



**Office of the
Medicaid Inspector
General**

FRANK T. WALSH, JR.
Acting Medicaid Inspector General

Audit of Claims for Durable Medical Equipment (DME) Services

**Final Audit Report
Audit #: 18-1709**

Borbas Pharmacy, Inc.

**Provider ID #: 02709680
NPI #: 1801926019**



**Office of the
Medicaid Inspector
General**

KATHY HOCHUL
Governor

FRANK T. WALSH, JR.
Acting Medicaid Inspector General

October 27, 2022

[REDACTED]
Borbas Pharmacy, Inc.
2046 Bath Avenue
Brooklyn, New York 11214-4806

Re: Final Audit Report
County Demonstration Project
New York City
Audit #: 18-1709
Provider ID #: 02709680

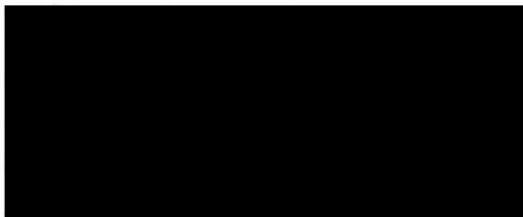
Dear [REDACTED]

This is the Office of the Medicaid Inspector General's (OMIG) Final Audit Report for Borbas Pharmacy, Inc. (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 durable medical equipment services claims paid by Medicaid for New York City recipients to the Provider from January 1, 2013, through December 31, 2014. The audit universe consisted of 9,877 claims totaling \$554,262.84. The audit consisted of a random sample of 100 claims with Medicaid payments totaling \$5,463.10 (Attachment A).

Since there was no response to the Draft Audit Report dated August 4, 2022, 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 \$35,512. The adjusted lower confidence limit of the amount overpaid is \$6,566. 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 \$6,566.

If you have any questions or comments concerning this report, please contact [REDACTED] at [REDACTED] Please refer to audit number 18-1709 in all correspondence.



Division of Medicaid Audit
Office of the Medicaid Inspector General

Attachments

Certified Mail Number: 7021 0350 0001 9900 4685

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.

Department regulations define durable medical appliances, equipment and supplies (DME) as follows: durable medical equipment are devices and equipment, other than prosthetic and orthotic appliances, which have been ordered by a practitioner in the treatment of a specific medical condition. Medical/surgical supplies are items for medical use other than drugs, prosthetic or orthotic appliances, durable medical equipment, or orthopedic footwear, which have been ordered by a practitioner in the treatment of a specific medical condition. Orthotic appliances and devices are those used to support a weak or deformed body member, or to restrict or eliminate motion in a diseased or injured part of the body. Prosthetic appliances and devices (excluding artificial eyes and dental prostheses) are those ordered by a qualified practitioner, which replace any missing part of the body. Orthopedic footwear is shoes, shoe modifications, or shoe additions used to correct, accommodate or prevent a physical deformity or range of motion malfunction in a diseased part of the ankle or foot, or to form an integral part of a brace. The specific standards and criteria pertaining to DME are outlined in Title 18 NYCRR Section 505.5 and the MMIS Provider Manual for Durable Medical Equipment.

Objective

The objective of this audit was to assess Borbas Pharmacy, Inc.'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 procedure 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 durable medical equipment claims paid to the Provider by Medicaid for payment dates included in the period beginning January 1, 2013, and ending December 31, 2014, was completed.

The audit universe consisted of 9,877 claims totaling \$554,262.84. The audit sample consisted of 100 claims totaling \$5,463.10 (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 August 4, 2022. There was no Provider response to the Draft Audit Report. As a result, the sample overpayment of \$461.75 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

<u>Error Description</u>	<u>Number of Errors</u>
Ordering Practitioner Conflicts with Claim Practitioner	3
Ordering Practitioner's Signature Missing on Fiscal Order	2
Original Signed Follow Up Order Not Received Within 30 Calendar Days	1
Oxygen Therapy Refilled More Than 365 Days from the Original Date Ordered	1
Order Refilled More Than 180 Days from the Original Date Ordered	1
Missing Information on Fiscal Order	1
Missing Documentation Confirming Receipt/Delivery of Billed Service	1

Audit Findings Detail

OMIG's review of Medicaid claims paid to the Provider from January 1, 2013, through December 31, 2014, identified 9 claims with at least one error, for a total sample overpayment of \$461.75 (Attachment C).

1. Ordering Practitioner Conflicts with Claim Practitioner

"By enrolling the provider agrees: 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;" *18 NYCRR Section 504.3(f)*

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

"The identity of the practitioner who ordered the durable medical equipment, medical/surgical supply, prosthetic or orthotic appliance or device, or orthopedic footwear must be recorded by the provider on the claim for payment by entering in the license or MMIS provider identification number of the practitioner where indicated." *18 NYCRR Section 505.5(c)(1)*

"Identification Number [Ordering/Referring Provider] (Field 19C)...Enter the ordering provider's National Provider Identifier (NPI) in this field."

NYS 150003 Billing Guidelines, Durable Medical Equipment, Medical Supplies, Orthopedic Footwear, Orthotic and Prosthetic Appliance, Version 2011-01, Section 2.3.1

In 3 instances, pertaining to 2 patients, the ordering practitioner on the claim conflicts with the ordering practitioner denoted on the fiscal order. For this category of findings, OMIG will disallow only the actual amount of the sample overpayment and will not extrapolate the sample findings to the universe of services. This finding applies to Sample #s 19, 44, and 77.

2. Ordering Practitioner's Signature Missing on Fiscal Order

"Practitioner means a physician, dentist, podiatrist, physician assistant, or nurse practitioner." *18 NYCRR Section 505.5(a)(6)*

"The terms **written order** or fiscal order are used interchangeably in this section and mean any original, signed written order of a practitioner which requests durable medical equipment, prosthetic or orthotic appliances and devices, medical/surgical supplies, or orthopedic footwear." *18 NYCRR Section 505.5(a)(8)*

"When used in the context of an order for a prescription item, the order must also meet the requirements for a prescription under section 6810 of the Education Law. When used in the context of a nonprescription item, the order must also contain the following information: name of the item, quantity ordered, size, catalog number as necessary, directions for use, date ordered, and number of refills, if any." *18 NYCRR Section 505.5(b)(3)*

"The *minimum* information required on a fiscal order is:... Original signature of the ordering practitioner..."

*NYS Medicaid Program Durable Medical Equipment Manual,
Policy Guidelines, Versions 2013-1 through 2019-1, Section III*

In 2 instances, pertaining to 2 patients, the fiscal order is missing the signature of the ordering practitioner. This finding applies to Sample #s 38 and 40.

3. **Original Signed Follow Up Order Not Received Within 30 Calendar Days**

"When an order for DMEPOS not written on the serialized official prescription form has been telephoned or faxed to the provider, **it is the DME or Pharmacy provider's responsibility to obtain the original signed fiscal order from the ordering practitioner within 30 calendar days.**"

*NYS Medicaid Program Durable Medical Equipment Manual,
Policy Guidelines, Versions 2013-1 through 2019-1, Section I*

In 1 instance, an original signed follow up order to a non-serialized official prescription form for a telephoned or faxed order was not received within 30 calendar days. This finding applies to Sample # 8.

4. **Oxygen Therapy Refilled More Than 365 Days from the Original Date Ordered**

"Oxygen therapy must be re-ordered once every 365 days or more frequently if the beneficiary's need for oxygen changes, as well as all medical documentation to substantiate coverage criteria."

*NYS Medicaid Program Durable Medical Equipment, Orthotics, Prosthetics, and Supplies,
Procedure Codes and Coverage Guidelines, Versions 2013-1 through 2015-2, Section 4.4*

"Oxygen therapy must be re-ordered once every 365 days or more frequently if the member's need for oxygen changes, as well as all medical documentation to substantiate coverage criteria."

*NYS Medicaid Program Durable Medical Equipment, Orthotics, Prosthetics, and Supplies,
Procedure Codes and Coverage Guidelines, Versions 2016-1 through 2019-1, Section 4.4*

In 1 instance, the oxygen therapy order was refilled more than 365 days from the original date ordered. This finding applies to Sample # 52.

5. **Order Refilled More Than 180 Days from the Original Date Ordered**

"No order can be refilled more than 180 days from the original date ordered."

18 NYCRR Section 505.5(b)(4)(iii)

"The following are unacceptable practices:... Order being refilled more than 180 days from the original date ordered."

*NYS Medicaid Program Durable Medical Equipment Manual,
Policy Guidelines, Versions 2013-1 through 2019-1, Section III*

In 1 instance, the fiscal order was refilled more than 180 days from the original date ordered. This finding applies to Sample # 57.

6. Missing Information on Fiscal Order

"All orders must show the name, address, telephone number of the practitioner and the name and identification number of the recipient for whom ordered."

18 NYCRR Section 505.5(b)(2)

"When used in the context of an order for a prescription item, the order must also meet the requirements for a prescription under section 6810 of the Education Law. When used in the context of a nonprescription item, the order must also contain the following information: name of the item, quantity ordered, size, catalog number as necessary, directions for use, date ordered, and number of refills, if any."

18 NYCRR Section 505.5(b)(3)

"The *minimum* information required on a fiscal order is:... Name of the item, specific quantity ordered (not case or package quantity), size, catalog number as necessary, directions for use, date ordered and number of refills, if any... All refills must be appropriately referenced to the original order by the dispenser. A fiscal order for medical supplies may be refilled when the prescriber has indicated on the order the number of refills and the beneficiary has requested the refill."

*NYS Medicaid Program Durable Medical Equipment Manual,
Policy Guidelines, Version 2013-1, Section III*

"The *minimum* information required on a fiscal order is:... Name of the item, specific quantity ordered (not case or package quantity), size, catalog number as necessary, directions for use, date ordered and number of refills, if any... A fiscal order for medical supplies may be refilled when the prescriber has indicated on the order the number of refills and the beneficiary has requested the refill. All refills must be appropriately referenced to the original order by the dispenser."

*NYS Medicaid Program Durable Medical Equipment Manual,
Policy Guidelines, Versions 2016-1 and 2019-1, Section III*

"The **Length of Need** must be specified by the ordering practitioner on the fiscal order. If the order specifies a *Length of Need of less than 10 months*, the equipment must be rented initially. If *Length of Need is 10 months or greater*, the equipment may be initially rented or purchased."

*NYS Medicaid Program Durable Medical Equipment Manual,
Policy Guidelines, Versions 2013-1 through 2019-1, Section III*

In 1 instance, the fiscal order did not contain the required information. In 1 instance, the quantity was missing. This finding applies to Sample # 57.

7. Missing Documentation Confirming Receipt/Delivery of Billed Service

"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)

"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..."

18 NYCRR Section 517.3(b)(2)

"All bills for medical care, services and supplies shall contain... a dated certification... that such records as are necessary to disclose fully the... 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... information will be furnished regarding any payment claimed therefor as the... Department... may request..."
18 NYCRR Section 540.7(a)(8)

"... the provider filling an order for DME, medical/surgical supplies, orthotic and prosthetic appliances and orthopedic footwear must keep on file the fiscal order signed by the prescriber and the delivery statement signed by the beneficiary for any item for which Medicaid payment is claimed.

For audit purposes, these signed, written orders, in addition to other supporting documentation such as invoices and delivery receipts, must be kept on file for six years from the date of payment..."
NYS Medicaid Program Durable Medical Equipment Manual, Policy Guidelines, Version 2013-1, Section I

"... the provider filling an order for DME, medical/surgical supplies, orthotic and prosthetic appliances and orthopedic footwear must keep on file the fiscal order signed by the prescriber and the delivery statement signed by the beneficiary for any item for which Medicaid payment is claimed.

For audit purposes, these signed, fiscal orders, in addition to other supporting documentation such as invoices and delivery receipts, must be kept on file for six years from the date of payment..."
NYS Medicaid Program Durable Medical Equipment Manual, Policy Guidelines, Versions 2016-1 and 2019-1, Section II

In 1 instance, documentation confirming receipt/delivery of the billed service was missing. This finding applies to Sample # 98.

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



- 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 \$35,512. 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
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]
Borbas Pharmacy, Inc.
2046 Bath Avenue
Brooklyn, New York 11214-4806

Provider ID #: 02709680

Audit #: 18-1709

Amount Due: \$6,566

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]
[REDACTED]
[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.