

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

**BED RESERVE AUDIT
HIGHFIELD GARDENS CARE CENTER OF GREAT NECK
JANUARY 1, 2002 – DECEMBER 31, 2004**

FINAL AUDIT REPORT

**James G. Sheehan
Medicaid Inspector General
March 1, 2011**

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
FINDINGS	3
PAYMENT OPTIONS	4
REMITTANCE FORM	6
ATTACHMENTS AND SCHEDULES	
ATTACHMENT I - Facility Response to Draft Report	
ATTACHMENT II - Provider Periodic Census Report	
ATTACHMENT III - Corrective Action Letters	
ATTACHMENT III-A – Facility’s February 7, 2007 Letter	
ATTACHMENT III-B – OMIG February 23, 2007 Request Letter	
ATTACHMENT III-C – Facility’s April 18, 2007 Letter	
ATTACHMENT IV - OMIG Corrective Action Claims Identified	
ATTACHMENT V - Analysis of Vacancy Rate	
ATTACHMENT VI - Disallowance - Vacancy Rate Violation 18 NYCRR §505.9(d)(5)	
ATTACHMENT VII - Total Audit Disallowances	
ATTACHMENT VIII - Promulgated Rates Period of Jan. 1, 2002 - Dec. 31, 2004	
ATTACHMENT IX - 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 G. SHEEHAN
MEDICAID INSPECTOR GENERAL

March 1, 2011

Moshe Bain, Administrator
Highfield Gardens CC Great Neck
199 Community Drive
Great Neck, NY 11021

Re: Bed Reserve Audit
Final Report
Audit# 06-7425
Provider # [REDACTED]

Dear Mr. Bain:

Enclosed is the Office of the Medicaid Inspector General's ("OMIG") final audit report of bed reserve payments to Highfield Gardens CC Great (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 15, 2010 response (Attachment I) to the OMIG's December 1, 2010 draft report, the bed-hold disallowances identified in the final report remain unchanged to those cited in the draft report. A detailed explanation of the findings is included in this final 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."

In a February 7, 2007 response to the audit engagement letter the Facility notified the OMIG of corrective action that was previously taken by the Facility and reported to DOH as a result of a prior bed reserve audit (Audit # 04-P-1131). Included in this December 31, 2004 letter (Attachment III-A) was a single adding machine tape without any supporting detail, totaling 186,624. The OMIG sent a February 23, 2007 follow-up letter to the Facility requesting the Facility to provide a detailed breakdown of the claims associated with the 186,624 listed on the tape (Attachment III-B). On April 18, 2007 the Facility responded to the OMIG's follow-up letter detailing inappropriate bed reserve payments of \$146,132.62 (754 bed-hold days) for the three years ended December 31, 2004 (Attachment III-C), and not 186,624 as previously referenced by the Facility.

After the receipt of the April 18, 2007 letter, an analysis was then 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 200 bed capacity throughout the audit period. In complying with the 5% vacancy requirement, the Facility's unoccupied bed count could not exceed 10 vacant beds at the time the Facility billed Medicaid for a new bed-hold.

FINDINGS

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 1,148 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 \$214,631.40 (Attachment VI). This finding remains the same as that cited in the December 1, 2010 draft report and was not contested by the Facility in their response.

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 \$11,523.73 in this report (Attachment VI, Disallowed Cash Assessment). This finding was reduced by \$25.82 from that cited in the draft report as two cash assessment disallowances were removed as overpayments (Attachment VI). In response to the draft report, the Facility did not contest the calculation of this finding but did contest their requirement to reimburse the OMIG for revenue assessment dollars that New York State had already received. The OMIG discussed this with the Facility, as the Facility had requested in response to the draft report, and explained to the Facility the reason for the recovery and the process the Facility should follow to get credit for any payments previously made to New York State related to the OMIG recovery of these cash assessment overpayments.

In accordance with 18 NYCRR §518.4, interest may be collected and will accrue at the current rate from the date of the overpayment. The Facility's original December 31, 2004 corrective action letter did not contain a detailed breakdown of identifiable bed reserve claims, therefore the detailed listing of \$146,132.62 (754 bed-hold days) from inappropriate bed reserve billings identified in the Facility's April 18, 2007 response letter (Attachment III-C) was reviewed by the OMIG. This review determined that \$139,865.20 (751 bed-hold days) was recognized and reported by the Facility as being inappropriately billed to Medicaid (Attachment IV). The \$6,267.42 difference between the Facility's calculation and the OMIG's calculation was due to the OMIG determining that three less bed reserve days were inappropriately billed, and differences in the rate that the Facility used in determining the overpayment compared to the OMIG's use of the Facility's current promulgated rates at the date of the draft report. This finding remains the same as that cited in the December 1, 2010 draft report and was not contested by the Facility in their response.

Since the Facility demonstrated it had proper intentions regarding the corrective action process, the OMIG has waived the associated interest that is applicable to the above \$139,865.20 (751 bed-hold days) that was self reported by the Facility. In addition, the OMIG does not charge interest on those recoveries related to cash assessment

overpayments. As a result, the overpayment amount subject to interest is \$74,766.20 (\$214,631.40 less \$139,865.20), and \$31,530.79 in accrued interest is now due (Attachment VII). Interest was calculated using the Federal Reserve Prime rate (Attachment IX) from the date of each overpayment through November 30, 2010. This finding remains the same as that cited in the December 1, 2010 draft report and was not contested by the Facility in their response.

All overpayments identified in this final report were determined by applying the Facility's promulgated rates at the date this report was issued (Attachment VIII). Based on this determination, the total amount of overpayment, as defined in 18 NYCRR §518.1 is \$257,685, inclusive of interest (Attachment VII). Repayment of \$257,685 is due the New York State Department of Health.

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:

Mr. Donald Collins
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
Phone #: (518) 474-5878
Fax#: (518) 408-0593

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.

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:

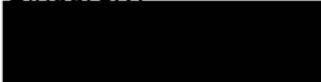
General Counsel
Division of Counsel
New York State Office of the Medicaid Inspector General
800 North Pearl Street
Albany, New York 12204

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 Eric Linendoll at (518) 474-6155 or email at eric.linendoll@omig.ny.gov. **Do not** submit claim voids in response to this final report.

Thank you.

Sincerely,


Martin G. Dale, Audit Manager
Bureau of Managed Care Audit & Provider Review
Office of the Medicaid Inspector General

CERTIFIED MAIL 7010 0290 0002 0527 8409
RETURN RECEIPT REQUESTED

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

NAME AND ADDRESS OF AUDITEE

Highfield Gardens CC Great Neck
199 Community Drive
Great Neck, NY 11021

Provider # XXXXXXXXXX

AUDIT # 06- 7425

AMOUNT DUE: \$ 257,685

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:

Mr. Donald Collins
Medicaid Financial Management, B.A.M.
New York State Department of Health
GNARESP Corning Tower, Room 1237
File #06- 7425
Albany, New York 12237-0016

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

CORRECT PROVIDER NUMBER