NEW YORK STATE | Office of the Medicaid Inspector General

DENNIS ROSEN
Medicaid Inspector General

Audit of Duplicate Medicaid Pharmacy Claims Billed for the Same Recipient and Date of Service Paid From January 1, 2011 to December 31, 2014

Final Audit Report
Audit #: 2016Z63-184K

Tops PT, LLC
Provider ID #: [redacted]
NPI #: [redacted]

NEW YORK STATE | Office of the Medicaid Inspector General

ANDREW M. CUOMO
Governor

DENNIS ROSEN
Medicaid Inspector General

October 19, 2016

Tops PT, LLC
124 Taylor Drive
Depew, New York 14043-2015

Tops PT, LLC ([redacted])
124 Taylor Drive
Depew, New York 14043-2015

Final Audit Report
Audit #: 2016Z63-184K
Provider ID #: [redacted]

Dear Provider:

This is the Office of the Medicaid Inspector General's (OMIG) Final Audit Report for Tops PT, LLC (Provider).

In accordance with Title 18 of the Official Compilation of the Codes, Rules and Regulations of the State of New York Section 517.6, the attached Final Audit Report represents the final determination on the issues found during OMIG's audit.

The Provider did not respond to OMIG's July 20, 2016 Draft Audit Report. As a result, the overpayments identified in this Final Audit Report remain unchanged from those cited in the Draft Audit Report. The total amount due is $1,266.80, inclusive of interest.

The OMIG has determined that Tops PT, LLC ([redacted]) is an affiliate of Tops PT, LLC, as defined in 18 NYCRR 504.1(d)(1) and overpayments may be recouped from Tops PT, LLC ([redacted]) pursuant to 18 NYCRR 518.6(a).

To obtain the password for the enclosed disc, please email [redacted] If you have any questions or comments concerning this report, please contact [redacted] or through email at [redacted]. Please refer to audit number 2016Z63-184K in all correspondence.

Sincerely,

[redacted]

Office of the Medicaid Inspector General

Enclosure
CERTIFIED MAIL #: [redacted]
RETURN RECEIPT REQUESTED

Enclosure
CERTIFIED MAIL #: [redacted]
RETURN RECEIPT REQUESTED

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Background, Objective, and Audit Scope

Background

The New York State Department of Health (DOH) is the single state agency responsible for the administration of the Medicaid program. As part of its responsibility as an independent entity within DOH, the Office of the Medicaid Inspector General (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 in New York Public Health Law, New York Social Services Law, the regulations of DOH (Titles 10 and 18 of the New York Codes, Rules and Regulations), the regulations of the Department of Mental Hygiene (Title 14 of the New York Codes, Rules and Regulations), DOH's Medicaid Provider Manuals and *Medicaid Update* publications.

A review of Medicaid payments made to you has determined that you billed and were paid twice by Medicaid for the same drug claim for the same recipient and same date of service, once through a Medicare Crossover pharmacy claim billed with a J-code, and secondly by directly billing Medicaid for the same drug.

Objective

The objective of this audit was to assess the Provider's adherence to applicable laws, regulations, rules, and policies governing the New York State Medicaid program and to:

- recover duplicate Medicaid pharmacy claims billed for the same recipient and date of service.

Audit Scope

An audit of Medicaid pharmacy claims paid by Medicaid for payment dates included in the period beginning January 1, 2011 and ending December 31, 2014 was completed.

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.

Audit Findings

OMIG issued a Draft Audit Report to the Provider on July 20, 2016 that identified $1,266.80 in Medicaid overpayments. The Provider did not respond to the Draft Audit Report. As a result, the overpayments identified in this Final Audit Report remain unchanged from those cited in the Draft Audit Report.

OMIG performed its audit of duplicate pharmacy claims paid for payment dates included in the period beginning January 1, 2011 and ending December 31, 2014.

OMIG identified the following findings:

1. **Duplicate Pharmacy Claims Billed for the Same Recipient and Date of Service**

   Regulations state: "By enrolling the provider agrees: (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 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 517.3(b)

   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 518.1(c)

   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 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 518.3(b)

   Regulations state: "Persons furnishing, or supervising the furnishing of, medical care, services or supplies are jointly and severely liable for any overpayments resulting from the furnishing of the care, services or supplies."

   18 NYCRR 518.3(c)

> Regulations state: "Where a third party, such as a health insurer or responsible person, has a legal liability to pay for Medicaid covered services on behalf of a recipient, the department or social services district will pay only the amount by which the Medicaid reimbursement rate for the services exceeds the amount of the third party liability."
>
> 18 NYCRR 360-7.2
>
> 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 540.1

As a result of this finding, OMIG has determined that **$1,134.17** (Attachment 1) was inappropriately billed to Medicaid, resulting in Medicaid overpayments.

In accordance with 18 NYCRR Section 518.4, interest may be collected on any overpayments identified in this audit and will accrue at the current rate from the date of the overpayment. Interest on the overpayments identified in this Final Audit Report was calculated from the date of each overpayment through the date of the Draft Audit Report, using the Federal Reserve Prime Rate. For the overpayments identified in this audit, OMIG has determined that accrued interest of **$132.63** (Attachment 1) is now owed.

Based on this determination, the total amount due to DOH, as defined in 18 NYCRR Section 518.1 is **$1,266.80** (Attachment 1), inclusive of interest.

Do not submit claim voids or adjustments in response to this Final Audit Report. Repayment instructions are outlined on the next page.

Repayment Options

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 Audit Report. The check should be made payable to the **New York State Department of Health** with the audit number included and be sent with the attached remittance advice to:

[redacted]
New York State Department of Health
Medicaid Financial Management
GNARESP Corning Tower, Room 2739
Audit #: 2016Z63-184K
Albany, New York 12237

Option #2: Enter into a repayment agreement with OMIG. 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. 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:

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

Should you fail to select a payment option above, OMIG, in its discretion, may use any remedy allowed by law to collect the amount due. Pursuant to the State Finance Law §18(5), a collection fee equal to twenty two percent (22%) of the amount due, including interest, may be added to the amount owed. OMIG's remedies may include, without limitation, filing this Final Audit Report as the final administrative determination for purposes of obtaining a judgment lien pursuant to §145-a of the New York State Social Services Law; withholding Medicaid payments otherwise payable to the provider or its affiliates pursuant to 18 NYCRR 518.6; and imposing a sanction, pursuant to 18 NYCRR 515.2, against a provider who fails to reimburse the department for overpayments discovered by this audit.

Hearing Rights

The Provider 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 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 Provider wishes to request a hearing, the request must be submitted in writing within sixty (60) days of the date of this notice to:

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

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

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

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

Contact Information

Office Address:

New York State
Office of the Medicaid Inspector General
Division of Systems Utilization and Review
800 North Pearl Street
Albany, New York 12204

Mission

The mission of the Office of the Medicaid Inspector General is to enhance 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 while promoting high quality patient care.

Vision

To be the national leader in promoting and protecting the integrity of the Medicaid program.

NEW YORK STATE | Office of the Medicaid Inspector General

REMITTANCE ADVICE

Tops PT, LLC **124 Taylor Drive** **Depew, New York 14043-2015**	**Provider ID #:** [redacted] **Audit #: 2016Z63-184K**
Amount Due: $1,266.80	**Audit Type** ☐ **Managed Care** ☒ **Fee-for-Service** ☐ **Rate**

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 the check to:

[redacted]
New York State Department of Health
Medicaid Financial Management
GNARESP Corning Tower, Room 2739
Audit #: 2016Z63-184K
Albany, New York 12237