



**Testimony by
Albany County Comptroller
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To The New York State Senate Hearing
On Medicaid Fraud Waste and Abuse
Given September 21, 2005**

Senators,

Thank you for having this hearing. Earlier today you heard about the view from 20,000 feet. I will try to give you some perspective on Medicaid Fraud from the ground level in New York State.

As Albany County Comptroller, I started an audit last year of our prescription drugs that were paid for under the Medicaid program. When I tried to obtain the data through the Department of Social Services, the Social Services Commissioner said the data was not available. When we talked to the Department of Health they also said the data was not readily available. The Albany County Comptroller actually had to FOIL the information on the 3000 drugs that Albany County paid for under the Medicaid Program. The reason we audited these drugs was due to the fact that our spending increased from \$25 million to \$36 million of Federal, State and Local dollars in one year. As you know, because of the differences and variegates of reimbursement, Medicaid drugs have a 25% local share reimbursement which results in a larger portion of our budget than our 10% share of the \$80 million we spent for long term care. Given the dollars in question we audited the Prescription drug portion of Medicaid for Albany County in late 2004. It was difficult to analyze results without the tools to properly perform your job, and made more difficult by a culture that does not encourage change. Especially when no one wants to watch people pick up the rock and look at what is happening underneath.

Our audit looked at 150 of the most expensive drugs we purchased out of over 3000 prescription drugs paid for in 2002. The 150 prescriptions accounted for \$10.7 million of the \$36 million spent that year for Medicaid drugs. We were overcharged \$2.4 million on the \$10.7 million of drugs and the average wholesale price was inflated for 141 out of the 150 drugs audited. We talked to the County Attorney about this and it was agreed that there appeared to be fraud and we could potentially collect for 7 years of fraudulent over billing of Albany County, New York State and the Federal government. As a result, the County has joined the class action lawsuit against those Pharmaceutical companies for the recovery of these funds.

This year as we move forward, and I want to echo the sentiments of the County Executives and other officials, we appreciate that the Legislature and Governor have tried to do something to help us with Medicaid. We all know that a cap, while it is a wonderful thing for us this year, will limit what we

take out of the front pocket of the taxpayers. We all know that the two back pockets are the Federal pockets, and the left pocket (Freudian slip here), but the left pocket is the State pocket. The reality is that if you cap what you are taking from one pocket but do not contain your overall spending, all that does is drive up the cost for the other pocket. We appreciate your efforts and we would hope that you would have the same insights and protections in place when the next budget comes out.

This year we began an effort to do a Medicaid fraud audit on our own prescription drugs. When that report came out in the NY Times it was something that got everyone's attention. We met with people from the Department of Health and from the Attorney General's Office. We started to work on trying to do something about this developing problem.

Through a constituent's request, I was referred to a District Attorney in St. Lawrence County, Gary Miller, who I spoke with about problems we had here and about a doctor from whom we were trying to get a referral. DA Miller actually referred me to their DEA contact Timothy Sinnigen who has done a phenomenal job. I would request at your future hearings that you invite Agent Sinnigen to come and present the Medicaid Fraud investigation he cracked open in St. Lawrence County.

As a result of this case, last Tuesday three doctors and one pharmacist are turning in their licenses and can no longer prescribe prescription drugs. Over a million dollars in Medicaid drugs which were illegally diverted are no longer going to be on the streets, and future fraud is something that is going to be prevented.

When you look into the issue of a multiplicity of agencies responsible for Medicaid Fraud it is surprising that anything gets accomplished, given the alphabet soup of agency turf issues. We met with DOH and the Attorney General's Office to suggest a joint effort into investigating Medicaid Fraud in Albany County in July. We offered to do a Medicaid audit at the ground level, we let them know that our office has the capabilities to conduct such an audit and we'd like to assist in these efforts. We were assured that this was possible.

As time passed we met with NYSAC, several Counties and the DOH Medicaid Fraud experts. Although the dialogue between these agencies regarding the MOU was good, there is a great deal of difficulty dealing with multiple agencies about this matter. For example, we held a meeting to try to

plan a strategy to investigate the possible illegal sale of pharmaceuticals in our own County. We met at the DEA office in Albany with The Bureau of Narcotic Enforcement (BNE), the Office of Professional Medical Conduct (OPMC), the Department of Health's (DOH) Medicaid Fraud staff, individuals from the County Attorney's office, and many other people who we believed would be significant to the discussion. It was apparent that when you go through these conversations there are many loop holes and places where the ball gets dropped because of the way the statutes and the regulatory climate is set up.

I would very much appreciate having the opportunity to put some suggestions about closing these gaps before you. It is not just the stream lining that poses a problem; it is also the coordination that creates the real difficulty. One area where this is evident is where a doctor can lose his or her license and that same doctor is still allowed under New York State Law to continue to provide referral services and act as a medical advisor for the Worker's Compensation Board. Another area is the prohibitions between BNE, OPMC, DOH Fraud staffers and the DEA in sharing information. We need to connect the dots and close the gaps of information sharing when investigating fraud, waste and abuse. Your assistance with these issues of concern would be appreciated.

One of the obstacles to fighting fraud, waste and abuse of Medicaid is the privacy issue. While critically important we need to develop the protocols for auditing Medicaid that won't become mired in the excuse of HIPAA and confidentiality. These issues can be sometimes used as an excuse not to aggressively pursue fraud, waste and abuse. Our office deals with "confidentiality" issues on a daily basis - whether it is for hotel/motel audits, a County agency audit, or other individuals who are billing the County or are being paid by the County and Medicaid should be audited by appropriate County auditing offices as well.

It is very easy to lose sight of what you are trying to do which is to improve health care delivery in New York State through the Medicaid system, and try to contain spending. There are a great number of very good people who are very well meaning, but the effort to measure, detect and prevent fraud, waste and abuse is going to take a lot of hard work and you are going to literally have to dismantle the system in some areas. It will not be easy. Most individuals resist change. The Legislature is going to have to be the large driving force in making the necessary changes.

I think it is clear from the questions that were asked from both sides of the aisle this morning that there is a strong willingness to hold all of us accountable. As Comptroller my interest is to minimize fraud, waste and abuse for our County. Last year we spent \$346 million dollars on Medicaid in Albany County and we are not seeing an improved health care outcome as a result of that spending. We need a better outcome. Everyone has asked, "How much are we losing? How much is being diverted by fraud, or waste, or abuse, or a combination of all three?" The predicament is that no one knows at the local level because there has not been the type of audit work that needs to be done at our level. You've got to make sure the statutes and regulations allow Comptrollers and Auditors at the County level to assist in these efforts. Right now the effort is to try to block attempts to have someone who is not part of the "system" look at the system.

If you look at the premise that only Social Services can review Social Services claims, you really don't have an independent outside audit of those claims or figures. I really think this is something that needs to be closely reviewed.

When you look at Medicaid fraud and assume this is just happening in New York City, take a second look at St. Lawrence County where 3 clients were issued sixty thousand pills of Oxycontin within a two year period of time from one doctor (who allegedly committed fraud) that were then sold for \$25 a pill on the open market illegally. You have heard about the 6000 edits. One of the pharmacists who is helping me in our efforts to design the audit in Albany County laughed when I told him about the hard edits because the hard edits for prescription drugs had been turned off. So, if an individual receives prescriptions for 800 Oxycontin for one week, that edit had been turned off. The reason the opiate case was cracked open in St. Lawrence County was due to a tip by a pharmacist that some pain patches were being dipped into coffee and kids were drinking the coffee and getting high. One teenager had three patches in his coffee and is still in a coma today, which resulted in an investigation. It wasn't an edit that caught this. This wasn't something that the system caught. It was a tip that was given to the DA in that County and it was investigated by the DEA agency and they solved the case through their hard field work.

If you look at the length of time that Agent Sinnigen worked on this case for the Doctors he investigated, he started in the spring of this year and the last person arrested retired on September 7th from the Gouverneur Correctional Facility as its pharmacist. In that short period of time his investigation

achieved results. When we looked at the MOU process and the audits that would occur under the proposed MOU, the typical time line would be eighteen months for a DOH audit. You've heard of several large investigations where it has taken four years to bring the case to a conclusion and not result in any criminal charges after \$77 million was stolen. In this drug case in St. Lawrence County, Agent Sinnigen working with Acting DA Miller here was able to achieve arrests in three months. Not only was he able to get them to remit their license to practice medicine, but their licenses to dispense drugs as well. We have been lucky and fortunate in our county that there is a DEA agent there that is working with us. There will also be a diversion agent working with us in Albany County. The Pharmacists Association will be sponsoring a meeting with providers as well. We can develop a tremendously effective effort to quantify the size and dimensions of Medicaid fraud, waste and abuse...if the DOH will let us.

I commend your efforts and it is a great start. But there is a lot of work for us to do. And when you look at developing a better outcome as you try to go through this process of conducting an audit, you have to develop language in the MOU for independently elected auditors in the county level to assist in the fraud waste and abuse efforts. It's ironic that you talk about giving more resources to the Department of Health, but when our office offers to assist in the effort to fight fraud, waste and abuse, there is a great reluctance and resistance to this effort from either from your own Social Services Department or from the Department of Health to allowing our involvement. Why turn aside help those who have the resources and are willing to assist in these efforts?

So I would caution as you go forward, the resources that will be part of the remedy for getting a handle on the size and scope of this behemoth, is available at the local level. The reason for this is because on the county level we have more to lose tax-wise than you do. Our local share for Medicaid in Albany County will exceed our total property tax levy by about \$15 million next year.

By tapping into local resources, you will get local officials to do the creative things like what has been started in Oneida as well as the excellent efforts by the DEA in St. Lawrence County. There is an enormous potential to do great things to facilitate change.

In our initial press conference on July 26, 2005, we made a conservative estimate that if the total amount of Medicaid fraud waste and abuse in

Albany County was 2.5% we would be losing \$9 million. Obviously, the big problem with this is you are not getting the kind of return on your investment for the health care outcome. These overarching issues that we are wrestling with will lead to a better outcome provided that you know “how many” and “who”- and the audit process is the best way to achieve this. A provision will have to be made to bring in local help not only in the Department of Social Services, but also to bring people from outside to assist in these efforts.

The Departments of Social Services received the MOU in 2002 and Joan Johnson mentioned - not one had signed the contract. That agreement was not so egregious as to prevent involvement. If you went to the fifth page of the propose MOU, you saw that there was a way to recoup money. There was a way for the County to benefit. There just wasn't the inclination at the local level to fight Medicaid fraud by providers.

Medicaid is an issue that you have worked on last year in your Task Force, Some of the things that you have done for us to get a grip on this in the last 12 months is a good first step. But you need to quantify the size and dimension of fraud, waste and abuse and then combat them. Local audits will help you do that.

Thank you for this invitation to testify and the opportunity to work with you in remedying the Medicaid fraud, waste and abuse problem in our County and State.