



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

259 Monroe Avenue, Room 312
Rochester, New York 14607

(585)238-8166
Fax: (585)238-8169

ANDREW M. CUOMO
GOVERNOR

JAMES C. COX
ACTING MEDICAID INSPECTOR GENERAL

August 8, 2011

[REDACTED]
Westgate Nursing Home
525 Beahan Road
Rochester, New York 14624

Re: Medicaid Rate Audit #08-2139
NPI Number: [REDACTED]
Provider Number: [REDACTED]

Dear [REDACTED]

Enclosed is the final audit report of the Office of the Medicaid Inspector General's (the "OMIG") audit of Westgate Nursing Home's (the "Facility") Medicaid rates for the rate period January 1, 2003 through December 31, 2006. In accordance with 18 NYCRR Section 517.6, this report represents the OMIG's final determination on issues raised in the draft report.

In response to the draft audit report dated August 14, 2009, and the draft audit report amendment letter dated October 7, 2010, you identified specific audit findings with which you disagreed. Your comments have been considered and the report has been either revised accordingly and/or amended to address your comments, and to correct an error in the draft report which reduced the Medicaid overpayment. These changes resulted in a reduction of \$2,654 to the Medicaid overpayment. Based on the enclosed audited rates calculated by the Bureau of Long Term Care Reimbursement, the Medicaid overpayment currently due is \$737,321. This overpayment is subject to Department of Health (the "DOH") and Division of Budget (the "DOB") final approval. While not anticipated, any difference between the calculated overpayment and the final DOH and DOB approved amount will be resolved with the Facility by the OMIG Bureau of Collections Management.

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 audit report. The check should be made payable to the New York State Department of Health and be sent with the attached Remittance Advice to:

[REDACTED]
New York State Department of Health
Medicaid Financial Management
GNARESP Corning Tower, Room 1237
File #08-2139
Albany, New York 12237-0048

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 audit 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 audit 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

[REDACTED]

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.

You have the right to challenge this action and determination by requesting an administrative hearing within sixty (60) days of the date of this notice. You may not request a hearing to raise issues related to rate setting or rate setting methodology. In addition, you may not raise any issue that was raised or could have been raised at a rate appeal with your rate setting agency. You may only request a hearing to challenge specific audit adjustments which you challenged in a response to the draft audit report.

If you wish to request a hearing, the request must be submitted in writing to:

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

Questions regarding the request for a hearing should be directed to [REDACTED]
of the Office of Counsel at [REDACTED]

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 a signed authorization permitting that person to represent you along with your hearing request. At the hearing, you may call witnesses and present documentary evidence on your behalf. If you have any questions regarding the above, please contact me at [REDACTED]

Sincerely,

[REDACTED]

Principal Medical Facilities Auditor
Division of Medicaid Audit
Audit Management and Development
Office of the Medicaid Inspector General

Attachments:

- EXHIBIT I - Summary of Per Diem Impact and Medicaid Overpayment
- EXHIBIT II - Summary of Medicaid Rates Audited
- EXHIBIT III - Property Expense Disallowances/(Allowances)
- EXHIBIT IV - Reduction to Per Diem Adjustments

CERTIFIED MAIL # [REDACTED]
Return Receipt Requested

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

NAME AND ADDRESS OF AUDITEE

Westgate Nursing Home
525 Beahan Road
Rochester, New York 14624

NPI #: [REDACTED]
PROVIDER #: [REDACTED]

AUDIT #08-2139

AMOUNT DUE: \$737,321

AUDIT	<input type="checkbox"/>	PROVIDER
TYPE	<input checked="" type="checkbox"/>	RATE
	<input type="checkbox"/>	PART B
	<input type="checkbox"/>	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]
New York State Department of Health
Medicaid Financial Management
GNARESP Corning Tower, Room 1237
File #08-2139
Albany, New York 12237-0048

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

CORRECT PROVIDER NUMBER

WESTGATE NURSING HOME
RATE YEARS 2003 THROUGH 2006
SUMMARY OF PER DIEM IMPACT AND MEDICAID OVERPAYMENT

<u>RATE PERIOD</u>	<u>ISSUED RATES*</u>		<u>FINAL RATES</u>		<u>RATE DECREASE (INCREASE)</u>	<u>MEDICAID DAYS</u>	<u>MEDICAID OVERPAYMENT</u>
	<u>Medicare Part B</u>		<u>Medicare Part B</u>				
	<u>Non-Elig.</u>	<u>Eligible</u>	<u>Non-Elig.</u>	<u>Eligible</u>			
01/01/03 - 03/31/03	\$121.66 /	121.61	\$113.71 /	113.66	\$ 7.95	8,211	\$ 65,277
04/01/03 - 06/30/03	125.72 /	125.67	117.77 /	117.72	7.95	8,266	65,715
07/01/03 - 09/30/03	119.89 /	119.84	111.94 /	111.89	7.95	8,594	68,322
10/01/03 - 12/31/03	122.72 /	122.67	114.77 /	114.72	7.95	8,614	68,481
01/01/04 - 03/31/04	123.72 /	123.67	115.48 /	115.43	8.24	8,590	70,782
04/01/04 - 06/30/04	129.08 /	129.03	120.84 /	120.79	8.24	8,197	67,543
07/01/04 - 09/30/04	125.51 /	125.46	117.27 /	117.22	8.24	8,313	68,499
10/01/04 - 12/31/04	127.42 /	127.37	119.18 /	119.13	8.24	8,201	67,576
01/01/05 - 03/31/05	124.73 /	124.68	121.91 /	121.86	2.82	7,817	22,044
04/01/05 - 06/30/05	126.71 /	126.66	123.89 /	123.84	2.82	8,247	23,257
07/01/05 - 09/30/05	132.69 /	132.64	124.07 /	124.02	8.62	8,244	71,063
10/01/05 - 12/31/05	135.24 /	135.19	126.62 /	126.57	8.62	7,915	68,227
01/01/06 - 03/31/06	135.29 /	135.24	134.95 /	134.90	0.34	7,606	2,586
04/01/06 - 06/30/06	136.65 /	136.60	136.31 /	136.26	0.34	7,615	2,589
07/01/06 - 09/30/06	134.78 /	134.73	134.44 /	134.39	0.34	8,033	2,731
10/01/06 - 12/31/06	136.05 /	136.00	135.71 /	135.66	0.34	7,733	<u>2,629</u>
Total Medicaid Overpayment							<u>\$ 737,321</u>

* Any differences between these rates and the rates listed in Exhibit II of this report represent rate changes made subsequent to our audit. These changes remain open to future audit by the Office of the Medicaid Inspector General.

WESTGATE NURSING HOME
RATE YEARS 2003 THROUGH 2006
SUMMARY OF MEDICAID RATES AUDITED

The Facility's Medicaid utilization ranged from approximately 76 to 81 percent for the period under audit and the Medicaid per diem rates audited are shown below. Any differences between these rates and the "Issued Rates" listed in Exhibit I of this report represent rate changes made subsequent to our audit. These changes remain open to future audit by the Office of the Medicaid Inspector General.

<u>RATE PERIOD</u>	<u>ISSUED RATES</u>	
	<u>Non-Elig.</u>	<u>Eligible</u>
01/01/03 - 12/31/03	\$130.79	\$130.74
01/01/04 - 03/31/04	134.65	134.60
04/01/04 - 09/30/04	135.00	134.95
10/01/04 - 12/31/04	135.00	134.95
01/01/05 - 06/30/05	132.87	132.82
07/01/05 - 12/31/05	141.52	141.47
01/01/06 - 03/31/06	142.90	142.85
04/01/06 - 12/31/06	142.58	142.53

WESTGATE NURSING HOME
RATE YEARS 2003 THROUGH 2006
PROPERTY EXPENSE DISALLOWANCES/(ALLOWANCES)

	DESCRIPTION	COST CENTER	DISALLOWED (ALLOWED)	TRACE-BACK %	RATE YEAR			
					2003	2004	2005	2006
Expense Allowed on HE-12B					\$ 122,072	\$ 117,064	\$ 133,256	\$ 117,196
Less Disallowances/(Allowances):								
1. RETURN ON AND RETURN OF REAL PROPERTY EQUITY DISALLOWANCE								
The Facility's return on equity and return of equity were reduced to reflect adjustments to real property historical costs and accumulated reimbursement. These changes were due to audit adjustments from a prior audit (#00-M04-1006), and from disallowances to real property asset additions in the current audit. The disallowed real property asset additions were for repairs that were operating expenses and not allowable as real property costs.								
	Ret. on Equity	001	\$1,657	100.00%	1,657			
	Ret. on Equity	001	1,582	100.00%		1,582		
	Ret. on Equity	001	1,576	99.57%			1,569	
	Ret. on Equity	001	2,047	99.55%				2,038
	Ret. of Equity	001	3,234	100.00%	3,234			
	Ret. of Equity	001	3,234	100.00%		3,234		
	Ret. of Equity	001	3,746	99.55%			3,729	
	Ret. of Equity	001	6,131	99.55%				6,103
Regulations: 10 NYCRR Section 451.140, Section 86-2.4, 86-2.17(a), and 86-2.21, RHC Accounting and Reporting Manual								
2. PROPERTY INSURANCE EXPENSE DISALLOWANCE								
Reported property insurance expense included premiums for business income/interruption insurance. This type of insurance is an operating expense and not allowable as a property cost. In addition, there were differences between the property insurance per audit and that reported on the RHC-4 Report. The provider could not substantiate the discrepancies. As a result, adjustments were made to disallow the business income premiums, and to disallow the insurance that could not be substantiated by the provider.								
	Prop. Ins.	005	3,576	100.00%	3,576			
	Prop. Ins.	005	3,216	100.00%		3,216		
	Prop. Ins.	005	3,658	99.95%			3,656	
	Prop. Ins.	005	3,824	99.95%				3,822
Regulations: 10 NYCRR Section 86-2.17(a), PRM-1 Sections 2161 and 2300, RHC Accounting and Reporting Manual, RHC Instructions								
3. DISALLOWANCE OF UNSUBSTANTIATED RENTAL EXPENSE								
Based on the Facility's reponse to the draft audit report, this adjustment was eliminated.								
4. OFFSET OF RENTAL INCOME								
The Facility had room (space) rental income from activities not related to patient care. Since the cost of the activity could not practically be determined, regulations require that the income derived be substituted for costs of these services and activities. Consequently, the rental income was offset against property expenses.								
	Direct Assign.	000	600	100.00%	600			
	Direct Assign.	000	600	100.00%		600		
Regulation: 10 NYCRR Section 86-2.18								

WESTGATE NURSING HOME
RATE YEARS 2003 THROUGH 2006
PROPERTY EXPENSE DISALLOWANCES/(ALLOWANCES)

	DESCRIPTION	COST CENTER	DISALLOWED (ALLOWED)	TRACE-BACK %	RATE YEAR			
					2003	2004	2005	2006
5. DISALLOWANCE OF AUTO INSURANCE								
Reported auto insurance expense included insurance premiums on a vehicle the owner used for personal purposes. Such premiums represent additional compensation to the owner and are allowable only in the base period operating component of the rate. Only the expense associated with nursing home business use of the vehicle is allowable in the property component. The provider did not substantiate the nursing home business use of the vehicle. Therefore, the auto insurance on the vehicle used by the owner was disallowed from property expense.								
	Insurance	001	2,284	100.00%		2,284		
	Insurance	022	1,870	100.00%			1,870	
	Insurance	022	1,839	100.00%				1,839
Regulations: 10 NYCRR Section 86-2.17, RHCf Accounting and Reporting Manual								
6. WORKING CAPITAL INTEREST EXPENSE DISALLOWANCE								
Working capital interest expense included interest on financed whole life insurance premiums. The insurance policies were in the owners' names. Life insurance premiums on the owners' lives is considered part of owner's compensation which is an operating expense. As such, the financing costs of those premiums were also part of owner's compensation and are not allowable as a property expense. Accordingly, the reported working capital interest applicable to the financing of the owners' life insurance was disallowed.								
	WC Interest	005	1,603	99.95%			1,602	
Regulations: 10 NYCRR Section 86-2.17, PRM -1 Section 218.1								
Total Disallowances/(Allowances)					<u>9,067</u>	<u>10,916</u>	<u>12,426</u>	<u>13,802</u>
AUDITED PROPERTY EXPENSE					<u>\$ 113,005</u>	<u>\$ 106,148</u>	<u>\$ 120,830</u>	<u>\$ 103,394</u>

WESTGATE NURSING HOME
RATE YEARS 2003 THROUGH 2006
REDUCTION TO PER DIEM ADJUSTMENTS

In accordance with Sections 2808 and 2808-d of the Public Health Law, the Facility received funding in the 2003 through 2006 Medicaid rates through a Health Recruitment and Retention (HR&R) per diem and a Nursing Home Quality Improvement Demonstration Program (NHQIDP) per diem. These Funds were to be used for the training, recruitment, retention, and betterment of direct care workers and other non-supervisory employees. Funds that were not used for these purposes are subject to recoupment.

The provider could only substantiate a portion of the NHQIDP and HR&R funding had been used for authorized purposes. As a result, the NHQIDP and HR&R per diems were reduced to recoup the funding the provider did not substantiate were used as authorized. The changes to these per diems are summarized below and the provider was given schedules to show how the NHQIDP and HR&R per diem reductions were calculated.

Regulations: 10 NYCRR Section 86-2.4, PRM-1 Section 2300, Public Health Law Sections 2808 and 2808-d

	Rate Periods				
	<u>1/1/2003-</u> <u>12/31/2003</u>	<u>1/1/2004-</u> <u>12/31/2004</u>	<u>1/1/2005-</u> <u>6/30/2005</u>	<u>7/1/2005</u> <u>12/31/2005</u>	<u>1/1/2006-</u> <u>12/31/2006</u>
Nursing Home Quality Impr. Demonstration Program Per Diem	\$ 6.81	\$ 6.79		\$ 8.65	\$ 4.42
Audit Reduction to Per Diem	5.78	5.27		5.80	-
Allowable Per Diem	<u>\$ 1.03</u>	<u>\$ 1.52</u>		<u>\$ 2.85</u>	<u>\$ 4.42</u>
Health Retention and Recruitment Per Diem	\$ 1.95	\$ 2.70	\$ 2.53	\$ 2.53	\$ 2.73
Audit Reduction to Per Diem	1.95	2.70	2.53	2.53	-
Allowable Per Diem	<u>\$ -</u>	<u>\$ -</u>	<u>\$ -</u>	<u>\$ -</u>	<u>\$ 2.73</u>