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COUNTY OF ERIE

MARK C. POLONCARZ

COUNTY EXECUTIVE

July 3, 2013

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

Re: Medicaid Recertification Audit and Investigation

Dear Comptroller Mychajliw: *STEFAN*

On June 25, 2013, your office made comments at the Erie County Legislature's Government Affairs Committee Meeting regarding the alleged "rubber stamping" of the Medicaid recertification process by the Department of Social Services ("DSS"). Those comments seemingly indicate a lack of finality specific to the previously suspended Medicaid Audit or a separate Medicaid investigation, investigations to which there has been no activity for several months, and, moreover, are in contravention to proof provided to your office by DSS of the legitimacy of the recertification process.

As you know, 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 previously-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, a whistleblower or whistleblowers apparently alleged that DSS was automatically recertifying Medicaid clients without verifying certain information and conditions.

On May 3, 2013, DSS Commissioner Carol Dankert-Maurer provided Ms. Fraas with a copy of written guidance from the New York State Department of Health ("NYSDoH") regarding the recertification process. The NYSDoH letter assured DSS that its Medicaid certification process followed State protocols and DSS was operating within appropriate State guidelines (another copy of Commissioner Dankert-Maurer's letter and attached NYSDoH guidance is enclosed for your convenience). In addition to this and my May 8th letter (also attached) on the same topic, it is my understanding that a third copy of the NYSDoH letter was acquired by your office independently from the Division of Information and Support Services after your

office requested confirmation from the County's email system that the NYSDoH letter was in fact, legitimate and had been sent to Commissioner Dankert-Maurer by the State regulator.

Specifically, NYSDoH notified Erie County that the County's 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 not only in compliance with State policy and guidelines but the County "must" continue Medicaid coverage "until a determination of ongoing eligibility is made." Given this confirmation from the State oversight agency that DSS is not only operating properly on the Medicaid recertification process but is mandated to recertify until a review can be held, and the fact that your office has suspended both the audit and investigation into the recertification process, it seems disingenuous and arbitrary to rehash this issue before the Legislature. This is what likely prompted Legislators Joseph Lorigo and Ed Rath to write misinformed editorials on the subject recently published in the *Bee Newspapers* (copies of these are also attached).

Every month, DSS processes 5,000 new Medicaid recertifications, plus thousands of new applications. The work is complex and challenging under the best of circumstances. Given looming State changes in Medicaid administration, the time it takes to train new County Medicaid employees, as well as heavy caseloads for examiners, your continuing rhetoric, without proof, is harming the County and inspires false perceptions by the public.

On multiple occasions you have been provided with the State's written assurance that the County is in compliance with existing policy and protocols concerning Medicaid recertification. As such, I unfortunately must pose for the third time the question of why you see fit to continue to level allegations of wrongdoing by DSS employees, as you did before the Government Affairs Committee, without any proof or basis. Not only does this seem to be a waste of taxpayer resources, but it calls into question your veracity and motives in continuing to pursue whistleblower claims which have been shown to be untrue.

Having established the Comptroller Whistleblower Hotline in 2008 I know all too well that many tips received through the hotline or other sources have no basis in reality after the claim is fact checked by auditors. All claims must be verified and no claim should be discussed in public until the assertion can be confirmed or rejected as being truthful. Your office's actions in this regard are lacking, as evidenced by either your blind acceptance of the claims or your own actions in misrepresenting the allegations. In short, I would encourage you to take your own words to heart, and to verify your own actions and statements before publicly making unfounded and false allegations against County employees.

Additionally, you have repeatedly asserted you encountered road-blocks and your investigation was thwarted. For the record, since your office announced in late January 2013 that you were conducting DSS audits, DSS has held 43 meetings related to the audit and investigation, over 100 email exchanges with Comptroller staff, and over two dozen formal written communications with your office. During this process, Ms. Fraas has repeatedly made comments on the record and on audiotape and contradicted herself later and/or gone back on her word or comments. You have also repeatedly contacted state and federal agencies and the media, breathlessly making assertions and claims without any proof. It has become increasingly difficult for DSS personnel to trust the representations made by you and Ms. Fraas on behalf of your office. Contrary to your own words, you neither trust nor do you appear to verify.

As you know, in my previously mentioned May 8th letter, I assured you DSS and my administration would continue to cooperate with your Medicaid audit and investigation. Even after I assured you in writing that DSS employees would be made available to auditors for interviews, you issued subpoenas to eighteen (18) of these career civil service employees and then represented to the public, Legislature and media that you needed to issue subpoenas because DSS would not cooperate. Such a claim was false and you knew it to be untruthful. You later repeated your false testimony to the Legislature and in a press release on June 25, 2013.

I have sent you numerous letters requesting clarification regarding this matter, and you have never responded. Rather, your communications come in the form of press releases and media announcements. Such behavior, while perhaps acceptable to you, is beneath your office

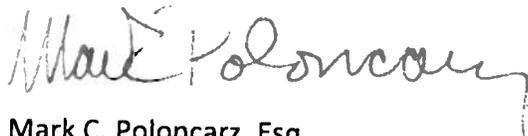
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and does a disservice to the career civil servants of Erie County in all departments. It is irresponsible and demeaning to the people you represent.

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. However, so far, your behavior does not inspire confidence, including your suspect motives, which is profoundly troubling.

Sincerely,

A handwritten signature in cursive script that reads "Mark Poloncarz".

Mark C. Poloncarz, Esq.
Erie County Executive

MCP/mt
Attachments

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



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.

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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

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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,

A handwritten signature in black ink, appearing to read "Carol Dankert-Maurer". The signature is fluid and cursive, with the first name "Carol" being the most prominent.

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

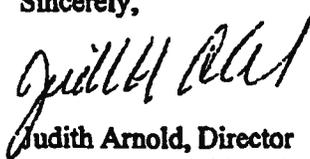
Dear Commissioner Dankert:

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

HEALTH.NY.GOV
facebook.com/NYSDOH
twitter.com/HealthNYGov

Comptroller's report must answer Medicaid questions

Nearly every dollar of Erie County property taxes goes to pay for the county's Medicaid bill, which totals more than \$211 million each year.

That is an important figure for Erie County residents to understand, especially as the Comptroller's Office is investigating claims that Medicaid recertification applications may not have been processed properly, which could lead to costly penalties for the county.

Recently, documents associated with Medicaid applications were found among sensitive personal papers improperly disposed of by the Department of Social Services. The comptroller stated before the Legislature that his office was banned from accessing those same documents while conducting an investigation of DSS. The comptroller's auditors had been following a whistleblower's tip that claimed county employees were directed to recertify Medicaid applications without verifying income or other information provided by the applicant. In essence, DSS workers were rubber-stamping applications for Medicaid. Clearly, this is an extremely serious matter that could be very costly for the county. If anything was done inappropriately or rules were not followed, I believe this needs to be addressed immediately.

It is my understanding that the Comptroller's Office is preparing to close its investigation and that a report is expected to be brought forward shortly.

Medicaid costs continue to be a huge burden on taxpayers, and the cost grows significantly each

year. Therefore, each application and recertification must be thoroughly reviewed without exception.

As a legislator, it is my job to ensure that Erie County is not paying benefits that aren't warranted. Rubber-stamping recertification applications without reviewing qualifications would be unfair to the taxpayers of Erie County. Simply put, it creates an environment to waste taxpayer dollars, rather than invest them in helping people. As far as I am aware, there are regulations put in place, and we trust that the county will follow and abide by those regulations to ensure we are best serving all residents of Erie County and respecting the taxpayers who fund the services.

I find it interesting that in 2012, the county executive pushed for the creation of the Medicaid Anti-Fraud Task Force to investigate and expose provider-level waste, fraud and abuse within the system. Yet we are now talking about county employees being

directed to "rubber-stamp" Medicaid requests.

I would have expected an administration focused on stopping and preventing Medicaid fraud to have a strict policy concerning how employees handle applications. Why wasn't the imposed task force investigating this issue?

Currently, there is a lot of concern surrounding DSS and how it handles personal information. I look forward to reviewing the entire report to understand what occurred and what effect this would have on the county.

Anyone with questions or concerns about a county matter can contact my Legislative Office at 858-8922 or email joseph.lorigo@erie.gov and I would be happy to discuss them with you.



JOSEPH LORIGO

Erie County Legislator

Investigating Medicaid fraud needs to be priority of county executive

Last week, the Erie County Legislature concluded its investigation into what has been referred to as "document-gate," the improper disposal of sensitive documents from the Department of Social Services. After the county comptroller brought the issue to the public's attention, DSS appropriately revised its practices and has implemented changes to ensure that all documents are handled and disposed of properly.

When the issue first came to the attention of the Legislature, my colleagues and I in the minority caucus called for an immediate investigation. Identity theft is a major concern in our country. The number of identity theft incidents has reached 9.9 million a year, according to the Federal Trade Commission. While it was disappointing to learn that residents' personal identification was compromised in the past, I am pleased that the issue has been resolved following Legislature hearings. The people we serve deserve to have their information protected and should not have to worry about being put at risk because of something the county did or did not do.

There is a second aspect of this issue that is far more serious and could be quite costly. The comptroller received a whistleblower tip that county employees were directed to rubber stamp Medicaid recertification applications. If that is accurate, it would mean that county workers weren't verifying that the application met the requirements and applicants continued to receive Medicaid benefits without proof of qualifications. If any resident received Medicaid benefits when they should not have been, the county could face penalties and unnecessary costs.

It was after being denied access to Medicaid documents and records that the Comptroller's Office found personal papers in an unsecure location, which prompted the investigation into Medicaid document handling by DSS. Now that the document disposal issue is resolved, I think the county needs to shift its focus to the rubber stamping matter. If

rubber stamping of Medicaid recertification applications has occurred, that is a tremendous disservice to the hardworking men and women who support the program through their taxes.

While there are many residents who rely on Medicaid benefits and meet the requirements, there is still a significant amount of fraud and abuse within the system. New York State has reported in the past that approximately 15 percent of the cost of Medicaid pays for fraudulent claims.

One important question to the county executive: Where is the county's Medicaid Task Force on this issue, and what information can it provide?

It is my understanding that a report will be released soon from the Comptroller's Office that will detail the alleged rubber stamping issue and upon receiving that report, I will ensure that all necessary changes have been implemented and that the county is in full compliance with Medicaid procedures.



EDWARD RATH

Erie County Legislator