NEW YORK STATE | Office of the Medicaid Inspector General

ANDREW M. CUOMO
Governor

DENNIS ROSEN
Medicaid Inspector General

June 23, 2015

[redacted]
Respiratory Services of WNY
80 French Road
Cheektowaga, New York 14227-2702

FINAL AUDIT REPORT
Audit #2015Z12-191H
Provider [redacted]

Dear [redacted]:

The New York State Office of the Medicaid Inspector General (OMIG) completed an audit of Medicaid claims paid for services allegedly provided to Medicaid recipients after their date of death.

In accordance with Section 517.6 of Title 18 of the Official Compilation of Codes, Rules and Regulations of the State of New York (18 NYCRR), this report represents the final determination on issues found during the OMIG's review.

Your response to the OMIG's May 12, 2015 Draft Audit Report agreed with the audit findings. As a result, the overpayments in the final report remain unchanged to those cited in the draft report. The total Medicaid overpayment is $1,446.86, inclusive of interest.

Based on this determination, restitution of the overpayments as defined in 18 NYCRR 518.1 is required in the amount of $1,446.86, inclusive of interest.

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

OPTION #1: Make a 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 enclosed Remittance Advice form, signed and dated, to:

New York State Department of Health
Medicaid Financial Management
GNARESP Corning Tower, Room 2739
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%. 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

Do not submit claim voids or adjustments in response to this Final Report.

You have 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 you wish 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, you may have a person represent you or you may represent yourself. If you choose to be represented by someone other than an attorney, you must supply along with your hearing request a signed authorization permitting that person to represent you. At the hearing, you may call witnesses and present documentary evidence on your behalf.

Questions concerning this audit may be directed to [redacted].

Sincerely,

[redacted]

Office of the Medicaid Inspector General

Enclosure

CERTIFIED MAIL [redacted]
RETURN RECEIPT REQUESTED

NEW YORK STATE
OFFICE OF THE MEDICAID INSPECTOR GENERAL
REMITTANCE ADVICE

NAME AND ADDRESS OF AUDITEE

Respiratory Services of WNY
80 French Road
Cheektowaga, NY 14227-2702

AMOUNT DUE: $ 1,466.86

Provider [redacted]

AUDIT #2015Z12-191H

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

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 #2015Z12-191H
Albany, New York 12237

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

CORRECT PROVIDER NUMBER

NEW YORK STATE
OFFICE OF THE MEDICAID INSPECTOR GENERAL

ANDREW M. CUOMO
GOVERNOR

DENNIS ROSEN
MEDICAID INSPECTOR GENERAL

FINAL REPORT

RESPIRATORY SERVICES OF WNY
80 FRENCH ROAD
CHEEKTOWAGA, NEW YORK 14227-2702

DECEASED RECIPIENT
#2015Z12-191H

ISSUED JUNE 23, 2015

BACKGROUND, PURPOSE AND SCOPE

The New York State Department of Health (DOH) is responsible for the administration of the Medicaid program. As an independent office within DOH, the OMIG conducts audits and reviews of providers of Medicaid reimbursable services, equipment and supplies. These audits and reviews are directed at assuring provider compliance with applicable laws, regulations, rules and policies of the Medicaid program as set forth in NY Public Health Law, NY Social Services Law, regulations of the Department of Health, (Titles 10 and 18 of the NYCRR), Medicaid Provider Manuals, and *Medicaid Update* publications.

A review of Medicaid payments made to you has determined that you may have improperly billed for services allegedly provided to Medicaid recipients after their date of death. This review matched the recipient's Medicaid payment history against Medicaid death records, New York State Vital Statistics death records, and the Social Security Death Index (SSDI) records.

To accomplish this review, claims for services with payment dates from July 1, 2009 through December 31, 2012, were reviewed.

Please note that due to the implementation of the National Provider Identifier (NPI) on September 1, 2008, there may be multiple Provider Identification Numbers associated with the Primary Provider Identification Number. The NPI is linked to the Primary Provider Identification Number. The Primary Provider Identification Number is used for correspondence and recoupment.

DETAILED FINDINGS

A copy of the supporting exhibit is enclosed with this Final Audit Report. The exhibit details each disallowed claim by Recipient, Primary Provider Identification Number, Category of Service, Procedure/Rate Code, Date of Service and Date of Death.

1. Provider Incorrectly Billed Medicaid for Services Rendered After Recipient's Death

Regulations state: "By enrolling, the provider agrees… 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;"

18 NYCRR 504.3(e)

Regulations state: "By enrolling the provider agrees … that the information provided in relation to any claim for payment shall be true, accurate, and complete."

18 NYCRR 504.3(h)

Regulations state: "By enrolling, the provider agrees… to comply with the rules, regulations and official directives of the department."

18 NYCRR 504.3(i)

Regulation 18 NYCRR 518.1(c) defines "overpayment" as "any amount not authorized to be paid under the medical assistance program, whether paid as the result of ...improper claiming, unacceptable practices, fraud, abuse or mistake" and provides for the recovery by OMIG of these overpayments.

18 NYCRR 518.1(c)

Medicaid Policy states: "Automatic refilling of prescriptions for prescription drugs, or fiscal orders for nonprescription drugs, medical surgical supplies or enteral products is not allowed under the Medicaid Program. Faxed refill authorization requests are not allowed under the Medicaid Program."

eMedNY *Pharmacy Manual Policy Guidelines*
Version 2009-1 (effective July 1, 2009), Page 5
Version 2010-1 (effective October 1, 2010), Page 5
Version 2010-2 (effective December 16, 2010), Page 5
Version 2011-1 (effective September 6, 2011), Page 5

Medicaid policy states: "Automatic refilling of prescriptions/orders for prescription drugs, over-the-counter products, medical surgical supplies and enteral products is **NOT** allowed under the Medicaid program".

DOH Medicaid Update, January 2004, Vol.19, No.1

Medicaid policy states: "Guidelines for the Delivery of: Prescription Drugs, Over-the-Counter Products, Medical/Surgical Supplies, and Durable Medical Equipment... The pharmacy or DME provider must first contact the recipient or caregiver to ensure that a delivery is needed. Confirmation of needed delivery shall be maintained in the patient's record. Automatic refills are not permitted".

DOH Medicaid Update, November 2003, Vol.18, No.11

Medicaid Policy states: "The pharmacy or DME provider must first contact the beneficiary or caregiver to ensure that a delivery is needed. Confirmation of needed delivery shall be maintained in the patient record. Automatic refills will not be permitted. The beneficiary or caregiver must receive delivery."

eMedNY *Pharmacy Manual Policy Guidelines*
Version 2009-1 (effective July 1, 2009), Page 6
Version 2010-1 (effective October 1, 2010), Page 6
Version 2010-2 (effective December 16, 2010), Page 6
Version 2011-1 (effective September 6, 2011), Page 6

Exhibit I is a list of paid claims that shows the recipient's date of service occurring after the recipient's date of death. This resulted in an overpayment of $1,260.36.

DETERMINATION

In accordance with 18 NYCRR 518.4, interest may be collected on any overpayments identified in this audit and will accrue at the current rate from the preliminary determination of the overpayment. For the overpayments identified in this audit, the OMIG has determined that accrued interest totals $186.50.

Based on this determination, the total amount of overpayment, as defined in 18 NYCRR 518.1(c) is $1,446.86, inclusive of interest.

Do not submit claim voids or adjustments in response to this Final Report.