COUNTY OF ERIE

MARK C. POLONCARZ
COUNTY EXECUTIVE

May 8, 2013

Honorable Stefan I. Mychajliw
Erie County Comptroller
95 Franklin Street, 11th Floor
Buffalo, New York 14202

Re: Comptroller Investigation into Medicaid Recertification Process

Dear Comptroller Mychajliw:

On May 2, 2013, Deputy Comptroller-Audit Teresa Fraas orally informed the Department of Social Services ("DSS") that in addition to the Comptroller's Office's announced audit of the Medicaid recertification process your office was also initiating an investigation based on the same underlying whistleblower information that prompted the audit. Specifically, the whistleblower or whistleblowers apparently alleged DSS was automatically recertifying Medicaid clients without verifying certain information and conditions.

As you know, since your office announced the commencement of separate Medicaid and Temporary Assistance audits in late January 2013, DSS has met and/or exchanged documents and emails with your staff, including Ms. Fraas, several dozen times. DSS staff has spent many work hours working with your staff to accommodate its needs and requests. Along the way, you have also changed your audit scope several times.

My administration takes serious any allegations of potential improprieties or lack of adherence to State or local regulations or protocols. My administration has been, and will continue to cooperate with the Comptroller's Office.

Recently, Ms. Fraas notified DSS in writing and orally that your office wished to interview six (6) DSS employees, including Commissioner Carol Dankert-Maurer, who Ms. Fraas identified as "targets" of the investigation. In an email, Ms. Fraas stated that you, personally, would also attend and participate in the questioning of DSS employees. However, on May 3rd, with no advance warning or consultation with DSS, Ms. Fraas sent an email directly to eighty (80) DSS employees requesting they make themselves available for interviews by the Comptroller's Office. As I am sure you can understand naming six or eighty employees as "targets" of an investigation raises a host of concerns and issues among career civil service employees in DSS.

Upon being notified by Ms. Fraas on May 2nd that the Comptroller's Office was commencing an investigation of the Medicaid recertification process, Commissioner Dankert-Maurer notified your office in a letter dated May 3, 2013 that the County had received written guidance from the New York State Department of Health ("NYSDoH") on the recertification process and assurances that the County was following State protocols (a copy of Commissioner Dankert-Maurer's letter and attached NYSDoH guidance is enclosed for your review). Specifically, NYSDoH notified Erie County that the County's automatic Medicaid recertification process followed State guidelines and requirements for Medicaid recertification. NYSDoH made it clear that Medicaid eligibility must be maintained until the recertification is completed, stating:

> Medicaid recipients who return their renewal form before the end of their certification period must be continued without a lapse in coverage until a determination of ongoing eligibility is made...

The NYSDoH guidance letter also made clear that the State policy is that Medicaid clients should retain their benefits until the recertification process was completed.

> . . . extending coverage for 12 months for recipients who returned their renewal, but where the county was (and is) unable to complete a redetermination of eligibility prior to the coverage expiration date (cases with certification end dates of January 31, 2013 and February 28, 2013), is a reasonable action to take to ensure that there is no lapse in coverage. This is within State policy provided a redetermination of eligibility is made as soon as possible following the original authorization end date.

As this indicates, the County is in compliance with State policy and guidelines. Given this information from the State, it seems superfluous and a misuse of taxpayer resources for Comptroller staff to conduct 80 (or more) interviews of DSS employees in a continued investigation or audit given the State's written assurance that the County is in compliance with existing policy and protocols concerning Medicaid recertification.

Nevertheless, should the Comptroller's Office continue to deem said investigation of the Medicaid recertification process in light of the NYSDoH's letter a worthy use of limited County resources, you may contact DSS employees through their supervisors for interviews, as long as said interviews do not disrupt the employees' normal business, which is to conduct Medicaid recertification and review.

Finally, I must state for the record my concerns about your office's handling of this matter. Before you even began your Medicaid audit, met with DSS for an entrance meeting, or gathered and vetted any evidence regarding this matter, your office sent multiple communications to a number of federal and state agencies making a number of serious allegations against DSS. Those agencies include the New York State Attorney General's Medicaid Fraud Control Unit, the Office of the New York State Comptroller, the New York State Office of Medicaid Inspector General, and the Office of Inspector

General of the U.S. Department of Health and Human Services. Your office also contacted media outlets. In your communications, your office appeared to accuse DSS of engaging in purported wrongdoing, raising questions about your office's motives, agenda and potential bias before you even began any field work. As the former Comptroller, I find that behavior to be improper, unethical and not conducive to a serious discussion and resolution of potential issues.

This administration has, and will continue to cooperate with your investigation, as long as it is a legitimate inquiry and does not waste taxpayer resources.

Sincerely,

Mark C. Poloncarz, Esq.
Erie County Executive

MCP/mt

cc: Erie County Attorney Michael Siragusa
Carol Dankert-Maurer, Commissioner of Social Services
Erie County Legislature
Erie County Fiscal Stability Authority
New York State Department of Health

COUNTY OF ERIE

MARK C. POLONCARZ
COUNTY EXECUTIVE

May 3, 2013

Teresa M. Fraas, Deputy Comptroller-Audit
Erie County Comptroller's Office
95 Franklin Street, 11th Floor
Buffalo, New York 14202

Re: Medicaid Recertification Investigation

Dear Ms. Fraas:

On May 2, 2013, you met with me to discuss your office's separate audits of the recertification process for Medicaid and Temporary Assistance. In our meeting, you provided me with new information and details concerning your Medicaid audit. For the first time since January 31, 2013 when you issued a letter announcing the audit, you informed the Department of Social Services ("DSS") that the report(s) to the Comptroller's whistleblower hotline was only about automatic recertification in the Medicaid program during the months of January and February 2013.

In our May 2nd meeting, you notified DSS that while you have postponed your Medicaid audit, you have instead commenced an "investigation" into Medicaid recertification. You stated for the first time that your investigation was caused by five reports/tips you received on your whistleblower hotline. As you know, this clarification that you were conducting an investigation was important, as your previous communications to DSS were handled through the formalized process of an audit conducted under Government Auditing Standards. You acknowledged that you had not made a clear distinction or communicated to DSS that you were conducting an investigation. Because you have delayed the commencement of a Medicaid audit and have instead, commenced an investigation, the nature of DSS' interaction with the Comptroller's Office on this issue has immediately and significantly changed.

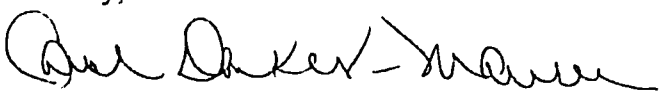
Based on your clarification on May 2nd that the Comptroller's Office intends to proceed with an investigation related to the whistleblower hotline allegations (and not the rigorous methodology employed in a governmental audit conducted under Government Auditing Standards), we are able to offer you additional information regarding Medicaid recertification.

Please find attached a letter from the New York State Department of Health ("NYSDOH"), the state agency responsible for oversight of local districts that perform Medicaid eligibility functions. I believe the State communication is self-explanatory and clear. NYSDOH is aware of DSS' recertification practices and finds them consistent with State policy. As I have repeatedly stated throughout this process, DSS is committed to following State regulations, guidance and policy. NYSDOH has formally stated that the Medicaid recertification process employed by Erie County follows and complies with State regulations and policy.

DSS is certain you will agree that this State communication brings this matter to a close. Neither of us will want to misdirect limited County resources pursuing a matter initiated from an email from a mid-level manager who misunderstood the work process. As such, I will inform the DSS staff who you seek to interview concerning Medicaid recertification that we consider this a closed matter.

We anticipate hearing from you in order to proceed with the Temporary Assistance audit in the most expeditious manner and look forward to our continued cooperation and coordination.

Sincerely,



Carol Dankert-Maurer, Commissioner
Erie County Department of Social Services

Attachment

NEW YORK
state department of
HEALTH

Nirav R. Shah, M.D., M.P.H.
Commissioner

Sue Kelly
Executive Deputy Commissioner

February 15, 2013

Carol Dankert, Commissioner
Erie County Department of Social Services
95 Franklin Street
Buffalo, New York 14202

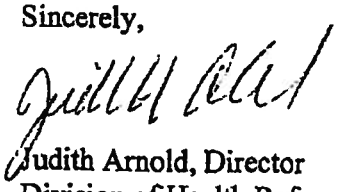
Dear Commissioner Dankert:

I am responding to your request for clarification about the Medicaid renewal policy. Medicaid recipients who return their renewal form before the end of their certification period must be continued without a lapse in coverage until a determination of ongoing eligibility is made and notification sent regarding any increase or decrease in coverage.

With that being said, extending coverage for 12 months for recipients who returned their renewal, but where the county was (and is) unable to complete a redetermination of eligibility prior to the coverage expiration date (cases with certification end dates of January 31, 2013 and February 28, 2013), is a reasonable action to take to ensure that there is no lapse in coverage. This is within State policy provided a redetermination of eligibility is made as soon as possible following the original authorization end date. A time period of 90 days for a redetermination of eligibility is reasonable. The redetermination of eligibility should include a review of the renewal and any accompanying information, a new Medicaid budget to support the coverage period and reconciliation of any back end matches such as Resource File Integration. Proper notification must be sent following the redetermination of eligibility.

If you need any further clarification, feel free to contact me.

Sincerely,



Judith Arnold, Director
Division of Health Reform and
Health Insurance Exchange Integration
Office of Health Insurance Program