OFFICE OF THE NEW YORK STATE COMPTROLLER

DIVISION OF STATE GOVERNMENT ACCOUNTABILITY

New York State Department of Health

Collection of Medicaid Accounts Receivable

Report 2009-S-59

Thomas P. DiNapoli

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State of New York
Office of the State Comptroller

Division of State Government Accountability

September 9, 2010

Richard F. Daines, M.D.
Commissioner
Department of Health
Corning Tower, Room 1495
Empire State Plaza
Albany, NY 12237

Dear Dr. Daines:

The Office of the State Comptroller is committed to helping State agencies, public authorities and local government agencies manage government resources efficiently and effectively and, by so doing, providing accountability for tax dollars spent to support government operations.

The Comptroller oversees the fiscal affairs of State agencies, public authorities and local government agencies, as well as their compliance with relevant statutes and their observance of good business practices. This fiscal oversight is accomplished, in part, through our audits, which identify opportunities for improving operations. Audits can also identify strategies for reducing costs and strengthening controls that are intended to safeguard assets.

Following is a report of our audit of *Collections of Medicaid Accounts Receivable*. This audit was performed 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.

This audit's results and recommendations are resources for you to use in effectively managing your operations and in meeting the expectations of taxpayers. If you have any questions about this report, please feel free to contact us.

Respectfully submitted,

Office of the State Comptroller
Division of State Government Accountability

EXECUTIVE SUMMARY

Audit Objective

The objective of our audit was to determine whether the Department of Health effectively recovered certain accounts receivable resulting when Medicaid overpaid providers.

Audit Results - Summary

The Department of Health (Department) administers New York State's Medicaid program, which provides medical assistance to eligible individuals. The Department's administration of the program includes recovering accounts receivable arising when providers are overpaid for Medicaid. The Department identifies such overpayments through provider audits performed by the New York State Office of the Medicaid Inspector General (OMIG) or when a retroactive rate adjustment that applies to providers' already reimbursed Medicaid claims results in an overpayment situation.

During calendar years 2008 and 2009, the Department identified $1.1 billion in new accounts receivable for active providers. As of January 26, 2010, the Department had collected about $990 million (90 percent) of this receivable amount. Consequently, we conclude that the Department did an effective job of recovering accounts receivable from active providers. However, we also found that the Department needs to improve its collection efforts in certain special situations pertaining to inactive providers, providers who join group practices and providers who are affiliated and share the same federal taxpayer identification number. In addition, we noted that the Department needed to act in a timely manner to submit uncollected accounts receivable to the State Attorney General for follow up. In total, we found the Department needed to act more effectively to collect about $37 million of accounts receivables attributable to these conditions over the past few years.

For example, as of October 1, 2009 the Department was owed about $35 million from inactive providers. For 120 of these providers, the total amount owed was about $20 million which had been outstanding for at least two years. Balances due for 22 other providers totaled about $3.9 million and had been due for about six years. The Department needed to evaluate options for obtaining recoveries in these instances. For example, the Department ought to work with the federal Center for Medicare and Medicaid Services to determine if any of the providers are obtaining Medicare reimbursement which could be used to offset amounts owed to the State's Medicaid program. In addition, the Department should determine if it is possible to

offset amounts owed with State tax refunds and other payments that the State is making to the inactive providers.

The Department has regulatory authority to offset payments made to individual providers in group practice when providers in the practice have outstanding Medicaid accounts receivable arising prior to when they joined the practice. However the Department is not using its regulatory authority to make the necessary recoveries even though a prior audit that we performed made a recommendation to do this. As a result, as of December 31, 2009, there were 1,104 providers who owe the Medicaid program $737,469 based on their accounts receivable prior to joining a group practice.

During our audit, we identified 15 providers that owed $1.7 million of accounts receivable as of October 1, 2009 and were affiliated with each other and used a common federal tax identification number. The Department's regulations permit the Department to recover accounts receivable from any individual providers in these situations and the Department explained its practices for obtaining such recoveries. However, we noted the Department had not obtained any recoveries of the amounts owed for these 15 providers for at least 120 days. Consequently, we questioned the effectiveness of the Department's practices and we made recommendations for improvements.

We also noted that the Department has not acted in a timely manner to refer uncollected accounts receivable of inactive providers to the State Attorney General for collection. In this regard, the Department had not forwarded such accounts receivable during the five years preceding our audit.

Our report contains four recommendations to improve the Department's controls over Medicaid accounts receivable. Department officials generally agreed with our recommendations.

This report, dated September 9, 2010, is available on our website at http://www.osc.state.ny.us
Add or update your mailing list address by contacting us at: (518) 474-3271 or
Office of the State Comptroller
Division of State Government Accountability
110 State Street, 11th Floor
Albany, NY 12236

Introduction

Background

The Department of Health (Department) administers New York State's Medicaid program, which provides medical assistance to eligible individuals. The Department is responsible for recovering accounts receivable from providers whose Medicaid claims were overpaid when processed by the Department's eMedNY computer system. The Department identifies these overpayments through audits by the New York State Office of the Medicaid Inspector General (OMIG) or when a retroactive rate causes a previously paid claim to have been over reimbursed. As of July 30, 2009, there were approximately 360 providers with Medicaid accounts receivable totaling about $220 million that were identified due to audits and negative retroactive rate adjustments.

When an overpayment is identified, the Department establishes an accounts receivable on eMedNY. The Department recovers accounts receivable by having providers issue checks or by using eMedNY to recover a percentage (usually 15 percent) from subsequent payments. Generally, eMedNY collection percentages are designed to recover accounts receivable within a two year period. The Department identified $1.1 billion in new accounts receivable during calendar years 2008 and 2009.

Audit Scope and Methodology

The objective of our audit was to determine whether the Department effectively recovered certain accounts receivables resulting when Medicaid overpaid providers. Our audit period was January 1, 2006 through February 18, 2010.

To accomplish our objective, we interviewed Department officials as well as officials from OMIG to determine how they collect Medicaid accounts receivable. We used a risk based approach in selecting activities to be audited. We reviewed accounts by providers who were affiliated and inactive providers. We reviewed and analyzed these providers using eMedNY, and reviewed the Department and OMIG files. We also evaluated the Department's activities related to recovering the federal share of claims once the overpayment is deemed to be uncollectable.

We conducted our audit in accordance with generally accepted government auditing standards. Those standards require that we plan and perform the audit to obtain sufficient, appropriate evidence to provide a reasonable basis for our findings and conclusions based on our audit objectives. We believe that the evidence obtained provides a reasonable basis for our findings and conclusions based on our audit objectives.

In addition to being the State Auditor, the Comptroller performs certain other constitutionally and statutorily mandated duties as the chief fiscal officer of New York State. These include operating the State's accounting system; preparing the State's financial statements; and approving State contracts, refunds, and other payments. In addition, the Comptroller appoints members to certain boards, commissions and public authorities, some of whom have minority voting rights. These duties may be considered management functions for purposes of evaluating organizational independence under generally accepted government auditing standards. In our opinion, these functions do not affect our ability to conduct independent audits of program performance.

Authority

The audit was performed 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.

Reporting Requirements

We provided draft copies of this report to Department officials for their review and comment. We have considered these comments in preparing this report. Department officials generally agreed with our findings and recommendations and indicated the steps they have already taken or will take to address the recommendations. The Department's comments are included in their entirety at the end of this report.

Within 90 days of the final release of this report, as required by Section 170 of the Executive Law, the Commissioner of the New York State 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 why.

Contributors to the Report

Major contributors to this report include Ed Durocher, William Clynes, Michele Turmel, Jackie Keeys-Holston, Lisa Rooney, Nicole Van Hoesen and Sue Gold.

Audit Findings and Recommendations

We found that the Department did a good job collecting accounts receivable from active providers. During calendar years 2008 and 2009, the Department recorded $1.1 billion in Medicaid accounts receivable that resulted from retroactive rate adjustments and audits. As of January 26, 2010, the Department had collected about $990 million (90 percent) of these receivables. The recovery of accounts receivable resulted when eMedNY reduced ongoing provider payments for the amounts overpaid.

However, we also found that the Department needs to do a better job of collecting accounts receivable in certain unique circumstances pertaining to inactive providers, providers who join group practices and providers who are affiliated and have a common federal tax identification number. In addition, we found room for improvement in the collection of receivables due from the federal government when a New York Medicaid provider's accounts receivable is deemed uncollectible.

Collections from Inactive Providers

Medicaid providers become inactive for various reasons including, withdrawal from the program, changes in business ownership and business closure. As of October 1, 2009, there were 190 inactive Medicaid providers with accounts receivable totaling about $35 million. Balances due from 120 of these providers had been outstanding for at least two years and totaled about $20 million. Balances due from 22 other providers had been outstanding for at least six years and totaled $3.9 million. Since the Department primarily relies on eMedNY to collected accounts receivable by offsetting payments with amounts owed, and since inactive providers no longer obtain eMedNY payments, the Department needed to identify and use other methods beyond eMedNY to recover amounts owed by the inactive providers. However, we found that the Department had not made much progress in identifying and using other methods to collect the amounts due from inactive providers. Nevertheless, there are some options that the Department should be considering to make recoveries from inactive providers.

For example, federal law enables the federal Center for Medicare and Medicaid Services (Center) to withhold Medicare payments to providers and to use the payments to satisfy uncollected Medicaid accounts receivable. In fact, Massachusetts routinely works with the Center to recover its Medicaid accounts receivable in this manner. However, we found that the Department has not made arrangements with the Center to similarly seek recovery of New York State Medicaid accounts receivable. In this regard, we noted that 29 of the inactive providers that

we identified with New York State Medicaid accounts receivable totaling about $7.8 million also participated in the Medicare program.

Another option for pursuing recovery from inactive providers includes working at the State level with the Department of Taxation and Finance and the Office of the State Comptroller to identify inactive providers who are obtaining tax refunds or payments from other State programs. Once such situations are identified, steps could be taken to determine if these other State payments could be offset to collect on the Medicaid accounts receivable. We noted that similar procedures are in place in other states. For example, Massachusetts has an automated process that identifies when state vendor and tax refund payments are being made to entities that also have Medicaid accounts receivable. In New Jersey, providers with delinquent accounts receivable are referred to the Department of the Treasury on a quarterly basis so that collections can be pursued as offsets to tax refunds and vendor payments to these providers.

Collection from Providers in Group Practice

Medicaid providers with accounts receivable accumulated under their unique provider identification number, may become affiliated with other Medicaid providers in, for example, a group practice. When this occurs the provider may begin billing under the group's provider identification number and discontinue billing through their original identification number. As of December 31, 2009, there were 1,104 providers who owed the Medicaid program $737,469 as individual providers prior to joining a group practice that also billed Medicaid.

In such circumstances, Department regulations allow recovery of a provider's accounts receivable by withholding all or part of the Medicaid payments resulting from billing made by the group practice. In fact, in our prior audit report, *Medicaid Claims Processing Activities* (2004-S-29, issued October 31, 2005), we recommended that the Department follow the regulation to accelerate recoveries of overdue accounts receivable. However, our current audit finds that the Department has not acted on the prior audit recommendation. As a result, providers continue to collect all the Medicaid payments they are entitled to under a group practice without consideration that some of these same providers have Medicaid accounts receivable arising from overpayments made to them. For example:

- The Department made Medicaid payments totaling $53,000 to a doctor providing services under a group practice when the same doctor owed $34,194 arising from claims adjustments associated with the doctor's prior practice as an individual provider.

- The Department made Medicaid payments totaling $12,930 to a dentist providing services under a group practice when the same dentist owed $31,537arising from an Office of the Medicaid Inspector General audit associated with the dentist's prior practice as an individual provider.

We again recommend that the Department seek recovery from providers in group practice when these providers have accounts receivable arising prior to their joining the group practice.

Collections from Affiliated Providers

Medicaid providers with unique provider identification numbers may be affiliated with each other and may share the same federal tax identification number. For example, various facility locations each having their own Medicaid provider identification number may exist in affiliation with the same hospital and all locations may have a common federal tax identification number. Again, regulations permit the Department to treat all of the affiliated entities as one entity for purposes of recovering accounts receivable due from any individual affiliated entity. As of October 1, 2009, we identified Medicaid accounts receivable totaling approximately $1.7 million for 15 providers affiliated through a common federal tax identification number. We found that no recoveries of accounts receivable had been obtained for these 15 providers for at least 120 days.

Department officials maintained that they had procedures for making recoveries of accounts receivable for such affiliated providers. They stated that quarterly they review a report that shows accounts receivable identified for individual providers. Officials explained that the review identifies receivables that can be assigned among providers who have a common federal tax identification number. The officials reported that between June 2009 and February 2010, the Department identified 166 providers who owed accounts receivable that could be reassigned based on affiliation. However, we noted that the Department's review process only identified one of the fifteen providers that we identified. Therefore, we question the effectiveness of the Department's review. In this regard, we noted that the Department's review only targets accounts receivable generated based on retroactive rate adjustments and does not address those established based upon audits. We recommend that the Department's review process be enhanced to include all situations that result in accounts receivable.

In addition, we noted that starting in May 2007, the Health Insurance Portability and Accountability Act required that providers' identification numbers be replaced with a National Provider Identifier (NPI) that must

be used for all financial transactions, including those of the Medicaid program. As a result, in October 2009, the Department's eMedNY stopped using providers' original Medicaid identification numbers for financial transactions and began using the NPI. In this regard, the Department linked the providers' original identification number to the new NPI for purposes of tracking accounts receivable arising from rate adjustments. However, such a link was not established for accounts receivable arising from audits. Therefore, the Department lacks an effective control for ensuring that all accounts receivable that a provider owes as a result of audits are collectively identified and pursued.

The Department stated that it is in the process of making sure that all accounts receivables associated with providers' original identification numbers are linked to the new NPI. However, the Department did not provide firm time frames for completing this work and explained that it is time consuming and it requires manual interventions from staff. The Department needs to be as timely as possible in linking the NPI to the original providers' identification number to ensure the effective recovery of all accounts receivable.

Write-off of Uncollected Receivables

When the Department determines that a provider has been overpaid and establishes an accounts receivable, the Department has 60 days to repay the federal government for its share (50 percent) of the overpayment regardless of whether the Department effectuates recovery within the 60 days. However, the Department can obtain recovery of the federal repayment later if the Department establishes that the accounts receivable must be written-off. In New York, this happens after the accounts receivable has been forwarded to the State Attorney General for collection efforts and the State Attorney General has determined the accounts receivable is uncollectible.

We found that the Department does not act in a timely manner to ensure that it recovers the amounts repaid to the federal government for accounts receivable that are found to be uncollectible and must be written-off. We make this conclusion because for the five years prior to the start of our audit, the Department had not referred any accounts receivables for inactive providers to the Attorney General for collection. In August 2009, when our audit commenced, the Department referred the accounts receivable for six inactive providers to the Attorney General.

Recommendations

1. Determine the feasibility of options, including those identified in this report, for pursuing the collection of accounts receivable due from inactive providers.
2. Follow regulations and seek recovery of accounts receivable that were owed by providers when they joined a group practice.
3. Ensure the Department procedures and practices address the recovery of all accounts receivables identified through audits or retroactive rate adjustments for affiliated providers.
4. Ensure that the Department acts in a timely manner to routinely refer appropriate accounts receivable to the State Attorney General for collection.

Agency Comments

STATE OF NEW YORK
DEPARTMENT OF HEALTH
Corning Tower The Governor Nelson A. Rockefeller Empire State Plaza Albany, New York 12237

Richard F. Daines, M.D.
Commissioner

James W. Clyne, Jr.
Executive Deputy Commissioner

June 18, 2010

Steven E. Sossei, CPA
Audit Director
Office of the State Comptroller
Division of State Government Accountability
110 State Street – 11th Floor
Albany, New York 12236

Dear Mr. Sossei:

Enclosed are the New York State Department of Health's comments on the Office of the State Comptroller's draft audit report 2009-S-59 on "Collections of Medicaid Accounts Receivable."

Thank you for the opportunity to comment.

Sincerely,

James W. Clyne, Jr.
Executive Deputy Commissioner

Enclosure

cc: James Sheehan
Robert W. Reed
Donna Frescatore
Diane Christensen
Nicholas Meister
Stephen Abbott
Ron Farrell
Mary Elwell
Irene Myron
Lynn Oliver

Department of Health
Comments on the
Office of the State Comptroller's
Draft Audit Report 2009-S-59 on
"Collections of Medicaid Accounts Receivable"

The following are the Department of Health's (Department) comments in response to the Office of the State Comptroller's (OSC) draft audit report 2009-S-59 on "Collections of Medicaid Accounts Receivable", including a general comment followed by responses to the specific recommendations contained in the report.

General Comment:

The Audit Findings and Recommendations section of the report states that the Department has recovered 90 percent of the receivables established during 2008 and 2009 for retroactive rate adjustments and audits. The Department is not certain of the data used by OSC to arrive at the 90 percent figure. Regarding negative rate adjustments, the largest category of accounts receivable, the Department has actually recovered 99.7 percent of such debts since the rate adjustment system was established in the 1980s.

Recommendation #1:

Determine the feasibility of options, including those identified in this report, for pursuing the collection of accounts receivable due from inactive providers.

Response #1:

The Department agrees and will work cooperatively with the Office of the Medicaid Inspector General (OMIG), as necessary, to investigate the possibility of partnering with other federal and State agencies to collect debts from inactive Medicaid providers. The OMIG has already initiated conversations with the federal Department of Health and Human Services' Office of the Inspector General and Center for Medicare and Medicaid Services regarding the feasibility of withholding Medicare payments as specified by 2 CFR §405.377 and Treasury Offset Payments pursuant to 31 USC §371(c) to recover Medicaid overpayments. OMIG is additionally pursuing the development of processes and protocols for a Statewide Offset Program, and has also initiated research regarding the possibility of applying for unclaimed funds from OSC relative to providers with delinquent accounts.

Recommendation #2:

Follow regulations and seek recovery of accounts receivable that were owed by providers when they joined a group practice.

Response #2:

The Department agrees, in general, with the recommendation although it notes that many of the related group IDs relative to the $737,469 audit findings amount appear to be hospitals.

Hospitals would almost certainly be separate legal entities with different federal tax IDs than the individuals that joined the groups, thereby making recovery questionable.

18 NYCRR Part 518 governs the recovery and withholding of payments or overpayments. Section 518.3(c) of NYCRR Title 18 provides that persons furnishing or supervising the furnishing of medical care services or supplies are jointly and severally liable for any overpayments resulting from the furnishing of the care, services or supplies. As part of the enrollment process, providers can request Medicaid participation as a group member by completing the appropriate form. The application for group enrollment includes language that the provider acknowledges that he/she remains personally responsible for all claims billed to Medicaid using both group Medicaid identification number and individual provider number. In addition, pursuant to 18 NYCRR § 518.6(a), overpayments may be recovered by withholding all or part of a provider's and an affiliate's payments otherwise payable, at the option of the Department. Affiliate or affiliated person is defined in 18 NYCRR § 504.1(d) (1).

The OMIG, with the Department's assistance as needed, will investigate those providers identified that have an account receivable balance with the OMIG to confirm the providers' group status to determine if there is a basis for holding the group and/or the group members jointly and severally liable, and/or to determine whether the providers meet the regulatory definition of affiliate or affiliated person under 18 NYCRR § 504. OMIG will work to recover the outstanding amounts as appropriate.

With respect to sharing a federal tax number, providers that share the same federal tax number may not meet the regulatory definition of affiliate or affiliated as referenced above. A federal tax number or Employer Identification Number (EIN) is an identification number used to identify the tax accounts of employers and certain others who have no employees. It does not define an ownership structure. The application for an EIN does not require any ownership information. Before an overpayment can be recovered by withholding payments from an affiliate, it must be determined that the affiliate meets the definition set forth in18 NYCRR § 504. The OMIG will check the balance of providers with a recoupment balance to determine if they have the same EIN. The OMIG, in consultation with the Department as necessary, will then further investigate to determine whether those providers that have the same EIN meet the definition of affiliate or affiliated person and will initiate recoveries as appropriate.

Depending on the results of the above initiatives, the Department will decide whether performing similar reviews of the remaining providers with a recoupment balance is warranted.

Recommendation #3:

Ensure the Department procedures and practices address the recovery of all accounts receivables identified through audits or retroactive rate adjustments for affiliated providers.

Response #3:

The Department agrees and has already initiated evolution project EP1505 to link the accounts receivable associated with providers' original identification number to the new National Provider Identifier. In addition, the Department will continue to review negative rate adjustment debts

without a collection in the past 90 days once per quarter to determine the possibility of transferring the debt to an active provider ID with the same tax ID. A similar review for those individual debts with group associations could be conducted if the appropriate criteria can be determined.

In regard to affiliations through a common tax ID, the audit findings indicated an accounts receivable balance of $1,746,305.19 related to 15 providers that were allegedly inactive and where no collections had been obtained in at least 120 days. Department and OMIG review determined that more than 55 percent of that total, or $986,770.17, relates to a single audit debt for Wyckoff Heights Medical Center, which is an actively billing provider. Collection activity had been suspended on the debt while awaiting an adjusted recovery percentage from OMIG. The adjusted percentage has since been established, and the debt is expected to be completely collected within a few weeks. The next largest amount owed, $476,596.38 from Amsterdam Memorial SNF cannot benefit from being transferred to any other billing IDs with the same tax ID, since all billing from the Amsterdam Memorial corporation has stopped and the provider is out of business. This debt will be reviewed for possible referral to the Attorney General's office. A similar situation exists for Episcopal Residential HCF which is also out of business. The majority of the remaining, smaller debts have already been transferred and/or collected.

In regard to individual affiliations with a group practice, such determinations would be a more complicated matter. For example, the provider might either be an employee of the group or a partial owner of the group, and the provider could be involved with several groups in different capacities. There would likely have to be a separate investigation to determine the possibility of group liability for each individual provider debt, which might result in the need to issue additional notices with the right of appeal, as well as require the involvement of the Attorney General's office for additional judgments.

Recommendation #4:

Ensure that the Department acts in a timely manner to routinely refer appropriate accounts receivable to the State Attorney General for collection.

Response #4:

The Department agrees and has a procedure in place that results in the eventual referral of negative rate adjustment debts to the State Attorney General for collection, although it will work to improve timeliness. Additionally, OMIG is currently working with the State Attorney General's office to establish protocols for referring outstanding audit-related debts to the State Attorney General for collection. There are currently eight OMIG accounts being handled by the Attorney General.