NEW YORK STATE | Office of the Medicaid Inspector General

FRANK T. WALSH, JR.
Acting Medicaid Inspector General

Audit of Claims for Consumer Directed Personal Assistance Program Services

Final Audit Report
Audit #: 20-7130

Center for Disability Rights

Provider ID #: 01945688

Fighting Fraud. Improving Integrity and Quality. Saving Taxpayer Dollars.

NEW YORK STATE | Office of the Medicaid Inspector General

KATHY HOCHUL
Governor

FRANK T. WALSH, JR.
Acting Medicaid Inspector General

October 19, 2022

[redacted]
Center for Disability Rights
497 State Street
Rochester, New York 14608

Re: Final Audit Report
Audit #: 20-7130
Provider ID #: 01945688

Dear [redacted]

This is the Office of the Medicaid Inspector General's (OMIG) Final Audit Report for Center for Disability Rights (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 consumer directed personal assistance program claims paid to the Provider from January 1, 2015, through December 31, 2017. The audit universe consisted of 196,576 claims totaling $27,915,260.46. The audit consisted of a random sample of 100 claims with Medicaid payments totaling $13,961.67 (Attachment A).

Since the Provider did not respond to OMIG's September 9, 2022 Draft Audit Report, the findings in the Final Audit Report are identical to those in the Draft Audit Report.

OMIG has attached the sample detail for the paid claims determined to be in error. The adjusted point estimate overpaid is $633,663. The adjusted lower confidence limit of the amount overpaid is $41,279. We are 95% certain that the actual amount of the overpayment is greater than the lower confidence limit. This audit may be settled through repayment of the adjusted lower confidence limit of $41,279.

If you have any questions or comments concerning this report, please contact [redacted] at [redacted] or through email at [redacted]. Please refer to audit number 20-7130 in all correspondence.

[redacted]
Division of Medicaid Audit
Office of the Medicaid Inspector General

Attachments
Certified Mail Number: 7021-0350-0000-6247-9930
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.

Objective

The objective of this audit was to assess Center for Disability Rights' (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 consumer directed personal assistance claims paid to the Provider by Medicaid for payment dates included in the period beginning January 1, 2015, and ending December 31, 2017, was completed.

The audit universe consisted of 196,576 claims totaling $27,915,260.46. The audit sample consisted of 100 claims totaling $13,961.67 (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 September 9, 2022. Since the Provider did not respond to OMIG's Draft Audit Report, the total sample overpayment of $3,506.03 remains unchanged from the sample overpayment cited in the Draft Audit Report. 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

Error Description	Number of Errors
1. Missing Certificate of Immunization	21
2. Missing Documentation of a PPD (Mantoux) Skin Test or Follow-Up	6
3. Failure to Complete Required Health Assessment	6
4. Missing Documentation of Service	2
5. Billed More Units than Documented or Authorized	2

Audit Findings Detail

OMIG's review of Medicaid claims paid to the Provider from January 1, 2015, through December 31, 2017, identified 31 claims with at least one error, for a total sample overpayment of $3,506.03 (Attachment C).

1. Missing Certificate of Immunization

"(1) Fiscal intermediaries have the following responsibilities with respect to the consumer directed personal assistance program: (ii) ensuring that the health status of each consumer directed personal assistant is assessed prior to service delivery pursuant to 10 NYCRR § 766.11(c) and (d) or any successor regulation; (iii) maintaining personnel records for each consumer directed personal assistant, including time sheets and other documentation needed for wages and benefit processing and a copy of the medical documentation required pursuant to 10 NYCRR § 766.11(c) and (d) or any successor regulation..."

18 NYCRR Section 505.28 (i)(1)(ii) and (iii)

"(d) that a record of the following tests, examinations or other required documentation is maintained for all personnel who have direct patient contact: (1) a certificate of immunization against rubella... (2) a certificate of immunization against measles for all personnel born on or after January 1, 1957..." *10 NYCRR Section 766.11(d)*

In 21 instances pertaining to 18 recipients, the personnel record of the personal assistants providing care did not contain the required certificate of immunization. This finding applies to Sample #s 3, 9, 16, 28, 31, 32, 33, 36, 42, 43, 44, 45, 49, 63, 64, 72, 77, 79, 85, 92 and 94.

2. Missing Documentation of a PPD (Mantoux) Skin Test or Follow-Up

"(1) Fiscal intermediaries have the following responsibilities with respect to the consumer directed personal assistance program: (ii) ensuring that the health status of each consumer directed personal assistant is assessed prior to service delivery pursuant to 10 NYCRR § 766.11(c) and (d) or any successor regulation; (iii) maintaining personnel records for each consumer directed personal assistant, including time sheets and other documentation needed for wages and benefit processing and a copy of the medical documentation required pursuant to 10 NYCRR § 766.11(c) and (d) or any successor regulation..."

18 NYCRR Section 505.28 (i)(1)(ii) and (iii)

"(d) that a record of the following tests, examinations or other required documentation is maintained for all personnel who have direct patient contact: (4) either tuberculin skin test or Food and Drug Administration (FDA) approved blood assay for the detection of latent tuberculosis infection, prior to assuming patient care duties and no less than every year thereafter for negative findings..." *10 NYCRR Section 766.11(d)*

In 6 instances pertaining to 6 recipients, a personal assistant was allowed to care for patients prior to completion of a PPD skin test. This finding applies to Sample #s 5, 29, 75, 79, 80 and 87.

3. Failure to Complete Required Health Assessment

"(1) Fiscal intermediaries have the following responsibilities with respect to the consumer directed personal assistance program: (ii) ensuring that the health status of each consumer directed personal assistant is assessed prior to service delivery pursuant to 10 NYCRR § 766.11(c) and (d) or any successor regulation; (iii) maintaining personnel records for each consumer directed personal assistant, including time sheets and other documentation needed for wages and benefit processing and a copy of the medical documentation required pursuant to 10 NYCRR § 766.11(c) and (d) or any successor regulation..."

18 NYCRR Section 505.28 (i)(1)(ii) and (iii)

"...the health status of all new personnel is assessed and documented prior to assuming patient care duties..." *10 NYCRR Section 766.11(c)*

"... an annual, or more frequent if necessary, health status assessment to assure that all personnel are free from any health impairment that is of potential risk to the patient, family or to employees or that may interfere with the performance of duties..."

10 NYCRR Section 766.11(d)(5)

In 6 instances pertaining to 6 recipients, the personnel record of the personal assistants providing care did not contain the required health assessments. This finding applies to Sample #s 29, 60, 68, 79, 80 and 87.

4. Missing Documentation of Service

"(1) Fiscal intermediaries have the following responsibilities with respect to the consumer directed personal assistance program...(vi) complying with the department's regulations at 18 NYCRR § 504.3, or any successor regulation, that specify the responsibilities of providers enrolled in the medical assistance program..." *18 NYCRR Section 505.28 (i)(1)(vi)*

"No payment to the fiscal in termediary will be made for authorized services unless the fiscal intermediary's claim is supported by documentation of the time spent in provision of services for each consumer." *18 NYCRR Section 505.28(j)(3)*

"By enrolling the provider agrees: (a) 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)*

"(8) a dated certification by the provider that the care, services and supplies itemized have in fact been furnished... 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..." *18 NYCRR Section 540.7(a)(8)*

"Fee-for-service providers. (1) All providers, who are not paid at rates or fees approved by the State Director of 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..." *18 NYCRR Section 517.3(b)(1)*

In 2 instances pertaining to 2 recipients, recipient records did not document that a service was provided. This finding applies to Sample #s 18 and 56.

5. Billed More Units than Documented or Authorized

"No payment to the fiscal intermediary will be made for authorized services unless the fiscal intermediary's claim is supported by documentation of the time spent in provision of services for each consumer." *18 NYCRR Section 505.28(j)(3)*

"No payment to the fiscal intermediary will be made for authorized services unless each claim can be supported by documentation of the time spent per day in provision of services for each individual patient."

NYS Medicaid Program Consumer Directed Personal Assistance Program Provider Manual Policy Guidelines, Version 2011-1 Section III

"By enrolling the provider agrees...(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..." *18 NYCRR Section 504.3(e)*

"By enrolling the provider agrees...(h) that the information provided in relation to any claim for payment shall be true, accurate and complete..." *18 NYCRR Section 504.3(h)*

In 2 instances pertaining to 2 recipients, the number of units billed exceeded the number of units authorized in the recipient record. This finding applies to Sample #s 39 and 45.

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, money order, or OMIG's Online Payment Portal 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, should include the audit number on the memo line, and be mailed with the attached remittance advice to:

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

- If you elect to pay electronically through OMIG's Online Payment Portal, please visit [redacted] or contact OMIG's Bureau of Collections Management by telephone or email, at the above number or address.

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's acceptance of a 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, by telephone or email, as provided above.

Should you fail to select a payment option above within 20 days of the date of this Report, OMIG will initiate recoupment by withholding all or a part of your payments otherwise payable, in accordance with 18 NYCRR 518.6. Additionally, OMIG reserves the right to 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.

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 adjusted point estimate of $633,663. 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 Medicaid Audit
259 Monroe Avenue
Suite 312
Rochester, New York 14607

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

[redacted]
Center for Disability Rights
497 State Street
Rochester, New York 14608

Provider ID #: 01945688

Audit #: 20-7130

Amount Due: $41,279

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:

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

If you elect to pay electronically through OMIG's Online Payment Portal, please visit [redacted] or contact OMIG's Bureau of Collections Management by telephone or email, at the above number or address.