NEW YORK STATE | Office of the Medicaid Inspector General

ANDREW M. CUOMO
Governor

DENNIS ROSEN
Medicaid Inspector General

October 6, 2016

Dr. Xiandong Shi
41-60 Main Street, Unit 201 C
Flushing, New York 11355

Re: Final Audit Report
Medicaid EHR Incentive Program
Audit # 16-2150
NPI # [redacted]
Provider ID # [redacted]

Dear Dr. Shi:

This letter serves as the Office of the Medicaid Inspector General's (OMIG) Final Audit Report of payment made to you under the New York State Medicaid Electronic Health Record (EHR) Incentive Program for Meaningful Use during the calendar year ending December 31, 2013.

BACKGROUND, PURPOSE AND SCOPE

The New York State Department of Health (the Department) is responsible for the administration of the Medicaid program. As part of this responsibility, the Office of the Medicaid Inspector General (OMIG), an independent office within the Department, 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 by the Departments of Health, Mental Hygiene, and Social Services [Titles 10, 14 and 18 of the Official Compilation of Codes, Rules and Regulations of the State of New York (10 NYCRR, 14 NYCRR, 18 NYCRR)], the Medicaid Management Information System (MMIS) Provider Manuals and Department *Medicaid Updates*.

The OMIG recently completed a review of the information attested to in your attestation for the NYS Medicaid EHR Incentive Program. Medicaid EHR Incentive payments were authorized by the American Recovery and Reinvestment Act of 2009 (Public Law 111-5), and implemented by Federal regulation principally at 42 CFR Part 495. This review examined the supporting documentation for your submitted attestation, signed June 13, 2013, for payment for Meaningful Use during the calendar year ending December 31, 2013. You were paid an EHR incentive payment of $8,500 for this submitted attestation. The purpose of the audit was to ensure your compliance with applicable Federal and State laws, regulations, rules, and policies governing the New York State Medicaid EHR Incentive Program, including verification of eligibility for the EHR Incentive Program and the Meaningful Use of a certified EHR system.

LAWS, REGULATIONS, RULES AND POLICIES

The following are applicable Laws, Regulations, Rules and Policies of the Medicaid program referenced when conducting this audit:

- Departments of Health and Mental Hygiene [Titles 10, 14, and 18 of the Official Compilation of Codes, Rules and Regulations of the State of New York (10 NYCRR, 14 NYCRR, 18 NYCRR)].

- Medicaid Management Information System and eMedNY Provider Manual.

- Specifically, 42 CFR § 495-Standards for The Electronic Health Record Technology Incentive Program.

- 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)

DETERMINATION

After reviewing your response to the OMIG's July 28, 2016 Draft Audit Report, the overpayment in the Final Audit Report remains unchanged to the overpayment identified in the Draft Audit Report.

The OMIG's review of your payment for the Medicaid EHR Incentive Program identified at least one error, for a total overpayment of $8,500. The errors identified in the audit are described in the Detailed Findings section below.

DETAILED FINDINGS

1. **Failure to Support Meaningful Use Core Measures/Exclusions**

Federal regulations state: "Stage 1 criteria for EPs— (1) General rule regarding Stage 1 criteria for meaningful use for EPs. Except as specified in paragraphs (a)(2) and (a)(3) of this section, EPs must meet all objectives and associated measures of the Stage 1 criteria specified in paragraph (d) of this section ... to meet the definition of a meaningful EHR user." *42 CFR §495.6(a)*

The following Stage 1 Core measures/exclusions were not supported:

e- Prescribing (eRx) Measure/Exclusion

Federal regulations state: "Stage 1 Core criteria for EPs. An EP must satisfy the following objectives and associated measures, except those objectives and associated measures for which an EP qualifies for an exclusion under paragraph (a)(2) of this section specified in this paragraph: (4)(i) Objective. Generate and transmit permissible prescriptions electronically (eRx).(ii) Measure. Subject to paragraph (c) of this section, more than 40 percent of all permissible prescriptions written by the EP are transmitted electronically using certified EHR technology. (iii) Exclusion in accordance with paragraph (a)(2) of this section (A) Any EP who writes fewer than 100 prescriptions during the EHR reporting period. (B) Beginning 2013, any EP who does not have a pharmacy within their organization and there are no pharmacies that accept electronic prescriptions within 10 miles of the EP's practice location at the start of his/her EHR reporting period, or the exclusion specified in (d)(4)(iii)(A) of this section." *42 CFR § 495.6(d)(4)*

Medication Allergy List Measure

Federal regulation states: "Stage 1 Core criteria for EPs. An EP must satisfy the following objectives and associated measures, except those objectives and associated measures for which an EP qualifies for an exclusion under paragraph (a)(2) of this section specified in this paragraph: (6)(i) Objective. Maintain active medication allergy list. (ii) Measure. More than 80 percent of all unique patients seen by the EP have at least one entry (or an indication that the patient has no known medication allergies) recorded as structured data." *42 CFR § 495.6(d)(6)*

Clinical Summaries Measure/Exclusion

Federal regulations state: "Stage 1 Core criteria for EPs. An EP must satisfy the following objectives and associated measures, except those objectives and associated measures for which an EP qualifies for an exclusion under paragraph (a)(2) of this section specified in this paragraph: (13)(i) Objective. Provide clinical summaries for patients for each office visit. (ii) Measure. Subject to paragraph (c) of this section, clinical summaries provided to patients for more than 50 percent of all office visits within 3 business days. (iii) Exclusion in accordance with paragraph (a)(2) of this section. Any EP who has no office visits during the EHR reporting period." *42 CFR § 495.6(d)(13)*

Security Risk Analysis to Protect Electronic Health Information Measure

Federal regulations state: "Stage 1 Core criteria for EPs. An EP must satisfy the following objectives and associated measures, except those objectives and associated measures for which an EP qualifies for an exclusion under paragraph (a)(2) of this section specified in this paragraph: (15)(i) Objective. Protect electronic health information created or maintained by the certified EHR technology through the implementation of appropriate technical capabilities. (ii) Measure. Conduct or review a security risk analysis in accordance with the requirements under 45 CFR 164.308(a)(1) and implement security updates as necessary and correct identified security deficiencies as part of its risk management process." *42 CFR § 495.6(d)(15)*

2. **Failure to Support Meaningful Use Menu Measures/Exclusions**

Federal regulations state: "Stage 1 criteria for EPs— (1) General rule regarding Stage 1 criteria for meaningful use for EPs. Except as specified in paragraphs (a)(2) and (a)(3) of this section, EPs must meet ... five objectives of the EP's choice from paragraph (e) of this section to meet the definition of a meaningful EHR user." *42 CFR §495.6(a)*

The following Stage 1 menu measures/exclusions were not supported:

Drug Formulary Checks Measure/Exclusion

Federal regulations state: "Stage 1 menu set criteria for EPs. An EP must meet five of the following objectives and associated measures, one of which must be either paragraph (e)(9) or (e)(10) of this section, except that the required number of objectives and associated measures is reduced by an EP's paragraph (a)(2) of this section exclusions specified in this paragraph: (1)(i) Objective. Implement drug-formulary checks. (ii) Measure. The EP has enabled this functionality and has access to at least one internal or external formulary for the entire EHR reporting period. (iii) Exclusion in accordance with paragraph (a)(2) of this section. Any EP who writes fewer than 100 prescriptions during the EHR reporting period." *42 CFR § 495.6(e)(1)*

Immunization Registries Data Submission Measure/Exclusion

Federal regulations state: "*Stage 1 menu set criteria for EPs.* An EP must meet five of the following objectives and associated measures, one of which must be either paragraph (e)(9) or (e)(10) of this section, except that the required number of objectives and associated measures is reduced by an EP's paragraph (a)(2) of this section exclusions specified in this paragraph: (9)(i) Objective. (A) Capability to submit electronic data to immunization registries or immunization information systems and actual submission according to applicable law and practice. (B) Beginning 2013, capability to submit electronic data to immunization registries or immunization information systems and actual submission except where prohibited and according to applicable law and practice. (ii) Measure. Performed at least one test of certified EHR technology's capacity to submit electronic data to immunization registries and follow up submission if the test is successful (unless none of the immunization registries to which the EP submits such information has the capacity to receive the information electronically). (iii) Exclusion in accordance with paragraph (a)(2) of this section. An EP who administers no immunizations during the EHR reporting period or where no immunization registry has the capacity to receive the information electronically." *42 CFR § 495.6(e)(9)*

3. **Failure to Submit Documentation to Support Eligibility**

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*

Furthermore, according to regulations, all providers must prepare and maintain contemporaneous records demonstrating their right to receive payment under the medical assistance program. In addition, the provider must keep, for a period of six years, all records necessary to disclose the nature and extent of services furnished and the medical necessity therefore, including any prescription or fiscal order for the service or supply. This information is subject to audit for a period of six years and must be furnished, upon request. *18 NYCRR Section 517.3(b)*

Statute provides, "The inspector shall have the following functions, duties and responsibilities:...(9) to require and compel the production of such books, papers, records and documents as he or she may deem to be relevant or material to an investigation, examination or review undertaken pursuant to this section..." *Public Health Law §32(9)*

During enrollment in the NYS EHR Incentive Program each provider attested to the following: "I hereby agree to keep such records as are necessary to demonstrate that I met all Medicaid EHR Incentive Program requirements...failure to furnish subsequently requested information or documents will result in the issuance of an overpayment demand letter followed by recoupment procedures."
NYS EHR Incentive Program Attestation

4. **Failure to be a Meaningful User**

Federal regulations state: "Meaningful EHR user means: (1) Subject to paragraph (3) of this definition, an EP, eligible hospital or CAH that, for an EHR reporting period for a payment year, demonstrates in accordance with § 495.8 meaningful use of certified EHR technology by meeting the applicable objectives and associated measures under § 495.6; and (2)(i) Except as specified in paragraph (2)(ii) of this definition, a Medicaid EP or Medicaid eligible hospital, that meets the requirements of paragraph (1) of this definition and any additional criteria for meaningful use imposed by the State and approved by CMS under § 495.316 and § 495.332...(3) To be considered a meaningful EHR user, at least 50 percent of an EP's patient encounters during the EHR reporting period during the payment year must occur at a practice/location or practices/locations equipped with certified EHR technology."
42 CFR § 495.4

Federal regulations state, "Subsequent payment years (1) In the second, third, fourth, fifth, and sixth payment years, to receive an incentive payment, the Medicaid EP or eligible hospital must demonstrate that during the EHR reporting period for the applicable payment year, it is a meaningful EHR user, as defined in § 495.4." *42 CFR § 495.314(b)*

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:

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

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. 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 #:
Fax#:

You have the right to challenge these findings by requesting an administrative hearing. Issues you may raise shall be limited to those issues relating to determinations contained in the Final Audit Report. You may only request a hearing to challenge specific audit adjustments which you challenged in a response to the Draft Audit Report. Your hearing request may not address issues regarding the methodology used to determine any rate of payment or fee.

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.

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 (

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.

If you have any questions regarding the above, please contact Thank you for your cooperation.

Division of Medicaid Audit
Office of the Medicaid Inspector General

NEW YORK STATE
OFFICE OF THE MEDICAID INSPECTOR GENERAL
REMITTANCE ADVICE

NAME AND ADDRESS OF AUDITEE
Dr. Xiandong Shi
41-60 Main Street, Unit 201 C
Flushing, New York 11355

PROVIDER ID # [redacted]

AUDIT #16-2150

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

AMOUNT DUE: $8,500

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 Audit #16-2150 HIT
4. Mail check to:

[redacted]
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]

Thank you for your cooperation.