



Office of the
Medicaid Inspector
General

DENNIS ROSEN
Medicaid Inspector General

Audit of Claims for Assisted Living Program Services

**Final Audit Report
Audit #: 14-5912**

**Dosberg Manor ALP
Provider ID #: 01441712**



**Office of the
Medicaid Inspector
General**

ANDREW M. CUOMO
Governor

DENNIS ROSEN
Medicaid Inspector General

March 11, 2020

[REDACTED]
Dosberg Manor ALP
2680 North Forest Rd
Getzville, New York 14068

Re: Final Audit Report
County Demonstration Project
Erie County
Audit #: 14-5912
Provider ID #: 01441712

Dear [REDACTED]

This is the Office of the Medicaid Inspector General's (OMIG) Final Audit Report for Dosberg Manor ALP (Provider).

In accordance with Sections 30, 31 and 32 of 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 Assisted Living Program claims paid to the Provider for Erie County recipients from January 1, 2009, through December 31, 2011. The audit universe consisted of 695 claims totaling \$1,229,828.45. The audit consisted of a random sample of 100 claims with Medicaid payments totaling \$183,790.50 (Attachment A).

OMIG has attached the sample detail for the paid claims determined to be in error. This Final Audit Report incorporates consideration of any additional documentation and information presented in the Provider's response to the Draft Audit Report dated May 7, 2019. The point estimate overpaid is \$53,782. The lower confidence limit of the amount overpaid is \$14,388. We are 90% certain that the actual amount of the overpayment is greater than the lower confidence limit. This audit may be settled through repayment of the lower confidence limit of \$14,388.

If you have any questions or comments concerning this report, please contact [REDACTED] or through email at [REDACTED]. Please refer to audit number 14-5912 in all correspondence.



Division of Medicaid Audit
Office of the Medicaid Inspector General

Attachments
Certified Mail Number: 7019 0700 0000 1671 7244
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 Office 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.

An Assisted Living Program ("ALP") is an entity approved to operate, pursuant to 18 NYCRR Section 485.6(n), in adult homes and enriched housing programs. The ALP is established and operated for the purpose of providing long-term residential care, room, board, housekeeping, personal care, supervision, and providing or arranging for home health services to five or more eligible residents unrelated to the operator 18 NYCRR Section 494.2. For each Medicaid enrollee participating in the ALP, a daily rate is paid to the ALP for the provision of nine distinct home care services. No additional fee-for-service billing can be made for these home care services.

Services covered under the daily Medicaid rate and for which no additional separate billing may be made include:

- Title XIX Personal Care Services
- Home Health Aide Services
- Personal Emergency Response Services
- Nursing Services
- Physical Therapy
- Occupational Therapy
- Speech Therapy
- Medical supplies and equipment not requiring prior approval
- Adult Day Health Care

Objective

The objective of this audit was to assess Dosberg Manor ALP's (Provider) adherence to applicable laws, regulations, rules and policies governing the New York State Medicaid program and to verify that:

- Medicaid reimbursable services were rendered for the dates billed;
- appropriate rate codes were billed for services rendered;
- recipient related records contained the documentation required by the regulations; and,
- claims for payment were submitted in accordance with applicable rules and requirements.

Audit Scope

A review of Assisted Living Program claims for Erie County recipients paid to the Provider by Medicaid for payment dates included in the period beginning January 1, 2009, and ending December 31, 2011, was completed.

The audit universe consisted of 695 claims totaling \$1,229,828.45. The audit sample consisted of 100 claims totaling \$183,790.50 (Attachment A).

Regulations of General Application

Each audit finding is supported by relevant regulations, policy statements and manuals. In addition, the audit findings in this audit are supported by regulations of general application to the Medicaid program. These regulations are provided below.

“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 under the medical assistance program. 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)

“All bills for medical care, services and supplies shall contain: (1) patient name, case number and date of service; (2) itemization of the volume and specific types of care, services and supplies provided (including for a physician, his final diagnosis, and for drugs, the prescription filled); (3) the unit price and total cost of the care, services and supplies provided; . . . and (8) a dated certification by the provider that the care, services and supplies itemized have in fact been furnished; that the amounts listed are 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)

Audit Findings

OMIG issued a Draft Audit Report to the Provider on May 7, 2019. This Final Audit Report incorporates consideration of any additional documentation and information presented in the Provider's response to the Draft Audit Report dated May 22, 2019. The attached Bridge Schedule (Attachment D) indicates any financial changes to the findings as a result of the Provider's response. A description of each finding, regulations, and the list of samples supporting each finding, appear below. Each sample may contain more than one error, and may be listed in more than one category of finding. A sample may only be disallowed once in an audit, however, each sample is subject to disallowance based on a single error.

Summary of Audit Findings

<u>Error Description</u>	<u>Number of Errors</u>
Missing Service Documentation	5
Missing Nursing/Functional/Social Assesment	1

Audit Findings Detail

OMIG's review of Medicaid claims paid to the Provider from January 1, 2009, through December 31, 2011, identified 6 claims with at least one error, for a total sample overpayment of \$7,738.38 (Attachment C).

1. Missing Service Documentation

"Appropriate services must be provided to or arranged for an eligible individual only in accordance with a plan of care which is based upon an initial assessment and periodic reassessments conduct by an assisted living program, or if the assisted living program itself is not an approved long-term home health care program or certified home health agency, by an assisted living program and a long-term home health care program or certified home health agency."
18 NYCRR Section 494.4(b)

"to prepare and to maintain contemporaneous records demonstrating its right to receive payment under the medical assistance program and to keep for a period of six years . . . all records necessary to disclose the nature and extent of services furnished . . ."
18 NYCRR Section 504.3(a)

"Payment for assisted living program services (1) The MA program will pay an assisted living program for services provided to eligible MA recipients who are assisted living program residents at a capitated rate of payment established in accordance with the regulations of the Department of Health, based upon assessments of the recipients conducted pursuant to section 494.4 of this Title. Such capitated rate of payment is payment in full for the following MA services provided to MA recipients: (i) adult day health care provided in a program approved by the Department of Health; (ii) home health aide services; (iii) medical supplies and equipment not requiring prior approval pursuant to this Title; (iv) nursing services; (v) personal care services; (vi) personal emergency response services; and (vii) physical therapy, speech therapy, and occupational therapy"
18 NYCRR Section 505.35(h)(1)

"All providers, who are not paid at rates or fees approved by the State Director or the Division of the Budget based upon their allowable costs of operation but who are paid in accordance with the rates, fees and schedules established by the department, must prepare and maintain contemporaneous records demonstrating their right to receive payment under the medical assistance program. All records necessary to disclose the nature and extent of services furnished and the medical necessity therefor, including any prescription or fiscal order for the service or supply, 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."
18 NYCRR Section 517.3(b)(1)

In 5 instances pertaining to 3 residents, the record did not include service documentation for the date of service. This finding applies to Sample #'s 19, 40, 68, 86, and 95.

2. Missing Nursing/Functional/Social Assessment

“(a) the agency shall maintain a confidential record for each patient admitted to care to include . . . (3) nursing assessments conducted to provide services.”

10 NYCRR Section 766.6(a)(3)

“(e) Before an operator admits an individual to an assisted living program, a determination must be made that the assisted living program can support the physical, supervisory and psycho-social needs of the resident. (f) The determination referred to in subdivision (e) of this section must be based on: (1) a medical evaluation conducted within 30 days prior to the date of admission; (2) an interview between the administrator or a designee responsible for admission and retention decisions and the resident and resident’s representative(s), if any; (3) a preassessment screening, a nursing assessment, and an assessment of the individual’s social and functional needs and an assessment of the ability of the program to meet those needs. These assessments will be conducted by the operator and, if required, by a certified home health agency or a long-term home health care program; and (4) a mental health evaluation if a proposed resident has a known history of chronic mental disability, or if the medical evaluation or resident interview or any assessment suggests that such a disability exists. This evaluation will be conducted by a psychiatrist, physician, nurse, psychologist or social worker who has experience in the assessment and treatment of mental illness.”

18 NYCRR Section 494.4(e)-(f)

In 1 instance pertaining to 1 resident, the record did not include a Nursing/Functional/Social Assessment for our date of service. This finding applies to Sample # 94.

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
File # 14-5912
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 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

If you choose not to settle this audit through repayment of the adjusted lower confidence limit, you have the right to challenge these findings by requesting an administrative hearing where OMIG would seek and defend the point estimate of \$53,782. 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]

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 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.

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 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

[REDACTED]
Dosberg Manor ALP
2680 North Forest Road
Getzville, New York 14068

Provider ID #: 01441712

Audit #: 14-5912

Amount Due: \$14,388

Audit Type

- Managed Care
- Fee-for-Service
- Rate
- County Demo

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
File #14-5912
Albany, New York 12237