STATE OF NEW YORK
OFFICE OF THE MEDICAID INSPECTOR GENERAL
221 South Warren Street, Suite 410
Syracuse, NY 13202

ANDREW M. CUOMO
GOVERNOR

JAMES C. COX
ACTING MEDICAID INSPECTOR GENERAL

December 19, 2011

Richard A. Gasalberti, M.D.
111-20 Queens Boulevard
Forest Hills, NY 11375-6341

Re: Revised Final Audit Report
Medicare Part B Coinsurance/Deductible
Audit #: 09-1588
NPI #: [redacted]
Provider ID # [redacted]

[redacted]

Dear Dr. Gasalberti:

This letter will serve as our final audit report of the billing review of Medicaid claims for Medicare Part B coinsurance and/or deductible amounts for Medicaid reimbursable services to dual eligibles covering the period January 1, 2005 to December 31, 2008 made to you under the New York State Medicaid Program. Dual eligibles are defined to be recipients with both Medicare A and/or B and NY Medicaid coverage.

BACKGROUND, PURPOSE AND SCOPE

The New York State Department of Health ("the Department") is responsible for the administration of the Medicaid program. As part of this responsibility, the Office of the Medicaid Inspector General ("OMIG"), an independent office within the Department, 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, Mental Hygiene, and Social Services [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)], the Medicaid Management Information System (MMIS) Provider Manuals and Department Medicaid Updates.

The OMIG recently completed a review of Medicare Part B claims submitted to Medicaid with incorrect claim amounts. Specifically, the amounts Medicare approved and paid were matched to the Medicaid claims, as were the coinsurance and deductible amounts. The review has found instances where you appear to have received Medicaid overpayments, because you incorrectly reported amounts Medicare approved and paid or you failed to bill Medicare.

DETERMINATION

You failed to comply with the following regulations and policies cited below.

> When payment under part B of title XVIII of the federal social security act for items and services provided to eligible persons who are also beneficiaries under part B of title XVIII of the federal social security act... would exceed the amount that otherwise would be made under this title...the amount payable under this title shall be twenty percent of the amount of any co-insurance liability of such eligible persons pursuant to federal law were they not eligible for medical assistance...
>
> Social Services Law 367-a (d) (iii)

> Regulations state, "MA program as payment source of last resort. Where a third party, such as a health insurer or responsible person, has a legal liability to pay for MA-covered services on behalf of a recipient, the department or social services district will pay only the amount by which the MA reimbursement rate for the services exceeds the amount of the third party liability".
>
> 18 NYCRR Section 360-7.2

> Per DOH Medicaid Update (DOH Medicaid Update December 2005 Vol.20, No.13): Medicaid law and regulations require that, when a recipient is eligible for both Medicare and Medicaid or has other insurance benefits: The provider must bill Medicare or the other insurance first for covered services prior to submitting a claim to Medicaid. The Medicaid program is designed to provide payment for medical care and services only after all other resources available for payments have been exhausted; Medicaid is always payor of last resort. Providers must maximize all applicable insurance sources before submitting claims to Medicaid. When coverage is available, payment from other insurance sources must be received before submitting a Medicaid claim.

> Per DOH Medicaid Update (DOH Medicaid Update August 2003 Vol.18, No.8): Due to recent legislative change, Medicaid payment for Medicare coinsurance for most Part B services provided to recipients eligible under both the Medicare and Medicaid Programs - dual-eligibles and Qualified Medicare Beneficiaries - will be reduced ... effective July 1, 2003, the Medicaid program will no longer pay the full Medicare Part B coinsurance amount for dual-eligibles, but will instead pay 20% of the Medicare Part B coinsurance for most Part B services (except for ambulance, psychologist, and hospital-based/freestanding clinics).

> Regulations state, "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)

DETAILED FINDINGS

1. Final Audit Report Exhibit 1 – Medicare Part B Coinsurance/Deductible

The total claim overpayment is $45,535.00.

The OMIG has made a determination not to charge pre-collection interest for this audit. Therefore the total amount of overpayment, as defined in 18 NYCRR 518.1(c), is $45,535.00 exclusive of interest.

PROVIDER RIGHTS

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
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.

Furthermore, 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

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 recover payment, 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.

If you choose not to settle this review through repayment, you have the right to challenge these findings by requesting an administrative hearing. Issues you may raise shall be limited to those issues relating to determinations contained in the final audit report. You may only request a hearing to challenge specific audit adjustments which you challenged in a response to the draft audit report. Your hearing request may not address issues regarding the methodology used to determine any rate of payment or fee.

At the hearing you have the right to:

a) be represented by an attorney or other representative, or to represent yourself;
b) present witnesses and written and/or oral evidence to explain why the action taken is wrong; and
c) cross examine witnesses of the Department of Health and/or the OMIG.

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, New York 12204

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

The OMIG reserves the right to conduct further reviews of your participation in the Medicaid Program, take action where appropriate, and recover monies owed through the initiation of a civil lawsuit or other legal mechanisms including, but not limited to, the recovery of state tax refunds pursuant to Section 206 of the Public Health Law and Section 171-f of the State Tax Law.

If you have any questions, regarding the above, please contact [redacted] at [redacted] or by email at [redacted]

Sincerely,

[redacted]

Management Specialist 4
Data Warehouse and Analysis Unit
Division of Medicaid Audit
Office of the Medicaid Inspector General

Attachment(s):
Exhibit 1 – Medicare Part B Coinsurance/Deductible

CERTIFIED MAIL #[redacted]
RETURN RECEIPT REQUESTED

NEW YORK STATE
OFFICE OF THE MEDICAID INSPECTOR GENERAL
REMITTANCE ADVICE

NAME AND ADDRESS OF AUDITEE

Richard A. Gasalberti, M.D.
111-20 Queens Boulevard
Forest Hills, NY 11375-6341

PROVIDER # [redacted]

AUDIT # 09-1588

PROVIDER TYPE

- ☐ Fee For Service
- ☐ Rate - LTC
- ☐ Rate - NH
- ☐ Managed Care
- ☒ Other

PRINCIPAL AMOUNT: $45,535.00

TOTAL AMOUNT DUE: $45,535.00

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, B.A.M.
GNARESP Corning Tower, Room 1237
Albany, New York 12237-0016

Thank you for your cooperation.