NEW YORK STATE | Office of the Medicaid Inspector General

FRANK T. WALSH, JR.
Acting Medicaid Inspector General

Audit of Claims for People With Developmental Disabilities (OPWDD) Individualized Residential Alternative (IRA) Residential Habilitation Services

Final Audit Report
Audit #: 22-2846

Able2 Enhancing Potential, Inc

Provider ID #: 02253547

NEW YORK STATE | Office of the Medicaid Inspector General

KATHY HOCHUL
Governor

FRANK T. WALSH, JR.
Acting Medicaid Inspector General

March 10, 2023

[redacted]
Able2 Enhancing Potential, Inc
1118 Charles Street
Elmira, New York 14904

Re: Final Audit Report
Audit #: 22-2846
Provider ID #: 02253547

Dear [redacted]

This is the Office of the Medicaid Inspector General's (OMIG) Final Audit Report for Able2 Enhancing Potential, 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 Office for People With Developmental Disabilities (OPWDD) Individualized Residential Alternative (IRA) Residential Habilitation claims paid to the Provider from June 1, 2016, through June 30, 2018. The audit universe consisted of 30,742 claims totaling $9,785,111.53. The audit consisted of a random sample of 100 claims with Medicaid payments totaling $31,553.15 (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 December 14, 2022. The adjusted point estimate overpaid is $288,838. The adjusted lower confidence limit of the amount overpaid is $19,598. 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 $19,598.

If you have any questions or comments concerning this report, please contact [redacted] or through email at [redacted]. Please refer to audit number 22-2846 in all correspondence.

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

Attachments
Certified Mail Number: 7019-2280-0000-6788-2019
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.

OPWDD

Outpatient services provided to persons with developmental disabilities are offered at programs licensed by the Office for People With Developmental Disabilities (OPWDD). The purpose of these programs is to offer a comprehensive system of services, which has as its primary purpose the promotion and attainment of independence, inclusion, and productivity for persons with mental retardation and developmental disabilities. These services are furnished at clinic and day treatment facilities and through a home and community based services (HCBS) Federal waiver program. The waiver program, established under the authority of section 1915 (c) of the Social Security Act, is intended for persons with mental retardation and developmental disabilities who would otherwise need the level of care provided in an intermediate care facility. The specific standards and criteria for OPWDD services are outlined in Title 14 NYCRR Parts 635, 671, 679, and 690.

Objective

The objective of this audit was to assess Able2 Enhancing Potential, Inc SPV'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 Office for People With Developmental Disabilities (OPWDD) Individualized Residential Alternative (IRA) Residential Habilitation claims paid to the Provider by Medicaid for payment dates included in the period beginning June 1, 2016, and ending June 30, 2018, was completed.

The audit universe consisted of 30,742 claims totaling $9,785,111.53. The audit sample consisted of 100 claims totaling $31,553.15 (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 December 14, 2022. This Final Audit Report incorporates consideration of any additional documentation and information presented in the Provider's response to the Draft Audit Report dated January 17, 2023. 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
Missing Required Elements in the IRA Residential Habilitation Service Note (Per Diem)	6
Failure to Forward Revised Habilitation Plan for Residential Habilitation Within 30 Days to the Service Coordinator	4
Missing Required Elements on the Individualized Service Plan (ISP)	3
Missing IRA Residential Habilitation Monthly Summary Note	2
Missing Residential Habilitation Plan	1
Missing Residential Habilitation Plan Review	1
Missing Copy of Individualized Service Plan (ISP)	1

Audit Findings Detail

OMIG's review of Medicaid claims paid to the Provider from June 1, 2016, through June 30, 2018, identified 17 claims with at least one error, for a total sample overpayment of $5,623.44 (Attachment C).

1. Missing Required Elements in the IRA Residential Habilitation Service Note (Per Diem)

"Regardless of which format is chosen, all Service Documentation must contain the following elements:

1. Individual's name and Medicaid number ("CIN"). (Note that the "CIN" need not be included in daily documentation; rather it can appear in the individual's ISP or Residential Habilitation Plan.)
2. Identification of category of waiver service provided (e.g., IRA Residential Habilitation).
3. A description of the individualized service provided by staff that is based on the person's Residential Habilitation Plan (e.g., a staff person documents that she "taught the person how to shop indepently").
4. The individual's response to the service (e.g., "the individual was able to make his own purchase at the store"). (At a minimum, the individual's response must be documented in a monthly summary note. A provider may choose to include the individual's response more frequently, e.g., daily.)
5. The date the service was provided.
6. The primary service location (e.g., North Main Street IRA).
7. Verification of service provision by the staff person delivering the service (initials are permitted if a "key" is provided which identifies the title, signature and full name associated with the staff initials).
8. The signature and title of the staff person writing the note.
9. The date the note was written."

OPWDD Administrative Memorandum #2014-01, page 6

In 6 instances pertaining to 3 recipients, one or more required elements were missing in the IRA residential habilitation service note. This finding applies to Sample #s 11, 21, 55, 79, 91 and 95.

2. Failure to Forward Revised Habilitation Plan for Residential Habilitation Service within 30 Days to the Service Coordinator

"...If habilitation services are provided (i.e., residential habilitation, day habilitation, community habilitation, supported employment, pre-vocational services, pathway to employment), the relevant habilitation plan(s) must be developed, and on a semiannual basis thereafter, reviewed and revised as necessary by the habilitation service provider. The ISP shall include or contain as attachments the following: (1) all relevant habilitation plans (for individuals receiving habilitation services); ..." *14 NYCRR Section 635-99.1(bk)*

"Revised Habilitation Plans, which are also written by the habilitation service provider, must be sent to the person's service coordinator no more than 30 days after either: (a) an ISP review date, or (b) the date on which the habilitation service provider makes a significant change in the Habilitation Plan. If the habilitation provider fails to send the Habilitation Plan within the 30 day time frame, the habilitation provider is then responsible for distributing the Habilitation Plan to

the service coordinator and all other required parties including other Waiver Service Providers, the individual being served and/or his/her advocate."

OPWDD Administrative Memorandum #2012-01, pages 3-4

In 4 instances pertaining to 4 recipients, there was a failure to forward the revised habilitation plan to the Service Coordinator within 30 days. This finding applies to Sample #s 4, 20, 40 and 55.

3. Missing Required Elements on the Individualized Service Plan (ISP)

"(a)... Each support or service is expected to contribute to the person's current or future capacity for self-determination, integration with the community, independence and productivity. Specific services and the intensity with which they are delivered will be set forth in an individualized service plan..." *14 NYCRR Section 635-10.2(a)*

"... The ISP must include the following elements:

1. The category of waiver service provided (that is, Residential Habilitation) and identification of the Residential Habilitation Agency delivering the service as provider of the service.
2. Valued Outcomes of the person receiving services.
3. Frequency. The ISP must specify that the frequency of Residential Habilitation is "day" or "daily."
4. Duration. The ISP must specify that the duration as "ongoing."
5. The effective date for Residential Habilitation services (that is, the date the person was enrolled in Residential Habilitation services). This date must be on or before the first date of service that the Residential Habilitation agency bills for Supervised IRA-RH services." *OPWDD Administrative Memorandum #2014-01, page 5*

In 3 instances pertaining to 3 recipients, the ISP was missing one or more of the required elements related to Residential Habilitation services. This finding applies to Sample #s 2, 64 and 100.

4. Missing IRA Residential Habilitation Monthly Summary Note

"The required service documentation format for the daily Supervised IRA-RH service is a Daily Narrative Note format or a checklist with a monthly summary note, which must be completed by the staff person who delivers the service or is knowledgeable of service delivery. If the service documentation is completed by someone other than the staff person delivering the service, the documentation must include a verification of service delivery by staff who actually delivered the service. The documentation can be completed in one of the following three ways:

1. The Daily Narrative Note describes both the provision of the staff actions and the individual's response to the service. At least once a month, one of the Daily Narrative Notes must also discuss any issues or concerns and summarize the implementation of the person's Residential Habilitation Plan; or
2. The Daily Narrative Note describes the staff actions only. If this second format is selected, a monthly summary is also required. The monthly summary must describe the individual's response to services, address any issues or concerns and summarize the implementation of the person's Residential Habilitation Plan; or

3. Daily Checklist with Monthly Summary Note format. If the checklist format is chosen, a Monthly Summary Note, which discusses any issues or concerns, includes the person's response to service and summarizes the implementation of the person's Residential Habilitation Plan, must be completed."

OPWDD Administrative Memorandum #2014-01, pages 5-6

In 2 instances pertaining to 2 recipients, the monthly summary note was not available for review. This finding applies to Sample #s 30 and 81.

5. <u>Missing Residential Habilitation Plan</u>

"...If habilitation services are provided (i.e., residential habilitation, day habilitation, community habilitation, supported employment, pre-vocational services, pathway to employment), the relevant habilitation plan(s) must be developed, and on a semiannual basis thereafter, reviewed and revised as necessary by the habilitation service provider. The ISP shall include or contain as attachments the following: (1) all relevant habilitation plans (for individuals receiving habilitation services); ..." *14 NYCRR Section 635-99.1(bk)*

"The initial Habilitation Plan must be written by the habilitation service provider and should be developed in collaboration with the person, their advocate and service coordinator. The initial Habilitation Plan must be written and forwarded to the service coordinator within 60 days of the start of the habilitation service."

OPWDD Administrative Memorandum #2012-01, pages 2-3

"Residential Habilitation services include activities that support the individual and are described in the Residential Habilitation Plan to be implemented. The Habilitation Plan includes activities or supports that are designed to help the person to pursue or to maintain the outcomes that have value to the individual. Only services clearly identified within the Habilitation Plan and the Individualized Service Plan of the individual will be provided under this service."

OPWDD Administrative Memorandum #2014-01, page 3

"For all people receiving Supervised IRA-RH services, there must be a Residential Habilitation Plan, which can be included as part of the ISP or as a separate document, developed by the Residential Habilitation agency. The plan must cover the time period of the payment claim and must meet the standards outlined in ADM #2012-01."

OPWDD Administrative Memorandum #2014-01, page 5

"All documentation that supports a Medicaid claim, including documentation of the person's presence in the IRA, the ISP, and the Residential Habilitation Plan, must be retained for a period of six years from the date of the service billing."

OPWDD Administrative Memorandum #2014-01, page 6

In 1 instance the residential habilitation plan valid for the service date was not available. This finding applies to Sample # 47.

6. Missing Residential Habilitation Plan Review

"...If habilitation services are provided (i.e., residential habilitation, day habilitation, community habilitation, supported employment, pre-vocational services, pathway to employment), the relevant habilitation plan(s) must be developed, and on a semiannual basis thereafter, reviewed and revised as necessary by the habilitation service provider. The ISP shall include or contain as attachments the following: (1) all relevant habilitation plans (for individuals receiving habilitation services); ..." *14 NYCRR Section 635-99.1(bk)*

"Once the Habilitation Plan has been implemented, the Habilitation Plan must be reviewed at least twice annually." *OPWDD Administrative Memorandum #2012-01, page 3*

"In addition, there must be evidence that the Habilitation Plan was reviewed within 12 months prior to the month in which the service occurs."
OPWDD Administrative Memorandum #2012-01, page 7

"For all people receiving Supervised IRA-RH services, there must be a Residential Habilitation Plan, which can be included as part of the ISP or as a separate document, developed by the Residential Habilitation agency. The plan must cover the time period of the payment claim and must meet the standards outlined in ADM #2012-01."
OPWDD Administrative Memorandum #2014-01, page 5

In 1 instance the residential habilitation plan review was not found. This finding applies to Sample # 61.

7. Missing Copy of Individualized Service Plan (ISP)

"(a)... Each support or service is expected to contribute to the person's current or future capacity for self-determination, integration with the community, independence and productivity. Specific services and the intensity with which they are delivered will be set forth in an individualized service plan..." *14 NYCRR Section 635-10.2(a)*

"(6) Total reimbursable residential habilitation services costs shall be related to the service specifications of each person's individualized service plan (ISP) and shall be equal to the lower of budgeted costs or recommendations from the budget review process..."
14 NYCRR Section 635-10.5(b)(6)

"For individuals who live in a Supervised IRA or CR on July 1, 2014, the individual's ISP and Residential Habilitation Plan must reflect the change from the monthly unit of service to the daily unit of service no later than August 31, 2014..."
OPWDD Administrative Memorandum #2014-01, page 6

In 1 instance the ISP for the service date was not available. This finding applies to Sample # 88.

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 $288,838. 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
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]
Able2 Enhancing Potential, Inc
1118 Charles Street
Elmira, New York 14904

Provider ID #: 02253547

Audit #: 22-2846

Amount Due: $19,598

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.