



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

**BED RESERVE AUDIT
PROMENADE REHABILITATION AND HEALTH CARE CENTER
JANUARY 1, 2008 – JUNE 30, 2010
AUDIT# 13-5516**

FINAL AUDIT REPORT

**James C. Cox
Medicaid Inspector General
August 20, 2014**

OFFICE OF THE MEDICAID INSPECTOR GENERAL

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.

TABLE OF CONTENTS

	PAGE
BACKGROUND, PURPOSE AND SCOPE	1-2
FINDINGS	3-4
PAYMENT OPTIONS	4
PROVIDER RIGHTS	5
REMITTANCE FORM	6
ATTACHMENTS AND SCHEDULES	
ATTACHMENT I - Provider Periodic Census Reports	
ATTACHMENT I-A - Geriatric Unit Census Report	
ATTACHMENT I-B - Vent Unit Census Report	
ATTACHMENT I-C - Vent Unit Census Detail Report (1 year sample)	
ATTACHMENT II - Analysis of Vacancy Rate	
ATTACHMENT II-A - Geriatric and Vent Unit Census Transfers/Adjustments	
ATTACHMENT II-B - Vent Unit Census Analysis	
ATTACHMENT III- Disallowance Vacancy Rate Violation 18 NYCRR §505.9(d)(5)	
ATTACHMENT IV - Total Audit Disallowances	
ATTACHMENT V - Promulgated Rates Period of Jan 1, 2008 – June 30, 2010	
ATTACHMENT VI - Federal Reserve Prime Rates	
ATTACHMENT VII - Facilities Response to the Draft Report	



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

ANDREW M. CUOMO
GOVERNOR

JAMES C. COX
MEDICAID INSPECTOR GENERAL

August 20, 2014

[REDACTED]
Promenade Rehabilitation and Health Care Center
140 Beach 114th Street
Rockaway Park, NY 11694

Re: Bed Reserve Audit
Final Audit Report
Audit# 13-5516
Provider [REDACTED]

Dear [REDACTED]

Enclosed is the Office of the Medicaid Inspector General's ("OMIG") Final Audit Report of bed reserve payments to Promenade Rehabilitation and Health Care Center (the "Facility") for period of January 1, 2008 to June 30, 2010. In accordance with Section 517.6 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.

After reviewing the Facility's May 5, 2014, July 11, 2014 and July 17, 2014 responses to draft report (Attachment VII) and considering information from June 19, 2014 phone conversation with the Facility, the OMIG has reduced the findings in May 2, 2014 Draft Report disallowances from \$241,372 to \$155,719. A detailed explanation of the revision is included in the findings section of 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 in New York Public Health Law, New York Social Services Law, the regulations of the Department of Health (Titles 10 and 18 of the NYCRR), the regulations of Office of Mental Health (Title 14 of the NYCRR) and the Department of Health's Medicaid Provider Manuals and *Medicaid Update* publications.

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. Also, 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 date of the overpayment.

For a bed to be reserved and billed to the Medicaid Program, the vacancy rate requirement under 18 NYCRR Section 505.9(d) states, "The department will pay an institution for a recipient's reserved bed days when 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."

The scope of the audit was a review of the Facility's records to ensure that the Facility properly complied with applicable Federal and State laws, regulations, rules and policies that govern the New York State Medicaid bed reserve program related to:

1. The Facility's claim for payment was true, accurate and complete.
2. The Facility had a vacancy rate of no more than 5% on the day of the resident's temporary leave from the facility.

An analysis was completed of the Monthly Periodic Census Reports (Attachments I-A and I-B) that were submitted by the Facility to support the daily activity and bed reserve payments for period January 1, 2008 to June 30, 2010. Part of this analysis was to determine if any new bed-holds were billed to Medicaid by the Facility during a period where the vacancy rate exceeded 5%. The Facility had a 229 bed capacity Geriatric Unit and an 11 bed capacity Ventilator Dependent unit for the period of January 1, 2008 to March 17, 2009 and a 220 bed capacity Geriatric Unit and a 20 bed capacity Ventilator Dependent unit for the period of March 18, 2009 to June 30, 2010. In complying with the 5% vacancy requirement, the Facility's Geriatric Unit's unoccupied bed count could not exceed 11 vacant beds and the Ventilator Dependent Unit had to be at full capacity for period of January 1, 2008 to March 17, 2009 at the time the Facility billed Medicaid for a new bed-hold. For the period of March 18, 2009 to June 30, 2012 the Facility's Geriatric Unit's unoccupied bed count could not exceed 11 vacant beds and the Ventilator Dependent Unit could not exceed 1 vacant bed at the time the Facility billed Medicaid for a new bed-hold.

FINDINGS

In a May 2, 2014 OMIG Draft Report the audit findings identified \$241,372 in inappropriate bed reserve payments that were made to the Facility for bed-holds during a period in which the Facility exceeded the allowable 5% vacancy rate. The Facility's May 5, 2014 response to the draft report (Attachment VII) presented additional ventilator recipients that were not initially included in the Facility's ventilator census reports (Attachments I-B, I-C). In this Final Report the OMIG has adjusted the initial Draft Report ventilator census analysis to include this additional recipient information.

In reviewing the monthly periodic census reports (Attachments I-A, I-B) submitted by the Facility in response to the OMIG engagement letter, the OMIG found in-house resident transfers occurring between the Facility's geriatric and ventilator units that were not clearly identified in the monthly census reports. As a result, to clearly define the occupancy level for each specialized unit within the Facility, the OMIG requested and received the daily periodic census detail and billing code information (Attachment I-C, 1 year sample) from the Facility. Using the detailed information from the daily periodic census reports in conjunction with the monthly periodic census reports, the OMIG was able to properly identify the daily transfers and occupancy levels for each specialized unit within the Facility. Attachment II-A, Geriatric and Vent Unit Census Transfers/Adjustments, reflects daily admission/discharges of geriatric and vent patients that were not clearly identified on the monthly periodic census reports.

After applying the information contained in the Periodic Census Reports submitted by the Facility (Attachment I-A), the audit determined that the Facility's geriatric unit was operating at a 5% vacancy or less when billing bed-holds for these residents, and no overpayments were identified during the period of January 1, 2008 to June 30, 2010.

After applying the information contained in the Ventilator Dependent Unit Periodic Census Reports submitted by the Facility (Attachments I-B, I-C and VII), the audit determined that the Facility was periodically operating above a 5% vacancy rate during the period of January 1, 2008 to June 30, 2010. The audit found that a total of 234 bed-hold days were inappropriately billed to Medicaid while the Facility's vacancy rate exceeded 5% (Attachment II-B). As a result, §504.3 and §505.9(d) requirements were violated and the amount of overpayment, as defined in 18 NYCRR §518.1, is \$127,695.16 (Attachment III).

Under the Health Care Assessment Program, residential health care facilities licensed under Article 28 of the Public Health Law §2807-d must pay an 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 of \$3,309.78 in this report (Attachment IV, Disallowed Cash Assessment).

In accordance with 18 NYCRR §518.4, interest may be collected and will accrue at the current rate from the date of the overpayment. Interest was calculated on the overpayments identified in this Final Audit Report using the Federal Reserve Prime rate

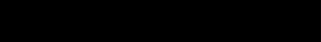
(Attachment VI) from the date of each overpayment through April 30, 2014; the date of Draft Audit Report preparation. As a result, for the overpayments identified in this audit, the OMIG has determined that accrued interest of 24,714.20 is owed (Attachment IV).

The overpayments identified in this Final Audit Report were determined by applying the Facility's promulgated rates at the date this report was issued (Attachment V). Based on this determination, the total amount of overpayment, as defined in 18 NYCRR §518.1 is \$155,719, inclusive of interest (Attachment IV). Repayment of \$155,719 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:


New York State Department of Health
Medicaid Financial Management, B.A.M.
GNARESP Corning Tower, Room 2739
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 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 50% withhold after 20 days until an agreement is established. 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. In addition, if you receive an adjustment in your favor while you owe funds to the State, such adjustment will be applied against any amount owed. If you wish to enter into a repayment agreement, please contact the Bureau of Collections Management within 20 days at the following:

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


PROVIDER 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 [REDACTED] or email at [REDACTED] **Do not** submit claim voids in response to this Final Audit Report.

Thank you.

Sincerely,

[REDACTED]

Bureau of Managed Care Audit & Provider Review
Office of the Medicaid Inspector General

CERTIFIED MAIL [REDACTED]
RETURN RECEIPT REQUESTED

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

NAME AND ADDRESS OF AUDITEE

Promenade Rehabilitation and
Health Care Center
140 Beach 114 Street
Rockaway Park, NY 11694

Provider [REDACTED]

AUDIT # 13-5516

AMOUNT DUE: \$ 155,719

AUDIT

TYPE

PROVIDER
 RATE
 PART B
 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:

[REDACTED]
Medicaid Financial Management, B.A.M.
New York State Department of Health
GNARESP Corning Tower, Room 2739
File # 13-5516
Albany, New York 12237-0016

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

CORRECT PROVIDER NUMBER