



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

REVIEW OF MONTEFIORE MEDICAL CENTER
CLAIMS FOR SERVICES FOR UNDOCUMENTED INDIVIDUALS
FROM
APRIL 9, 2007 – APRIL 22, 2009

FINAL AUDIT REPORT

James C. Cox
Medicaid Inspector General

May 11, 2012



STATE OF NEW YORK
OFFICE OF THE MEDICAID INSPECTOR GENERAL
800 North Pearl Street
Albany, NY 12204

ANDREW M. CUOMO
GOVERNOR

JAMES C. COX
MEDICAID INSPECTOR GENERAL

May 11, 2012

[REDACTED]
Montefiore Medical Center
111 East 210th Street
Bronx, New York 10467

Re: Final Audit Report
Audit #: 09-3044

Dear [REDACTED]

Enclosed is the Office of the Medicaid Inspector General (OMIG) final audit report entitled "Review of Montefiore Medical Center" (Montefiore Hospital) paid claims for services for undocumented residents covering the period April 9, 2007, through April 22, 2009.

After reviewing your response to the OMIG's November 2, 2011 draft audit report, the findings in the final audit report remain unchanged to those cited in the draft audit report. The total Medicaid overpayment is \$392,219.12. Your response is addressed in the Audit Note from Dr. Jonathan E. Cooper, M.D. (attached).

In the attached final audit report, the OMIG has detailed our scope, procedures, laws, regulations, rules and policies, sampling technique, findings, provider rights, and statistical analysis. The OMIG has attached the sample detail for the paid claims determined to be in error.

[REDACTED]
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If Montefiore Medical Center has any questions or comments concerning this final audit report, please contact [REDACTED] at [REDACTED] or through email at [REDACTED]. Please refer to report number 09-3044 in all correspondence.

Sincerely,

[REDACTED]

Assistant Director
Bureau of Audit Resources Mangement
Division of Medicaid Audit, Albany
Office of the Medicaid Inspector General

[REDACTED]
Enclosures

CERTIFIED MAIL # [REDACTED]
RETURN RECEIPT REQUESTED

Ver-1.0

OFFICE OF THE MEDICAID INSPECTOR GENERAL

www.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 assess compliance to 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 assess 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.

EXECUTIVE SUMMARY

BACKGROUND

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 OMIG conducts audits and reviews of various providers of Medicaid reimbursable services, equipment and supplies. These audits and reviews are conducted to determine if the provider complied 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] and the Medicaid Provider Manuals.

The federal regulations regarding limited Medicaid services to resident aliens are in 42 CFR Section 440.255. The State regulations and law covering Medicaid beneficiaries with alien status are in Title 18, Section 360-3.2(j) and in NY Social Services Law Section 122.

PURPOSE AND SCOPE

The purpose of this audit was to determine whether Montefiore Medical Center claim for Medicaid reimbursement for services for undocumented residents complied with applicable federal and state laws, regulations, rules and policies governing the New York State Medicaid Program. With respect to services for undocumented residents, this audit covered services paid by Medicaid from April 9, 2007, through April 22, 2009.

SUMMARY OF FINDINGS

We inspected 29 services with \$1,127,870.09 in Medicaid payments. Of the 29 services in our review, all 29 services had at least one error and did not comply with state requirements. Specifics are as follows:

<u>Error Description</u>	<u>Number of Errors</u>
Medicaid Inappropriately Billed for Heart Transplants to Undocumented Aliens, and Medicaid Inappropriately Billed for Non-emergency Services to Undocumented Aliens	29

Based on the procedures performed, the OMIG has determined Montefiore Medical Center was overpaid \$392,219.12.

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INTRODUCTION

BACKGROUND

Medicaid Program

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.

New York State's Medicaid Program

In New York State, the Department of Health (DOH) is the State agency responsible for operating the Medicaid program. Within DOH, the Office of Health Insurance Programs administers the Medicaid program. DOH uses the electronic Medicaid New York Information system (eMedNY), a computerized payment and information reporting system, to process and pay Medicaid claims, including Services to Undocumented Residents claims.

As part of this responsibility, the OMIG conducts audits and reviews of various providers of Medicaid reimbursable services, equipment and supplies. These audits and reviews are conducted to determine if the provider complied 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] and the Medicaid Provider Manuals.

New York State's Medicaid Services for Undocumented Residents Program

The federal regulations regarding limited Medicaid services to resident aliens are in 42 CFR Section 440.255. The State regulations and law covering Medicaid beneficiaries with alien status are in Title 18, Section 360-3.2(j) and in NY Social Services Law Section 122.

PURPOSE, SCOPE, AND METHODOLOGY

Purpose

The purpose of this audit was to determine whether the Montefiore Medical Center's claim for Medicaid reimbursement for Medicaid services to undocumented residents complied with applicable Federal and State laws, regulations, rules and policies governing the New York State Medicaid Program and to verify that:

- Medicaid reimbursable services were rendered for the dates billed;
- appropriate rate or procedure codes were billed for services rendered;
- patient related records contained the documentation required by the regulations; and,
- claims for payment were submitted in accordance with DOH regulations and the appropriate Provider Manuals.

Scope

Our audit period covered payments to Montefiore Medical Center for Undocumented Resident services paid by Medicaid from April 9, 2007, through April 22, 2009. Our audit universe consisted of 29 claims totaling \$1,127,870.09.

During our audit, we did not review the overall internal control structure of Montefiore Medical Center. Rather, we limited our internal control review to the objective of our audit.

Methodology

To accomplish our objective, we:

- reviewed applicable federal and state laws, regulations, rules and policies;
- held discussions with MONTEFIORE Medical Center management and professional staff to gain an understanding of the Services to Undocumented Residents program;
- ran computer programming application of claims in our data warehouse that identified 29 paid Services to Undocumented Residents claims, totaling \$1,127,870.09;
- determined the overpayment paid in the population of 29 services.

For each Medicaid claim selected we inspected, as available, the following:

- Medicaid electronic claim information
- Patient record, including, but not limited to:
 - Inpatient claims
 - Clinic claims
- Any additional documentation deemed by Montefiore Medical Center necessary to substantiate the Medicaid paid claim

LAWS, REGULATIONS, RULES AND POLICIES

The following are applicable Laws, Regulations, Rules and Policies of the Medicaid program referenced when conducting this audit:

- 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)].
- Medicaid Management Information System and eMedNY Provider Manual.
- Specifically, Title 18 NYCRR Section 540.6, and other applicable program regulations, for example, 18 NYCRR Section 360.
- In addition to any specific detailed findings, rules and/or regulations which may be listed below, the following regulations pertain to all audits:

Regulations state: "By enrolling the provider agrees: (a) to prepare and to maintain contemporaneous records demonstrating its right to receive payment . . . and to keep for a period of six years from the date the care, services or supplies were furnished, all records necessary to disclose the nature and extent of services furnished and all information regarding claims for payment submitted by, or on behalf of, the provider . . . (e) to submit claims for payment only for services actually furnished and which were medically necessary or otherwise authorized under the Social Services Law when furnished and which were provided to eligible persons; (f) to submit claims on officially authorized claim forms in the manner specified by the department in conformance with the standards and procedures for claims submission; . . . (h) that the information provided in relation to any claim for payment shall be true, accurate and complete; and (i) to comply with the rules, regulations and official directives of the department."
18 NYCRR Section 504.3

Regulations state: "All bills for medical care, services and supplies shall contain: . . . (8) a dated certification by the provider that the care, services and supplies itemized have in fact been furnished; that the amounts listed are due and owing . . . ; that such records as are necessary to disclose fully the extent of care, services and supplies provided to individuals under the New York State Medicaid program will be kept for a period of not less than six years from the date of payment . . . ; and that the provider understands that payment and satisfaction of this claim will be from Federal, State and local public funds and that he or she may be prosecuted under applicable Federal and State laws for any false claims, statements or documents, or concealment of a material fact provided. . . ."
18 NYCRR Section 540.7(a)

Regulations 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(c)

Regulations state: "An unacceptable practice is conduct by a person which is contrary to: . . . (2) the published fees, rates, claiming instructions or procedures of the department" and "(3) the official rules and regulations of the Departments of Health, Education and Mental Hygiene. . . ."

18 NYCRR Section 515.2(a)

Furthermore, according to regulations, all providers must prepare and maintain contemporaneous records demonstrating their right to receive payment under the medical assistance program. In addition, the provider must keep, for a period of six years, all records necessary to disclose the nature and extent of services furnished and the medical necessity therefore, including any prescription or fiscal order for the service or supply. This information is subject to audit for a period of six years and must be furnished, upon request.

18 NYCRR Section 517.3(b)

DETAILED FINDINGS

The OMIG's review of Medicaid claims paid to Montefiore Medical Center from April 9, 2007, through April 22, 2009, identified 29 claims with at least one error, for a total overpayment of \$392,219.12 (Attachment C).

1. Medicaid Inappropriately Billed for Heart Transplants to Undocumented Aliens, and Medicaid Inappropriately Billed for Non-emergency Services to Undocumented Aliens All 29 claims

Regulations state: "Effective January 1, 1987, aliens who are not lawfully admitted for permanent residence in the United States or permanently residing in the United States under the color of law must receive the services necessary to treat the condition defined in paragraph (1) of this section if--

(1) The alien has, after sudden onset, a medical condition (including emergency labor and delivery) manifesting itself by acute symptoms of sufficient severity (including severe pain) such that the absence of immediate medical attention could reasonably be expected to result in:

- (i) Placing the patient's health in serious jeopardy;
- (ii) Serious impairment to bodily functions; or
- (iii) Serious dysfunction of any bodily organ or part, and

(2) The alien otherwise meets the requirements in Sec. 435.406(c) and 436.406(c) of this subpart."

42 C. F. R. §440.255(c)

United States Code of Federal Regulations

42 CFR 440.255; and

(iii) *Emergency medical condition.* The term *emergency medical condition* means a medical condition (including emergency labor and delivery) manifesting itself by acute symptoms of sufficient severity (including severe pain) such that the absence of immediate medical attention could reasonably be expected to result in:

- (a) placing the person's health in serious jeopardy;
- (b) serious impairment to bodily functions; or
- (c) serious dysfunction of any bodily organ or part.

18 NYCRR §360-3-2

New York Codes, Rules and Regulations

PROVIDER RIGHTS

In accordance with 18 NYCRR Part 518 which regulates the collection of overpayments, your repayment options are described below. The overpayment amount is \$392,219.12. One of the following repayment options must be selected within 20 days from the date of this letter:

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
GNARESP Corning Tower, Room 2266
Albany, New York 12237

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.

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 and liquidate the lower confidence limit 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.

If you choose not to settle this audit through repayment of the overpayment, you have the right to challenge these findings by requesting an administrative hearing where the OMIG would seek and defend the overpayment of \$392,219.12. 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]

Issues you may raise shall be limited to those issues relating to determinations contained in the final audit report. Your hearing request may not address issues regarding the methodology used to determine the rate, or any issue that was raised at a proceeding to appeal a rate determination.

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.

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.

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

Montefiore Medical Center
111 East 210th Street
Bronx, New York 10467

PROVIDER ID [REDACTED]

AUDIT #09-3044

AMOUNT DUE: \$392,219.12

AUDIT
TYPE

PROVIDER
 RATE
 PART B
 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, B.A.M.
GNARESP Corning Tower, Room 2266
File #09-3044
Albany, New York 12237-0048

Thank you for your cooperation.

Montefiore Medical Center
Audit #09-3044
Audit Note from Dr. Jonathan E. Cooper M.D.

With regards to Montefiore's contention that the 3 admissions, 2 for [REDACTED], one on [REDACTED] and another on [REDACTED], and one for [REDACTED] on [REDACTED] are eligible for reimbursement under the legal definition of emergency medical treatment, as we discussed in our recent review of these cases, The OMIG determined that in fact all 3 admissions were for elective, or urgent medical care, not emergent, and are therefore ineligible for reimbursement as undocumented aliens under Medicaid statutes. For [REDACTED] admission, the attending MD's note of [REDACTED] states the patient has "history of tracheal stenosis and laser dilatation in July and October...has not had SOB [shortness of breath] recently, but needs eval. of airway prior to consideration for transplant". This clearly indicates that this was an elective, pre-surgical evaluation admission, and therefore not an emergency admission.

For the [REDACTED] admission, the ER notes indicate "c/o SOB since yesterday". His vital signs were satisfactory, with oxygen saturation of 99% on room air. He was noted to have "mild SOB, denies CP [chest pain]". Further notes state "VS stable" and "pt. denies dyspnea". He was admitted for laser dilatation of the tracheal stenosis, which was carried out 3 days later, so clearly this was not an emergent need. The attending physician on [REDACTED] writes that the CT scan done [REDACTED] showed "reasonable airway on axial" and concludes "He can be discharged and done as outpatient as well", clearly indicating the non-emergent nature of the intervention.

As to [REDACTED], the explanation of her LVAD, performed on [REDACTED], Mr. Chananie's 01/19/12 letter points out that this was a planned, elective procedure, that, although medically indicated and important to reduce the risks he enumerated, is clearly not included in the legal definitions of an emergent medical condition, to wit: "a medical condition...manifesting itself by acute symptoms of sufficient severity... such that the absence of immediate medical attention could reasonably be expected to result in: a.) placing the person's health in serious jeopardy; b.) serious impairment of bodily functions; or c.) serious dysfunction of any bodily organ or part." (NYCRR).

The OMIG stands by our previous determination that none of these 3 admissions meet the criteria to qualify as emergency admissions eligible for reimbursement by NYS Medicaid funds.

OFFICE OF THE MEDICAID INSPECTOR GENERAL
 MONTEFIORE MEDICAL CENTER
 REVIEW OF UNDOCUMENTED RESIDENT MEDICAID CLAIMS
 PROJECT NUMBER: 09-3044
 REVIEW PERIOD: 04/01/07 - 04/30/09

TCN#	CIN #	Patient Initials	Service Type	Dates of Service		DRG or Rate Code		Amount		Amount Disallowed	DETAILED AUDIT FINDINGS	
				From	To	Billed	Derived	Paid	Derived		1. Ineligible Claim - Organ Transplant for Resident	Ineligible Claim - Nonemergency Service
			inpatient	06/02/08	07/04/08	2946	0812	\$ 268,570.99	\$ 9,001.12	\$ 259,569.87	x	
			inpatient	04/09/07	08/10/07	0103	0103	355,309.29	355,309.29	\$ -		
			inpatient	02/13/08	02/22/08	76		24,686.14		\$ 24,686.14	x	x
			inpatient	03/17/08	03/19/08	398		11,616.47		\$ 11,616.47	x	x
			inpatient	04/14/08	04/16/08	2996		10,457.74		\$ 10,457.74	x	x
			inpatient	05/11/08	05/13/08	0144		11,323.93		\$ 11,323.93	x	x
			Clinic	03/10/08	03/10/08	6529		165.11		\$ 165.11	x	x
			Clinic	04/25/08	04/25/08	6541		170.35		\$ 170.35	x	x
			Clinic	05/23/08	05/23/08	6541		170.35		\$ 170.35	x	x
			Clinic	07/11/08	07/11/08	3014		1,708.63		\$ 1,708.63	x	x
			Clinic	07/25/08	07/25/08	3014		1,708.63		\$ 1,708.63	x	x
			Clinic	08/08/08	08/08/08	3014		1,708.63		\$ 1,708.63	x	x
			Clinic	09/04/08	09/04/08	6545		174.51		\$ 174.51		x
			Clinic	09/12/08	09/12/08	3014		1,708.63		\$ 1,708.63	x	x
			Clinic	09/22/08	09/22/08	6545		174.51		\$ 174.51		x
			Clinic	10/02/08	10/02/08	6545		174.51		\$ 174.51		x
			Clinic	10/10/08	10/10/08	3014		1,708.63		\$ 1,708.63	x	x
			Clinic	11/14/08	11/14/08	3014		1,708.63		\$ 1,708.63	x	x
			Clinic	12/18/08	12/18/08	1400		176.77		\$ 176.77		x
			Clinic	12/19/08	12/19/08	1401		1,923.15		\$ 1,923.15	x	x
			inpatient	10/02/07	10/07/07	0076	2879	27,941.50	156.16	\$ 27,785.34	x	x
			inpatient	03/27/08	04/12/08	0105	0105	46,799.99	46,799.99	\$ -		
			Clinic	04/16/08	04/16/08	6541		170.35		\$ 170.35		x
			Clinic	04/22/08	04/22/08	6541		170.35		\$ 170.35		x
			inpatient	05/13/08	05/16/08	0127	0127	10,457.74	10,457.74	\$ -		
			inpatient	06/09/08	08/25/08	0103	0103	277,748.47	277,748.47	\$ -		
			inpatient	12/19/08	12/22/08	0544	0544	26,211.52	26,211.52	\$ -		
			inpatient	02/26/09	03/03/09	0127	0127	9,966.68	9,966.68	\$ -		
			inpatient	04/11/09	04/22/09	0110		33,057.89		\$ 33,057.89		x
			Total							392,219.12	16	22