



**Office of the
Medicaid Inspector
General**

ANDREW M. CUOMO
Governor

DENNIS ROSEN
Medicaid Inspector General

February 16, 2016

Laboratory Corporation of America
Main Headquarters
358 South Main Street
Burlington, North Carolina 27215

Esoterix Genetic Laboratories LLC
3400 Computer Drive
Westborough, MA 01581-1771
Provider ID # [REDACTED]

Esoterix Genetic Laboratories LLC
W. 57th Street, 6th Floor
New York, New York 10019-2929
Provider ID # [REDACTED]

Esoterix Genetic Laboratories LLC
2000 Vivigen Way
Santa Fe, NM 87505-5600
Provider ID # [REDACTED]

Re: Final Audit Report
Audit #: 15-3728
Provider ID #: [REDACTED]

Dear [REDACTED]:

The New York State Office of the Medicaid Inspector General (OMIG) has reviewed final audit report 2012-S-131 from the Office of the State Comptroller (OSC), which reviewed Medicaid Claims Processing from period October 1, 2012, through March 31, 2013 to determine whether Medicaid claims were submitted using the appropriate HIPAA delay reason code, pursuant to 18 NYCRR 540.6 and the MMIS Provider Billing Manual. 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 the final audit report of OMIG's findings and determinations.

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.

The purpose of OSC's audit was to determine whether the Department of Health's eMedNY system reasonably ensured that Medicaid claims were submitted by approved providers, were processed in accordance with Medicaid requirements, and resulted in correct payments to providers.

OMIG has determined that Laboratory Corporation of America's (LabCorp) failure to comply with Titles 8, 10 and/or 18 of the NYCRR resulted in a total overpayment of \$2,689,352. The following detailed findings reflect the results of our audit.

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 draft audit report dated August 6, 2015.

Billed Using Inappropriate HIPAA Delay Code

Regulations state: "Claims for payment for medical care, services or supplies furnished by any provider under the medical assistance program must be initially submitted within 90 days of the date of the medical care, services or supplies were furnished to an eligible person to be valid and enforceable against the Department or a Social Services district, unless the provider's submission of the claims is delayed beyond 90 days due to circumstances outside of the control of the provide. Such circumstances include, but are not limited to, attempts to recover from a third party insurer, legal proceedings against a responsible third party or the recipient of the medical care, services or supplies, or delays in the determination of client eligibility by the Social Services district. All claims submitted after 90 days must be accompanied by a HIPAA delay reason code, a statement of the reason for such delay and must be submitted within 30 days from the time the submission came within the control of the provider." *18 NYCRR Section 540.6*

It has been determined that 43,261 total claims for \$2,689,352 were submitted using incorrect HIPAA1 delay reason codes. These claims were submitted over one year from the original dates of service, which ranged from December 1, 2010 through July 20, 2011. Medicaid regulations require that claims be initially submitted within 90 days of the date of service to be valid and enforceable, unless the claim is delayed due to circumstances outside the control of the provider. All such claims submitted after 90 days must be submitted within 30 days from the time submission came within the control of the provider.

43,218 of these claims totaling \$2,687,298.78 in payments were submitted using HIPAA delay reason code 4, which indicates a delay in certifying provider. LabCorp acquired laboratories from Genzyme Corp. in December, 2010. It has been determined that there was no delay caused by the Department of Health in certifying the new provider ID numbers. LabCorp/Esoterix submitted an enrollment application in April, 2011 and promptly received two new provider IDs (# 03349002 and # 03349286) effective July 21, 2011. Effective April 6, 2012, an additional laboratory was enrolled in the New York Medicaid program as an Esoterix laboratory and issued provider number ID # 03428544. Further, Genzyme Corp.'s provider ID numbers, effective since 1995, remained open during this process. The dates of these submitted claims were more than one year after the change in provider's enrollment status, which was effective July 21, 2011. Therefore, the use of delay reason code 4 to submit these claims does not appear to be valid.

The remaining 43 claims totaling \$2,053.22 in payments were found to be submitted using four other incorrect HIPAA delay reason codes (03,07,09,11). It has been determined there was no evidence of an authorization delay (code 03), Third party processing delay (code 07), original claim reject/deny- billing limit rules (09), or IPRO Denial/reversal or interrupted Maternity Care (Code 11).

This resulted in a total overpayment of \$2,689,352 billed using Provider IDs # 01740165, # 01738985, and # 01739000 (Exhibit I).

EFFECTIVE DATE

The OMIG, on behalf of the Department, is seeking to recover overpayments in the amount of \$2,689,352 from you, effective 20 days from the date of this Final Audit Report.

PROVIDER RIGHTS

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 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:

New York State Department of Health
Medicaid Financial Management
GNARESP Corning Tower, Room 2739
File #15-3728
Albany, New York 12237

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. 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. 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

If you choose not to settle this audit through repayment, you have the right to challenge these findings by requesting an administrative hearing. 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, NY 12204

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

Issues you may raise shall be limited to those issues relating to determinations contained in the final audit report. Your hearing request may not address issues regarding the methodology used to determine the rate, or any issue that was raised at a proceeding to appeal a rate determination.

[REDACTED]

Page 6 of 7
February 16, 2016

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.

For a full listing of hearing rights, please see 18 NYCRR Part 519.

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 any mechanism allowed by law.

If you have any questions comments concerning this final audit report, please contact [REDACTED]
[REDACTED] Please refer to report number 15-3728 in all correspondence. Also, enclosed is a CD documenting the findings which is password protected, please contact me for the password.

Sincerely,

[REDACTED]

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

[REDACTED]
Enclosure

CERTIFIED MAIL # [REDACTED]
RETURN RECEIPT REQUESTED

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

NAME AND ADDRESS OF AUDITEE

Laboratory Corporation of America
Esoterix Genetic Laboratories LLC
Main Headquarters
358 South Main Street
Burlington, North Carolina 27215

PROVIDER ID # [REDACTED]

AUDIT #15-3728

AMOUNT DUE: \$2,689,352

AUDIT

TYPE

PROVIDER

RATE

PART B

OTHER:

OSC

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
GNARESP Corning Tower, Room 2739
File #15-3728
Albany, New York 12237

Thank you for your cooperation.

[REDACTED]
February 16, 2016

Laboratory Corporation of America
Main Headquarters
358 South Main Street
Burlington, North Carolina 27215
CERTIFIED MAIL # [REDACTED]

Esoterix Genetic Laboratories LLC
3400 Computer Drive
Westborough, MA 01581-1771
CERTIFIED MAIL # [REDACTED]

Esoterix Genetic Laboratories LLC
W. 57th Street, 6th Floor
New York, New York 10019-2929
CERTIFIED MAIL # [REDACTED]

Esoterix Genetic Laboratories LLC
2000 Vivigen Way
Santa Fe, NM 87505-5600
CERTIFIED MAIL # [REDACTED]