NEW YORK STATE | Office of the Medicaid Inspector General

ANDREW M. CUOMO
Governor

DENNIS ROSEN
Acting Medicaid Inspector General

April 10, 2015

[redacted]
Lutheran Medical Center
150 55th Street, 3rd Floor
Brooklyn, New York 11220-2559

Final Audit Report
Audit # 14-6406
Provider ID # [redacted]

Dear [redacted]:

The New York State Office of the Medicaid Inspector General (OMIG) has reviewed Report 2011-S-39 from the Office of the State Comptroller (OSC), which examined Medicaid payments made to Lutheran Medical Center for physician administered J-Code drugs. In accordance with Section 517.5 of Title 18 of the Official Compilation of Codes, Rules, and Regulations of the State of New York (NYCRR), this notice shall serve as our final audit report of the recently completed review of payments made to Lutheran Medical Center under the New York State Medicaid Program. Since you did not respond to our revised draft audit report dated January 21, 2015, the findings in the final audit report are identical to those in the revised draft audit report.

BACKGROUND, PURPOSE, AND SCOPE

The New York State Department of Health (DOH) is responsible for the administration of the Medicaid program. As part of this responsibility, the OMIG conducts audits and reviews of various providers of Medicaid reimbursable services, equipment and supplies. These audits and reviews are directed at assessing provider compliance with applicable laws, regulations, rules and policies of the Medicaid program as set forth by the Departments of Health and Education (Titles 8, 10, and 18 of the NYCRR) and the Medicaid Management Information System (MMIS) Provider Manuals.

OSC is responsible for overseeing the fiscal affairs of State agencies, public authorities and local government agencies, as well as their compliance with relevant statutes and their observance of good business practices. This fiscal oversight is accomplished, in part, through audits performed pursuant to authority under Article V, Section 1 of the State Constitution and Article II, Section 8 of the State Finance Law. OSC audits identify opportunities for improving operations, strategies for reducing costs, and strengthening controls.

Social Services Law Section 367-a and Title 18 NYCRR Section 505.3 require Medicaid providers to bill physician administered drugs at actual acquisition cost (per invoice).

The purpose of this audit was to identify overpayments caused by overcharging the acquisition cost of physician administered J-Code drugs. The audit covers claims paid by Medicaid from October 1, 2011, through March 31, 2012 (the "Review period").

OMIG has determined that Lutheran Medical Center's failure to comply with New York State Social Services Law and Titles 8, 10 and/or 18 of the Official Compilation of Codes, Rules and Regulations of the State of New York (NYCRR) resulted in a total overpayment of $2,289.42.

REGULATIONS OF GENERAL APPLICATION

In addition to any specific detailed findings, rules and/or regulations which may be listed below, the following regulations pertain to all audits:

Regulations state: "By enrolling the provider agrees: (a) to prepare and to maintain contemporaneous records demonstrating its right to receive payment . . . and to keep for a period of six years from the date the care, services or supplies were furnished, all records necessary to disclose the nature and extent of services furnished and all information regarding claims for payment submitted by, or on behalf of, the provider . . . (e) to submit claims for payment only for services actually furnished and which were medically necessary or otherwise authorized under the Social Services Law when furnished and which were provided to eligible persons; (f) to submit claims on officially authorized claim forms in the manner specified by the department in conformance with the standards and procedures for claims submission; . . . (h) that the information provided in relation to any claim for payment shall be true, accurate and complete; and (i) to comply with the rules, regulations and official directives of the department." *18 NYCRR Section 504.3*

Regulations state: "Fee-for-service providers. (1) All providers ... must prepare and maintain contemporaneous records demonstrating their right to receive payment . . . All records necessary to disclose the nature and extent of services furnished and the medical necessity therefor ... must be kept by the provider for a period of six years from the date the care, services or supplies were furnished or billed, whichever is later. (2) All information regarding claims for payment submitted by or on behalf of the provider is subject to audit for a period of six years from the date the care, services or supplies were furnished or billed, whichever is later, and must be furnished, upon request, to the department ... for audit and review." *18 NYCRR Section 517.3(b)*

Regulations require that bills for medical care, services and supplies contain patient name, case number and date of service; itemization of the volume and specific types of care, services and supplies provided; the unit price and total cost of the care, services and supplies provided; and a dated certification by the provider that the care, services and supplies itemized have been in fact furnished; that the amounts listed are in fact due and owing; that such records as are necessary to disclose fully the extent of care, services and supplies provided to individuals under the New York State Medicaid program will be kept for a period of not less than six years from the date of payment; and that the provider understands that payment and satisfaction of this claim will be from Federal, State and local public funds and that he or she may be prosecuted under applicable Federal and State laws for any false claims, statements or documents, or concealment of a material fact provided.
18 NYCRR Section 540.7(a)(1)-(3) and (8)

Regulations state: "An overpayment includes any amount not authorized to be paid under the medical assistance program, whether paid as the result of inaccurate or improper cost reporting, improper claiming, unacceptable practices, fraud, abuse or mistake." *18 NYCRR Section 518.1(c)*

Regulations state: "Vendor payments for medical care and other items of medical assistance shall not be made unless such care or other items of assistance have been furnished on the basis of the appropriate authorization prescribed by the rules of the board and regulations of the department."
18 NYCRR Section 540.1

Regulations state: "The department may require repayment from the person submitting an incorrect or improper claim, or the person causing such claim to be submitted, or the person receiving payment for the claim." *18 NYCRR Section 518.3(a)*

Regulations state: "The department may require repayment for inappropriate, improper, unnecessary or excessive care, services or supplies from the person furnishing them, or the person under whose supervision they were furnished, or the person causing them to be furnished...."
18 NYCRR Section 518.3(b)

Regulations state: "Medical care, services or supplies ordered or prescribed will be considered excessive or not medically necessary unless the medical basis and specific need for them are fully and properly documented in the client's medical record." *18 NYCRR Section 518.3(b)*

AUDIT FINDINGS

The following audit findings reflect the results of our audit. This audit report incorporates consideration of any additional documentation and information presented in response to the revised draft audit report dated January 21, 2015. Since you did not respond to the revised draft audit report, the findings remain the same. The findings in the final audit report are identical to those in the revised draft audit report.

1. <u>Billed in Excess of Actual Acquisition Cost</u>

Regulations state: "...(f) Payment for drugs. (2) Drugs provided by a practitioner and billed separately will be paid for at the actual cost to the practitioner."
18 NYCRR Section 505.3(f)(2)

Regulations state: " ...payments under this title shall be made at the following amounts...(a) for drugs provided by medical practitioners and claimed separately by the practitioners, the actual cost of the drugs to the practitioners;"
Social Service Law 367-a.9.(a)

Regulations state: "...payments under this title shall be made at the following amounts...(iii)... if the drug dispensed is a drug that has been purchased from a manufacturer by a covered entity pursuant to section 340B of the federal public health service act (42 USCA § 256b), the actual amount paid by such covered entity pursuant to such section, plus the reasonable administrative costs, as determined by the commissioner, incurred by the covered entity or by an authorized contract pharmacy in connection with the purchase and dispensing of such drug and the tracking of such transactions..."
Social Service Law 367-a. 9. (b)(iii)

In 3 claims, physician administered J-Code drugs were not billed at the actual acquisition cost (per invoice). This resulted in an overpayment of $2,289.42 (Exhibit 1).

REPAYMENT OPTIONS

In accordance with 18 NYCRR Part 518, which regulates the collection of overpayments, your repayment options are described below. If you decide to repay the total overpayment amount of $2,289.42, one of the following repayment options must be selected within 20 days from the date of this letter:

OPTION #1: Make full payment by check or money order within 20 days of the date of the final audit report. The check should be made payable to the New York State Department of Health and be sent with the attached Remittance Advice to:

[redacted]
New York State Department of Health
Medicaid Financial Management, B.A.M.
GNARESP Corning Tower, Room 2739
Albany, New York 12237-0048

OPTION #2: Enter into a repayment agreement with the Office of the Medicaid Inspector General. If your repayment terms exceed 90 days from the date of the final audit report, recoveries of amounts due are subject to interest charges at the prime rate plus 2%. If the process of establishing the repayment agreement exceeds 20 days from the date of the final audit report, the OMIG will impose a 50% withhold after 20 days until the agreement is established. OMIG's acceptance of the repayment agreement is based on your repaying the Medicaid overpayment as agreed. The OMIG will adjust the rate of recovery, or require payment in full, if your unpaid balance is not being repaid as agreed. The OMIG will notify you no later than 5 days after initiating such action. If you wish to enter into a repayment agreement, please contact the Bureau of Collections Management within 20 days at the following:

Bureau of Collections Management
New York State Office of the Medicaid Inspector General
800 North Pearl Street
Albany, New York 12204
Phone #: [redacted]
Fax#: [redacted]

If within 20 days you fail to make full payment or contact the OMIG to make repayment arrangements, the OMIG will establish a withhold equal to 50% of your Medicaid billings to recover payment and liquidate the overpayment amount, interest and/or penalty, not barring any other remedy allowed by law. The OMIG will provide notice to you no later than 5 days after the withholding of any funds. In addition, if you receive an adjustment in your favor while you owe funds to the State, such adjustment will be applied against the amount owed.

PROVIDER RIGHTS

If you choose not to settle this audit through repayment of the total overpayment, you have the right to challenge these findings by requesting an administrative hearing where the OMIG would seek and defend the total overpayment of $2,289.42. In accordance with 18 NYCRR Section 519.18 (a), "The issues and documentation considered at the hearing are limited to issues directly relating to the final determination. An appellant may not raise issues regarding the methodology used to determine any rate of payment or fee, nor raise any new matter not considered by the department upon

submission of objections to a draft audit or notice of proposed agency action." As allowed by state regulations, you must make your request for a hearing, in writing, within sixty (60) days of the date of this report to:

General Counsel
Office of Counsel
New York State Office of the Medicaid Inspector General
800 North Pearl Street
Albany, New York 12204

Questions regarding the request for a hearing should be directed to Office of Counsel at .

Pursuant to 18 NYCRR Section 519.8, at the hearing you have the right to:

a) be represented by an attorney or other representative, or to represent yourself;
b) present witnesses and written and/or oral evidence to explain why the action taken is wrong; and
c) cross examine witnesses of the Department of Health and/or the OMIG.

The OMIG reserves the right to conduct further reviews of your participation in the Medicaid Program, take action where appropriate, and recover monies owed through the initiation of a civil lawsuit or other legal mechanisms including but not limited to the recovery of state tax refunds pursuant to Section 206 of the Public Health Law and Section 171-f of the State Tax Law.

Should you have any questions, please contact me at .

Thank you for the cooperation and courtesy extended to our staff during this audit.

Sincerely

Division of Medicaid Audit, Albany Office
Office of the Medicaid Inspector General

CERTIFIED MAIL #
RETURN RECEIPT REQUESTED

NEW YORK STATE
OFFICE OF THE MEDICAID INSPECTOR GENERAL
REMITTANCE ADVICE

[redacted]
Lutheran Medical Center
150 55th Street, 3rd Floor
Brooklyn, New York 11220-2559

PROVIDER ID #[redacted]

AUDIT #14-6406

AUDIT TYPE	[X] PROVIDER [ ] RATE [ ] PART B [ ] OTHER:

AMOUNT DUE: $2,289.42

CHECKLIST

1. To ensure proper credit, please enclose this form with your check.
2. Make checks payable to: *New York State Department of Health*
3. Record the Audit Number on your check.
4. Mail check to:

[redacted]
New York State Department of Health
Medicaid Financial Management, B.A.M.
GNARESP Corning Tower, Room 2739
File #14-6406
Albany, New York 12237-0048

Thank you for your cooperation.

Exhibit 1

Itemized Overpayments Lutheran Medical Center

MMIS#[redacted] OSC Audit #2011-S-39 OMIG Audit #14-6406

TCN	Recipient ID	Procedure Code	Date of Service	Amount Paid	Actual acquisition cost per (340B) invoice price	OMIG calculated overpayment (netted)
[redacted]	[redacted]	J2505	10/13/2011	$2,707.46	$1,908.22	$799.24
[redacted]	[redacted]	J2505	11/17/2011	$2,653.31	$1,908.22	$745.09
[redacted]	[redacted]	J2505	10/21/2011	$2,653.31	$1,908.22	$745.09
					total	$2,289.42