



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

**BED RESERVE AUDIT  
DRY HARBOR NURSING HOME  
JANUARY 1, 2002 – DECEMBER 31, 2004**

**FINAL AUDIT REPORT  
AUDIT # 07- 4911**

**James C. Cox  
Acting Medicaid Inspector General  
January 27, 2012**

## **OFFICE OF THE MEDICAID INSPECTOR GENERAL**

[omig.ny.gov](http://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	4
PROVIDER RIGHTS	5
REMITTANCE FORM	6
<b>ATTACHMENTS AND SCHEDULES</b>	
ATTACHMENT I – Provider Response to Draft Report	
ATTACHMENT II – Provider Responses	
ATTACHMENT II-A – Provider Periodic Census Report	
ATTACHMENT II-B – Other Census Related Material Including Voids	
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 27 2012

[REDACTED]  
Dry Harbor Nursing Home  
61-35 Dry Harbor Rd.  
Middle Village, NY 11379

Re: Bed Reserve Audit  
Final Report  
Audit# 07-4911  
Provider # [REDACTED]

Dear [REDACTED]

Enclosed is the Office of the Medicaid Inspector General's ("OMIG") final audit report of bed reserve payments to Dry Harbor Nursing Home (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 thoroughly reviewing the Facility's January 10, 2011 response (Attachment I) to the OMIG's December 7, 2011 draft report, the OMIG has found no basis to change any of the findings identified in the draft report. Therefore the final report findings remain unchanged to those cited in the draft 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-A) and other census related worksheets (Attachment II-B) 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 360 bed capacity throughout the audit period. In complying with the 5% vacancy requirement, the Facility's unoccupied bed count could not exceed 18 vacant beds at the time the Facility billed Medicaid for a new bed-hold.

## **FINDINGS**

In response to the December 28, 2007 audit engagement letter the Facility submitted Monthly Periodic Census Reports (Attachment II-A) for the three years ended December 31, 2004 that did not reflect the Medicaid bed-hold billings identified through eMedNY in the OMIG's pre-audit analysis. Further review of the submitted census reports indicated the Facility voided numerous bed-hold billings in response to the engagement letter, and then submitted an amended census report reflecting these voids. The OMIG sent a June 25, 2008 follow up letter (Attachment I-B) to the Facility requesting a list of the bed-hold claims they voided as a result of the initiation of the audit. The Facility's July 10, 2008 response letter (Attachment II-B) included a detailed listing of 740 bed-hold days voided by the Facility as a result of the OMIG's initiation of the audit.

After applying the information contained in Attachments II-A and II-B, the OMIG determined that the Facility had billed Medicaid for bed reserve payments while periodically operating above a 5% vacancy rate during the three years ended December 31, 2004. The audit found that a total of 743 bed-hold days were inappropriately billed to Medicaid while the Facility's vacancy rate exceeded 5% (Attachment V). 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 \$173,365.54 (Attachment V). The Facility in response to the engagement letter voided 740 of these inappropriate bed-hold days (Attachment III). The remaining 3 disallowed bed-hold days remain due the Department (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 an 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 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 \$10,397.42 in this report (Attachment V, Disallowed Cash Assessment). The Facility has already voided \$10,352.75 of the \$10,397.42 disallowed (Attachment III).

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 VIII). The OMIG has determined interest is applicable since the Facility only conducted an internal audit of its bed-hold billings as a result of our December 28, 2007 engagement letter, as acknowledged by the Facility in their July 10, 2008 letter to the OMIG (Attachment II-B). For those voids processed by the Facility and for any additional overpayments identified as a result of this audit, interest was calculated from the date of each overpayment through January 31, 2008; the date the Facility began to void the inappropriate billings. As a result, the OMIG has determined that accrued interest of \$48,062.37 is owed (Attachment VI).

In reviewing the voids processed as a result of the audit engagement letter the OMIG has confirmed that the Facility voided 740 bed-hold days (\$157,684.26) and \$10,352.75 in cash assessment payments directly related to these inappropriately billed bed-holds (Attachment III). As a result, the total amount of voids submitted by the Facility as result of the December 27, 2008 OMIG engagement letter totals \$168,037.01 (Attachment III). After reducing the \$168,037.01 in voids previously submitted by the Facility, \$63,788 remains due to the New York State Department of Health (Attachment VI).

### **SUMMARY OF FINDINGS**

\$173,365.54 - Reserved Bed-holds/Payments Disallowed (Attachment V)  
\$ 10,397.42 - Corresponding Cash Assessment Disallowances (Attachment V)  
\$ 48,062.37 - Interest on Disallowed Bed-holds/Payments (Attachment VI)  
\$231,825.33 - Total Audit Finding (Attachment VI)

\$157,684.26 - Reserved Bed-holds/Payments Voided To Date (Attachment III)  
\$ 10,352.75 - Corresponding Cash Assessments Voided To Date (Attachment III)  
\$168,037.01 - Total Voids Processed To Date (Attachment III)

\$231,825.33 - Total Audit Finding (Attachment VI)  
\$168,037.01 - Less Total Voids Processed To Date (Attachment IV)  
\$ 63,788.00 - Balance Due (Attachment VI)

## **PAYMENT OPTIONS**

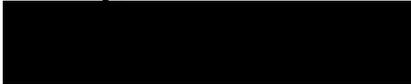
In accordance with 18 NYCRR Part 518 which regulates the collection of overpayments, your repayment options are described below.

**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  
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, 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]  
[REDACTED]

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

**NAME AND ADDRESS OF AUDITEE**

Dry Harbor Nursing Home  
61-35 Dry Harbor Rd.  
Middle Village, NY 11379

Provider [REDACTED]

AUDIT # 07-4911

AMOUNT DUE: \$ 63,788

AUDIT  
TYPE

PROVIDER  
 RATE  
 PART B  
 OTHER:  
Bed Reserve

**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- 4911  
Albany, New York 12237-0016

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

[REDACTED]

**CORRECT PROVIDER NUMBER**