



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

**BED RESERVE AUDIT
DAUGHTERS OF JACOB HEALTH SERVICES
JANUARY 1, 2002 – DECEMBER 31, 2004
AUDIT# 06-7429**

FINAL AUDIT REPORT

**James C. Cox
Medicaid Inspector General
January 23, 2014**

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.

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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 23, 2014

[REDACTED]
Daughters of Jacob Nursing Home Company Inc.
1600 Teller Avenue
Bronx, NY 10456-4145

Re: Bed Reserve Audit
Final Audit Report
Audit# 06-7429
Provider # [REDACTED]

Dear [REDACTED]

Enclosed is the Office of the Medicaid Inspector General's ("OMIG") Final Audit Report of bed reserve payments to Daughters of Jacob Nursing Home Company Inc. (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.

In the Facility's August 30, 2012 (Attachment I-A) response to the OMIG's May 17, 2012 Draft Audit Report, the Facility's attorney requested an opportunity to reach a mutually acceptable resolution to this audit's findings. After multiple discussions and several attempts to negotiate a fair resolution, the Facility and the OMIG were unable to reach a mutually acceptable resolution. The OMIG's review of the objections and documents submitted by the Facility in their response to Draft Report warranted no adjustments to the findings cited in the Draft Audit Report. Therefore, the findings in this Final Audit Report remain unchanged from those cited in the Draft Audit Report. A detailed explanation of our review 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 in New York Public Health Law, New York Social Services Law, the regulations of the Department of Health (Titles 10 and 18 of the NYCRR), the regulations of Office of Mental Health (Title 14 of the NYCRR) and the Department of Health's Medicaid Provider Manuals and *Medicaid Update* publications.

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 21 bed capacity for the ventilator unit and a 494 bed capacity in the geriatric unit throughout the audit period. In complying with the 5% vacancy requirement, the Facility's unoccupied bed count could not exceed 1 vacant bed in the ventilator unit and 24 vacant beds in the geriatric unit at the time the Facility billed Medicaid for a new bed-hold.

The OMIG reviewed the Periodic Census Reports submitted by the Facility and determined that the census information conflicted with Medicaid payment information for the audit period. OMIG contacted the Facility and was told that the census information the Facility submitted did not reflect additional adjustments to the census reports that the Facility had made to their patient count. The Facility then followed up with the OMIG and submitted additional adjusted census information than previously reported. After reviewing the amended census information, OMIG audit staff determined that the amended information required further clarification due to multiple inconsistencies and irregularities within the census documentation itself. Multiple phone conversations were held with the Facility to resolve the conflicting data and as a result, OMIG audit staff made an on-site visit to the Facility to further discuss the information submitted to date, and to retrieve any correct and necessary data/census information to complete the audit. While on-site OMIG audit staff reviewed with the Facility their daily logs/census, and obtained both a hard copy of the facility's most updated daily census report, and a disc of the payer source for any bed-holds reserved by the Facility. The OMIG then used this information to determine the facility's applicable daily vacancy rate during the audit period.

FINDINGS

After applying the information contained in the Periodic Census Reports obtained from the on-site review (one month example - Attachment II), the audit determined that the Facility's geriatric unit was periodically operating above a 5% vacancy rate during the three years ended December 31, 2004. The audit found that a total of 4,262 bed-hold days were inappropriately billed to Medicaid while the Facility's geriatric unit's vacancy rate exceeded 5% (Attachment III-A). As a result, §504.3 and §505.9(d) requirements were violated and the amount of overpayment, as defined in 18 NYCRR §518.1, is \$867,261.01 (Attachment IV-A).

After applying the information contained in the Periodic Census Reports obtained from the on-site review (one month example - Attachment II), the audit determined that the Facility's ventilator unit was periodically operating above a 5% vacancy rate during the three years ended December 31, 2004. The audit found that a total of 17 bed-hold days were inappropriately billed to Medicaid while the Facility's ventilator unit's vacancy rate exceeded 5% (Attachment III-B). As a result, §504.3 and §505.9(d) requirements were violated and the amount of overpayment, as defined in 18 NYCRR §518.1, is \$9,544.88 (Attachment IV-B).

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 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 \$45,747.90 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 Audit Report using the Federal Reserve Prime rate (Attachment VII) from the date of each overpayment through the date of the on-site review; November 7, 2007. As a result, for the overpayments identified in this audit, the OMIG has determined that accrued interest of \$247,362.16 is owed (Attachment V).

The overpayments identified in this Final Audit 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 \$1,169,915, inclusive of interest (Attachment V). Repayment of \$1,169,915 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 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:


New York State Department of Health
Medicaid Financial Management, B.A.M.
GNARESP Corning Tower, Room 2739
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 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


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 Report 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] or email at [REDACTED] **Do not** submit claim voids in response to this Final Audit Report.

Thank you.

Sincerely,

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

CERTIFIED MAIL [REDACTED]
RETURN RECEIPT REQUESTED

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

NAME AND ADDRESS OF AUDITEE

Daughters of Jacob Nursing Home
Inc.
1600 Teller Avenue
Bronx, NY 10456-4145

Provider [REDACTED]

AUDIT # 06-7429

AMOUNT DUE: \$ 1,169,915

AUDIT	<input type="checkbox"/> PROVIDER
	<input type="checkbox"/> RATE
	<input type="checkbox"/> PART B
TYPE	<input checked="" type="checkbox"/> 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 2739
File # 06-7429
Albany, New York 12237-0016

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

[REDACTED]
CORRECT PROVIDER NUMBER