Department sent delinquency notices to 18 of these providers. Four providers paid directly, payments for 11 providers were recouped, and three providers were referred to Department Counsel due to closure or bankruptcy.

The Department has also finalized the methodology to estimate surcharge liabilities of delinquent Comprehensive Diagnostic and Treatment Centers and has, as of January 2002, issued bills to 27 such providers. Of this total, 11 have been resolved, six were sent for recoupment and 10 are in various stages of resolution. The Department also plans to issue estimated bills to delinquent freestanding ambulatory surgery centers and laboratories. At the time of our follow-up review, the Department was researching possible data sources to use as a basis for estimating these bills, since these providers do not file cost reports with the Department. The Department was also in the process of identifying electing payors that are large contributors who are delinquent in submitting monthly payments, and developing a methodology to estimate related liabilities.

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.

Status – Implemented

Agency Action – The Department has developed and implemented a dedicated website to provide detailed instructions on surcharge obligations and related administrative requirements. Third party payors and healthcare providers now have the opportunity to carry out reporting requirements via the Internet. In November 2001, a mailing was sent to 100 selected users so they could obtain user identification names and passwords, for electronic reporting. Of the 100 selected users, 13 payors and four third party administrators expressed an interest in the electronic reporting process and have signed up to use this new process. Department officials stated that they are experiencing some delays in the release of the system because further testing is needed. According to Department officials, the completed application will be released for use by the entire third party administrator, payor and provider population by July 2002.

The Department has also developed and implemented a Help Unit, which provides individualized assistance to affected payors, providers and consumers through telephone contacts and correspondence.

In addition, as part of an effort to reduce the number of paper reports filed on a monthly basis and corresponding keypunching needs, the Department proposed legislation that would allow annual, rather than monthly reporting for certain payors. The legislation was

enacted December 21, 1999 and, as a result, over 23,000 payors were deemed eligible and notified to report on an annual, rather than a monthly basis, for 2001. For 2002, the number of electing payors deemed eligible to file annually increased to 28,600, thereby reducing by 50 percent the number of reports filed on a monthly basis. Consequently, payors failing to file reports will require delinquency follow-up actions on one annual report, rather than 12 monthly reports.

Recommendation 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.

Status – Implemented

Agency Action – The Department has provided third party payors and healthcare providers with the opportunity to use wire transfers for the remittance of the HCRA surcharge. However, Department officials stated that since there are no legal requirements to force these contributors to remit the surcharge using a wire transfer, response has been low. As of January 2002, only 20 to 30 contributors were using the wire transfer option.

According to Department officials, they have some reservations regarding the feasibility of wire transfers for certain third party administrators who are required to keep client accounts segregated and not co-mingled. Under this circumstance, multiple small wire transfers would be necessary, creating a costly and administratively burdensome requirement on many third party administrators who have elected to directly pay surcharges on behalf on their clients. Further, the Department has been advised by their 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.

Major contributors to this report were Edward Durocher, Kristee Iacobucci and Timothy Marten.

We would appreciate your response to this report within 30 days indicating any actions planned or taken to address any unresolved matters discussed in this report. We also thank the management and the staff of the Department for the courtesies and cooperation extended to our auditors during the review.

Very truly yours,

Kevin M. McClune
Audit Director

cc: Deirdre A. Taylor