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
ACTING MEDICAID INSPECTOR GENERAL

December 6, 2011

Boris Itskovich, MD
3009 Ocean Parkway
Brooklyn, NY 11235-8302

FINAL AUDIT REPORT
Audit #2011Z34-189W
Provider [redacted]

Dear Dr. Itskovich:

The New York State Office of the Medicaid Inspector General (the "OMIG") completed an audit of Medicaid claims paid for physician services provided to Medicaid patients. In accordance with Section 517.6 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.

Since you did not submit any documentation in response to the OMIG's October 4, 2011 Updated Exhibits, the overpayments are unchanged. A detailed Final Report, along with supporting exhibits, is appended to this notice.

Based on this determination, restitution of the overpayments as defined in 18 NYCRR 518.1 is required in the amount of $4,480.59, inclusive of interest.

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 to have the overpayments applied against your future Medicaid payments. 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 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.

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. 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] or by fax 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

Boris Itskovich, MD
3009 Ocean Parkway
Brooklyn, NY 11235-8302

Provider [redacted]

AUDIT #2011Z34-189W

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

AMOUNT DUE: $4,480.59

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 #2011Z34-189W
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

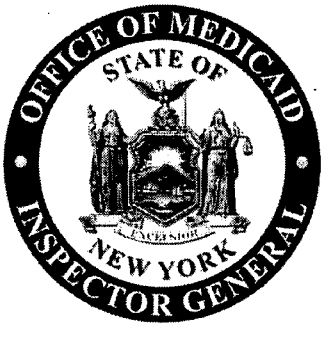
ANDREW M. CUOMO
GOVERNOR

JAMES C. COX
ACTING MEDICAID INSPECTOR GENERAL

FINAL REPORT

BORIS ITSKOVICH, MD
3009 OCEAN PARKWAY
BROOKLYN, NY 11235-8302

PHYSICIAN PLACE OF SERVICE
#2011Z34-189W



ISSUED DECEMBER 6, 2011

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 Department of Health and Social Services, [Titles 10 and 18 of the Official Compilation of Codes, Rules and Regulations of the State of New York] and the eMedNY Provider Manuals.

The maximum reimbursable amount for Evaluation and Management (E&M) procedure codes is dependent on the "Place of Service" reported. Physician's services provided in a facility's hospital outpatient clinic or emergency room, and not included in the facility's rates, are to be billed at the physician's appropriate E&M Fee (Facility Global Fee).

Physician's services provided in the physician's private office setting are to be billed at a higher private office E&M fee (Non-Facility Global Fee). This is to compensate for the higher costs the physician incurs by performing services in a private office setting. The Non-Facility Global Fee should only be used when the service is performed in a private office setting.

A review of your claims shows that in numerous instances Medicaid was inappropriately billed the Non-Facility Global Fee for a service provided in a hospital outpatient clinic or emergency room setting.

To accomplish this review, claims submitted for physician's services with payment dates from January 1, 2009 through December 31, 2010 were reviewed.

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. Billed Amount Exceeds the Facility Global Fee for Services Rendered in the Outpatient Clinic

Regulations 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 state: "By enrolling, the provider agrees... to comply with the rules, regulations and official directives of the department."

18 NYCRR 504.3(i)

Regulation 18 NYCRR 518.1(c) defines "overpayment" as "any amount not authorized to be paid under the medical assistance program, whether paid as the result of ...improper claiming, unacceptable practices, fraud, abuse or mistake" and provides for the recovery by OMIG of these overpayments.

18 NYCRR 518.1(c)

The eMedNY Provider Manual for Physicians states: "For Evaluation and Management services rendered in the practitioner's private office, report place of service "11". For services rendered in a Hospital Outpatient setting report place of service "22". The maximum reimbursable amount for these codes is dependent on the Place of Service reported.

eMedNY Provider Manual for Physicians
Procedure Codes- Section 2, Evaluation and Management Services

When a Medicaid eligible patient is seen in a hospital outpatient clinic, the attending physician must bill using the Facility Global Fee. The physician should not use a Non-Facility Global Fee (private office fee) for a patient seen in a hospital outpatient clinic.

Exhibit I is a list of physician claims that were paid the Non-Facility Global Fee. For each claim, there is a corresponding hospital outpatient clinic claim showing the Attending Physician to be the same person as the Billing Physician. As the actual place of service was a hospital clinic and not the physician's office, the physician should have billed using the Facility Global Fee. Not doing so resulted in a Medicaid overpayment of $0.

2. <u>Billed Amount Exceeds the Facility Global Fee for Services Rendered in a Setting other than the Office</u>

Regulations 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 state: "By enrolling, the provider agrees ...to comply with the rules, regulations and official directives of the department."

18 NYCRR 504.3(i)

Regulation 18 NYCRR 518.1(c) defines "overpayment" as "any amount not authorized to be paid under the medical assistance program, whether paid as the result of ...improper claiming, unacceptable practices, fraud, abuse or mistake" and provides for the recovery by OMIG of these overpayments.

18 NYCRR 518.1(c)

The eMedNY Provider Manual for Physicians states: "For Evaluation and Management services rendered in the practitioner's private office, report place of service "11". For services rendered in a Hospital Outpatient setting report place of service "22". The maximum reimbursable amount for these codes is dependent on the Place of Service reported.

eMedNY Provider Manual for Physicians
Procedure Codes- Section 2, Evaluation and Management Services

When a Medicaid eligible patient is seen in a hospital outpatient clinic, the attending physician must bill using the Facility Global Fee. The physician should not bill using the higher Non-Facility Global Fee for a patient seen in a hospital outpatient clinic.

Exhibit II is a list of physician claims that show the place of service as other than a physician's office. For each claim, the physician billed the higher Non-Facility Global Fee. This resulted in an overpayment of $4,252.50.

3. **Billed Amount Exceeds the Facility Global Fee for Services Rendered in the Emergency Room Setting**

Regulations 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 state: "By enrolling, the provider agrees ...to comply with the rules, regulations and official directives of the department."

18 NYCRR 504.3(i)

Regulation 18 NYCRR 518.1(c) defines "overpayment" as "any amount not authorized to be paid under the medical assistance program, whether paid as the result of ...improper claiming, unacceptable practices, fraud, abuse or mistake" and provides for the recovery by OMIG of these overpayments.

18 NYCRR 518.1(c)

The eMedNY Provider Manual for Physicians states that providers must enter a "two-digit code indicating the type of location where the service was rendered". The appropriate code from Appendix A to the Physician Billing Guidelines is "23" for "Emergency Room-Hospital".

eMedNY Provider Manual for Physician
Billing Guidelines- Section 2, Claims Submission

When a Medicaid eligible patient is seen in a hospital emergency room, the attending physician must bill using the Facility Global Fee.

Exhibit III is a list of physician claims billed using emergency room Evaluation and Management codes. For each claim, the physician was paid a fee exceeding the Facility Global Fee. This resulted in an overpayment of $0.

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 $$228.09.

Based on this determination, the total amount of overpayment, as defined in 18 NYCRR 518.1(c) is $4,480.59, inclusive of interest.

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