



Office of the
Medicaid Inspector
General

DENNIS ROSEN
Medicaid Inspector General

Audit of NYS Medicaid EHR Incentive Payment

**Final Audit Report
Audit #: 19-2127**

Dr. Arnulfo J. Herrera

**Provider ID #: 03643556
NPI #: 1649583220**



Office of the
Medicaid Inspector
General

ANDREW M. CUOMO
Governor

DENNIS ROSEN
Medicaid Inspector General

September 12, 2019

Dr. Arnulfo J. Herrera
1003 Front Street
Uniondale, New York 11553

Re: Final Audit Report
Audit #: 19-2127
Provider #: 03643556
NPI #: 1649583220

Dear Dr. Herrera:

This is the Office of the Medicaid Inspector General's (OMIG) Final Audit Report for Dr. Herrera (Provider).

In accordance with the New York State Public Health Law, and Title 18 of the Official Compilation of the Codes, Rules and Regulations of the State of New York (NYCRR) Parts 504 and 517, OMIG performed an audit of the Provider's submitted attestation, signed May 12, 2015, for the adoption, implementation, or upgrade (A/I/U) to a certified EHR system during the calendar year ending December 31, 2015. The Provider was paid an EHR incentive payment of \$21,250 for the submitted attestation. The purpose of the audit is to ensure 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 adoption, implementation, or upgrade (A/I/U) to a certified EHR system.

If you have any questions or comments concerning this Final Audit Report, please contact [REDACTED] or through email at [REDACTED]. Please refer to audit number 19-2127 in all correspondence.

[REDACTED]
Bureau of Managed Care Audit & Program Reviews
Division of Medicaid Audit
Office of the Medicaid Inspector General

Certified Mail Number: 7018-1830-0000-1335-4228
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), the regulations of the Education Department (Title 8 of the New York Codes Rules and Regulations), DOH's Medicaid Provider Manuals and *Medicaid Update* publications.

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. Through the NYS Medicaid EHR Incentive Program, eligible hospitals (EH) and eligible professionals (EP) in New York who adopt, implement, or upgrade certified EHR technology, and subsequently become meaningful users of the EHR technology, may qualify for financial incentives.

Objective

The objective of this audit was to assess the Provider's adherence to the 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 adoption, implementation, or upgrade (A/I/U) to a certified EHR system.

Audit Scope

This audit examined the supporting documentation for the Provider's submitted attestation, signed May 12, 2015, regarding payment for the adoption, implementation, or upgrade (A/I/U) to a certified EHR system during the calendar year ending December 31, 2015.

Regulations of General Application

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:

"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

"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)

"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)

"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

"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)

"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)

"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)

"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

Audit Findings

Since you did not respond to our Draft Audit Report dated June 27, 2019, the findings in the Final Audit Report remain identical to 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 \$21,250. The errors identified in the audit are described in the Detailed Findings below.

1. Failure to Support the Adoption, Implementation, or Upgrade to a Certified EHR System

"Adopt, implement or upgrade means—(1) Acquire, purchase, or secure access to certified EHR technology; (2) Install or commence utilization of certified EHR technology capable of meeting meaningful use requirements; or (3) Expand the available functionality of certified EHR technology capable of meeting meaningful use requirements at the practice site, including staffing, maintenance, and training, or upgrade from existing EHR technology to certified EHR technology per the ONC EHR certification criteria." 42 CFR § 495.302

"First payment year. (1) In the first payment year, to receive an incentive payment, the Medicaid EP or eligible hospital must meet one of the following: (i) Demonstrate that during the payment year, it has adopted, implemented, or upgraded certified EHR technology, as defined in §495.302." 42 CFR § 495.314(a)(1)(i)

For the 2015 payment year, the Provider failed to produce documentation upon audit to demonstrate that he/she adopted/implemented/upgraded to a certified EHR system as required by federal regulations and, therefore, was not eligible to receive an incentive payment for that year.

2. Failure to Support Medicaid Patient Volume

"Additional requirements for the Medicaid EP. To qualify for an EHR incentive payment, a Medicaid EP must, for each year for which the EP seeks an EHR incentive payment, ... meet one of the following criteria: (1) Have a minimum 30 percent patient volume attributable to individuals enrolled in a Medicaid program. (2) Have a minimum 20 percent patient volume attributable to individuals enrolled in a Medicaid program, and be a pediatrician." 42 CFR § 495.304(c)(1) and (2)

"Methodology, patient encounter — (1) EPs. To calculate Medicaid patient volume, an EP must divide: (i) The total Medicaid patient encounters in any representative, continuous 90-day period in the calendar year preceding the EP's payment year, or in the 12 months before the EP's attestation; by (ii) The total patient encounters in the same 90-day period." 42 CFR § 495.306(c)(1)

"For purposes of this section, the following rules apply: (1) A Medicaid encounter means services rendered to an individual on any one day where: (i) Medicaid (or a Medicaid demonstration project approved under section 1115 of the Act) paid for part or all of the service. (ii) Medicaid (or a Medicaid demonstration project approved under section 1115 of the Act) paid

all or part of the individual's premiums, co-payments, and cost-sharing. (iii) The individual was enrolled in a Medicaid program (or a Medicaid demonstration project approved under section 1115 of the Act) at the time the billable service was provided." 42 CFR § 495.306(e)(1)

For the 2015 payment year, the Provider failed to produce documentation upon audit demonstrating that the Provider met the minimum Medicaid patient volume threshold during a continuous 90-day period in the calendar year preceding the payment year, or in the 12 months before the Provider's attestation as required by federal regulations and, therefore, was not eligible to receive an incentive payment for that year.

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 this 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:

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]

Option #2: Enter into a repayment agreement with OMIG. If your repayment terms exceed 90 days from the date of this Final Audit Report, recoveries of amounts due are subject to interest charges at the Prime Rate plus two percent (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. In addition, if you receive an adjustment in your favor while you owe funds to New York 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
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 Section 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 Section 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 Section 518.6; and imposing a sanction, pursuant to 18 NYCRR Section 515.2, against a provider who fails to reimburse the department for overpayments discovered by this audit.

Hearing Rights

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 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]
[REDACTED]

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.

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 Medicaid Audit
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.



Office of the
Medicaid Inspector
General

REMITTANCE ADVICE

Dr. Arnulfo J. Herrera
1003 Front Street
Uniondale, New York 11553

Provider ID #: 03643556

Audit #: 19-2127

Amount Due: \$21,250

Audit
Type

- ☐ Managed Care
☐ Fee-for-Service
☒ Medicaid EHR

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 19-2127HIT on your check.
4. Mail the check to:

Bureau of Collections Management
New York State Office of the Medicaid Inspector General
800 North Pearl Street
Audit #: 19-2127
Albany, New York 12204
Phone #: [REDACTED]
Fax#: [REDACTED]