OLA **OFFICE OF THE LEGISLATIVE AUDITOR**
STATE OF MINNESOTA • James Nobles, Legislative Auditor

Date: April 10, 2012

To: Senator Sean Nienow

From: Jim Nobles, Legislative Auditor

Subject: DHS / UCare Payment to State of Minnesota

Last week, you called me and we had a conversation about how the Minnesota Department of Human Services (DHS) has handled the UCare $30 million payment to the State of Minnesota. You asked me to summarize in a memorandum how the Office of the Legislative Auditor (OLA) has been involved with the UCare payment issue. This memorandum is in response to your request.

OLA annually audits the State of Minnesota's compliance with certain requirements associated with the state's receipt and use of federal funds. A significant amount of OLA's federal compliance audit work occurs at the Minnesota Department of Human Services, particularly related to the state's administration of Medicaid funds.

During our federal compliance audit work at DHS in January and February 2012, we inquired about the $30 million payment from UCare to the State of Minnesota. We questioned assertions by state officials that the payment was a "donation" and that the state could deposit the entire amount in the General Fund. Because UCare is a Minnesota managed care plan that serves only people whose health care is paid for through either Medicare or Medicaid, we thought it was likely that the state would have to share a portion of the $30 million with the federal government.

Our concerns were reinforced by documents David Feinwachs presented to legislators and OLA in early 2012. The documents included a letter in which UCare said the payment resulted from excess reserves derived from its Medicaid contract payments. The documents also included instructions within DHS to characterize the payment as a "donation" so that the state would not have to share any of the UCare payment with the federal government. In public statements, DHS officials suggested that the department had consulted with the federal Center for Medicare and Medicaid Services (CMS) in making the "donation" determination.

In February, OLA staff auditors working at DHS asked DHS officials for any documents or other communications sent to or received from CMS related to the UCare payment. After documents were not forthcoming in response to those requests, Cecile Ferkul, Deputy Legislative Auditor for the Financial Audit Division, and I met on February 17, 2012,

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with DHS Commissioner Lucinda Jesson and other DHS officials about the UCare issue, as well as other matters. We again asked for any documents related to communications between DHS and CMS on the UCare $30 million payment. We were told that the only document related to the UCare payment was a letter DHS would soon submit as a supplement to its quarterly report to CMS.

Late last week, OLA became aware that in July 2011, CMS had submitted a letter to DHS expressing concerns about media reports that Minnesota officials were characterizing the UCare $30 million payment as a "donation." The day after obtaining a copy of the July 2011 CMS letter, I contacted Scott Leitz, DHS Assistant Commissioner, and expressed concern that the letter had not been disclosed by DHS to OLA. I also expressed concern that, apparently, the letter had not been shared with others, including legislators, interested in the UCare payment issue. I pointed to the legal obligation DHS has to be fully responsive to requests for documents made by OLA. I also told Mr. Leitz that I thought not disclosing the letter to everyone interested in the UCare payment issue added to concerns about how DHS has handled the UCare payment issue. Mr. Leitz reiterated what he and Commissioner Jesson told Cecile Ferkul and me in February—that DHS thinks there is a strong case for classifying the UCare payment as a "donation."

As you know, DHS has made its case in a letter dated February 17, 2012, to Cindy Mann, Director, Center for Medicaid, CHIP and Survey & Certification. In a response letter dated March 21, 2012, Ms. Mann asked for additional documentation and justification from DHS for its position. In my view, this latest communication from CMS, like the July 2011 letter, suggests that CMS has significant doubts about DHS's characterization of the UCare payment as a donation. While I appreciate DHS advocating for the state to keep as much of the UCare payment as possible, I do not think DHS has been as candid as it should have been with legislators and others in Minnesota about the nature of the UCare payment and the policy implications it raised.

I hope this memorandum was responsive to your request. Please let me know if you have questions or need additional information from me.

April 5, 2012

TO: Senators Hann, Lourey and Marty, Representatives Abeler, Gottwalt and Huntley
cc: Speaker Zellers, Representative Thissen, Majority Leader Senjem and Minority Leader Tom Bakk

FROM: Dr. Peter Daly and Dr. Eric Becken

RE: Current PMAP/Medicaid Transparency Language

We serve in leadership positions in two physician organizations, the Minnesota Ambulatory Health Care Consortium and the Collaborative Care Cooperative. Our new Cooperative has brought 17 notable medical specialty groups together to identify efficient methods to coordinate and customize care that can be virtually wrapped around the patient. We look forward to sharing more about our efforts and ideas for the future once your legislative season has ended.

It is probably unnecessary to state that the Minnesota medical specialty community has been closely watching the events linked to the PMAP financial transparency issue over the last two years. By any measure, physician specialists have not shared in possible overpayments from this program. We have, instead, seen significant ongoing reimbursement decreases due to cuts in our fee schedules and an immediate transition to a new valuation system in 2010.

Along with most of our colleagues, we are proud of the service and care we have provided to Minnesota's Medicaid patients under extremely difficult circumstances. However, we also hold a decade-long skepticism regarding MinnesotaCare/Medicaid financial reporting. We encourage you to:

1. Pursue a robust, independent financial monitoring process which builds trust and openness – more essential as we look to greater expansion of Medicaid in 2014.
2. Include clinicians in the repeal if the requirements commonly referred to as Rule 101 are lifted from the health plans. (Rule 101 essentially forces physicians and other clinicians to either accept under-cost Medicaid contractual arrangements with payers or turn away 40% of their patients who are tied to public funding or state programs). Not including clinicians in the repeal most surely will distort the marketplace further, continue the misaligned incentives and give us no other option than limiting access for these patients to curtail our losses. Additionally, not to include physicians in the repeal will further distort the disparity in the Medicaid healthplan/provider contracting process. After all, smaller care providers are forced to participate in a competitive bidding process already – but with no real options from which to choose.

As we look to the challenges ahead, we believe it is critical that policy makers seek involvement from our ranks. Eliminating all of our contracting options while continuing to require us to participate in a financially flawed, unsustainable program does not make good policy for Minnesota. We believe you would also agree it does not make good business sense for us as employers and job creators. This is the year to rectify a situation that has been brewing for a long time and we urge you to lead forward and make the improvements necessary.

Thank you for your attention to our concerns. Please do not hesitate to contact either one of us through Liz Quam ([redacted]), who serves as policy chair for the Consortium and as secretary of the Cooperative.

May you be granted wisdom, patience and perseverance in the days ahead. Thank you in advance for your efforts and willingness to make positive changes.