



**NEW YORK STATE  
DEPARTMENT OF HEALTH  
OFFICE OF THE MEDICAID INSPECTOR GENERAL**

**BED RESERVE AUDIT  
CONCORD NURSING HOME INC.  
JANUARY 1, 2002 – DECEMBER 31, 2002**

**FINAL AUDIT REPORT**

**James G. Sheehan  
Medicaid Inspector General  
April 28, 2011**

## **OFFICE OF THE MEDICAID INSPECTOR GENERAL**

[omig.ny.gov](http://omig.ny.gov)

The mission of the Office of the Medicaid Inspector General (OMIG), as mandated by New York Public Health Law § 31 is to preserve 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.

### **DIVISION OF MEDICAID AUDIT**

The Division of Medicaid Audit professional staff conducts audits and reviews of Medicaid providers to ensure compliance and program requirements and, where necessary, to recover overpayments. These activities are done to monitor the cost-effective delivery of Medicaid services for prudent stewardship of scarce dollars; to ensure the required involvement of professionals in planning care to program beneficiaries; safeguard the quality of care, medical necessity and appropriateness of Medicaid services provided; and, to reduce the potential for fraud, waste and abuse.

### **DIVISION OF MEDICAID INVESTIGATIONS**

The Division of Medicaid Investigations (DMI) investigates potential instances of fraud, waste, and abuse in the Medicaid program. DMI deters improper behavior by inserting covert and overt investigators into all aspects of the program, scrutinizing provider billing and services, and cooperating with other agencies to enhance enforcement opportunities. Disreputable providers are removed from the program or prevented from enrolling. Recipients abusing the system are not removed from this safety net, but their access to services is examined and restricted, as appropriate. DMI maximizes cost savings, recoveries, penalties, and improves the quality of care for the state's most vulnerable population.

### **DIVISION OF TECHNOLOGY AND BUSINESS AUTOMATION**

The Division of Technology and Business Automation will continue to support the data needs for the OMIG in the form of audit and investigative support, data mining and analysis, system match and recovery, through the use of commercial data mining products and procurement of expert service consultants.

### **OFFICE OF COUNSEL TO THE MEDICAID INSPECTOR GENERAL**

The Office of Counsel to the Medicaid Inspector General promotes the OMIG's overall statutory mission through timely, accurate and persuasive legal advocacy and counsel.

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**STATE OF NEW YORK  
OFFICE OF THE MEDICAID INSPECTOR GENERAL**  
800 North Pearl Street  
Albany, New York 12204

ANDREW M. CUOMO  
GOVERNOR

JAMES G. SHEEHAN  
MEDICAID INSPECTOR GENERAL

April 28, 2011

Ms. Lille Bryant, Administrator  
Concord Nursing Home Inc.  
300 Madison Street  
Brooklyn, NY 11216

Re: Bed Reserve Audit  
Final Audit Report  
Audit# 05-1058  
Provider # [REDACTED]

Dear Ms. Bryant:

Enclosed is the Office of the Medicaid Inspector General's ("OMIG") final audit report of bed reserve payments to Concord Nursing Home Inc. (the "Facility") for the year ended December 31, 2002. In accordance with Section 517.5 of Title 18 of the Official Compilation of Codes, Rules and Regulations of the State of New York, this report represents the final determination on issues found during the review.

Since the Facility did not respond to the OMIG's March 23, 2011 revised draft report, the findings in the final report remain unchanged to those cited in the revised draft report. A detailed explanation of the findings is included in this final report.

**BACKGROUND, PURPOSE & SCOPE**

Pursuant to Title XIX of the Social Security Act, the Medicaid program provides medical assistance to low-income individuals and individuals with disabilities. The federal and state governments jointly fund and administer the Medicaid program. In New York State, the Department of Health ("DOH") administers the Medicaid program. As part of this responsibility, the Department's Office of the Medicaid Inspector General (the "OMIG") conducts audits and reviews of various providers of Medicaid reimbursable services,

equipment and supplies. These audits and reviews are directed at ensuring provider compliance with applicable laws, regulations, rules and policies of the Medicaid program as set forth by the Departments of Health and Mental Hygiene [Titles 10, 14 and 18 of the Official Compilation of Codes, Rules and Regulations of the State of New York (10 NYCRR, 14 NYCRR, 18 NYCRR)] and the Medicaid Provider Manuals.

The purpose of the audit was to ensure that the Facility was in compliance with 18 NYCRR §505.9(d), which addresses the eligibility and requirements to bill Medicaid for a reserved bed day, §504.3 which addresses the duties of a provider by enrolling in Medicaid, and §515.2 that addresses unacceptable practices.

For a bed to be reserved and billed to the Medicaid Program, the vacancy rate requirement under 18 NYCRR Section 505.9(d) states, "A reserved bed day is a day for which the department pays a medical institution to reserve a bed for an MA recipient...(5)(i) The department will pay an institution for a recipient's reserved bed days when...(b) the part of the institution to which the recipient will return has a vacancy rate of no more than 5 percent on the first day the recipient is hospitalized or on leave of absence." §505.9(d)(6)(ii) further states, "If a bed is not reserved, the recipient must be given priority in readmission to the institution over persons referred to the institution for their first admissions."

An audit engagement letter was sent to the Facility on November 8, 2004 notifying the Facility that the New York State Department of would be conducting an audit of the bed reserve billings made by the Facility to Medicaid for service dates January 1, 2002 thru December 31, 2002 (Attachment I). The engagement letter requested that the Facility send their Monthly Periodic Census Reports that supported the daily activity and bed-holds for 2002 dates of service. The Facility was also asked to include any policies or explanations that the Facility may apply when determining if a bed-hold day is billable to Medicaid. In accordance with Title 18 NYCRR Part 517.5, this report represents the final determination on issues found during our review.

An analysis was completed by the OMIG of the Monthly Periodic Census Reports (Attachment II) submitted by the Facility in response to the audit engagement letter to determine if any new bed-holds were billed to Medicaid during a period where the vacancy rate was above 5% on the date the bed-hold was initiated. The submitted census report indicated a single census methodology was being applied by the Facility and that there were no distinct units within the Facility. The OMIG then determined the Facility's vacancy rate/percentage and eligibility for bed-hold status based on the Facility having a 140 bed capacity throughout the audit period. On December 5, 2005 the OMIG issued a draft audit report with findings that identified \$543,516 in bed reserve overpayments.

On January 18, 2006 the Facility submitted a written response to the December 5, 2005 draft report (Attachment III) stating that the audit based the Facility's vacancy level upon a faulty assumption that the Facility was a 140-bed SNF with no specialty-care beds, when in fact the Facility was comprised of two levels of care (123 geriatric and 17 ventilator beds) which should be treated separately and distinctly when addressing reserve bed day thresholds. In addition, the Facility submitted an adjusted census report outlining the occupancy level for each distinct unit during the audit period (Attachment IV).

On January 25, 2006 the Facility submitted a second written response (Attachment V) to the draft audit report stating:

- On November 20, 2001 the Facility received contingent approval from NYS DOH to use 17 of their geriatric beds for construction of a ventilator dependent unit that was scheduled to open on September 5, 2002, and as a result, the Facility's geriatric unit had an occupancy capacity of 123 beds effective 1/1/02 through 9/4/02, and not the 140 bed capacity used in the vacancy calculation by the OMIG in the audit analysis.
- NYS DOH gave the Facility permission to use eight of the targeted ventilator beds for standard geriatric care from January 23, 2002 until the ventilator unit was to be opened on September 5, 2002.
- The Facility did not use any of the eight beds in the ventilator unit for geriatric care until May 9, 2002, and that for reserve bed day threshold calculations the certified capacity of the Facility's geriatric unit should remain at a constant 123 beds even though some or all of the eight beds in the ventilator unit were being used as geriatric beds from May 9, 2002 through September 4, 2002.
- Census schedules previously submitted by the Facility did not accurately depict the Facility's census and as a result the Facility was submitting a revised census (Attachment VI) for the OMIG to use in the audit analysis.

After reviewing the Facility's responses, the OMIG contacted NYS DOH, Office of Health Systems Management (OHSM), who oversaw bed reserve policy and bed certification approval related to the Facility's request referenced in their response. OHSM confirmed to OMIG auditors that effective January 7, 2002, OHSM approved the Facility's request to continue usage of eight of the geriatric beds designated for the new ventilator unit for geriatric patients until the ventilator unit was to be opened on September 5, 2002.

The OMIG, in reviewing the revised daily census submitted by the Facility confirmed that the Facility did not begin utilizing the eight beds in the ventilator unit (2E) for geriatric patients until May 9, 2002, and did not initiate a bed hold in the ventilator unit (2E) for a geriatric patient until June 12, 2002. In addition, the audit confirmed that the ventilator unit was fully operational for ventilator patient's usage effective September 5, 2002. As a result, the geriatric unit's occupancy level used by the OMIG in determining the vacancy rate of the facility during the audit period was:

- 123 beds from January 1, 2002 thru June 11, 2002. The OMIG recognizes that the facility did not use any of the ventilator beds for geriatric patients until May 9, 2002, and did not initiate any bed holds in the ventilator unit for geriatric patients' until June 12, 2002. The OMIG has not applied any of the eight beds being used in the ventilator unit in the geriatric census count until that time that the Facility began holding beds in unit 2E for geriatric patients; June 12, 2002.
- 131 beds from June 12, 2002 thru September 4, 2002. The eight beds in the ventilator unit approved by OHSM to be used for geriatric patients were fully occupied by geriatric residents effective June 5, 2002, with the first geriatric bed-hold in this unit being initiated on June 12, 2002. As a result, the Facility's occupancy count to be

used by the OMIG to determine vacancy rate increases by the eight beds to 131 effective the first day the Facility began initiating bed holds in that unit; June 12, 2002.

- 123 beds from September 5, 2002 thru December 31, 2002. The ventilator unit became fully operational effective September 5, 2002. As a result, geriatric residents can no longer have a bed-hold placed in a unit where the resident did not meet the distinct admission criteria for that unit; which a geriatric patient does not meet in a ventilator unit. As a result, the geriatric occupancy level is reduced by these eight beds that were previously authorized/occupied for use by geriatric patients, and the total occupancy level of the geriatric unit is reduced from 131 to 123 effective September 5, 2002. Going forward, any bed-hold placed on a geriatric patient in a ventilator bed is disallowed, and the payment recoverable.

Due to the additional information submitted by the Facility a revised draft report was issued on March 23, 2011 outlining the preliminary determination on issues found during the review using the above stated occupancy levels. The Facility did not submit any comments in response to their receipt of the revised draft report to indicate they were contesting the audit methodology used or any of the audit findings that were identified.

## **FINDINGS**

After applying the information contained in the revised census reports submitted by the Facility the audit determined that the Facility was periodically operating above a 5% vacancy rate during the January 1, 2002 through December 31, 2002 audit period. The audit found that a total of 769 bed-hold days were inappropriately billed to Medicaid while the Facility's vacancy rate exceeded 5%. As a result, §504.3, §505.9(d), and §515.2 requirements were violated and the amount of overpayment, as defined in 18 NYCRR §518.1, is \$161,738.83 (Attachment VII). This finding was identified in the March 23, 2011 revised draft report and was not contested by the Facility as of the release date of this final report.

Under the Health Care Assessment Program, residential health care facilities licensed under Article 28 of the Public Health Law §2807-d must pay a six percent assessment on monthly cash receipts effective April 1, 2002. New York State Medicaid has established a reimbursement mechanism through rate code 3836 to reimburse nursing homes for the portion of the assessment that applies to days where the Medicaid Program is the primary payer for your residents. The cash receipt assessment payment made by New York State Medicaid related to each disallowed bed reserve payment is also recoverable as a disallowance and is included as an overpayment of \$5,487.22 in this report (Attachment VIII, Disallowed Cash Assessment). This finding was identified in the March 23, 2011 revised draft report and was not contested by the Facility as of the release date of this final report.

The overpayments identified in this final report were determined by applying the Facility's promulgated rates at the date this report was issued (Attachment IX). Based on this determination, the total amount of overpayment, as defined in 18 NYCRR §518.1 is \$167,226.05 (Attachment VIII). Repayment of \$167,226 is due the New York State Department of Health.

## **PAYMENT OPTIONS**

In accordance with 18 NYCRR Part 518 which regulates the collection of overpayments, your repayment options are described below.

**OPTION #1:** Make full payment by check or money order within 20 days of the date of the final report. The check should be made payable to the New York State Department of Health and be sent with the attached Remittance Advice to:

Mr. Donald Collins  
New York State Department of Health  
Medicaid Financial Management, B.A.M.  
GNARESP Corning Tower, Room 1237  
Albany, New York 12237-0016

**OPTION #2:** Enter into a repayment agreement with the Office of the Medicaid Inspector General. If your repayment terms exceed 90 days from the date of the final report, recoveries of amounts due are subject to interest charges at the prime rate plus 2%. If the process of establishing the repayment agreement exceeds 20 days from the date of the final report, the OMIG will impose a 15% withhold after 20 days until the agreement is established. The OMIG may require financial information from you to establish the terms of the repayment agreement. If additional information is requested, the OMIG must receive the information within 30 days of the request or a 50% withhold will be imposed. OMIG acceptance of the repayment agreement is based on your repaying the Medicaid overpayment as agreed. The OMIG will adjust the rate of recovery, or require payment in full, if your unpaid balance is not being repaid as agreed. The OMIG will notify you no later than 5 days after initiating such action.

If you wish to enter into a repayment agreement, you must forward your written request within 20 days to the following:

Bureau of Collections Management  
New York State Office of the Medicaid Inspector General  
800 North Pearl Street  
Albany, New York 12204  
Phone #: (518) 474-5878  
Fax#: (518) 408-0593

If within 20 days, you fail to make full payment or contact the OMIG to make repayment arrangements, the OMIG will establish a withhold equal to 50% of your Medicaid billings to secure payment and liquidate the overpayment amount, interest and/or penalty, not barring any other remedy allowed by law. The OMIG will provide notice to you no later than 5 days after the withholding of any funds.

In addition, if you receive an adjustment in your favor while you owe funds to the State, such adjustment will be applied against the amount owed.

**PROVIDER'S RIGHTS**

The Facility has the right to challenge this action and determination by requesting an administrative hearing within sixty (60) days of the date of this notice. In accordance with 18 NYCRR Section 519.18(a), "The issues and documentation considered at the hearing are limited to issues directly relating to the final determination. An appellant may not raise issues regarding the methodology used to determine any rate of payment or fee, nor raise any new matter not considered by the department upon submission of objections to a draft audit or notice of proposed agency action."

If the Facility wishes to request a hearing, the request must be submitted in writing to:

General Counsel  
Division of Counsel  
New York State Office of the Medicaid Inspector General  
800 North Pearl Street  
Albany, New York 12204

If a hearing is held, the Facility may have a person represent the Facility or the Facility may represent itself. If the Facility chooses to be represented by someone other than an attorney, the Facility must supply along with the Facility's hearing request a signed authorization permitting that person to represent the Facility. At the hearing, the Facility may call witnesses and present documentary evidence on the Facility's behalf.

If the Facility has any questions please contact me at (518) 402-1117 or email at [Patrick.Dufresne@omig.ny.gov](mailto:Patrick.Dufresne@omig.ny.gov). **Do not** submit claim voids in response to this final report.

Thank you.

Sincerely,  


Patrick W. Dufresne, Director  
Bureau of Managed Care Audit & Provider Review  
Office of the Medicaid Inspector General

CERTIFIED MAIL 7010 1870 0002 2223 5017  
RETURN RECEIPT REQUESTED

**NEW YORK STATE  
OFFICE OF THE MEDICAID INSPECTOR GENERAL  
REMITTANCE ADVICE**

**NAME AND ADDRESS OF AUDITEE**

Concord Nursing Home Inc.  
300 Madison Street  
Brooklyn, NY 11216

Provider # XXXXXXXXXX

AUDIT # 05- 1058

AMOUNT DUE: \$ 167,226

AUDIT	<input type="checkbox"/> PROVIDER
	<input type="checkbox"/> RATE
	<input type="checkbox"/> PART B
TYPE	<input checked="" type="checkbox"/> OTHER: Bed Reserve

**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 check to:

Mr. Donald Collins  
Medicaid Financial Management, B.A.M.  
New York State Department of Health  
GNARESP Corning Tower, Room 1237  
File # 05- 1058  
Albany, New York 12237-0016

5. If the provider number shown above is incorrect, please enter the correct number below.

**CORRECT PROVIDER NUMBER**