COUNTY OF ERIE, NEW YORK
OFFICE OF THE COMPTROLLER

COMPTROLLER'S REVIEW OF ERIE COUNTY'S MEDICAID ANTI-FRAUD PROCESSES

MARK C. POLONCARZ

Erie County Comptroller

June 17, 2009

Introduction

Erie County's ("County") annual share of Medicaid totals approximately $200 million, with the State's share slightly higher and the federal government's portion approximately $400 million. This account is the County's single-largest expenditure. The County's growing and State-mandated Medicaid expense has also long been a complaint of county executives, county comptrollers and county legislators.

Since 2005, the State and county governments in New York have increased their attention and efforts on reducing Medicaid fraud and abuse through a range of initiatives and approaches.

Based on the information available to my office, including data provided by the County's Department of Social Services ("DSS") and our own independent research, below is my office's summary of the County's efforts as well as information on measures undertaken by other counties in New York State to reduce Medicaid fraud and recover funds.

NYSAC-IBM "VERIFY-NY" Initiative

In July 2005, concurrent to the development and implementation of the State Medicaid Cap to help limit the annual growth in the county share of Medicaid expense, the New York State Association of Counties ("NYSAC") announced a partnership with IBM to help member counties identify and limit Medicaid waste, fraud and abuse. The initiative, developed by IBM, is called VERIFY-NY and is a data-mining solution that identifies irregular or anomalous billing by Medicaid providers. A number of counties agreed to participate in the program, including Chautauqua and Monroe Counties. In September 2005, then-County Executive Joel Giambra announced that Erie County was going to participate in the VERIFY-NY initiative. In his press conference, Mr. Giambra stated that the County could save between $80-$100 million annually through the reduction or elimination of Medicaid provider fraud.

Ultimately, on December 14, 2005, the Giambra Administration formally asked the Erie County Legislature ("Legislature") to authorize DSS to enter into a future contract with NYSAC to participate in the VERIFY-NY program. The Legislature approved the request on December 16, 2005 (Comm. 32E-9).

On March 16, 2006, the Giambra Administration requested Legislature approval to create a new position of Senior Special Investigator in DSS, to expend an additional $192,499 in 2006 and to pay NYSAC $119,700 for the VERIFY-NY program. The entire expense associated with the request was said to be covered by federal and state reimbursement funding. The resolution also authorized the administration to "execute necessary contracts and agreements for this program." The request was approved on April 6, 2006 (Comm. 6E-8). In addition, on April 6, 2006, the Legislature approved its own legislative resolution (Intro. 5-7) requesting that DSS provide detailed VERIFY-NY data for Erie County as well as asking the Erie County Fiscal Stability Authority ("ECFSA") to consider funding an efficiency grant for Medicaid anti-fraud efforts. To our knowledge, no data was formally submitted to the Legislature by DSS for review

or consideration and the Giambra Administration did not submit any Medicaid fraud efficiency grant applications to ECFSA.[1]

On June 7, 2006, the Giambra Administration signed and executed the NYSAC contract for VERIFY-NY and on August 25, 2006, NYSAC was paid $119,700.

Salient Corporation's Muni-Minder Medicaid Module

Several years ago, Salient Corporation of Horseheads, NY developed a software product named Muni-Minder Medicaid Module. The product tracks Medicaid expense and provider billing in an effort to determine possible waste, abuse or overbilling. Starting in 2005, some counties in New York began using Muni-Minder, instead of VERIFY-NY, to identify potential waste. Chemung County was the first to use Muni-Minder, paying Salient $50,000 in 2005 and receiving information showing potential waste including data that three physicians accounted for 14% of all Medicaid prescriptions in the county in 2005. Later that year, Onondaga County announced it would utilize Muni-Minder at an initial cost of $200,000 with $30,000 annually for maintenance. In March 2006 NYSAC recommended to its member counties that they consider using the product. In 2006, after a RFP, Albany County contracted with Salient to use Muni-Minder at a cost of $241,000 and in 2007, Nassau County contracted with Salient also. In 2008, Monroe County announced it would utilize Muni-Minder, along with VERIFY-NY, to conduct data mining for potential Medicaid fraud or waste.

As of June 2008, at least six counties were using Muni-Minder: Albany, Chemung, Monroe, Onondaga, Broome and Ulster. Muni-Minder was also then about to be implemented in Nassau and Suffolk Counties. In May 2008, Chemung County announced that since 2005, including the federal, state and county shares, approximately $1 million had been saved in Medicaid and other social services (e.g., Welfare to Work program) expense and Salient had been paid $265,000 for the use of its product.

New York State Medicaid Reform Act and Demonstration Projects

In 2005, as part of the State's 2005-2006 Budget, the State Legislature and Governor George Pataki signed the Medicaid Reform Act into law. Within the bill were provisions allowing the State and county governments, as administrators and funders of Medicaid, new mechanisms to help prevent waste, fraud and abuse. Among the reforms, the State allowed counties to apply to the New York State Department of Health ("NYSDOH") to participate in 'Demonstration Projects.' Under the projects, counties would use VERIFY-NY-generated data to investigate anomalies for potential provider fraud or over-billing. Counties could also enter into agreements or memoranda of understanding with NYSDOH and starting in 2006, with the newly-created Office of the Medicaid Inspector General for the auditing, investigation and prosecution of fraud. In addition, the New York State Attorney General's Medicaid Fraud Control Unit continues to work closely with NYSDOH, the Medicaid Inspector General, and counties to investigate and prosecute Medicaid fraud.

[1] To our knowledge, the Collins Administration has also not applied to ECFSA for efficiency grant funds for any Medicaid anti-fraud initiatives.

Signing an agreement in 2005, Rockland County was the first county to participate in a demonstration project and use VERIFY-NY data. Erie County signed a memorandum of understanding with NYSDOH and the Medicaid Inspector General in November 2005. By summer 2006, twelve (12) counties including Suffolk, Nassau, Westchester, Erie, Monroe, Albany, Broome, Orange, Dutchess, Rensselaer, Chautauqua and Rockland had requested and were granted permission by NYSDOH to become demonstration projects. Under the demonstration project process, which is now managed by the Office of the Medicaid Inspector General, counties are allowed to either use their own employees or contractors for audits and investigations of providers. Preliminary Rockland County data, for instance, strongly suggested $13 million in questionable medical provider and pharmacy Medicaid billings.

It is important to note that prior to this time, the State actively resisted county efforts and requests to become involved in Medicaid provider anti-fraud auditing and investigations and counties' abilities in this regard were limited by law and regulation. Under the concept of the demonstration project, counties could now collaborate with the State, especially NYSDOH and the Medicaid Inspector General on these activities.

Amendments to the Social Services Law, Section 145-b

In June 2006, the State Legislature approved and Governor George Pataki signed into law legislation amending the public health law and social services law and establishing the Office of the Medicaid Inspector General. Among the provisions of this legislation (S.8450) was language allowing county departments of social services the ability to participate in a Medicaid anti-fraud investigation and to receive/collect damages when referring the alleged criminal or civil violation to the Medicaid Inspector General and ultimately the Attorney General's Medicaid Fraud Control Unit for possible prosecution.

Counties in New York have two options for working with the State on Medicaid anti-fraud initiatives: through the Demonstration Project process or the Section 145-b process.

DSS Request for Proposals ("RFP") for Medicaid Auditing and Investigation Services

On June 22, 2006, DSS issued a RFP soliciting bids for "Medicaid Auditing and Investigation Services." The RFP stated its scope and objectives as a participating demonstration project were to "identify, root out, and prosecute Medicaid provider fraud" and DSS was seeking a partner for an initial three to five year contract with provisions for one additional two-year extension. Respondents could propose a contingency fee arrangement or a fee for service arrangement.

In November 2006 the Department of Law signed an agreement with three contractors (two law firms and an accounting firm) relating to this RFP. More details follow.

Four Year Financial Plan Medicaid Anti-Fraud Initiative

In October 2005, the County submitted a Four Year Financial Plan ("Plan") to ECFSA. Among the provisions of that Plan was a DSS initiative to "combat Medicaid fraud and abuse" in

conjunction with NYSDOH and the Medicaid Inspector General. Projected 2006 savings was $0, but 2007 savings was projected at $1,398,000, 2008 savings at $2,190,000 and 2009 savings of $3,852,000. In the revised October 2006 Plan, the County's projected savings was changed to $0 in 2007, $250,000 in 2008, $500,000 in 2009 and $1,000,000 in 2010.

In December 2006, Commissioner Weiner sent a memorandum to then-Director of Budget and Management James Hartman regarding "Medicaid Provider Fraud Recovery Estimates in the Four Year Plan." The memorandum did not specify any savings in 2007-2010 and noted that there had been no Medicaid fraud recoveries in any county as of that date. Commissioner Weiner did note that VERIFY-NY data identified 119 providers who billed $68.4 million that had "anomalous behavior sufficient to be flagged for priority investigation." The memorandum also stated that additional profiles had been ordered for other providers totaling $23 million.

In early January 2007, our office contacted DSS to inquire about the December 2006 memorandum and we requested a briefing with DSS regarding the status of Medicaid anti-fraud initiatives. Commissioner Weiner stated that his staff was preparing a progress report and would provide the document to us shortly. On February 6, 2007, we were provided with a progress report regarding the Medicaid demonstration project.[2]

February 2007 Medicaid Fraud Progress Report

The progress report (a copy of which is attached in the appendix) revealed that in addition to the 12 previously-mentioned counties participating in demonstration projects, New York County was also working on a project with the Medicaid Inspector General.[3] The report noted that DSS was going to soon request approval from the Medicaid Inspector General to audit specific pharmacy providers – a process otherwise barred under Social Services Law Section 145-b – but allowable under the Demonstration Project legislation.

The progress report stated that the County was awaiting delivery of remaining VERIFY-NY data (called profiles) from IBM and that using preliminary VERIFY-NY generated data, potential audit targets had been identified for future investigation by the County's Vendors (as hereinafter defined). The report also stated that DSS was awaiting NYSDOH's approval so that the County's Medicaid anti-fraud vendors could access and analyze client-provider data. Finally, the report estimated future County share Medicaid fraud savings of $250,000 in 2008, $500,000 in 2009 and $1,000,000 in 2010.

Throughout 2008, a number of county governments across New York publicly expressed concern that NYSDOH and the Medicaid Inspector General were not acting rapidly enough to process and approve applications allowing the counties and/or their vendors to access Medicaid claim and provider data and act on preliminary VERIFY-NY, Muni-Minder or other data.

---

[2] Legislature Chairwoman Lynn M. Marinelli was also electronically provided with a copy of the report by Commissioner Weiner.

[3] By the end of 2007, 15 counties had entered into agreements with the Medicaid Inspector General to conduct demonstration projects and conduct audits or investigations of Medicaid providers. The 3 new counties were Niagara, Onondaga and Schenectady. In early 2009, 19 counties are participating.

Commissioner Weiner has reaffirmed this point to our office. In a June 3, 2009 letter to our office, he stated that since late 2006, the Office of Medicaid Inspector General issued "a number of countervailing rules... that precluded any of the counties or their vendors (including Erie) from pursuing these investigations and recoveries." In the letter he lamented significant delays by the Medicaid Inspector General in approving data mining exchange agreements, potential fraud targets, and stated that the State did not authorize the County to investigate the "most 'lucrative' pharmacies."

The County's Three Medicaid Anti-Fraud Vendors

On April 6, 2006, the Legislature adopted a resolution allowing DSS to "contract for MA (Medicaid, or medical assistance) audit consulting and investigations services." The resolution (Comm. 6E-8) also authorized the administration to "execute necessary contracts and agreements for this program."

The Department of Law led this process, holding discussions with NYSAC, DSS and potential Special Counsel regarding potential auditing and investigations between September 2006 and February 2007. Ultimately, the Giambra Administration determined that the County should pursue anti-fraud initiatives and recovery under Social Services Law, Section 145-b, rather than through the demonstration project process.

In November 2006, the County entered into a 30% contingency-fee arrangement under Section 145-b with a team consisting of the law firm of DeProspo Petrizzo & Longo of Goshen, NY; the law firm of Levy Phillips & Konigsberg LLP of New York and Goshen; and accounting firm Weiser LLP (together herein referred to as the "County's Vendors"). Commissioner Weiner has stated that the Giambra Administration determined that using Section 145-b was a "more prudent and potentially more lucrative strategy for Erie County than continued active pursuit of the state Demonstration Project." This agreement was not put before the Legislature for approval or for informational purposes.

The County's Vendors have worked together as a team on Medicaid anti-fraud and recovery initiatives for a number of years. The three entities have advertised their services on Medicaid initiatives to county governments across New York State. The law firms maintain extensive plaintiff tort/injury practices and Levy Phillips & Konigsberg specializes in asbestos and mesothelioma litigation. In addition to Erie County, the firms have collaborated on Medicaid anti-fraud and recovery initiatives for the following county governments: Chautauqua, Orange, Broome, Rockland and Suffolk. The status of any Medicaid funds recovered due to the efforts of these vendors in their work for other county governments in New York is not known.

For the past several years, there appears to have been no public manifestation of Medicaid anti-fraud initiatives in Erie County. There have been no public pronouncements, press conferences, letters, progress reports, etc, clocked into the Legislature or publicly announced. At the same time, other counties' work has attained some media attention.

DSS Commissioner Weiner's June 3, 2009 letter to our office stated that in June 2008, the Medicaid Inspector General informed DSS that the State had problems and concerns with the County's Vendors regarding their allegedly inappropriate actions in their Medicaid anti-fraud work in Orange County. Commissioner Weiner's letter noted that "despite promises to the contrary, the (Office of Medicaid Inspector General) has not allowed our vendors to move forward in Orange (or Erie) County. Because of these delays and changing protocols, the County's Vendors recently informed DSS that they are withdrawing from this project."[4]

Since late 2005, County administrations have been pointing to the potential to recover millions of dollars from Medicaid anti-fraud revenue recovery measures with little to no progress to show for the efforts. This lack of progress – due either to State resistance, vendor problems, a County failure to actively pursue anti-fraud initiatives or some combination thereof – is troubling and merits an inquiry and discussion by the Legislature and ECFSA.

Independent Medicaid Management Advisor

In late April 2007, DSS issued a RFP for "Independent Medicaid Management Advisor" with responses due by May 25, 2007. The RFP stated that the advisor to be retained would assist DSS management "... in ensuring that a targeted sample of the Erie County Medicaid caseload meets all State and Federal requirements to receive such assistance. Furthermore, the Medicaid Advisor will assist in identifying potential instances of Medicaid fraud and/or abuse." The RFP also stated that DSS expected to submit a Medicaid management project to NYSDOH for approval as a Demonstration Project. Whether DSS ever submitted this specific initiative to the State for approval or consideration is not known.

In November 2007, the Giambra Administration requested legislative approval of a request to contract with the Rochester-based accounting/consulting firm Bonadio Group for "audits of self-employed applicants for Medicaid" in order to ensure only those persons who meet means tests could apply for and receive Medicaid from the County. On November 29, 2007, the Legislature approved the request (Comm. 21E-17) at a cost of $48,000 with the expense to be covered by federal and state reimbursement. The resolution also stated that the Legislature's Human Services Committee would be provided by DSS with a mid-year and final report regarding this process. DSS and Bonadio signed a contract in February 2008 for this initiative.

Under this contract, DSS provides Bonadio staff with documentation on potential new Medicaid cases (clients) which DSS believes may be questionable. Bonadio staff then analyzes the specific cases referred to them and provides DSS with data on whether or not the client meets income/assets eligibility criteria for Medicaid. Ultimately, DSS makes the final determination with respect to the client receiving Medicaid.

[4] Levy, Phillips & Konigsberg, LLP and DeProspo Petrizzo & Longo were also retained by Erie County in May 2007 to recover damages in the global Vioxx litigation against pharmaceutical company Merck. The law firms' involvement pertains to Vioxx purchased for County Medicaid recipients. That litigation is pending in a federal court in Louisiana.

In late September 2008, the Collins Administration sent to the Legislature a request to amend the contract with Bonadio and increase Bonadio's payment from $48,000 to $64,000 (Comm. 19E-18). The resolution stated that 75 Medicaid cases had been referred for audit and 63 were resolved, with 38 cases denied, downgraded or closed, resulting in "annualized cost avoidance of $373,548." The request was approved on October 23, 2008. As of June 9, 2009, Bonadio has been paid $63,080 under this contract.

In the Adopted 2009 County Budget, Bonadio Group is budgeted to receive an additional $120,000 for services through this program. Under an amendment adopted by the Legislature during the 2009 budget process, further payments or contract amendments in 2009 are subject to legislative approval. The County signed a new contract with Bonadio in December 2008 for this initiative.

We recommend that the Legislature and ECFSA inquire of DSS regarding the status of this Medicaid review process and receive a detailed report.

Other Vendors – Monroe County's Efforts Cited as a Model

Other vendors in New York State offer their services and have been retained by county governments for Medicaid anti-fraud auditing and investigations work. Monroe County, for example uses both VERIFY-NY and Muni-Minder products and employs Bonadio Group, Computer Sciences Corporation ("CSC"), and American Quality Review ("AQR") for this purpose. CSC maintains Medicaid claims data for New York State and audits Medicare cases for the Federal government and AQR works with the Office of the Medicaid Inspector General to investigate Medicaid abuse and waste. Bonadio was hired by Monroe County in August 2006 and its contract to analyze the records of about 24 pharmacies and other providers in Monroe County cost $47,000.

In addition, MAXIMUS is in the middle of a five year contract with the State to provide Medicaid fraud, waste and abuse recovery and retention consulting services to the Medicaid Inspector General, including recovering funds.[5]

In late February 2009, Monroe County and the Office of the Medicaid Inspector General announced that following extensive review of 2004-2005 Medicaid claims by Bonadio starting in October 2006 using Salient's Muni-Minder, one Medicaid provider, Saratoga Pharmacy, had been ordered to repay the State/County more than $3.3 million in claims for which paperwork was in arrears. The Office of the Medicaid Inspector General said this was the largest case to-date in the demonstration projects across the state, and praised Monroe County's partnership with Bonadio and Salient as a model for other counties.[6]

[5] MAXIMUS prepares the countywide cost allocation plan for Erie County under a contract.

[6] In November 2007, Saratoga Pharmacy sued the State over its decision in August 2007 to stop paying the pharmacy for Medicaid claims.

DSS Internal Medicaid Fraud Investigation Units

In addition to vendors, DSS maintains certain internal resources and staff to investigate Medicaid fraud and abuse. Within its newly-created Division of Public Health Insurance, DSS maintains three (3) cost centers in which investigators work: Investigations and Collections (1203030); Resource Recoveries (1203040); and Resource Services (1203050). In 2009, these three cost centers cumulatively have 11 senior special investigators, 13 special investigators, and 14 assistant special investigators; 29 of the 38 positions are in Investigations and Collections. A review of data from 2004-2009 shows essential static employee counts in these cost centers.

DSS documentation provided to this office indicates that one senior special investigator in the Investigations and Collections unit was apparently coordinating Medicaid anti-fraud efforts, including the work of the County's Vendors. However, SAP shows that specific employee resigned from the County in October 2008.

In May 2009 our office requested an update from DSS regarding the status of these positions and functions and their role and work in Medicaid anti-fraud initiatives. One month later, Commissioner Weiner responded, asking that we put our questions in writing and DSS would reply. We have chosen not to do so and instead recommend that the Legislature and ECFSA pursue this inquiry.

Medicaid "Overburden" Recovery

Erie County, like most counties in New York State, receives state aid for the expense of certain patients in long-term care managed care as well as state aid for certain clients discharged from mental health facilities after 1985 – so-called "overburden" cases. These mental health patients are often referred to as "621-eligibles" due to the 1974 state law that initially defined these patients and which placed them under State charge. In many instances, the State, through the New York State Office of Mental Health, incorrectly coded local cases, leading to situations in which counties over-paid and were not fully reimbursed by the State on the overburden reimbursement aid program.

In late June 2008, the Collins Administration sent to the Legislature a request to approve a contract with a vendor, Nancy Rose Stormer, PC, without conducting a RFP. DSS sought to hire this Utica, NY law firm under a 20% contingency fee arrangement to pursue Medicaid overburden recovery. The administration projected possible recoveries exceeding $2 million. The Legislature approved the request on July 10, 2008 (Comm. 13E-25). The Collins Administration signed and executed the contract in January 2009.

Nancy Rose Stormer, PC has been retained by numerous counties in New York to pursue Medicaid overburden recoveries from the State under a contingency fee arrangement, including: St. Lawrence, Rockland, Cayuga, Warren, Oneida, Jefferson, Seneca, Ontario and Westchester. As of today's date, there has been no DSS or Collins Administration reporting to the Legislature concerning recoveries, expenses, or the status of any overburden recovery initiatives. We recommend the Legislature and ECFSA inquire regarding potential recoveries through this vendor.

Conclusion

Not including County employee expense (DSS and/or Department of Law) based on SAP data the County has paid approximately $183,000 to attain data from VERIFY-NY and to utilize Bonadio Group for client review work. No contingency payments to the other vendors appear to have been paid.

In December 2008, Governor David Paterson and the Office of the Medicaid Inspector General announced that the State had recouped $551 million in improperly paid Medicaid funds in the past year. Clearly, Medicaid fraud and abuse is a problem across the state and there are significantly-enhanced, aggressive state and local efforts to reduce fraud and waste. However, Erie County has seemingly not realized any savings or expense reductions. Information provided to this office in June 2009 reveals that the County has made no real progress on Medicaid anti-fraud efforts – at least as through the State's Demonstration Project and Section 145-b mechanisms. Given that Medicaid-MMIS expense to the County is approximately $200 million annually (local share only), this account is a significant expense for Erie County. As such, any County efforts to reduce waste, fraud or abuse and expense in this area are appropriate and necessary. My office fully supports DSS' efforts to reduce expense and abuse in Medicaid, and we have been and continue to be willing to offer any assistance to appropriate parties in this matter.

In his June 3, 2009 letter to our office, Commissioner Weiner noted that the County's Medicaid anti-fraud efforts under Section 145-b were at a standstill and the County's three vendors for that work had withdrawn from the initiative. He stated in his letter that DSS is working with the County Attorney and reevaluating how to proceed, either by re-attempting to participate in the Demonstration Project model or another effort under Section 145-b.

We recommend that the Legislature convene a hearing or meeting of the appropriate committee to meet with representatives of DSS, the Department of Law, the County Administration, ECFSA, the various Medicaid vendors and if necessary, NYSDOH and the Medicaid Inspector General to understand the County initiatives being undertaken to reduce Medicaid fraud and expense. This meeting should also focus on why Erie County has been unable to proceed and investigate and recover damages while other counties have seemingly had significant success in these efforts.

We further recommend that aggressive steps be taken to enable the County to participate in the demonstration project process and/or Section 145-b, and to establish a positive and proactive working relationship with NYSDOH and the Medicaid Inspector General to pursue appropriate anti-fraud investigations and inquiries and to recover funds inappropriately paid out to Medicaid providers and/or clients.

APPENDIX

February 6, 2007 Weiner Memorandum and Progress Report

June 3, 2009 Weiner Letter to Comptroller's Office

MEMORANDUM

Erie County Department of Social Services

TO: Mark Poloncarz, Erie County Comptroller

FROM: Michael Weiner, Commissioner

SUBJECT: Medicaid Demo Project Progress Report

DATE: February 6, 2007

I recently received a request from your office for a status report on the Department's Medicaid Vendor Fraud demonstration initiative. Pursuant to that request, enclosed please find a progress report entitled "Erie County Demonstration Project: Medicaid Provider Fraud, Waste and Abuse Reviews". The summary covers the evolution of the Project including but not limited to: our designation as a NYS DOH Demonstration County, the status of health care queries from Verify NY, the creation of a professional services contract relationship for the purposes of data analysis, consultation and investigation services, the establishment of necessary data exchange and business associate agreements, the extent of coordination with the NYSDOH and the OMIG Office, relevant training activities and obstacles we have encountered in the start up of this very complex and challenging recovery effort.

Please do not hesitate to contact me in the event you have any questions or require additional information after reviewing this progress report.

Enclosure

Cc: Joel Giambra
Jim Hartman
Lynn Marinelli
Larry Rubin

Erie County Demonstration Project:
Medicaid Provider Fraud, Waste and Abuse Reviews

Progress Report

Erie County Department of Social Services
Michael Weiner, Commissioner
February 6, 2007

Introduction

The purpose of this Report is to provide a progress report on the status of the newly established Erie County Department of Social Services (ECDSS) Local District Demonstration Project on Medicaid Provider Fraud, Waste and Abuse. This summary will highlight the status of our fraud efforts to-date in pursuing suspicious or fraudulent provider or recipient Medicaid claims and services and is being shared with the Administration, the County Attorney, the Legislature and the Comptroller's Office for informational purposes.

Background

New York State, through the Department of Health (DOH), is the single entity responsible for the overall administration of the federal Medicaid Program in New York. Historically, the DOH conducted audits and investigations of Medical Assistance (MA) providers with very limited involvement of Counties beyond reporting providers suspected of fraud or abuse. The Counties' ability to conduct compliance reviews was proscribed by 03 OMM/ADM-6 which identified the latitude and limits of local social service districts with respect to provider audits, sanctions and criminal referrals of MA providers. Local districts were effectively prohibited from independently conducting provider compliance reviews or audits. Similarly, local districts were strictly prohibited from pursuing the administrative recovery of overpayments and the imposition of provider sanctions.

The Office of the Medicaid Inspector General (OMIG) was established in July, 2005 by Executive Order and became law in 2006. The OMIG has been established by statute as an independent entity within the New York State Department of Health (DOH) to coordinate all Medicaid provider fraud audit and investigation activities. Recognizing the limits of state resources, a County Fraud and Abuse Demonstration Project was enabled through Chapter 58 of the Laws of 2005. This is the same legislation that capped the financial contribution of counties for the Medicaid program. The Demonstration Project creates a structural incentive for counties to contribute to the efficiencies of the

Medicaid program, as participating counties may share in any net fraud or abuse recovery savings outside of the Medicaid Cap.

Operating as agents of the OMIG, counties participating in the demonstration initiative are able to pursue provider fraud, waste and abuse via audits and/or investigations. With the recent addition of New York City, thirteen (13) local districts are participating in the demonstration project. These counties are now empowered to investigate and audit providers under the OMIG's supervision. In addition to Erie, participating counties include: Albany, Broome, Chautauqua, Dutchess, Monroe, Nassau, Orange, Rensselaer, Rockland, Suffolk, Westchester and New York City. Participation in the Demonstration Project makes the Erie County Department of Social Services (ECDSS) a partner in the effort to detect, investigate and prosecute Medicaid provider fraud, waste and abuse and increase recoveries to both state and local governments.

The New York State Association of Counties (NYSAC) and its county members worked in conjunction with NYSDOH, the OMIG and the NYS Attorney General's Office to develop this project designed to assist New York State in pursuing Medicaid provider fraud at the county level. The project includes the availability of an IBM data analysis tool called Verify NY profiles provided through a statewide master contract with NYSAC. The Verify NY profiles enable counties to identify providers with alleged billing irregularities in comparison to their peer group. Further evaluation is made to determine if a formal audit or investigation is warranted. Erie County has contracted for six(6) such profiles including Durable Medical Equipment, Dental, Family Practice, Pharmacy, Psychology and Physical Therapy services.

With the Verify NY profiles, MA claims data from the state's data warehouse will now be available in a more useful format. The preliminary information obtained through Verify NY and other sources will be used to audit selected providers to determine if fraud, waste and/or abuse are evident. Unlike pure billing audits, these audits focus on provider behavior, potential unacceptable practices and often require a review of medical records.

In order to participate in the Demonstration Project, Erie County entered into a Memorandum of Understanding (MOU) with the OMIG and the DOH in November, 2005. This Agreement established the new roles and responsibilities for local social

service districts to conduct compliance reviews. This MOU empowered local social services districts to conduct MA provider audits, compliance reviews and to potentially share in the savings that may be attributed to recoveries made as a result of an audit/ compliance review. Erie County's historical "local share" is twenty-five percent (25%).

Independent of the Demonstration Project, counties can also pursue recoveries in accordance with the provisions of Social Services Law, Section 145-b. This section of law empowers local districts to recover triple damages for Medicaid payments obtained by means of "a false statement or representation or deliberate concealment of any material fact or other fraudulent scheme of device". It is an option that was recently enhanced through legislation to afford counties greater flexibility in local provider fraud efforts than the tightly controlled Demonstration Project protocols.

Status of Work Completed

The majority of the preliminary work needed to begin the first provider audits in Erie County has been completed. The ECDSS will soon request formal approval from the OMIG to audit specific MA Pharmacy providers. This clearance process is required to avoid duplication of effort among local, state and federal entities engaging in provider fraud audits and investigations. Some data analysis remains to be performed for the Pharmacy providers profiled by Verify NY. This analysis is crucial to making final decisions on the selection of providers to be submitted to the OMIG for audit clearance.

Work Completed from 11/05 to 2/06:

A resolution was passed by the Erie County Legislature authorizing the ECDSS to enter into a MOU with the NYSAC and the DOH. Both agreements have been executed. A Medicaid demonstration project work group was formed by the ECDSS. Research was conducted by the work group including meeting with other participating counties, health insurers who perform provider fraud investigations, software companies that provide data warehouse analysis tools, the NYS Attorney General's Office, the OMIG and the DOH. A Data Exchange Application and Agreement (DEAA) was submitted and approved by the DOH thereby allowing the ECDSS to purchase IBM's Verify NY profiles and to have

the state extract and transfer Erie County claims data to IBM for profiling. In addition, an application was approved by the DOH for the ECDSS to obtain a Medicaid Data Warehouse access license for investigative staff to provide for additional data mining and analysis capability. During this period an agreement was reached with IBM to place an order for six (6) Verify NY vendor profiles as identified earlier. Also, a sample profile was received from IBM and analyzed to obtain experience with data mining efforts.

Work Completed from 3/06 to 5/06:

The ECDSS in collaboration with New York Public Welfare Association (NYPWA) worked to develop local initiatives and to clarify fiscal issues centered on contingent fee based contracts, audit cost offsets to fraud recoveries and reimbursement procedures. Comparative analysis of how cost offsets would be applied to any future successful recovery efforts was also undertaken.

A resolution was passed by the Erie County Legislature to authorize funds for ECDSS to create a Sr. Special Investigator position, purchase IBM verify NY profiles and contract for MA audit consulting and investigations services. The Sr. Special Investigator position is intended to direct the work of an internal MA audit function and to work in conjunction with a consultant agency with expertise in medical services audits to examine and follow-up on billing anomalies as identified by Verify NY profiles. The position was filled and Medicaid fraud training has been received. Two (2) DSS staff from the project work group attended the DOH Medicaid Inspector General's County Demonstration Project training meeting held in March, 2006 at the NYS Police Training Center in Albany. Highlights of the training included: an overview of the roles and responsibilities of the OMIG and the local districts in local district targeting, auditing and investigating MA providers, available tools used in targeting, overview of various types of audits, HIPAA confidentiality issues, expenditure claiming and recovery distribution details.

Work Completed from 6/06 to 8/06:

The ECDSS worked with other New York counties in the Medicaid Demonstration Project to share information about strategies and data analysis. The first

IBM profile ordered by ECDSS was for Pharmacy providers. A Request for Proposal seeking audit and data analysis services was published in the Buffalo News and a bidder's conference was held on 6/28/06. The ECDSS participated in the NYPWA Summer Conference MA Provider Fraud meeting held in Saratoga Springs during this period as well.

Amendments to Section 145-b of the Social Services law were passed by the State Legislature which: 1) permits a county to receive compensation for its participation in a MA investigation which involves criminal fraud that is referred to the NYS Attorney General's Office and, 2) receive triple damages collected by the county or state against a participating provider who received MA payments by reason of fraud or misrepresentation. In addition to audit flexibility provided to counties, these amendments provided an important incentive for the local sharing in recoveries outside of the Medicaid Cap.

Work Completed from 9/06 to Present:

An evaluation of the benefits under the authority of Section 145-b of the Social Services Law was conducted by the County Attorney in conjunction with NYSAC, and included a conference call with potential Special Counsel to clarify the County's options for auditing MA providers through either the Demonstration Project, Section 145-b of the Social Services law or both. Issues discussed included but were not limited to: recoveries, reimbursement claims for disbursements and payment of a contingency fee and the application of accumulated costs against recoveries. Pursuance under Section 145-b for Medicaid Vendor Fraud and Recovery was determined by the Administration and the County Attorney as the more prudent and potentially more lucrative strategy for Erie County rather than sole reliance upon the Demonstration Project. Accordingly, the County Attorney entered into a contingent fee retainer agreement to pursue Section 145-b recoveries with the law firms of Levy, Phillips & Konigsberg, LLP and Deprospro Petrizzo & Longo and the services of their accounting firm Weiser LLP.

A Meeting was also held with IBM representatives for an update on Verify NY profiles and discussions of billing methods and their impact on our ability to analyze certain claims data for selecting an appropriate provider for audit consideration. Trends in

health care claims and growth in spending in various MA service types were reviewed to better understand the potential for audit recoveries.

An initial on-site meeting was held with representatives of our retained Special Counsel Law firms and their CPA firm where strategy and other aspects of the auditing plan were discussed. Protocols were designed to use as a model for targeting providers where revenue is projected to be greatest. Training on the claims of MA providers which are contained in the NYS DOH eMedNY data warehouse system also occurred in Batavia, New York.

Work Currently in Progress

Approval of a Data Exchange Application and Agreement (DEAA) is required to share NYS DOH data with our contractors, as is finalization of the required Business Associate Agreement necessary for HIPAA compliance. These approvals are pending from NYS DOH and are anticipated to be in place shortly. At present, we have been working with our Special Counsel firms Weiser, LLP, DeProspo and Levy to develop queries required to further analyze data contained in the IBM Verify NY Pharmacy profiles. Potential audit targets have been identified and provider practices and behaviors identified as anomalies are being analyzed for formal submission to the OMIG for approval to proceed with audits and investigations. More than thirty (30) pharmacies have been identified for possible submission. We are also working with DOH and the OMIG on the procedures required for moving forward with an acceptable plan to audit targeted MA providers.

What Remains to be Accomplished

We are awaiting delivery of the five (5) remaining IBM profiles. DOH has extracted the raw data for each of these profiles and we are working with IBM and DOH to reconcile and validate the data extracted so that the specific Verify NY Profiles can be generated. Once the profiles are received, the data needs to be analyzed and further investigated to confirm outliers and anomalous behaviors.

Problems or Obstacles that have Hindered Progress

Delays have been encountered in NYS DOH completion of its review and approval of the HIPAA Business Associate Agreement and inclusion of the Special Counsel firms in the DEAA agreement. Both are necessary to share client specific information with the Special Counsel. Technical difficulties have been experienced in gaining access to the DOH MA data. In addition, data integrity issues have been encountered but resolution is anticipated by DOH in March, 2007, as data line limitations required the relocation of state systems to an area where data transmission will be maximized. Finally, legal requirements related to data security have resulted in the necessity for increased security including data encryption software which has not yet been installed on local computers.

Conclusion

There is no pre-existing operational model in place for the execution of this complex and challenging new initiative. It is essentially a work in progress for all entities including Demonstration counties, DOH and the OMIG. We are confident our Project efforts including data analysis reflects the potential for significant recoveries and the Project is close to formally requesting approval from OMIG to audit the first specific MA providers in the Pharmacy area. Anticipated future recoveries that result from audits and investigations that document provider overpayments are conservatively forecasted to be $250,000, $500,000 and $1,000,000 (local share) for County fiscal years 2008, 2009 and 2010 respectively. These anticipated recoveries have been incorporated within the County's Four Year Plan Matrix. We believe these recoveries are realistic and achievable once field audits and investigations are initiated in the very near future.

COMPTROLLER'S
RECEIVED
09 JUN -4 PM 12:59

COUNTY OF ERIE

June 3, 2009

CHRIS COLLINS
COUNTY EXECUTIVE

Mr. Timothy Callan
Erie County Comptroller's Office
95 Franklin, Suite 1102
Buffalo, New York 14202

Re: Request for Contracts

Dear Mr. Callan:

In answer to your questions concerning the Medicaid (MA) Vendor Fraud project, I think it important to review the background that led to Erie County's participation.

The Office of the Medicaid Inspector General (OMIG) was established in July 2005 by Executive Order and became law in 2006. The OMIG was established by statute as an independent entity within the New York State Department of Health (DOH) to coordinate all Medicaid provider fraud audit and investigation activities. Recognizing the limits of state resources, a County Fraud and Abuse Demonstration Project was enabled through Chapter 58 of the Laws of 2005, the same legislation that capped the financial contribution of counties to the Medicaid program. The Demonstration Project created a structural incentive for counties to contribute to the efficiencies of the Medicaid program, as participating counties would share in any net fraud or abuse recovery savings outside of the Medicaid Cap. Operating as agents of the OMIG, counties participating in the demonstration were supposed to be able to pursue provider fraud, waste and abuse via audits and investigations.

In order to participate in the Demonstration Project, Erie County entered into a Memorandum of Understanding (MOU) with the OMIG and the DOH in November, 2005. That MOU established the new roles and responsibilities for local social service districts to conduct compliance reviews consistent with 18 NYCRR Part 517. The MOU was intended to empower local social services districts to conduct MA provider audits, compliance reviews and to potentially share in the savings that may be attributed to recoveries made as a result of the audit/compliance review. Erie County's historical "local share" has been 25%.

Amendments to Section 145-b of the Social Services law were passed by the state Legislature in June 2006, which 1) permitted a county to receive compensation for its participation in a MA investigation which involves criminal fraud that was referred to the NYS Attorney General's Office and 2) receive triple damages collected by the county or

state against a participating provider who received MA payments by reason of fraud or misrepresentation. These amendments, in addition to additional audit flexibility to counties, also critically provided for the local sharing in recoveries outside of the Medicaid Cap, an important incentive when considering this option.

An evaluation of benefits of proceeding under the authority of Section 145-b of the Social Services Law was undertaken in conjunction with the New York State Association of Counties (NYSAC). This included a conference call with potential Special Counsel to clarify the County's options for auditing MA providers through either the Demonstration Project, Section 145-b of the Social Services law or both. Issues discussed included but were not limited to recoveries, reimbursement claims for disbursements and payment of a contingency fee and the application of accumulated costs against recoveries. The option of using Section 145-b as the approach to Medicaid Vendor Fraud and Recovery was determined by the Administration and then County Attorney Lawrence Rubin as the more prudent and potentially more lucrative strategy for Erie County than continued active pursuit of the state Demonstration Project. Accordingly, in November 2006, the County Attorney entered into a retainer agreement pursuant to his authority to retain Special Counsel with two law firms, Levy, Phillips & Konigsberg, LLP and Deprospo Petrizzo & Longo, and the services or their accounting firm, Weiser LLP, to conduct audits and investigations of MA providers on a contingency fee basis and to pursue recoveries primarily under Social Services Law, Section 145-b.

Unfortunately, since that time a number of countervailing rules were issued by the OMIG that precluded any of the counties or their vendors (including Erie) from pursuing these investigations and recoveries. DSS worked with NYS for over a year just to obtain a Data Exchange Agreement that would allow access to NYS files. After much contentious discussion between the counties, vendors and the OMIG to complete the data mining DSS submitted the proposed "targets" to be investigated in April, 2008. Approval by the OMIG of these submissions took over four (4) months. Additionally, the State did not approve investigation of the most "lucrative" pharmacies.

In June 2008, the OMIG informed DSS that they had a problem with the process that our vendors were using in Orange County. DSS was told that it could not proceed because our vendors were allegedly acting inappropriately. A phone conference was set up with both Counties, our vendors, DOH and the OMIG. The OMIG's position (under new administration) was that although Orange County had received approval to proceed with its investigation [on two (2) separate occasions] the OMIG still was refusing to give them the authority to act. During that conference call our vendors identified the problems they were having working with the OMIG and the obstacles that everyone faced because of the time delays and conflicting directives received from the OMIG.

Despite promises to the contrary the OMIG has not allowed our vendors to move forward in Orange (or Erie) County. Because of these delays and changing protocols our vendors recently informed DSS that they are withdrawing from this project.

DSS must now reevaluate how to best proceed. Whatever path we choose [145(b) or demonstration model] it is essential to have the OMIG commitment, support and criteria in advance. We plan to confer with the County Attorney to explore our options on a plan for moving forward.

Rosemary Bapst, in the Special Investigations Division (SID), would be happy to answer your questions concerning the cost centers of the following:

1203030	Investigations and Collections
1203040	Resource Recoveries
1203050	Resource Services

Please provide those questions in writing to my attention at your earliest convenience and we will be happy to respond.

See the enclosed contracts/agreements you requested. If you have any questions please do not hesitate to contact Mickey Osterreicher at (716) 858-6271. Thank you.

Sincerely,

Michael Weiner

Michael Weiner, Commissioner
Erie County Department of Social Services

Enc.

c: Mickey Osterreicher (w/o enc.)
Cheryl Green (w/ enc.)
Greg Gach (w/o enc.)
Al Hammonds (w/o enc.)