



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

January 24, 2013

[REDACTED]  
Fulton Commons Care Center  
60 Merrick Avenue  
East Meadow, New York 11554

Re: Medicaid Rate Audit #07-3260  
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 Fulton Commons Care Center's (the "Facility") Medicaid rates for the rate period November 1, 2003 through December 31, 2006. In accordance with 18 NYCRR Section 517.6, this audit report represents the OMIG's final determination on issues raised in the draft audit report.

In response to the draft audit report dated October 16, 2012, you identified specific audit findings with which you disagreed. Your comments have been considered (see Attachment A). Consideration of your comments resulted in no reduction to the total Medicaid overpayment. As previously stated in the draft audit report, the Medicare Part B and D offsets were not within the scope of the review and may be examined as part of a future audit. Based on the enclosed audited rates calculated by the Bureau of Long Term Care Reimbursement, the Medicaid overpayment currently due is \$1,305,553. 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.

The overpayment does not reflect the impact on rates subsequent to December 31, 2006 that utilized the November 1, 2003 through October 31, 2004 base period for operating expense. Any overpayment resulting from operating expense disallowances in the November 1, 2003 through October 31, 2004 base period report for rates subsequent to December 31, 2006 will be addressed in the future.

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 2739  
File #07-3260  
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.

Should you have any questions, please contact [REDACTED] at [REDACTED] or through email at [REDACTED]. Please refer to audit number 07-3260 in all correspondence.

Sincerely,

[REDACTED]

Bureau of Rate Audit  
Division of Medicaid Audit  
Office of the Medicaid Inspector General

Enclosures

- Attachment A- Facility Draft Report Comments and OMIG Response
- EXHIBIT I - Summary of Per Diem Impact and Medicaid Overpayment
- EXHIBIT II - Summary of Medicaid Rates Audited
- EXHIBIT III - Operating Expense Disallowances/(Allowances)
- EXHIBIT IV - Property Expense Disallowances/(Allowances)

CERTIFIED MAIL RECEIPT # [REDACTED]  
RETURN RECEIPT REQUESTED

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

**NAME AND ADDRESS OF AUDITEE**

Fulton Commons Care Center  
60 Merrick Avenue  
East Meadow, New York 11554

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

AUDIT #07-3260

AMOUNT DUE: \$1,305,553

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 2739  
File #07-3260  
Albany, New York 12237-0048

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

[REDACTED]  
CORRECT PROVIDER NUMBER

**FULTON COMMONS CARE CENTER - AUDIT #07-3260  
FACILITY DRAFT REPORT COMMENTS AND OMIG RESPONSE**

All OMIG adjustments were accepted by the Facility except for those shown below. The following details the disposition of final report adjustments after consideration of the Facility's draft audit report response comments.

**EXHIBIT III COMMENTS**

**Adjustment #2 – RECLASSIFICATION OF UTILIZATION REVIEW EXPENSE**

**Facility Comment**

We have attached our Utilization Review Department Plan. The Utilization Review Department has used this plan since our base period. We request that the adjustment to reclass our Utilization Review department costs to Nursing Administration be eliminated, and our Utilization Review Department reimbursement be included in our non-comparable reimbursement for the base period and all subsequent years.

**OMIG Response**

The adjustment to reclassify reported Utilization Review Expense remains unchanged. The Facility did not provide adequate documentation to substantiate that this expense meets the requirements of utilization review expense as set forth in PHL Article 49, Title I – Certification of Agents and Utilization Review Process. The Facility provided, during the course of this audit, check listings for employees who were categorized as Utilization Review and a general Job Description for the MDS + Coordinator, Medicare. This job description was not tied specifically to any one employee in the department classed as Utilization Review and further an MDS Coordinator does fall within the scope of allowable costs for utilization review expense.

**Disposition: Adjustment remains unchanged.**

**FULTON COMMONS CARE CENTER - AUDIT #07-3260**  
**RATE PERIODS NOVEMBER 1, 2003 THROUGH DECEMBER 31, 2006**  
**SUMMARY OF PER DIEM IMPACT AND MEDICAID OVERPAYMENT**

<u>RATE PERIOD</u>	<u>ISSUED PART B &amp; D NON-ELIGIBLE RATES*</u>	<u>FINAL PART B &amp; D NON-ELIGIBLE RATES</u>	<u>RATE DECREASE (INCREASE)</u>	<u>MEDICAID DAYS</u>	<u>MEDICAID OVERPAYMENT</u>
11/01/03 - 12/31/03	\$235.18	\$230.13	\$5.05	12,197	\$ 61,595
01/01/04 - 01/31/04	241.07	235.92	5.15	6,571	33,841
02/01/04 - 03/31/04	240.92	235.77	5.15	12,179	62,722
04/01/04 - 04/30/04	240.92	235.77	5.15	6,111	31,472
05/01/04 - 07/31/04	240.94	235.79	5.15	18,189	93,673
08/01/04 - 10/31/04	240.87	235.72	5.15	19,803	101,985
11/01/04 - 12/31/04	242.99	237.83	5.16	13,659	70,480
01/01/05 - 01/31/05	250.02	244.76	5.26	6,946	36,536
02/01/05 - 04/30/05	247.97	242.71	5.26	19,173	100,850
05/01/05 - 06/30/05	250.58	245.33	5.25	13,661	71,720
07/01/05 - 07/31/05	250.58	245.33	5.25	7,107	37,312
08/01/05 - 10/31/05	249.78	244.53	5.25	21,060	110,565
11/01/05 - 12/31/05	253.29	248.04	5.25	13,428	70,497
01/01/06 - 01/31/06	265.01	259.61	5.40	6,679	36,067
02/01/06 - 03/31/06	266.57	261.17	5.40	12,609	68,089
04/01/06 - 04/30/06	266.05	260.66	5.39	6,555	35,331
05/01/06 - 07/31/06	265.16	259.77	5.39	19,998	107,789
08/01/06 - 10/31/06	274.00	268.61	5.39	19,567	105,466
11/01/06 - 12/31/06	275.08	269.70	5.38	12,930	69,563
<b>TOTAL MEDICAID OVERPAYMENT</b>					<b><u>\$ 1,305,553</u></b>

\* Any differences between these rates and the rates listed in Exhibit II of this report represent rate changes made subsequent to OMIG's audit. These changes remain open to future audit by the OMIG. For the purpose of this Exhibit, the Medicare Part B and D rates are not shown. The rate decrease/(increase) for those rates is the same as shown for the Medicare Part B and D non-eligible rates above.

**FULTON COMMONS CARE CENTER - AUDIT #07-3260**  
**RATE PERIODS NOVEMBER 1, 2003 THROUGH DECEMBER 31, 2006**  
**SUMMARY OF MEDICAID RATES AUDITED**

The Facility's Medicaid utilization was approximately 77 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 OMIG.

<u>RATE PERIOD</u>	<u>Issued Medicare Part B &amp; D Non-Eligible Rates *</u>
11/01/03 - 12/31/03	\$ 235.18
01/01/04 - 01/31/04	241.07
02/01/04 - 03/31/04	240.92
04/01/04 - 04/30/04	240.92
05/01/04 - 07/31/04	240.94
08/01/04 - 10/31/04	240.87
11/01/04 - 12/31/04	242.99
01/01/05 - 01/31/05	250.02
02/01/05 - 04/30/05	247.97
05/01/05 - 06/30/05	250.58
07/01/05 - 07/31/05	250.58
08/01/05 - 10/31/05	249.78
11/01/05 - 12/31/05	253.29
01/01/06 - 01/31/06	265.01
02/01/06 - 03/31/06	266.57
04/01/06 - 04/30/06	266.05
05/01/06 - 07/31/06	265.16
08/01/06 - 10/31/06	274.00
11/01/06 - 12/31/06	275.08

\* The Medicare Part B and D rates are not shown for the purpose of this Exhibit. The Medicare Part B and D offsets were not within the scope of this audit and may be examined as part of a future audit.

**FULTON COMMONS CARE CENTER - AUDIT #07-3260**  
**RATE PERIODS NOVEMBER 1, 2003 THROUGH DECEMBER 31, 2006**  
**OPERATING EXPENSE DISALLOWANCES/(ALLOWANCES)**

OPERATING EXPENSE COMPONENT	
COST CTR.	NON-COMP.
INDIRECT	DIRECT
\$ 5,683,045	\$ 2,130,358

DESCRIPTION	COST CTR.
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Operating Expense Allowed per HE-12B  
Less Disallowances/(Allowances):

**1. SALES TAX EXPENSE DISALLOWANCE**

Certain products and services associated with energy sources provided to long-term care facilities are exempt from New York State sales tax if the facilities are considered to be residential. The reduced sales tax rate of zero percent applies to energy sources and services purchased for use at any long-term care facility which falls within the definition of a health related facility or nursing home as defined by public health law. Taxes for which there is an exemption available are not allowable for reimbursement purposes. Consequently, a disallowance was necessary.

**Regulations: 10 NYCRR Section 86-2.17(a), PRM-1 Section 2122.2D, TSB-A-90(60)S, Sales and Use-Rate of Tax-Residential Energy Sources-Long Term Treatment Facilities**

Utilities	106			27,938
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**2. RECLASSIFICATION OF UTILIZATION REVIEW EXPENSE**

Utilization review expense included salaries and employee benefit expenses. The Facility reclassified these expenses from the Nursing Facility cost center to the Utilization Review cost center. However, the Facility did not provide adequate cost data nor job descriptions for the positions associated with these expenses. As a result, the Facility's reclassification of utilization review expenses was reversed.

**Regulations: 10 NYCRR Sections 86-2.17(a), 455.37, 455.5, PHL Article 49, & PRM-1 Sections 2300 & 2304**

Util. Review.	020			259,777
Nursing Admin.	013	(259,777)		

**3. PHARMACY DISALLOWANCES**

a) Providers receiving payments on the basis of reimbursable costs are required to provide adequate cost data based on financial and statistical records that can be verified on audit. Cost data must be current, accurate, and in sufficient detail. Audited costs varied from the amount reported by the Facility. The Facility did not provide adequate documentation to substantiate reported expense. Consequently, the unsubstantiated expense was disallowed.

**Regulations: 10 NYCRR Section 86-2.17(a), PRM-1 Sections 2300 & 2304**

b) The Facility received discounts for pharmacy expenses that were not taken into consideration when calculating pharmacy expense for the base period. These discounts should be offset against pharmacy expenses. Accordingly, a disallowance was necessary.

**Regulations: 10 NYCRR Section 86-2.17(a), PRM-1 Sections 2300 & 2304**

Pharmacy	042	28,580		
Pharmacy	042		171,705	

**FULTON COMMONS CARE CENTER - AUDIT #07-3260**  
**RATE PERIODS NOVEMBER 1, 2003 THROUGH DECEMBER 31, 2006**  
**OPERATING EXPENSE DISALLOWANCES/(ALLOWANCES)**

	COST CTR.	DESCRIPTION	OPERATING EXPENSE COMPONENT		
			DIRECT	INDIRECT	NON- COMP.
<b>4. OUT OF PERIOD EXPENSE DISALLOWANCES</b>					
Expenditures are to be recorded in the period in which they are incurred. Reported base year expense included expenditures pertaining to a prior period. Consequently, disallowances were necessary.					
<b>Regulations: 10 NYCRR Sections 86-2.4 &amp; 86-2.17(a), PRM-1 Sections 2300, 2302.1, &amp; 2304</b>					
<b>5. RECLASSIFICATION OF PROPERTY INSURANCE</b>					
Business income, employee theft, and forgery and alteration insurance are allowable expenses within the operating component. The Facility included these expenses in property expenses. Therefore, they were disallowed from property expenses and were reclassified to the Administrative Services cost center within the operating component. (See Exhibit IV, Adj. 2(b))				(4,072)	
<b>Regulations: 10 NYCRR Sections 86-2.17(a) &amp; (d), &amp; 455.5, PRM-1 Section 2161</b>					
<b>6. INSURANCE EXPENSE ALLOWANCE</b>					
Providers receiving payments on the basis of reimbursable costs are required to provide adequate cost data based on financial and statistical records that can be verified on audit. Cost data must be current, accurate, and in sufficient detail. Audited insurance varied from the insurance expense allowed in the rate, resulting in an allowance.				(1,661)	
<b>Regulations: 10 NYCRR Section 86-2.17(a), PRM-1 Sections 2102.2, 2300 &amp; 2304</b>					
<b>Total Disallowances/(Allowances)</b>			\$ 19,243	\$ (5,733)	\$ 287,715
<b>TOTAL AUDITED OPERATING EXPENSE BY COMPONENT</b>			\$ 10,469,182	\$ 5,688,778	\$ 1,842,643

**FULTON COMMONS CARE CENTER - AUDIT #07-3260  
RATE PERIODS NOVEMBER 1, 2003 THROUGH DECEMBER 31, 2006  
PROPERTY EXPENSE DISALLOWANCES/(ALLOWANCES)**

COST CTR.	RATE PERIODS		
	2003	2004	2005
	\$ 4,300,669	\$ 4,246,900	\$ 4,314,224
			<b>2006</b>
			\$ 4,468,951

Property Expense Allowed per HE-12B  
Less Disallowances/(Allowances):

**1. MORTGAGE INTEREST EXPENSE DISALLOWANCES**

According to the Bureau of Long Term Care Reimbursement (BLTCR) capital cost methodology, mortgage interest expense is reimbursed on a rate year basis. Audited rate year interest expense varied from the mortgage interest allowed in the promulgated rates, resulting in disallowances.  
**Regulation: 10 NYCRR Section 86-2.20(a)**

DESCRIPTION	COST CTR.	2003	2004	2005	2006
Mort. Int.	002		1,689	2,773	3,015

**2. PROPERTY INSURANCE EXPENSE DISALLOWANCES**

a) Facilities receiving payments on the basis of reimbursable costs are required to provide adequate cost data based on financial and statistical records that can be verified on audit. Cost data must be current, accurate, and in sufficient detail. The Facility did not provide adequate documentation to substantiate reported property insurance expense. Consequently, disallowances were necessary.  
**Regulations: 10 NYCRR Section 86-2.17(a), PRM-1 Sections 2300 & 2304**

DESCRIPTION	COST CTR.	2003	2004	2005	2006
Prop. Ins.	005	76,705	76,705	76,705	76,705

b) The Facility's November 1, 2003 through December 31, 2006 rates included insurance premiums for business income, employee theft, and forgery and alteration insurance. These types of insurance do not relate to the loss of or damage to the provider's physical property and consequently are only includable in the operating component of the rate. Since the insurance premiums are not allowable as property insurance costs, they were reclassified to operating. (See Exhibit III, Adj. #5)  
**Regulations: 10 NYCRR Sections 86-2.10(g), 86-2.17(a) & (d), PRM-1 Sections 2161 & 2806.2**

DESCRIPTION	COST CTR.	2003	2004	2005	2006
Prop. Ins.	005	4,072	4,072	4,072	4,072

**3. ORGANIZATION/START-UP COST DISALLOWANCES**

Providers receiving payment based on reimbursable costs must provide adequate cost data based on financial and statistical records that can be verified on audit. The Facility did not provide supporting documentation for portions of reported Organization/Startup costs. This resulted in disallowances.  
**Regulations: 10 NYCRR Section 86-2.17(a), PRM-1 Sections 2300 & 2304**

DESCRIPTION	COST CTR.	2003	2004	2005	2006
Org/Start-Up	001	111,094	111,094	111,094	111,094

Total Disallowances/(Allowances)

	\$ 191,871	\$ 193,560	\$ 194,644	\$ 194,886
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TOTAL AUDITED PROPERTY EXPENSE

	\$ 4,108,798	\$ 4,053,340	\$ 4,119,580	\$ 4,274,065
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