



Testimony

Of

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before the

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Committee Chairs Kruger and Farrell, Duane and Gottfried, and all committee members present, I am here today to discuss the budget and goals of the Office of the Medicaid Inspector General, or OMIG, as we are commonly known. On behalf of our staff, who work to protect the integrity of the largest Medicaid program in the United States, I want to express my appreciation for this opportunity.

Today I want to talk about the investment New York is making in Medicaid program integrity, and the return on that investment. New York has been the most successful state in the nation in Medicaid program integrity over the past year, and I am asking for your support for the resources set forth in Governor Paterson's budget needed to continue this success.

I will show you that the OMIG, as an independent entity, can—and has—improved and preserved the integrity of the Medicaid program by conducting and coordinating fraud, waste and abuse control activities for all state agencies responsible for Medicaid-funded services.

I will describe the progress we have made, thanks to the budgetary support that we have received from New York State and federal sources, since 2006, as well as discuss the directions in which we expect to go in State Fiscal Year 2009-10.

I will talk about provider reform—reforming the expectations of some New York health care providers who seem to believe that they are entitled to Medicaid payment regardless of whether they are providing necessary, cost-effective services to Medicaid patients. A few examples:

- The pharmacies which “provide” home-delivered prescriptions to patients who died weeks or months before;
- The nursing homes that bill the Medicaid program for the cost of the owner’s Lexus or Mercedes on the theory that they are occasionally used for patient transport;
- The managed care plans and hospitals that bill Medicaid for prenatal services for males;
- The accountant who tells the OMIG that he “has no workpapers” to support the cost report he submitted on behalf of his client;
- The provider who was overpaid in 2002 for the services it provided, has not repaid the overpayment since 2002, and who tells Medicaid that it was waiting for someone to ask for the money back;
- The health care providers who bill Medicaid for patients who were dead, or hospitalized, or in a nursing home, or incarcerated at the time outpatient services were allegedly rendered.

I want to talk about our efforts to assure that our audit and review processes treat providers fairly, give them fair notice of the standards to which they will be held

accountable, and provide due process for those providers who disagree with OMIG's findings.

Finally, I want to talk to you about reimbursement reforms needed to build on this record of success. Some of these reforms have been proposed by the Department of Health, but reflect changes OMIG believes are critical to assure that New York Medicaid receives high quality services at a fair price.

New Yorkers who work hard and pay their state and local taxes need to know that program integrity issues are being addressed. We need to move from a system which encourages providers to look for excuses, to a system which holds providers accountable for failing to have effective and appropriate billing and compliance systems in place. And we need to enlist the counties, which have demonstrated effectiveness through our demonstration program in these efforts.

FIRST—A LITTLE HISTORY—AND THIS YEAR'S SUCCESSES

The independent Office of Medicaid Inspector General was established by statute in November, 2006. It was created by a bipartisan coalition in the Legislature after a *New York Times* investigative series and Congressional hearings identified significant program vulnerabilities to fraud and abuse. A federal Department of Health and Human Services review issued by the Centers for Medicaid and Medicare Services (CMS) in May 2006 pointed out the limits of the state's existing fraud control efforts: "New York's overall commitment to program integrity has lagged behind the growth of its program," the

report notes. “As the largest single Medicaid program in the nation, New York’s anti-fraud efforts over the last several years have not been proportionate to its vulnerability. In the final analysis, the CMS review team believes that New York must do more to meet its program integrity obligations.”

When a team from CMS returned to do a follow-up review last summer, their report came to an entirely different conclusion. In a January 14, 2009 letter, CMS Director David Frank said, “OMIG has a solid staff foundation, including core clinical staff, to support investigations...Overall audit recoveries . . .have increased since the 2005 review... provider sanction activity has more than doubled from 2005 levels...OMIG provides an increased scrutiny of business enrollments. It conducts onsite reviews of all durable medical equipment providers statewide and pharmacies in New York City...Other effective practices include the use of undercover investigators posing as Medicaid recipients in New York City, regular use of OMIG clinical staff to assist in investigations alongside OMIG investigators, and a procedure to double check that requested edits to stop payments have been quickly entered into the Medicaid system.”

The overall conclusion from the team’s observation and analysis, Mr. Frank stated, is “that New York has satisfactorily addressed the specific issues cited” in the last report. OMIG is scheduled to undergo another comprehensive CMS review during Federal Fiscal Year 2010.

Federal-State Health Reform Partnership (F-SHRP)

In 2006, the federal Department of Health and Human Services (HHS) and New York agreed to the F-SHRP goals—the most ambitious fraud and abuse recovery goals in the history of the Medicaid program. In exchange for receiving funding for health care reform, New York agreed to recover \$1.6 billion over four fiscal years, or to pay the shortfall to the federal government. The first year goal (FFY 08) was \$215 million. By contrast, reported Medicaid recoveries for the entire country in 2007 were about \$305 million.

When I became Medicaid Inspector General in 2007, I had concerns about whether we could achieve the FSHRP monetary goals—and I am aware of a number of knowledgeable people who shared those concerns.

I am pleased to report to you today that New York not only met its 2008 F-SHRP requirement of \$215 million, we far exceeded it—identifying recoveries of more than \$551 million. In Federal Fiscal Year 2009 (October 1, 2008-September 30, 2009), the recovery requirement is \$322 million. We are confident that we will meet that expectation.

This result was not achieved by OMIG alone. A significant portion of the total recoveries was the result of the criminal and civil work of our partners in the Attorney General's Medicaid Fraud Control Unit, led by Special Deputy Attorney General Heidi Wendel, including a major pharmaceutical fraud case against Merck Pharmaceuticals under the

False Claims Act. We had many other partners in this effort, including the Department of Health (DOH), the Office of Alcohol and Substance Abuse (OASAS), the Office of Mental Health and Mental Retardation (OMRDD), the Office of Mental Health (OMH), the Office of the New York State Comptroller (OSC), the Office of Temporary Disability Assistance (OTDA), the Office of Children and Family Services (OCFS), the Workers' Compensation Board Inspector General, and the Commission on Quality Care (CQC). I want to place particular emphasis on the role of the Attorney General's office, since the OMIG's office does not have the authority to criminally prosecute fraud cases. We rely on our partnership with Attorney General Andrew Cuomo's office for prosecution of criminal cases referred by OMIG.

Our partnerships will continue, and we expect to forge new ones in the coming year. The Governor's budget proposal calls for the Office of the Welfare Inspector General (OWIG) to merge with the OMIG. Our office has had discussions with Welfare Inspector General Sean Courtney, and if the Legislature approves this proposal, we believe that this merger will strengthen collective efforts toward our closely aligned missions.

We can identify and deter fraud, waste and abuse, and in those cases where we cannot prevent improper payments on the front end, we are committed to recovering inappropriate payments made to providers.

New York State has become the nation's leader in identifying and investigating problems within the Medicaid program, in Medicaid program integrity, and Medicaid overpayment recoveries. I can say with confidence that New York has become the role model for the nation, the program to which all other states look as they seek to improve their own fraud, waste and abuse control efforts. But our work is far from done.

Medicaid Integrity

Medicaid integrity is a tall order. Medicaid provides coverage to more than four million New Yorkers. More than 200,000 New Yorkers are expected to lose their jobs during this economic downturn, and many of those citizens and their families will turn to the Medicaid program for health insurance. The Department of Health (DOH), which administers the program, now processes more than 400 million Medicaid claims annually to approximately 60,000 active health care providers. The 2009-10 New York State Medicaid program is projected to cost New York approximately \$48.2 billion prior to Executive Budget actions.

The OMIG continuously evaluates new and improved tools and initiatives to expand and further develop our auditing and investigatory capabilities.

Audit Protocols

We are employing consistent audit protocols, shortening audit cycles, and expanding the number and scope of audits we conduct. This is possible in large part because of our

increase in staff, but also because of the development in staff expertise since the OMIG came into existence.

We are building our staff through recruiting efforts. The key to conducting thorough on-site audits and investigations is having knowledgeable, qualified staff, including health care professionals, as well as auditors, to ensure that the process and audit findings are handled properly and fairly. We currently have just under 600 employees; when fully staffed, we will have 760 staff members

We have auditing, accounting, legal, investigative, clinical, administrative and information technology professionals on staff. What they share is a sense of energy and commitment to the citizens of New York State, the Medicaid enrollees, the Legislature and the Governor, to ensure that the Medicaid program is available to those in need, is administered fairly and equitably, and is focused on safeguarding resources and combating fraud, waste and abuse. I have made a concerted effort to meet each new employee and have been successful at reaching out to the vast majority of staff as they enter the office. I have been impressed by the quality, experience and enthusiasm each one brings to our mission.

We have an exceptional data mining staff, using enhanced computer programs, external databases from a variety of sources, and statistical analysis tools, to assist in identifying and recovering improper payments to Medicaid providers. These New York data mining efforts have become a national model.

Audit Plan

The OMIG continues to make significant strides to strengthen the office's anti-fraud and abuse capabilities and has achieved positive results. We expect that the OMIG will realize \$695 million in state savings in 2008-09, \$190 million more than the budgeted target of \$505 million in 2007-08.

The 2009-10 Budget builds on this success by continuing to provide additional resources and statutory tools for us to perform our critical role. We anticipate state share savings of \$820 million—an increase of \$125 million more than anticipated in the 2008-09 Budget, and a 173 percent increase since the inception of the OMIG—will be realized in 2009-10 through a combination of cash recoveries and cost avoidance activities. It is, therefore, vital that the OMIG continue to aggressively recruit and employ new audit, investigative, clinical, and information technology staff to implement new initiatives and activities necessary to achieve this increased savings goal.

Contractor Reductions

The OMIG has been successful in its efforts to recruit numerous state staff positions, including critical investigative staff. As a result, the reliance on OMIG contractors has lessened, and we anticipate that work functions will be transferred from contract staff to state employees. The State Fiscal Year 2009-10 Budget assumes contractor savings through the transfer of activities and functions currently performed by contract investigator staff to state staff, as well as elimination of certain contracts.

Investigations

The OMIG has been given the authority and tools to address investigations in an administrative, civil and criminal manner. We receive complaints from our hotline, 877-87FRAUD (877-873-7283), our Internet complaint form, www.omig.state.ny.us, and from local, state and federal organizations. However, we do not wait for referrals to come into our office. We have a dedicated clinical staff of nurses, pharmacists and other medical specialists who work closely with our investigators. We rely on their experience and expertise to look for trends and abnormalities and use targeting software to find problems to address even before we receive complaints.

We collaborate with law enforcement officials, federal health care fraud taskforces around the state, meet with the Attorney General's Medicaid Fraud Control Unit and the Office of the New York State Comptroller on a monthly basis, and participate with the New York State Fraud and Welfare Investigators' Association (NYWIFIA).

Last summer, we collaborated with the FBI and the United States Attorney of the Southern District of New York in a major undercover operation that resulted in the arrest and indictment of eight individuals charged with Medicaid fraud involving pharmacies in Manhattan. As in this case, our undercover unit works with investigators on ongoing work, but also collaborates with audit, enrollment and targeting staff to pose as Medicaid enrollees to check into services or conduct undercover "buys" of prescription drugs or other goods or services.

When OMIG investigators discover potential criminal behavior, as required by federal regulation and state law, those cases are referred to the Attorney General for potential criminal prosecution. We use our administrative authority to recover overpayments, impose penalties or exclude from participation in Medicaid those health care providers who have been found to have committed an improper practice as defined by New York State law.

The OMIG is also continuing to examine the role and specific personnel needs of our investigative unit to determine the level of forensic skills, including computer forensics, necessary to identify patterns of billing fraud committed by providers using technologically sophisticated billing programs.

Provider Compliance Programs

New provider compliance program regulations (Part 521 of Title 18) were published in the January 14, 2009 edition of *The New York State Register*. These regulations mandate which providers in New York State need to develop formal compliance programs, and how the OMIG will examine these programs during an audit or investigation. These regulations are part of OMIG's efforts to increase the agency's transparency and provide Medicaid program participants with a specific roadmap for effective compliance programs.

Outreach

We have increased our outreach to all constituents—legislators, policymakers, consumers and providers—to become more transparent and accessible.

We post our annual detailed workplan and our annual reports on our Web site, www.omig.state.ny.us. We have begun to post final audit reports on our Web site so that providers can learn from the audits of their peers. This approach follows that of the federal Office of the Inspector General, which has been posting such reports for several years.

We want to assure health care providers that they have an opportunity to be heard and are treated fairly in our work. To that end, my staff and I have personally met with, given presentations to, and heard from providers and their professional and business organizations across the state to discuss our goals and what providers can expect from the OMIG. As part of that effort, we have shared protocols and are working to develop a survey of providers. We released a comprehensive OMIG work plan last April, posted on our Web site, which is believed to be the first such effort by any state Medicaid inspector general or program in the country. Other states have reported that they are now using this work plan as a roadmap for their respective Medicaid integrity programs.

Self-Disclosure Protocol

The OMIG is in the process of finalizing a provider “self-disclosure” protocol. This document encourages providers who have found a reportable issue or an improper

payment or procedure within their own operation to report this to the OMIG prior to a formal OMIG audit. Providers are in fact required to disclose such discoveries when they are found; the OMIG then works with the provider to fully investigate the problem. The new self-disclosure procedure offers benefits for those providers who self-identify an overpayment and initiate repayment by waiving interest or establishing flexible repayment plans. This protocol will also enhance the process for both the providers and the OMIG, and is expected to be released in the next couple of weeks.

County Demonstration Program

We are overseeing a county demonstration program which involves a partnership with a total of 16 counties (including the boroughs of New York City). The counties are involved in more than 155 ongoing audits, along with their contractors, with OMIG's assistance.

We are particularly proud of our joint efforts in Monroe County, which recently resulted in an administrative law judge's upholding of a pharmacy audit recovery of more than \$3 million. Great strides have been made in other counties as well, including Albany, Broome, Rensselaer and Westchester, as well as in New York City, and we are encouraged by how well local district officials are receiving the program. We have also been impressed by their enthusiasm for this joint effort to fight fraud, waste and abuse.

I would like to add several other topics that may be of interest before closing.

- **Nursing home reimbursement system:** Based on OMIG’s experience in auditing New York nursing homes, it is clear that reform is urgently needed. New York State reimburses nursing homes on average more than any other state, and yet, based on quality information released late last year by the Center for Medicare and Medicaid Studies, New York’s skilled nursing facilities do not deliver better results. The reimbursement rates for nursing homes rely on 1983 as a base year; legislation passed in 2006 would have brought that base year to 2002 as of January 1, 2009. However, that means the base year would still be nine years old. The complexity of the reimbursement system has led to a number of questionable practices and creative interpretations of nursing home regulations, which OMIG auditors have found during the course of their work. Together with Commissioner Daines, I urge the state to reform and overhaul this reimbursement system to better reflect the actual conditions of care within each nursing home, and to develop a quality incentive program to enhance the rates of those facilities that deliver the best care. Providers and policymakers alike will agree that a rational approach to nursing home reimbursement is long overdue in New York State.
- **Lawsuits filed as a result of “whistleblower” actions under the False Claims Act at either the federal or state level can result in real and substantial dollars for the state:** The OMIG works closely with the Attorney General’s Medicaid Fraud Control Unit and federal agencies on these cases. Based on my experience, these actions typically take a minimum of three years from inception to completion. Most recently, a national case involving the Eli Lilly

pharmaceutical company for one of its drugs, Zyprexa, was settled for more than \$1.4 billion, including \$90 million for New York's Medicaid program.

- **Bureau of Allegations and Complaints:** Following an extensive review process, we have established a new bureau within the office, to be called the Bureau of Allegations and Complaints. This bureau will address the issue of follow-up when the OMIG receives an allegation or a complaint related to the Medicaid program from either an external or internal source.
- **Exclusions:** One of the most effective tools the OMIG has to protect the Medicaid program and its enrollees is administrative sanctioning authority, empowered under New York State laws. An excluded individual or company cannot bill the Medicaid program, nor can it order, recommend or prescribe any services that Medicaid would cover. This powerful tool led to the exclusion of 417 providers and termination of 28 providers between April 2008 and today. During the same time period, we made 63 case referrals to the Attorney General's Medicaid Fraud Control Unit based on information supporting a reasonable suspicion of potential fraud. Most recently, our office has begun to post the names of excluded, restricted and terminated providers on our Web site, to enable the OMIG's office to make daily updates, thereby allowing providers to use the list as a screening tool for potential employees, contractors and medical staff.

Governor Paterson has demonstrated courage and leadership in the 2009-2010 Budget.

The cuts necessary to achieve balanced budgets in the next two years will be painful.

It is OMIG's responsibility to assure that the limited funds are available to pay for quality services for patients who need them.

We will further reduce state expenditures going forward by changing provider behavior through the use of several tools we have developed, including using quality data, pre-payment edits to review or prevent payment of suspect claims, the "post-and-clear" process to assure that prescriptions are valid, enrollee recipient card swipe and enrollee restriction programs.

The citizens of the State of New York deserve fiscal responsibility and integrity from our state. My staff and I promise to contribute to that by focusing on finding potential instances of fraud, waste or abuse—and recovering the money that is rightfully owed to New York State's taxpayers.

Again, thank you for this opportunity to speak today. I would be happy to answer your questions at this time.