NEW YORK STATE
DEPARTMENT OF HEALTH
OFFICE OF THE MEDICAID INSPECTOR GENERAL

BED RESERVE AUDIT
BROOKHAVEN REHABILITATION & HEALTH CARE CENTER
JANUARY 1, 2002 – DECEMBER 31, 2004

FINAL AUDIT REPORT

James C. Cox
Acting Medicaid Inspector General
January 6, 2012

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	2 - 3
PAYMENT OPTIONS	3 - 4
PROVIDERS RIGHTS	4 - 5
REMITTANCE FORM	6

ATTACHMENTS AND SCHEDULES
- ATTACHMENT I - Provider Response to Draft
- ATTACHMENT II- Provider Response
  - ATTACHMENT II-A – Provider Periodic Census
  - ATTACHMENT II-B – Provider Response to Follow Up Letter
  - ATTACHMENT II-C – Provider Response to Additional Information Request
- ATTACHMENT III - Analysis of Vacancy Rate
- ATTACHMENT IV - Disallowance-Vacancy Rate Violation 18 NYCRR 505.9(d)(5)
- ATTACHMENT V - Total Audit Disallowances
- ATTACHMENT VI - Promulgated Rates Period of Jan. 1, 2002 - Dec. 31, 2004
- ATTACHMENT VII - Federal Reserve Prime Rates

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

January 6, 2012

[redacted]
Brookhaven Rehabilitation & Health Care Center
250 Beach 17th Street
Far Rockaway, NY 11691

Re: Bed Reserve Audit
Final Report
Audit# 07-4901
Provider #[redacted]

Dear [redacted]

Enclosed is the Office of the Medicaid Inspector General's ("OMIG") final audit report of bed reserve payments to Brookhaven Rehabilitation & Health Care Center (the "Facility") for the three years ended December 31, 2004. 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 December 21, 2011 response (Attachment I) to the October 19, 2011 draft report the findings in the final report remain unchanged to those cited in the draft report. A detailed explanation of the findings is included in the findings section of this 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 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 Provider Manuals.

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."

An analysis was completed of the Monthly Periodic Census Reports (Attachment II) that were submitted by the Facility to support the daily activity and bed reserve payments for the three years ended December 31, 2004. 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 298 bed capacity throughout the audit period. In complying with the 5% vacancy requirement, the Facility's unoccupied bed count could not exceed 14 vacant beds at the time the Facility billed Medicaid for a new bed-hold.

FINDINGS

In the Facility's December 21, 2011 response to the draft report the Facility states that it was the Department's policy to allow skilled nursing facilities to "round up" to the next full bed when the calculation of the vacancy rate resulted in a fractional number of beds, and that Mr. Elliott Frost, an employee of the Department, at times instructed nursing homes, associations and attorneys that they were allowed to do so. The OMIG disagrees that this was the policy of the Department as it is contradictory to regulations. The OMIG, in response to this statement, contacted Mr. Keith Servis, Mr. Frost's supervisor during the audit period in review. Mr. Servis confirmed that this was not the policy of the Department and that Mr. Frost did not have the authority to instruct facilities that they were entitled to round up to the next full bed if he did so. As a result, in calculating the vacancy rate for this audit, in accordance with 505.9(d)(5)(i) the OMIG will follow the regulatory requirement that states the department will pay an institution for a recipient's reserved bed when.....(b) the part of the institution to which the recipient will return has a vacancy rate of *no more than 5 percent.*

After applying the information contained in the Periodic Census Reports submitted by the Facility (Attachment II), the audit determined that the Facility was periodically operating above a 5% vacancy rate during the three years ended December 31, 2004.

The audit found that a total of 1,794 bed-hold days were inappropriately billed to Medicaid while the Facility's vacancy rate exceeded 5% (Attachment III). As a result, §504.3, §505.9(d), and §515.2 requirements were violated and the amount of overpayment, as defined in 18 NYCRR §518.1, is $358,407.01 (Attachment IV).

Under the Health Care Assessment Program, residential health care facilities licensed under Article 28 of the Public Health Law §2807-d must pay a six percent 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 and is included as an overpayment of $18,794.05 in this report (Attachment V, 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 report using the Federal Reserve Prime rate (Attachment VII) from the date of each overpayment through the date of the census submission; February 19, 2008. As a result, for the overpayments identified in this audit, the OMIG has determined that accrued interest of $104,819.35 is owed (Attachment V).

The overpayments identified in this final report were determined by applying the Facility's promulgated rates at the date this report was issued (Attachment VI). Based on this determination, the total amount of overpayment, as defined in 18 NYCRR §518.1 is $482,020, inclusive of interest (Attachment V). Repayment of $482,020 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 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. 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 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.

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
Office 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] at [redacted] or email at [redacted] ***Do not*** submit claim voids in response to this final report.

Thank you.

Sincerely,

[redacted]

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

CERTIFIED MAIL [redacted]
RETURN RECEIPT REQUESTED

CC: [redacted]

NEW YORK STATE
OFFICE OF THE MEDICAID INSPECTOR GENERAL
REMITTANCE ADVICE

NAME AND ADDRESS OF AUDITEE

Brookhaven Rehabilitation & Health Care Center
250 Beach 17th Street
Far Rockaway, NY 11691

Provider # [redacted]

AUDIT # 07-4901

AUDIT TYPE

[ ] PROVIDER
[ ] RATE
[ ] PART B
[X] OTHER: Bed Reserve

AMOUNT DUE: $ 482,020

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 1237
File # 07-4901
Albany, New York 12237-0016

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

CORRECT PROVIDER NUMBER