



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

ANDREW M. CUOMO
GOVERNOR

JAMES G. SHEEHAN
MEDICAID INSPECTOR GENERAL

TYMPF CO., INC.
Attn: David Melamud
354 Kings Highway, 2nd Floor
Brooklyn, NY 11223

Final Audit Report
County Demonstration Project – NYC HRA
Audit # 08 - 1780
Provider ID # [REDACTED]

Dear Mr. Melamud:

This letter will serve as our final audit report of the recently completed review of payments made to TYMPF Co., Inc. under the New York State Medicaid Program.

The New York State Department of Health is responsible for the administration of the Medicaid program. As part of this responsibility, the Office of the Medicaid Inspector General (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 by the Departments of Health and Mental Hygiene [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)] and the Medicaid Management Information System (MMIS) Provider Manuals.

Medicaid reimbursement in New York State is available to lawfully authorized ambulance, ambulette and taxi providers for transportation services furnished to Medicaid eligible persons going to or from the site of Medicaid covered medical services. Other carriers are specifically approved to transport Medicaid recipients to and from prescribed day treatment services. Transportation providers and their drivers must comply with all applicable state, county and municipal requirements for legal operation, including those for licensing, inspection, training, staffing and equipment. Applicable regulations of the State Departments of Transportation, Health and Motor Vehicles are referenced in the Department's governing regulation, Title 18 NYCRR Section 505.10.

A common requirement for all Medicaid transportation providers is the need to obtain prior authorization for all non-emergency services that are provided. Once authorized, a service must be rendered to receive reimbursement. Each billing claim for service submitted for Medicaid payment must conform to the billing requirements contained in the MMIS Provider Manual for Transportation and rate schedules issued by county social service districts as part of their local transportation plans.

A review of payments to TYMPF Co., Inc. for transportation services paid by Medicaid for New York City recipients from January 1, 2005, through December 31, 2006 was recently completed. During the audit period, \$4,554,948.70 was paid for services rendered to 12,919 patients. This review consisted of a random sample of 100 patients with Medicaid payments of \$40,484.00. The purpose of the audit was to ensure that: drivers and/or vehicles were properly licensed, inspected, certified and/or registered; prior authorizations were obtained; all billing and rate requirements were met; Medicaid reimbursable services were rendered for the dates billed; appropriate procedure codes were billed for services rendered; vendor records contained the documentation required by the regulations; and claims for payment were submitted in accordance with Department regulations and the Provider Manuals for Transportation.

TYMPF Co., Inc.'s failure to comply with Titles 8, 10, and/or 18 of the Official Compilation of Codes, Rules and Regulations of the State of New York (NYCRR), the MMIS Provider Manual for Pharmacy, and the Pharmacy Guide to Practice resulted in a total sample overpayment of \$2,590.00.

The statistical sampling methodology employed allows for extrapolation of the sample findings to the universe of cases (18 NYCRR Section 519.18). The mean per unit point estimate of the amount overpaid is \$334,602.00. The lower confidence limit of the amount overpaid is \$85,455.00. We are 95% certain that the actual amount of the overpayment is greater than the lower confidence limit (Exhibit I). This audit may be settled through repayment of the lower confidence limit of \$85,455.00.

The following detailed findings reflect the results of our audit. This audit report incorporates consideration of any additional documentation and information presented in response to the draft report dated October 5, 2010.

DETAILED FINDINGS

In addition to any specific detailed findings, rules and/or regulations which may be listed below, the following regulations pertain to all audits:

Regulations state: "By enrolling the provider agrees: (a) to prepare and to maintain contemporaneous records demonstrating its right to receive payment . . . and to keep for a period of six years from the date the care, services or supplies were furnished, all records necessary to disclose the nature and extent of services furnished and all information regarding claims for payment submitted by, or on behalf of, the provider . . . (e) 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; (f) to submit claims on officially authorized claim forms in the manner specified by the department in conformance with the standards and procedures for claims submission; . . . (h) that the information provided in relation to any claim for payment shall be true, accurate and complete; and (i) to comply with the rules, regulations and official directives of the department."
18 NYCRR Section 504.3

Regulations state: "All bills for medical care, services and supplies shall contain: . . . (8) a dated certification by the provider that the care, services and supplies itemized have in fact been furnished; that the amounts listed are due and owing . . . ; that such records as are necessary to disclose fully the extent of care, services and supplies provided to individuals under the New York State Medicaid program will be kept for a period of not less than six years from the date of payment . . . ; and that the provider understands that payment and satisfaction of this claim will be from Federal, State and local public funds and that he or she may be prosecuted under applicable Federal and State laws for any false claims, statements or documents, or concealment of a material fact provided. . . ."

18 NYCRR Section 540.7(a)

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)

Regulations state: "An unacceptable practice is conduct by a person which is contrary to: . . . (2) the published fees, rates, claiming instructions or procedures of the department" and "(3) the official rules and regulations of the Departments of Health, Education and Mental Hygiene. . . ."

18 NYCRR Section 515.2(a)

Furthermore, according to regulations, all providers must prepare and maintain contemporaneous records demonstrating their right to receive payment under the medical assistance program. In addition, the provider must keep, for a period of six years, all records necessary to disclose the nature and extent of services furnished and the medical necessity therefor, including any prescription or fiscal order for the service or supply. This information is subject to audit for a period of six years and must be furnished, upon request.

18 NYCRR Section 517.3(b)

1. Driver Did Not Meet DOT/DMV/NYCTLC Requirements

Regulations state: "Ambulette services must be authorized by the Department of Transportation. Ambulette drivers must be qualified under Article 19-A of the Vehicle and Traffic Law. Ambulette services and their drivers must comply with all requirements of the Department of Transportation and the Department of Motor Vehicles or have a statement in writing from the appropriate department or departments verifying that the ambulette services or their drivers are exempt from such requirements. In addition, ambulette services operating in New York City must be licensed by the New York City Taxi and Limousine Commission;"

18 NYCRR Section 505.10(e)(6)(ii)

Regulations state: "Unacceptable practices under the medical assistance program....An unacceptable practice is conduct which constitutes fraud or abuse and includes the practices specifically enumerated in this subdivisionEmployment of sanctioned persons. Submitting claims or accepting payment for medical care, services or supplies furnished by a person suspended, disqualified or otherwise terminated from participation in the program or furnished in violation of any condition of participation in the program."

18 NYCRR Section 515.2(b)(7)

In 18 instances pertaining to 2 recipients, the driver did not meet requirements set by DOT, DMV and/or NYCTLC. There was no documentation of 19A qualification. This resulted in a sample overpayment of \$900.00 (Exhibit II).

In 17 instances pertaining to 12 recipients, the driver did not meet requirements set by DOT, DMV and/or NYCTLC. There was no documentation of NYCTLC licensure. This resulted in a sample overpayment of \$847.00 (Exhibit III).

2. Missing/Inaccurate Information on Medicaid Claim

Regulations state: "By enrolling the provider agrees.... to submit claims on officially authorized claim forms in the manner specified by the department in conformance with the standards and procedures for claims submission" and "that the information provided in relation to any claim for payment shall be true, accurate and complete". *18 NYCRR Sections 504.3(f) and (h)*

The MMIS Provider Manual states: "Transportation providers billing for services when an ambulette vehicle is used are required to:

- Include the **driver license number** of the individual driving the vehicle on their claim.
- Include the **license plate number** of the vehicle used to transport the Medicaid client on their claim.

If a different driver and/or vehicle returns the Medicaid enrollee/s from the medical appointment, the license number of the driver and vehicle used for the origination of the trip should be reported on the claim." *MMIS Transportation Manual Policy Guidelines, Page 17*

The DOH Medicaid Update states: "Medicaid policy requires that all Ambulette Providers (Category of Service 0602) enter the ordering provider's Medicaid identification number, or license number and profession code, when submitting a claim to Computer Sciences Corporation.

Failure to accurately report the ordering provider's identification number will prevent the payment of claims. " *DOH Medicaid Update October 2006 Vol. 21, No. 10, Page 17*

The DOH Medicaid Update states: "...all claims (electronic and paper) submitted to Medicaid by nonemergency ambulette transportation providers (category of service 0602) must contain the *Driver's License Number*; and the *Vehicle License Plate Number*."

DOH Medicaid Update November 2005 Vol. 20, No. 12

In 10 instances pertaining to 8 recipients, the claim was missing/inaccurate. The driver license number was missing/inaccurate. This resulted in a sample overpayment of \$512.00 (Exhibit IV).

3. Missing/Incomplete Documentation

Regulations state: "By enrolling the provider agrees... to prepare and to maintain contemporaneous records demonstrating its right to receive payment under the medical assistance program and to keep for a period of six years from the date the care, services or supplies were furnished, all records necessary to disclose the nature and extent of services furnished and all information regarding claims for payment submitted by, or on behalf of, the provider and to furnish such records and information, upon request, to the department, the Secretary of the United States Department of Health and Human Services, the Deputy Attorney General for Medicaid Fraud Control and the New York State Department of Health"

18 NYCRR Section 504.3(a)

Regulations state: "Payment to a provider of ambulette services will only be made for services documented in contemporaneous records in accordance with section 504.3 of this Title. Documentation must include:

- (i) the recipient's name and MA identification number;
- (ii) the origination of the trip;
- (iii) the destination of the trip;
- (iv) the date and time of service; and
- (v) the name of the driver transporting the recipient."

18 NYCRR Section 505.10(e)(8)

Regulations state: "Unacceptable recordkeeping. Failing to maintain or to make available for purposes of audit or investigation records necessary to fully disclose the medical necessity for and the nature and extent of the medical care, services or supplies furnished, or to comply with other requirements of this Title."

18 NYCRR Section 515.2(b)(6)

In 4 instances pertaining to 3 recipients, documentation was missing. The time of service was missing. This resulted in a sample overpayment of \$224.00 (Exhibit V).

In 2 instances pertaining to 2 recipients, documentation was missing. There was no documentation of service. This resulted in a sample overpayment of \$75.00 (Exhibit VI).

4. Non-reimbursable Tolls

The MMIS Provider Manual states: "The Medicaid Program will reimburse only for the actual costs incurred by a transportation provider while transporting a Medicaid enrollee. When tolls are incurred, the toll is assessed per vehicle, not per rider, and should be billed according to the **actual toll charged**. If a vehicle is transporting **more than one rider** on the same trip, the provider may bill **one unit per round trip crossing**, not one unit per passenger."

MMIS Transportation Manual Policy Guidelines, Page 16

The DOH Medicaid Update states: "Providers may seek Medicaid reimbursement for the appropriate E-Z Pass toll amount....only if a toll was incurred while transporting a Medicaid enrollee in the vehicle across an affected bridge or tunnel. Only the E-Z Pass toll charge should be claimed. If a vehicle is transporting more than one rider on the same trip, the provider may bill one unit per round trip crossing, not one unit per passenger."

DOH Medicaid Update May 2008 Vol. 24, No. 6

In 14 instances pertaining to 5 recipients, the claim contained inappropriate toll charges. This resulted in a sample overpayment of \$32.00 (Exhibit VII).

Total sample overpayments for this audit amounted to \$2,590.00.

Additional reasons for disallowance exist regarding certain findings. These findings are identified in Exhibit VIII.

In accordance with 18 NYCRR Part 518 which regulates the collection of overpayments, your repayment options are described below. If you decide to repay the lower confidence limit amount of \$85,455.00, one of the following repayment options must be selected within 20 days from the date of this letter:

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:

Mr. Donald Collins
New York State Department of Health
Medicaid Financial Management, B.A.M.
GNARESP Corning Tower, Room 1237
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 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
Phone #: (518) 474-5878
Fax#: (518) 408-0593

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 and liquidate the lower confidence limit 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.

If you choose not to settle this audit through repayment of the lower confidence limit, you have the right to challenge these findings by requesting an administrative hearing where the OMIG would seek and defend the meanpoint estimate of \$334,602.00. 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 Charlene D. Fleszar, Esq., Office of Counsel, at (518) 408-5811.

Issues you may raise shall be limited to those issues relating to determinations contained in the final audit report. Your hearing request may not address issues regarding the methodology used to determine the rate, or any issue that was raised at a proceeding to appeal a rate determination.

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.

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.

Should you have any questions, please contact Stephen Mastrianni at (518) 474-9747.

Thank you for the cooperation and courtesy extended to our staff during this audit.

Sincerely,



Katherine Napoli, Director
County Demonstration Project
Office of the Medicaid Inspector General

Date : 2/17/11

cc: Helen Discala, NYC HRA
Margaret Surowka Rossi, Hiscock & Barclay
Stephen Mastrianni, OMIG

Enclosure
Ver-30.3
Fin-6.0

Certified Mail # 7001 1140 0001 4746 5573
Return Receipt Requested

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

NAME AND ADDRESS OF AUDITEE

TYMPF CO., INC.
354 Kings Highway, 2nd Floor
Brooklyn, NY 11223
Attn: David Melamud

PROVIDER ID: [REDACTED]

AUDIT #08-1780

County Demo

AUDIT

PROVIDER

RATE

PART B

TYPE

OTHER:

AMOUNT DUE: \$85,455.00

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:

Mr. Donald Collins
New York State Department of Health
Medicaid Financial Management, B.A.M.
GNARESP Corning Tower, Room 1237
File #08-1780 (County Demo)
Albany, New York 12237-0048

Thank you for your cooperation.