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

DAVID A. PATERSON
GOVERNOR

JAMES G. SHEEHAN
MEDICAID INSPECTOR GENERAL

August 24, 2010

Custodio R. Borgueta, M.D.
[redacted]
9 Hudson Valley Professional Plaza
Newburgh, New York 12550

FINAL AUDIT REPORT
Audit #2010Z57-142K
Provider [redacted]

Dear Dr. Borgueta:

The New York State Office of the Medicaid Inspector General (the "OMIG") completed an audit of Medicaid claims paid for obstetrical and delivery services provided to pregnant women. In accordance with Section 517.5 of Title 18 of the Official Compilation of Codes, Rules and Regulations of the State of New York (18 NYCRR), this report represents the final determination on issues found during the OMIG's review.

After reviewing your response to the OMIG's January 26, 2010 Draft Audit Report, the OMIG reduced the Draft Audit Report disallowances of $2,054.54 to $1,375.27 in the Final Report. A detailed explanation of the revision is included in the Final Report.

Based on this determination, restitution of the overpayments as defined in 18 NYCRR 518.1 is required in the amount of $1,375.27.

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

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

New York State Department of Health
Medicaid Financial Management
GNARESP Corning Tower, Room 1237
Albany, New York 12237

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:

Collections Management Group
New York State Office of the Medicaid Inspector General
800 North Pearl Street
Albany, New York 12204

Do not submit claim voids or adjustments in response to this Final Audit Report.

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.

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 you wish 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, 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.

Questions concerning this audit may be directed to [redacted] at [redacted]

Sincerely,

[redacted]

Bureau of Business Intelligence
Office of the Medicaid Inspector General

Enclosure

CERTIFIED MAIL # [redacted]
RETURN RECEIPT REQUESTED

NEW YORK STATE
OFFICE OF THE MEDICAID INSPECTOR GENERAL
REMITTANCE ADVICE

NAME AND ADDRESS OF AUDITEE

Custodio R. Borgueta, M.D.
[redacted]
9 Hudson Valley Professional Plaza
Newburgh, New York 12550

AMOUNT DUE: $1,375.27

Provider [redacted]

AUDIT #2010Z57-142K

AUDIT TYPE	[X] PROVIDER
	[ ] RATE
	[ ] PART B
	[ ] OTHER:

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:

[redacted]
Medicaid Financial Management
New York State Department of Health
GNARESP Corning Tower, Room 1237
File #2010Z57-142K
Albany, New York 12237

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

CORRECT PROVIDER NUMBER

NEW YORK STATE
OFFICE OF THE MEDICAID INSPECTOR GENERAL

DAVID A. PATERSON
GOVERNOR

JAMES G. SHEEHAN
MEDICAID INSPECTOR GENERAL

FINAL REPORT

CUSTODIO R. BORGUETA, M.D.
WOMEN'S MEDICAL CARE OF HUDSON VALLEY, P.C.
9 HUDSON VALLEY PROFESSIONAL PLAZA
NEWBURGH, NEW YORK 12550

OBSTETRICS/GYNECOLOGY
#2010Z57-142K

ISSUED AUGUST 24, 2010

BACKGROUND, PURPOSE AND SCOPE

The New York State Department of Health (DOH) is responsible for the administration of the Medicaid program. As an independent office within DOH, the OMIG conducts audits and reviews of 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 in NY Public Health Law, NY Social Services Law, regulations of the Departments of Health, [Titles 10 and 18 of the Official Compilation of Codes, Rules and Regulations of the State of New York] and the Medicaid Provider Manuals.

As a result of earlier audits of the OBSTETRICS/GYNECOLOGY (PCAP), the OMIG became aware of improper billings by physicians and physician groups (physicians/groups) for obstetrical and delivery services. In the course of our review, there was evidence of:

- Obstetrical deliveries that were incorrectly billed and paid at the global, all inclusive delivery rate for PCAP clinic patients. PCAP clinic patients receive all prenatal and postpartum care through the clinic. Obstetrical delivery services for these patients should be billed using the appropriate "delivery only" procedure code.

- Obstetrical deliveries that were billed more than once by the same or different physician/group for the same patient.

- Antepartum and postpartum care procedures billed for PCAP patients. PCAP clinic patients receive all ante partum and postpartum care through the PCAP clinic. Medicaid should not be bill billed for these procedures as they are included in the PCAP rate.

The purpose of this audit was to ensure provider compliance with applicable State laws, rules, regulations and policies governing the New York State Medicaid Program and to verify that services provided were accurately billed in accordance with the Medicaid Provider Manual for Physicians.

To accomplish this, claims for obstetrical services with payment dates from January 1, 2004 through December, 31, 2008 were reviewed.

These claims were reviewed to verify that:

- Obstetrical services included in the all-inclusive PCAP rate were not billed directly to Medicaid.
- Delivery services were not duplicated.
- Obstetrical services were billed at the correct fees.

Please note that due to the implementation of the National Provider Identifier (NPI) on September 1, 2008, there may be multiple Provider Identification Numbers associated with the Primary Provider Identification Number. The NPI is linked to the Primary Provider Identification Number. The Primary Provider Identification Number is used for correspondence and recoupment.

DETAILED FINDINGS

The exhibits are detailed in three categories. All or a combination of the following three exhibits are included in this Final Audit Report.

1. Physician/Group Billing Global Delivery Charges for PCAP Patients

Regulations state: "An unacceptable practice is conduct which constitutes fraud or abuse and includes... false claims. Submitting, or causing to be submitted, a claim or claims for... unfurnished medical care, services or supplies...

18 NYCRR 515.2(b)(1)(i)(a)

Regulations state: "An unacceptable practice is conduct which constitutes fraud or abuse and includes ... False statements. Making or causing to be made any false, fictitious or fraudulent statement or misrepresentation of material fact in claiming a medical assistance payment, or for use in determining the right to payment."

18 NYCRR 515.2(b) (2) (i)

Regulations also state: "By enrolling the provider agrees ... that the information provided in relation to any claim for payment shall be true, accurate, and complete;"

18 NYCRR 504.3(h)

Regulations also state: "By enrolling the provider agrees ... 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 504.3(e)

The Medicaid Provider Manual describes global delivery as: "Routine obstetric care including ante partum care, vaginal delivery (with or without episiotomy, and/or forceps) and (inpatient and outpatient) postpartum care (total, all inclusive, "global" care)...

Medicaid Provider Manual for Physicians, Surgery Section
Maternity Care and Delivery

Physicians/groups should not charge the global delivery procedure codes for patients who receive PCAP services. Global delivery procedure codes are all inclusive total obstetric care procedure codes that include obstetric care or postpartum care and delivery charges. Patients participating in the PCAP program receive ante partum and postpartum services from their PCAP providers. Physicians/groups providing delivery services for PCAP patients should use a "delivery only" procedure code.

Exhibit I is a list of all PCAP patients who had the global delivery fee incorrectly billed during the review period. The global delivery procedure was reduced to the delivery only procedure. This resulted in an overpayment totaling $634.00.

2. **Duplicate Delivery Charges for Patients**

Department Regulations state: "An unacceptable practice is conduct which constitutes fraud or abuse and includes... False claims. Submitting, or causing to be submitted, a claim or claims for... unfurnished medical care, services or supplies...

18 NYCRR 515.2(b)(1)(i)(a)

Regulations state: "An unacceptable practice is conduct which constitutes fraud or abuse and includes ... False statements. Making or causing to be made any false, fictitious or fraudulent statement or misrepresentation of material fact in claiming a medical assistance payment, or for use in determining the right to payment."

18 NYCRR 515.2(b)(2)(i)

Regulations also state: "By enrolling the provider agrees: ... that the information provided in relation to any claim for payment shall be true, accurate, and complete;"

18 NYCRR 504.3(h)

Regulations also state: "By enrolling the provider agrees ... 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 504.3(e)

Delivery procedure codes (i.e.: 59400, 59409, 59410, 59510, 59514, 59515, 59610, 59612, 59614, 59618, 59620 and 59622) should not be billed twice for the same patient's delivery.

Exhibit II is a list of all patients who had a duplicate billing of a delivery fee during the review period. Specifically, we identified payments for deliveries that occurred within 150 days of each other. In each instance, a delivery was billed within 150 days of a delivery that was already billed and paid by Medicaid. This resulted in overpayments totaling $0.00.

3. **Physician/Group Billing Antepartum or Postpartum Care Services for PCAP Patients**

The Medicaid Provider Manual states: "Prenatal Care Assistance (PCAP) providers, certified by the New York State Department of Health, provide a comprehensive package of prenatal care services through hospitals and clinics. PCAP providers may provide prenatal services either directly or through subcontract with qualified private physicians or agencies. The PCAP providers are reimbursed for all prenatal and postpartum visits, laboratory and ultrasound (sonogram) procedures."

Medicaid Provider Manual for Physicians, Section 2.2.4A

The PCAP clinic rates (3101, 3102 and 3103 for hospitals), (1601, 1602 and 1603 for diagnostic and treatment centers) include antepartum and postpartum services. Physicians/groups providing routine antepartum and postpartum services to PCAP patients should not bill Medicaid directly.

Exhibit III is a list of all PCAP patients who had antepartum and/or postpartum services incorrectly billed during the review period. This resulted in overpayments totaling $443.00.

DETERMINATION

In accordance with 18 NYCRR 518.4, interest may be collected on any overpayments identified in this audit and will accrue at the current rate from the preliminary determination of the overpayment. For the overpayments identified in this audit, the OMIG has determined that accrued interest totals $298.27.

Based on this determination, the total amount of overpayment, as defined in 18 NYCRR 518.1(c) is $1,375.27, inclusive of interest.