



STATE OF NEW YORK
OFFICE OF THE MEDICAID INSPECTOR GENERAL
90 Church Street, 14th Floor
New York, New York 10007

ANDREW M. CUOMO
GOVERNOR

JAMES C. COX
MEDICAID INSPECTOR GENERAL

June 4, 2014

[REDACTED]
Bayview Nursing and Rehabilitation Center
d/b/a South Point Plaza
Nursing and Rehabilitation Center
One Long Beach Road
Island Park, New York 11558

Re: Medicaid Rate Audit #08-1975
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 Bayview Nursing and Rehabilitation Center's (the "Facility") Medicaid rates for the rate period April 6, 2003 through December 31, 2007. 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 January 2, 2014, you identified specific audit findings with which you disagreed. You also raised an issue concerning the net book value of leasehold improvements. Your comments have been considered (see Attachment A); however, consideration of your comments resulted in no reduction to the Medicaid overpayment shown in the draft audit report. 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 \$1,074,126. This overpayment is subject to Department of Health ("DOH") and Division of Budget ("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, 2007 that utilized the April 6, 2003 through April 5, 2004 base period for operating expense. Any overpayment resulting from operating expense disallowances in the April 6, 2003 through April 5, 2004 base period report for rates subsequent to December 31, 2007 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 #08-1975
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 50% withhold after 20 days until an agreement is established. 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. In addition, if you receive an adjustment in your favor while you owe funds to the State, such adjustment will be applied against any amount owed. If you wish to enter into a repayment agreement, please contact the Bureau of Collections Management within 20 days at the following:

Bureau of Collections Management
New York State Office of the Medicaid Inspector General
800 North Pearl Street
Albany, New York 12204
[REDACTED]

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 the Office of Counsel at

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 me at [REDACTED] or through email at [REDACTED]. Please refer to audit number 08-1975 in all correspondence.

Sincerely,

[REDACTED]

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

Enclosure

ATTACHMENT A - Facility Draft Audit 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)
EXHIBIT V - Per Diem Disallowances
EXHIBIT VI - Return on Average Equity Disallowances/(Allowances)

CERTIFIED MAIL [REDACTED]
RETURN RECEIPT REQUESTED

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

NAME AND ADDRESS OF AUDITEE

Bayview Nursing
and Rehabilitation Center
One Long Beach Road
Island Park, New York 11558

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

AUDIT #08-1975

AMOUNT DUE: \$1,074,126

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 #08-1975
Albany, New York 12237-0048

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

CORRECT PROVIDER NUMBER

**BAYVIEW NURSING AND REHABILITATION CENTER - AUDIT #08-1975
FACILITY DRAFT AUDIT 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 IV COMMENTS

Adjustment #3 – Return on Average Equity Disallowances

Facility Comment

OMIG has proposed removing Goodwill from average equity. Facility requests that OMIG, in calculating the return on equity, decrease the liabilities by the corresponding loan payable used to finance purchase of the facility, which is an offset to the Goodwill.

<u>Cost Year</u>	<u>Rate Period</u>	<u>Loan Payable Balance</u>
4/6/2003 – 4/5/2004	2003-2005	\$ 4,019,537
2004	2006	3,881,201
2005	2007	3,673,697

OMIG Response

The Commissioner has determined that goodwill is not a recognized asset for Medicaid reimbursement purposes. In that regard, the Bureau of Long Term Care Reimbursement (BLTCR) has formulated a methodology for the computation of the Return on Average Equity that excludes goodwill. It does, however, recognize the entire liability on real property. On that basis, the OMIG uses the methodology set forth by the BLTCR and therefore considers this to be a methodology issue.

Disposition: The draft audit report disallowances remain the same.

Adjustment #4 – Organization Costs Disallowances

Facility Comment

OMIG has proposed disallowing organization costs due to insufficient documentation. Facility requests that organization costs of \$19,635 and \$43,111 be considered for reimbursement. Attached please find copy of closing figures worksheet prepared by the law office of Abrams Fensterman, et al.

OMIG Response

The regulations require that cost data must be current and in sufficient detail. The Facility has not provided sufficient detail to adequately substantiate the costs of \$19,635 and \$43,111. These costs were shown on the closing worksheet provided, however, no detailed supporting documentation for these expenses has been provided. The OMIG considers that the two costs referred to above have not been adequately substantiated.

Disposition: The draft audit report disallowances remain the same.

ADDITIONAL COMMENTS

Facility Comment

Facility accepts OMIG's adjustment, reducing opening balance of Major Moveable Equipment to reflect the Net Book Value of prior owner's final RHCF cost report for the period ended 12/31/2001. Facility requests that OMIG apply this same methodology to adjust opening balance of Leasehold Improvements to equal the Net Book Value of the prior owner to \$356,536 as per attached Schedule 11, RHCF-4 cost report for the period ended 12/31/2001.

	<u>Column</u>	<u>Line</u>	<u>Amount</u>
Cost to be Amortized	0192	040	\$ 1,248,056
Less: Accum. Amortization at Beginning of Year	0193	040	(819,000)
Less: Amortization for This Year	0196	040	(72,520)
TOTAL			\$ <u>356,536</u>

Please be advised that our opening balance value of \$206,006 for LHI was derived from the prior owner's Medicare Cost Report Worksheet G lines 17-18, for the period 01/01/2003 – 04/05/2003 i.e. period ended one day prior to sale to new owner and which was subsequent to the 12/31/2001 Medicaid Cost Report.

OMIG Response

The document provided by the Facility has served to substantiate the opening balance for Leasehold Improvements (LHI). As this was prepared by the prior owner one day prior to the sale, it is considered to be contemporaneous and supersedes the cost report filed for the 2001 cost year. The Facility has not shown why this is incorrect nor did they refile the cost report to change the opening balance. As no documentation was provided during the audit, the OMIG considered the opening balance to be acceptable as it was not overstated when compared to the prior owner's 2001 cost report. The Facility's comments do not pertain to an audit adjustment and, therefore, cannot be further addressed.

Disposition: The Facility's request is not recognized.

BAYVIEW NURSING & REHABILITATION CENTER - AUDIT #08-1975
RATE PERIODS APRIL 6, 2003 THROUGH DECEMBER 31, 2007
SUMMARY OF PER DIEM IMPACT AND MEDICAID OVERPAYMENT

<u>RATE PERIOD</u>	<u>ISSUED PART B & D NON-ELIGIBLE RATES*</u>	<u>FINAL PART B & D NON-ELIGIBLE RATES</u>	<u>RATE DECREASE (INCREASE)</u>	<u>MEDICAID DAYS</u>	<u>MEDICAID OVERPAYMENT</u>
04/06/03 - 04/30/03	\$201.65	\$198.10	\$3.55	3,699	\$ 13,131
05/01/03 - 06/30/03	201.34	197.79	3.55	9,127	32,401
07/01/03 - 09/30/03	199.92	196.37	3.55	14,829	52,643
10/01/03 - 12/31/03	200.12	196.56	3.56	15,421	54,899
01/01/04 - 03/31/04	208.92	205.63	3.29	15,187	49,965
04/01/04 - 06/30/04	207.47	204.18	3.29	14,743	48,504
07/01/04 - 09/30/04	207.65	204.36	3.29	15,767	51,873
10/01/04 - 12/31/04	205.86	202.57	3.29	14,794	48,672
01/01/05 - 03/31/05	215.92	212.24	3.68	14,631	53,842
04/01/05 - 06/30/05	216.53	212.84	3.69	15,718	57,999
07/01/05 - 09/30/05	219.62	215.93	3.69	15,137	55,856
10/01/05 - 12/31/05	222.08	218.39	3.69	14,952	55,173
01/01/06 - 03/31/06	230.69	224.69	6.00	14,104	84,624
04/01/06 - 06/30/06	232.83	226.84	5.99	14,418	86,364
07/01/06 - 09/30/06	238.75	232.76	5.99	14,364	86,040
10/01/06 - 12/31/06	242.26	236.26	6.00	14,019	84,114
01/01/07 - 03/31/07	248.13	245.12	3.01	13,240	39,852
04/01/07 - 06/30/07	246.72	243.73	2.99	13,297	39,758
07/01/07 - 08/31/07	248.01	245.02	2.99	8,501	25,418
09/01/07 - 12/31/07	248.01	245.02	2.99	17,725	52,998
TOTAL MEDICAID OVERPAYMENT					<u>\$ 1,074,126</u>

* Any differences between these rates and the rates listed in Exhibit II of this audit 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.

BAYVIEW NURSING & REHABILITATION CENTER - AUDIT #08-1975
RATE PERIODS APRIL 6, 2003 THROUGH DECEMBER 31, 2007
SUMMARY OF MEDICAID RATES AUDITED

The Facility's Medicaid utilization was approximately 93 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 audit 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 & D NON-ELIGIBLE RATES *</u>
04/06/03 - 04/30/03	\$ 201.65
05/01/03 - 06/30/03	201.34
07/01/03 - 09/30/03	199.92
10/01/03 - 12/31/03	200.12
01/01/04 - 03/31/04	208.92
04/01/04 - 06/30/04	207.47
07/01/04 - 09/30/04	207.65
10/01/04 - 12/31/04	205.86
01/01/05 - 03/31/05	215.92
04/01/05 - 06/30/05	216.53
07/01/05 - 09/30/05	219.62
10/01/05 - 12/31/05	222.08
01/01/06 - 03/31/06	230.69
04/01/06 - 06/30/06	232.83
07/01/06 - 09/30/06	238.75
10/01/06 - 12/31/06	242.26
01/01/07 - 03/31/07	248.13
04/01/07 - 06/30/07	246.72
07/01/07 - 08/31/07	248.01
09/01/07 - 12/31/07	248.01

* 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.

BAYVIEW NURSING & REHABILITATION CENTER - AUDIT #08-1975
RATE PERIODS APRIL 6, 2003 THROUGH DECEMBER 31, 2007
OPERATING EXPENSE DISALLOWANCES/(ALLOWANCES)

OPERATING EXPENSE COMPONENT				
	04/06/03-	12/31/2006	12/31/2007	
	NON-COMP	NON-COMP	NON-COMP	
DIRECT	\$ 8,799,875	\$ 3,826,756	\$ 569,140	\$ 327,660
INDIRECT				
TOTAL				

COST
CTR

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

1. UTILITY EXPENSE ADJUSTMENTS

Facilities receiving payments on the basis of reimbursable costs are required to provide cost data based on financial and statistical records that can be verified on audit. Cost data must be current, accurate and in sufficient detail. Utility expense for electricity determined on audit varied from the expense allowed in the promulgated rates. Consequently, the utility expenses not applicable to the operating base period were disallowed. In addition, sales tax expense erroneously credited to the accounts was reclassified to the property component. This resulted in a net allowance.

Regulations: 10 NYCRR Sections 86-2.4, 86-2.17(a) & (d), PRM-1 Sections 2300, 2302.1, & 2304

Utilities 106 (520) (520)

2. PHYSICIAN SERVICES FEES DISALLOWANCE

Reimbursable costs shall not include expenses which are determined by the Commissioner not to be reasonably related to the efficient production of services because of their nature or amount of the particular item. The Facility reported and was reimbursed physician services fees. Since this ancillary was not indicated as an allowable expense for inclusion in the Facility's Medicaid rate, a disallowance was necessary.

Regulations: 10 NYCRR Sections 86-2.17(a) & (d)

Medical Staff Serv 044 20,000 20,000

3. DENTAL EXPENSE DISALLOWANCE

Facilities receiving payments on the basis of reimbursable costs are required to provide 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 review of the Facility's records disclosed an out of period charge that was not related to the base period under audit. Consequently, the expense was disallowed.

Regulations: 10 NYCRR Sections 86.2.4, 86-2.17(a), PRM-1 Sections 2300, 2302.1, & 2304

Dental 037 2,670 2,670

Total Disallowances/(Allowances)	\$ -	\$ -	\$ 22,150	\$ 22,150
TOTAL AUDITED OPERATING EXPENSE BY COMPONENT	\$ 8,799,875	\$ 3,826,756	\$ 566,990	\$ 305,510

BAYVIEW NURSING & REHABILITATION CENTER - AUDIT #08-1975
RATE PERIODS APRIL 6, 2003 THROUGH DECEMBER 31, 2007
PROPERTY EXPENSE DISALLOWANCES/(ALLOWANCES)

DESCRIPTION	RATE PERIODS				
	2003	2004	2005	1/1/2006	4/1/2006
COST					
	\$ 739,270	\$ 721,668	\$ 744,956	\$ 881,731	\$ 881,731
					\$ 1,086,991

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

1. MOVEABLE EQUIPMENT DEPRECIATION DISALLOWANCES

Facilities receiving payments on the basis of reimbursable costs are required to provide 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 adequately substantiate the historical cost for moveable equipment. Consequently, the related depreciation expense was disallowed.

Regulations: 10 NYCRR Sections 86-2.4, 2.7, & 2.17(a), PRM-1 Sections 2300 & 2304

2. AUTOMOBILE EXPENSE DISALLOWANCES

Costs not related to patient care are costs that are not appropriate or necessary and proper in developing and maintaining the operation of patient care facilities and activities. Only costs properly chargeable to necessary patient care are allowable. The Facility was unable to provide documentation to substantiate the relationship to patient care for automobile lease and insurance expenses. Consequently, the automobile expenses were disallowed.

Regulations: 10 NYCRR Sections 86-2.17(a)&(d), PRM-1 Sections 2102.3, 2105.9, 2300, & 2304

3. RETURN ON AVERAGE EQUITY DISALLOWANCES

A proprietary residential health care facility is entitled to a reasonable return on average equity for equity associated with necessary and proper patient care activities. The returns in the promulgated rates were based on average equity that included an amount for goodwill. The Commissioner has determined that goodwill is not reimbursable for Medicaid. Consequently, the average equity calculation was recomputed based on the elimination of goodwill which resulted in disallowances to the return on average equity. See Exhibit VI for details.

Regulations: 10 NYCRR Sections 86-2.28 & 2.17(d)

4. ORGANIZATION COSTS DISALLOWANCES

Facilities receiving payments on the basis of reimbursable costs are required to provide 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 was unable to provide sufficient documentation to adequately substantiate reported organization costs. Consequently, the related amortization expense was disallowed.

Regulations: 10 NYCRR Sections 86-2.7 & 86-2.17(a), PRM-1 Sections 2134.1, 2300, & 2304

5. SALES TAX DISALLOWANCES

Facilities receiving payments on the basis of reimbursable costs are required to provide 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 sales tax on utilities varied from the sales tax expense allowed in the rate resulting in disallowances.

Regulations: 10 NYCRR Sections 86-2.7 & 86-2.17(a), PRM-1 Sections 2300 & 2304

DESCRIPTION	RATE PERIODS				
	2003	2004	2005	1/1/2006	4/1/2006
Mov Equip Dep 002	1,383	1,383	1,383	2,766	2,766
Rent A 002	6,021	6,021	6,021	2,826	2,826
Rent C 006					4,681
Auto Insurance 006	1,183	1,183	1,183	742	742
Return on Equity 006	44,952	27,350	50,638	77,612	77,612
Organiz. Costs 005	95,587	95,587	95,587	192,777	192,777
Sales Tax 005	8,341	8,341	8,341	13,702	13,702
					20,062

BAYVIEW NURSING & REHABILITATION CENTER - AUDIT #08-1975
RATE PERIODS APRIL 6, 2003 THROUGH DECEMBER 31, 2007
PROPERTY EXPENSE DISALLOWANCES/(ALLOWANCES)

DESCRIPTION	COST CTR.	RATE PERIODS				
		2003	2004	2005	1/1/2006 - 4/1/2006	2007
WCI Expense	005				24,975	
WCI Expense	005			24,975		

6. WORKING CAPITAL INTEREST EXPENSE DISALLOWANCES

(a) Costs not related to patient care are costs that are not appropriate or necessary and proper in developing and maintaining the operation of patient care facilities and activities. The Facility was unable to provide sufficient documentation to substantiate the expenses reported as working capital interest. Consequently, the expense was disallowed.
Regulations: 10 NYCRR Section 86-2.17(a)&(d), PRM-1 Sections 2102.3, 2300, & 2304

(b) Necessary interest on both current and capital indebtedness is an allowable cost for all residential facilities. Effective April 1, 2006 and thereafter, rates shall not contain a payment factor for working capital interest if the RHC-4 report utilized to determine such payment factor also shows a withdrawal of equity, a transfer of assets or a positive net income. The Facility had a withdrawal of equity in cost year 2004. Consequently, the working capital interest expense was disallowed.
Regulations: 10 NYCRR Sections 86-2.17(a),(d) & 2.20, Public Health Law Section 2809.22(a)

Total Disallowances/(Allowances)

TOTAL AUDITED PROPERTY EXPENSE

	\$ 157,467	\$ 139,865	\$ 163,153	\$ 315,400	\$ 315,400	\$ 122,902
	\$ 581,803	\$ 581,803	\$ 581,803	\$ 566,331	\$ 566,331	\$ 964,089

BAYVIEW NURSING & REHABILITATION CENTER - AUDIT # 08-1975
RATE PERIODS APRIL 6, 2003 THROUGH DECEMBER 31, 2007
PER DIEM DISALLOWANCES

DENTAL PER DIEM DISALLOWANCES

Residential health care facilities are responsible for the provision and reimbursement of dental services. Facilities that did not have the costs of required dental services included in their 1983 base year costs received a trended per diem add-on in the promulgated rates, based on a submitted budget. The Facility's rates for the period under audit were based on a new base period subsequent to 1983 which included the costs of dental services in reported operating expense. Therefore, the Facility is no longer entitled to receive the dental per diem add-on as it is a duplication of dental expense reimbursement. Consequently, the disallowance of the following dental per diems were necessary.

Regulation: 10 NYCRR Section 86-2.17(a) & (d)

	RATE PERIODS					
	<u>04/06/03-</u> <u>12/31/03</u>	<u>2004</u>	<u>2005</u>	<u>2006</u>	<u>01/01/07-</u> <u>03/31/07</u>	<u>04/01/07-</u> <u>12/31/07</u>
Dental Per Diem Disallowance	\$0.66	\$0.67	\$0.68	\$0.70	\$0.72	\$0.71

BAYVIEW NURSING & REHABILITATION CENTER - AUDIT #08-1975
RATE PERIODS APRIL 6, 2003 THROUGH DECEMBER 31, 2007
RETURN ON AVERAGE EQUITY DISALLOWANCES/(ALLOWANCES)

Return on Average Equity	RATE PERIODS			
	<u>2003</u>	<u>2004</u>	<u>2005</u>	<u>2006</u>
Average Equity per HE-12B	\$ 2,707,937	\$ 2,707,937	\$ 2,707,937	\$ 2,064,162
Audit Disallowances: Elimination of Goodwill	<u>5,342,896</u>	<u>5,342,896</u>	<u>5,342,896</u>	<u>5,342,896</u>
Audited Average Equity	\$ (2,634,959)	\$ (2,634,959)	\$ (2,634,959)	\$ (3,278,734)
Less: Audited Net Investment	<u>-</u>	<u>-</u>	<u>-</u>	<u>-</u>
Audited Remaining Equity	\$ (2,634,959)	\$ (2,634,959)	\$ (2,634,959)	\$ (3,278,734)
Rate of Return	<u>1.66%</u>	<u>1.01%</u>	<u>1.87%</u>	<u>3.76%</u>
Return on Average Equity Per Audit	\$ -	\$ -	\$ -	\$ -
Return on Average Equity Per HE-12B	<u>44,952</u>	<u>27,350</u>	<u>50,638</u>	<u>77,612</u>
Disallowance/(Allowance)	<u>\$ 44,952</u>	<u>\$ 27,350</u>	<u>\$ 50,638</u>	<u>\$ 77,612</u>