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TO: MEMBERS OF THE LONG ISLAND JEWISH ORGANIZED MEDICAL STAFF

There are times when we learn from our mistakes but the following report may help some learn from the mistakes of another practitioner.

The operator of two state authorized clinics was informed by the Medicaid Inspector General that an audit of his facilities uncovered approximately 6 million dollars in overpayments.

The aggrieved party challenged the findings and a final audit report (FAR) reduced the amount quite substantially to 1.85 million! This last amount was the result of an extrapolated estimate and the operator was duly informed that it had been reached on a sampling of encounters. By regulation there is a presumption that it is accurate in the absence of contrary evidence.

Strangely enough, in the same correspondence, a lower figure of 1.4 million was given as a lower confidence level of what was owed. This last phrase a lower confidence level – is defined as meaning that there is a 95% chance that the true figure is higher. Although this may occur the practitioner is afforded the opportunity of accepting the lesser amount as a final number PROVIDED that the lower amount will be accepted and paid in full. There is a 20 day period within which this option is to be exercised.

The regulations further provide that in the absence of a response withholding will begin by OMIG and OMIG can pursue a higher amount. The Notice of Hearing referred to the lower amount of 1.4 million as the figure which would attempt to be established as being owed. It was at a much later time that OMIG determined to move forward to argue for the 1.85 million. The clinic brought a proceeding in court to challenge the OMIG pursuit of the higher amount as opposed to the lower figure offered in settlement.

The trial court ruled against the clinic but that verdict was overturned by the Appellate Division which found that the OMIG was bound to the lower figure as that had been the figure mentioned in the Notice of Hearing. Unfortunately, that was not the last word on the subject.

On appeal to New York's highest court, the Court of Appeals held that the 1.85 million figure had been alluded to in correspondence and the clinic had, in essence, waived the opportunity to accept the 1.4 million proposal and could not now claim surprise that the higher amount was still in play. The fact that the clinic had not settled when it could (within 20 days of that earlier proposal) would not undercut the OMIG position at a later point.

The court added that it is only in an unusual factual setting that a governmental agency would be prevented from fulfilling its duties.

Lesson learned? All this could have been avoided had the clinic brought the dispute to closure by accepting the lower amount proposed.

Respectfully submitted,

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