



**NEW YORK STATE
OFFICE OF THE MEDICAID INSPECTOR GENERAL**

**BED RESERVE AUDIT
LORETTO HEALTH AND REHABILITATION CENTER
JULY 1, 2010 – JUNE 30, 2012
AUDIT# 14-3927**

FINAL AUDIT REPORT

**James C. Cox
Medicaid Inspector General
December 1, 2014**

OFFICE OF THE MEDICAID INSPECTOR GENERAL

omig.ny.gov

The mission of the Office of the Medicaid Inspector General (OMIG), as mandated by New York Public Health Law § 31 is to preserve the integrity of the New York State Medicaid program by preventing and detecting fraudulent, abusive and wasteful practices within the Medicaid program and recovering improperly expended Medicaid funds.

DIVISION OF MEDICAID AUDIT

The Division of Medicaid Audit professional staff conducts audits and reviews of Medicaid providers to ensure compliance and program requirements and, where necessary, to recover overpayments. These activities are done to monitor the cost-effective delivery of Medicaid services for prudent stewardship of scarce dollars; to ensure the required involvement of professionals in planning care to program beneficiaries; safeguard the quality of care, medical necessity and appropriateness of Medicaid services provided; and, to reduce the potential for fraud, waste and abuse.

DIVISION OF MEDICAID INVESTIGATIONS

The Division of Medicaid Investigations (DMI) investigates potential instances of fraud, waste, and abuse in the Medicaid program. DMI deters improper behavior by inserting covert and overt investigators into all aspects of the program, scrutinizing provider billing and services, and cooperating with other agencies to enhance enforcement opportunities. Disreputable providers are removed from the program or prevented from enrolling. Recipients abusing the system are not removed from this safety net, but their access to services is examined and restricted, as appropriate. DMI maximizes cost savings, recoveries, penalties, and improves the quality of care for the state's most vulnerable population.

DIVISION OF TECHNOLOGY AND BUSINESS AUTOMATION

The Division of Technology and Business Automation will continue to support the data needs for the OMIG in the form of audit and investigative support, data mining and analysis, system match and recovery, through the use of commercial data mining products and procurement of expert service consultants.

OFFICE OF COUNSEL TO THE MEDICAID INSPECTOR GENERAL

The Office of Counsel to the Medicaid Inspector General promotes the OMIG's overall statutory mission through timely, accurate and persuasive legal advocacy and counsel.

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STATE OF NEW YORK
OFFICE OF THE MEDICAID INSPECTOR GENERAL
800 North Pearl Street
Albany, New York 12204

ANDREW M. CUOMO
GOVERNOR

JAMES C. COX
MEDICAID INSPECTOR GENERAL

December 1, 2014

[REDACTED]
Loretto Health and Rehabilitation Center
700 East Brighton Avenue
Syracuse, NY 13205

Re: Bed Reserve Audit
Final Audit Report
Audit# 14-3927
Provider [REDACTED]

Dear [REDACTED]

Enclosed is the Office of the Medicaid Inspector General's ("OMIG") Final Audit Report of bed reserve payments to Loretto Health and Rehabilitation Center (the "Facility") for period of July 1, 2010 to June 30, 2012. In accordance with Section 517.6 of Title 18 of the Official Compilation of Codes, Rules and Regulations of the State of New York, this report represents the final determination on issues found during the review.

After having a phone conversation with the Facility on October 31, 2014 and reviewing the Facility's November 13, 2014 response to the October 15, 2014 Draft Audit Report, the findings in this Final Audit Report will remain unchanged to those cited in the Draft Audit Report. However, the OMIG has reduced the overpayments related to the cash receipt assessment payments in the final report by \$14.46. A detailed explanation of the findings is included in this final report.

BACKGROUND, PURPOSE & SCOPE

Pursuant to Title XIX of the Social Security Act, the Medicaid program provides medical assistance to low-income individuals and individuals with disabilities. The federal and state governments jointly fund and administer the Medicaid program. In New York State, the Department of Health ("DOH") administers the Medicaid program. As part of this responsibility, the Department's Office of the Medicaid Inspector General (the "OMIG") conducts audits and reviews of various providers of Medicaid reimbursable services, equipment and supplies. These audits and reviews are directed at ensuring provider compliance with applicable laws, regulations, rules and policies of the Medicaid program

as set forth in New York Public Health Law, New York Social Services Law, the regulations of the Department of Health (Titles 10 and 18 of the NYCRR), the regulations of Office of Mental Health (Title 14 of the NYCRR) and the Department of Health's Medicaid Provider Manuals and *Medicaid Update* publications.

The purpose of the audit was to ensure that the Facility was in compliance with 18 NYCRR §505.9(d) and effective July 19, 2010 New York DOH DAL/DRS 10-08 and supplement letters regarding Chapter 109 of the Laws of 2010 §2808(25) Public Health Law; which addresses the eligibility and requirements to bill Medicaid for a reserved bed day, §504.3 which addresses the duties of a provider by enrolling in Medicaid, and §515.2 that addresses unacceptable practices.

For a bed to be reserved and billed to the Medicaid Program, the vacancy rate requirement under 18 NYCRR Section 505.9(d) states, "The department will pay an institution for a recipient's reserved bed days when the part of the institution to which the recipient will return has a vacancy rate of no more than 5 percent on the first day the recipient is hospitalized or on leave of absence."

Reserved bed day reimbursement requirements to RHCF's for Medicaid eligible individuals aged twenty-one and older listed per New York DOH DAL/DRS 10-08 and supplement letters regarding Chapter 109 of the Laws of 2010; §2808(25) of Public Health Laws "Effective July 19, 2010, the Department will reimburse a RHCF to reserve the bed for a Medicaid recipient aged twenty-one or over, for fourteen (14) days in a 12-month period for temporary hospitalizations and for ten (10) days in a 12-month period for non-hospital (therapeutic) leaves of absence...."

The scope of the audit was a review of the Facility's records to ensure that the Facility properly complied with applicable Federal and State laws, regulations, rules and policies that govern the New York State Medicaid bed reserve program related to:

1. The Facility's claim for payment was true, accurate and complete.
2. The Facility had a vacancy rate of no more than 5% on the day of the resident's temporary leave from the facility.
3. The Facility's Medicaid recipients' bed reserve days were limited reimbursement for a maximum of 14 days in 12-month period for hospitalizations and ten days in 12-month calendar period for non-hospital therapeutic leave of absences.

An analysis was completed of the Daily Periodic Census Reports (Attachment I) that were submitted by the Facility to support the daily activity and bed reserve payments for period July 1, 2010 to June 30, 2012. Part of this analysis was to determine if any new bed-holds were billed to Medicaid by the Facility during a period where the vacancy rate exceeded 5%. The Facility had a 520 bed capacity for the period July 1, 2010 to June 29, 2011, a 553 bed capacity for the period June 30, 2011 to July 18, 2011, and a 583 bed capacity for period of July 19, 2011 to June 30, 2012. In complying with the 5% vacancy requirement, the Facility's unoccupied bed count could not exceed 26 vacant beds for July 1, 2010 to June 29, 2011, and the unoccupied bed count could not exceed 28 vacant beds for period of June 30, 2011 to July 18, 2011 and the Facility's unoccupied bed count could not exceed 30 vacant beds for the period of July 19, 2011 to June 30, 2012 at the time the Facility billed Medicaid for a new bed-hold.

FINDINGS

The OMIG reviewed each of the Facility's Medicaid recipient's bed reserve billing to ensure each recipient's bed reserve billings did not exceed fourteen (14) days in a 12-month period for temporary hospitalizations and that they did not exceed ten (10) days in a 12-month period for non-hospital (therapeutic) leaves of absence limitations. The OMIG found that a total of 33 inpatient hospital bed reserve days in the amount of \$6,336.00 were inappropriately billed beyond the 14 hospital bed reserve day limitation (Attachments II, III).

Using the periodic census reports provided by the Facility (Attachment I), the audit determined that the Facility's geriatric unit was periodically operating above a 5% vacancy rate during the period of July 1, 2010 to June 30, 2012. The audit found that a total of 203 bed-hold days in the amount of \$38,976.00 were inappropriately billed to Medicaid while the Facility's vacancy rate exceeded 5% (Attachments II and IV).

Additionally, the OMIG found instances in which the Facility received payment from the Medicaid program for claims in which the Facility coded the recipient as a resident residing at the Facility while the Medicaid program paid an in-patient hospital claim for the same recipient for the same dates of service. For these instances, the OMIG determined the appropriateness of the Facility's payments as if the Facility coded the claim as a bed reserve claim since the Facility would be entitled to a bed reserve payment if the Facility's vacancy rate did not exceed 5% at the time the Facility's resident was discharged to the hospital. The OMIG reviewed 60 geriatric days in which the Facility billed the Medicaid program for claims coded as a resident residing at the Facility while the Medicaid program paid an in-patient hospital claim for the same recipient for the same dates of service and the OMIG found that the Facility 6 geriatric days in the amount of \$1,152.00 were inappropriately billed to Medicaid when the Facility's vacancy rate exceeded 5% on the day the patient was discharged to the hospital (Attachments II, V). As a result of the findings, §504.3, §2808(25) and §505.9(d) requirements were violated and the combined amount of overpayment, as defined in 18 NYCRR §518.1, is \$46,464.00 (Attachment VI).

Under the Health Care Assessment Program, residential health care facilities licensed under Article 28 of the Public Health Law §2807-d must pay an assessment on monthly cash receipts effective April 1, 2002. New York State Medicaid has established a reimbursement mechanism through rate code 3836 to reimburse nursing homes for the portion of the assessment that applies to days where the Medicaid Program is the primary payer for your residents. The cash receipt assessment payment made by New York State Medicaid related to each disallowed bed reserve payment is also recoverable as a disallowance.

The October 15, 2014 Draft Audit Report identified inappropriate cash receipt assessment payments of \$3,552.34 that were made by New York State Medicaid to the Facility related to each disallowed bed reserve payment. In preparing the final report the OMIG has adjusted/reduced the amount owed related to the cash assessment recovery by \$14.46(Attachments III, IV and V) to \$3,537.88 (Attachment VI, Disallowed Cash Assessment).

The overpayments identified in this Final Audit Report were determined by applying the Facility's promulgated rates at the date this report was issued (Attachment VII). Based on this determination, the total amount of overpayment, as defined in 18 NYCRR §518.1 is \$50,001.88, (Attachment VI). Repayment of \$50,001.88 is now due to the New York State Department of Health.

PAYMENT OPTIONS

In accordance with 18 NYCRR Part 518 which regulates the collection of overpayments, your repayment options are described below.

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


New York State Department of Health
Medicaid Financial Management, B.A.M.
GNARESP Corning Tower, Room 2739
Albany, New York 12237-0016

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 an agreement is established. OMIG 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. In addition, if you receive an adjustment in your favor while you owe funds to the State, such adjustment will be applied against any amount owed. 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


PROVIDER RIGHTS

The Facility has the right to challenge this action and determination by requesting an administrative hearing within sixty (60) days of the date of this notice. 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."

If the Facility wishes to request a hearing, the request must be submitted in writing to:

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

If a hearing is held, the Facility may have a person represent the Facility or the Facility may represent itself. If the Facility chooses to be represented by someone other than an attorney, the Facility must supply along with the Facility's hearing request a signed authorization permitting that person to represent the Facility. At the hearing, the Facility may call witnesses and present documentary evidence on the Facility's behalf.

If the Facility has any questions please contact [REDACTED] or email at [REDACTED] **Do not** submit claim voids in response to this Final Audit Report.

Thank you.

Sincerely,

[REDACTED]
Bureau of Medicaid Audit
Office of the Medicaid Inspector General

CERTIFIED MAIL [REDACTED]
RETURN RECEIPT REQUESTED

**NEW YORK STATE
OFFICE OF THE MEDICAID INSPECTOR GENERAL
REMITTANCE ADVICE**

NAME AND ADDRESS OF AUDITEE

Loretto Health and Rehabilitation
Center
700 East Brighton Avenue
Syracuse, NY 13205

Provider [REDACTED]

AUDIT # 14-3927

AMOUNT DUE: \$ 50,001.88

AUDIT
TYPE

PROVIDER
 RATE
 PART B
 OTHER:
Bed Reserve

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]
Medicaid Financial Management, B.A.M.
New York State Department of Health
GNARESP Corning Tower, Room 2739
File # 14-3927
Albany, New York 12237-0016

5. If the provider number shown above is incorrect, please enter the correct number below.

[REDACTED]
CORRECT PROVIDER NUMBER