STATE OF NEW YORK
OFFICE OF THE MEDICAID INSPECTOR GENERAL
221 South Warren Street, Suite 410
Syracuse, New York 13202

ANDREW M. CUOMO
GOVERNOR

JAMES C. COX
MEDICAID INSPECTOR GENERAL

July 9, 2012

Edgar Lyubling MD
1401 Ocean Ave Apt 10G
Brooklyn, NY 11230

Re: Final Audit Report
Medicare Crossover Claims (COBA)
Audit #: 00900069
NPI #: [redacted]
Provider ID # [redacted]

Dear Dr. Lyubling:

This letter will serve as our final audit report of the billing review of Medicaid claims for Medicare Part B coinsurance and/or deductible amounts for Medicaid reimbursable services to dual eligibles paid on or before December 31, 2011 made to you under the New York State Medicaid Program. Dual eligibles are defined to be recipients with both Medicare A and/or B and NY Medicaid coverage.

BACKGROUND, PURPOSE AND SCOPE

The New York State Department of Health ("the Department") is responsible for the administration of the Medicaid program. As part of this responsibility, the Office of the Medicaid Inspector General ("OMIG"), an independent office within the Department, 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, Mental Hygiene, and Social Services [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)], the Medicaid Management Information System (MMIS) Provider Manuals and Department Medicaid Updates.

The OMIG recently completed a review of Medicaid payments you submitted to Medicaid where there is also an eMedNY generated Medicare crossover claim payment. The crossover payment has a Medicare Internal Control Number (ICN) with the same National Provider Identifier (NPI), recipient identification number, date of service and procedure code as your Medicaid submitted paid claim. The review has found instances where the claims you submitted circumvented the eMedNY automated void system and had both the generated Medicare crossover claim payment and a payment for your submitted Medicaid claim.

DETERMINATION

You failed to comply with the following regulations and policies cited below.

> Regulations state: "When the department has determined that any person has submitted or caused to be submitted claims for medical care, services or supplies for which payment should not have been made, it may require repayment of the amount determined to have been overpaid." Regulations also 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(b), (c)*

> Medicaid policy states: "Effective December 2009, New York State Medicaid implemented an automated Medicare crossover process so providers will no longer have to bill New York Medicaid separately for the Medicare deductible, coinsurance or co-pay amounts for Medicare beneficiaries covered by Medicare Parts A & B. These types of claims are now sent directly by Medicare to New York Medicaid for processing and payment."
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> *DOH Medicaid Update ,January 2010, Vol. 26, No. 1*

> Medicaid policy states: "If a separate claim is submitted directly by the provider to Medicaid for a dual eligible client and the claim is processed before the crossover claim from [Medicare], both the provider submitted claim and the crossover claim will be reimbursed. However, the eMedNY system will subsequently void the provider submitted claim."
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> *DOH Medicaid Update, September 2009, Vol. 25, No. 11*

> Medicaid policy states: "Any claim indicated by Medicare as a crossover to Medicaid (MA 18-NY Medicaid) should not be submitted by the provider to Medicaid as a separate claim. If, however, the Medicare remittance does not indicate the claim has been crossed over to Medicaid, the provider should submit the claim directly to Medicaid.
>
> *DOH Medicaid Update, May 2011, Vol. 27, No. 6*

DETAILED FINDINGS

1. Final Audit Report Exhibit 1 - Summary of Findings

Per our draft audit report, the amount of the overpayments totals $3,281.00. You did not provide any further documentation in response to the draft report; therefore, the overpayment in the final report remains the same.

PROVIDER RIGHTS

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
GNARESP Corning Tower, Room 2266
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.

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

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, 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 review through repayment, you have the right to challenge these findings by requesting an administrative hearing. Issues you may raise shall be limited to those issues relating to determinations contained in the final audit report. You may only request a hearing to challenge specific audit adjustments which you challenged in a response to the draft audit report. Your hearing request may not address issues regarding the methodology used to determine any rate of payment or fee.

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.

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 [redacted] Office of Counsel, at [redacted]

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.

If you have any questions, regarding the above, please contact [redacted] at [redacted] or by email at [redacted]

Sincerely,

[redacted]
Management Specialist 4
Data Warehouse and Analysis Unit
Division of Medicaid Audit
Office of the Medicaid Inspector General

Attachment:
Exhibit 1 – Summary of Findings

CERTIFIED MAIL # [redacted]
RETURN RECEIPT REQUESTED

NEW YORK STATE
OFFICE OF THE MEDICAID INSPECTOR GENERAL
REMITTANCE ADVICE

NAME AND ADDRESS OF AUDITEE

Edgar Lyubling MD
1401 Ocean Ave Apt 10G
Brooklyn NY 11230

PROVIDER # [redacted]

AUDIT # 12-2357

PROVIDER TYPE

- ☐ Fee For Service
- ☐ Rate - LTC
- ☐ Rate - NH
- ☐ Managed Care
- ☒ Other

TOTAL AMOUNT DUE: $3,281.00

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:

[redacted]
New York State Department of Health
Medicaid Financial Management, B.A.M.
GNARESP Corning Tower, Room 2266
Albany, New York 12237- 0016

Thank you for your cooperation.