



STATE OF NEW YORK
OFFICE OF THE MEDICAID INSPECTOR GENERAL

584 Delaware Avenue, 2nd Floor
Buffalo, New York 14202

(716) 847-5090
Fax: (716) 847-4553

ANDREW M. CUOMO
GOVERNOR

JAMES C. COX
MEDICAID INSPECTOR GENERAL

November 20, 2012

[REDACTED]
Catholic Health System
291 North Street
Buffalo, New York 14201

Re: McAuley Residence
Medicaid Rate Audit #09-3573
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 the McAuley Residence Nursing Home's (the "Facility") Medicaid rates for the rate period January 1, 2004 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 September 6, 2012, you identified specific audit findings with which you disagreed. Your comments have been considered (see Attachment A); however, consideration of your comments resulted in no reduction to the total Medicaid overpayment shown in the draft 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 \$645,168. This overpayment is subject to Department of Health (the "DOH") and Division of Budget (the "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.

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 #09-3573
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 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
[REDACTED]

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.

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 [REDACTED]
of the Office of Counsel at [REDACTED]

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. If you have any questions regarding the above, please contact [REDACTED] at [REDACTED]

Sincerely,

[REDACTED]
Director, Audit Resources Management
Bureau of Rate Audit
Division of Medicaid Audit
Office of the Medicaid Inspector General

[REDACTED]
cc: [REDACTED]

Attachments:

- Attachment A - Facility Draft Report Comments and OMIG Response
- EXHIBIT I - Summary of Per Diem Impact and Medicaid Overpayment
- EXHIBIT II - Summary of Medicaid Rates Audited
- EXHIBIT III - Property Expense Disallowances/(Allowances)

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

NAME AND ADDRESS OF AUDITEE

McAuley Residence
1503 Military Road
Kenmore, New York 14217

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

AUDIT #09-3573

AMOUNT DUE: \$645,168

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 #09-3573
Albany, New York 12237-0048

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

CORRECT PROVIDER NUMBER

**MCAULEY RESIDENCE - AUDIT #09-3573
FACILITY DRAFT 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 audit report adjustments after consideration of the Facility's draft audit report response comments.

EXHIBIT III COMMENTS

PROPERTY ADJUSTMENT #6 – PROPERTY INSURANCE EXPENSE DISALLOWANCE

Facility Comment

This finding disallows the business interruption component of our property insurance expense. 10 NYCRR Section 82-2.17 states that cost must be reasonable related to patient care. Business interruption insurance is critical to insure that proper care of our residents will continue after any unforeseen occurrence. This adjustment should be removed.

OMIG Response

Business interruption insurance does not relate to the loss of or damage to the provider's physical property and consequently is only includable in the operating component of the rate. Since the insurance premiums are not allowable as property insurance, they were disallowed.

Disposition: The draft report disallowances remain the same.

PROPERTY ADJUSTMENT #7 – INVESTMENT INCOME OFFSET ADJUSTMENTS

Facility Comment

The amounts in question are bond proceeds from the initial bonds financing that were held in trust by DASNY at the initial closing. These funds were not available to the facility and as such considered restricted. Regulation 10 NYCRR Section 86-2.20c does not specifically address this situation but it does fit the criteria of donor-restricted fund. These amounts do not represent investment income as defined in the same regulation. This adjustment should be removed. At a minimum, the adjustments should be allocated over the remaining life of the loan. The September 18, 2003 letter from the Department of Health state "Also please note the approved refinancing amount shall be adjusted to reflect scheduled principal reductions from the estimated amount and to reflect any and all excess debt service reserve funds that are not required for payment of the existing financing or required to be established with the replacement financing."

It should also be noted that between May 2004 and December 2005 The McAuley Residence spent more than \$2.0M in building improvements, fixed equipment, and moveable equipment.

OMIG Response

Since the DASNY funds were made available by deposit into the Facility's bank account in cost years 2003 and 2004 they should have reported the amount as unrestricted investment income and offset against interest expense in the promulgated rates. Since this unrestricted investment income was not "donor-restricted", this criterion would not apply; therefore the deposits represent a gain. Regulation 10 NYCRR Section 86-2.20c states: Interest expense shall be reduced by investment income with the exception of income from funded depreciation, qualified pension funds, trusted malpractice insurance funds, or in instances where income from gifts or grants is restricted by donors. Interest on funds borrowed from a donor restricted fund or funded depreciation is an allowable expense. Investment income shall be defined as the aggregate net amount realized from dividends, interest, rental income, interest earned on temporary investment of withholding taxes, as well as all gains and losses. If the aggregate net amount realized is a loss, the loss is not allowable.

Disposition: The draft audit report disallowances remain the same.

PROPERTY ADJUSTMENT #2 - DEPRECIATION EXPENSE ON ITEMS INCORRECTLY CAPITALIZED

Facility Comment

10 NYCRR 86-2.4 states that we must follow generally accepted accounting principles. These principles were followed when repairs to an asset resulted in a longer useful life. This adjustment should be removed.

OMIG Response

The Facility incorrectly capitalized costs that should have been expensed as operating costs because they were for repairs and purchases of supplies. The documentation provided by the Facility during the audit to support the costs were invoices generated by the contractor, which described the costs as repairs, and supplies purchases. Therefore, the related depreciation expense for these costs should have been expensed and not capitalized.

Disposition: The draft audit report disallowances remain the same.

MCAULEY RESIDENCE - AUDIT # 09-3573
RATE PERIODS JANUARY 1, 2004 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>
01/01/04 - 03/31/04	\$159.12	\$153.09	\$6.03	7,784	\$ 46,938
04/01/04 - 06/30/04	169.71	163.68	6.03	7,828	47,203
07/01/04 - 09/30/04	166.44	160.41	6.03	7,888	47,565
10/01/04 - 12/31/04	170.01	163.98	6.03	8,191	49,392
01/01/05 - 03/31/05	173.94	167.48	6.46	7,806	50,427
04/01/05 - 06/30/05	169.12	162.66	6.46	7,537	48,689
07/01/05 - 09/30/05	173.10	166.64	6.46	7,755	50,097
10/01/05 - 12/31/05	174.76	168.30	6.46	8,093	52,281
01/01/06 - 03/01/06	182.24	174.89	7.35	8,252	60,652
03/02/06 - 06/30/06	178.58	171.23	7.35	8,657	63,629
07/01/06 - 09/30/06	179.21	171.86	7.35	8,121	59,689
10/01/06 - 12/31/06	183.13	175.78	7.35	7,854	57,727
01/01/07 - 03/31/07	195.24	194.85	0.39	7,314	2,852
04/01/07 - 06/30/07	194.25	193.86	0.39	6,877	2,682
07/01/07 - 08/31/07	191.11	190.72	0.39	4,687	1,828
09/01/07 - 12/31/07	191.11	190.72	0.39	9,019	<u>3,517</u>
TOTAL MEDICAID OVERPAYMENT					<u>\$ 645,168</u>

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

MCAULEY RESIDENCE - AUDIT # 09-3573
RATE PERIODS JANUARY 1, 2004 THROUGH DECEMBER 31, 2007
SUMMARY OF MEDICAID RATES AUDITED

The Facility's Medicaid utilization was approximately 60 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 report represent rate changes made subsequent to our audit. These changes remain open to future audit by the OMIG.

<u>RATE PERIOD</u>	Issued Medicare Part B & D <u>Non-Eligible Rates *</u>
01/01/04 - 03/31/04	\$ 159.65
04/01/04 - 06/30/04	170.23
07/01/04 - 09/30/04	166.94
10/01/04 - 12/31/04	170.54
01/01/05 - 03/31/05	174.48
04/01/05 - 06/30/05	169.67
07/01/05 - 09/30/05	173.64
10/01/05 - 12/31/05	175.32
01/01/06 - 03/01/06	182.80
03/02/06 - 06/30/06	179.14
07/01/06 - 09/30/06	179.78
10/01/06 - 12/31/06	183.71
01/01/07 - 03/31/07	195.82
04/01/07 - 06/30/07	194.83
07/01/07 - 08/31/07	191.69
09/01/07 - 12/31/07	191.69

* 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.

MCAULEY RESIDENCE - AUDIT # 09-3573
RATE PERIODS JANUARY 1, 2004 THROUGH DECEMBER 31, 2007
PROPERTY EXPENSE DISALLOWANCES/(ALLOWANCES)

	RATE PERIODS		
	2004	2005	2006
	\$ 1,590,790	\$ 1,606,453	\$ 1,560,879
			\$ 1,700,688

DESCRIPTION	COST CTR.	DISALLOWED (ALLOWED)	TRACE-BACK %	2004	2005	2006	2007
Bldg. Depr.	001	17,001	99.73%	16,955			
Bldg. Depr.	001	17,001	99.80%		16,967		
Bldg. Depr.	001	17,001	99.80%			16,967	
Bldg. Depr.	001	16,872	99.80%				16,838
ME Depr.	002	5,604	99.98%	5,603			
ME Depr.	002	1,308	99.80%		1,305		
ME Depr.	002	1,105	99.62%			1,101	
ME Depr.	002	1,080	99.80%				1,078
Bldg. Depr.	001	86	99.73%	86			
Bldg. Depr.	001	333	99.80%		332		
Bldg. Depr.	001	1,495	99.80%			1,492	
Bldg. Depr.	001	7,804	99.80%				7,788
ME Depr.	002	106	99.98%	106			
ME Depr.	002	106	99.80%		106		
ME Depr.	002	167	99.62%			166	
ME Depr.	002	735	99.80%				734
Bldg. Depr.	001	285	99.73%	284			
Bldg. Depr.	001	285	99.80%		284		
Bldg. Depr.	001	288	99.80%			287	
Bldg. Depr.	001	315	99.80%				314
ME Depr.	002	130	99.80%				130
Bldg. Depr.	001	103	99.73%	103			
Bldg. Depr.	001	162	99.80%		162		
Bldg. Depr.	001	633	99.80%			632	
Bldg. Depr.	001	911	99.80%				909
ME Depr.	002	106	99.62%	106		106	
ME Depr.	002	422	99.80%				421

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

1. DEPRECIATION ON ASSETS DISALLOWED ON PRIOR AUDIT

Prior audits (#99-E04-1384 and #05-1415) disclosed that the allowable historical cost of land improvements, building/fixd equipment, and moveable equipment was overstated. The depreciation expense related to these overstatements was disallowed.
Regulations: 10 NYCRR Sections 86-2.22, 86-2.19(a), 86-2.17, and 18 NYCRR Section 517.14

2. DISALLOWANCE OF DEPRECIATION EXPENSE ON ITEMS INCORRECTLY CAPITALIZED

The Facility incorrectly capitalized costs that should have been expensed as operating costs because they were for repairs, inventory, or supplies. These expenditures should have been expensed in accordance with generally accepted accounting principles and the guidelines and definitions included in the RHCFAccounting and Reporting Manual. Accordingly, the depreciation expense applicable to these costs were disallowed.
Regulations: 10 NYCRR Sections 86-2.4, 451.168, 451.181, & 451.230

3. DISALLOWANCE OF UNSUBSTANTIATED DEPRECIATION EXPENSE

Providers are required to provide adequate cost data that can be verified. The Facility was unable to provide full documentation for reported building/fixd equipment and moveable equipment depreciation expense. Consequently, the unsubstantiated expense was disallowed.
Regulations: 10 NYCRR Sections 86-2.17(a) & (d), and 86-2.19, PRM-1 Sections 2102.3, 2300, and 2304

4. DISALLOWANCE OF TELEPHONE EQUIPMENT DEPRECIATION

The Bureau of Long Term Care Reimbursement has determined the nature of telephone expense to be an operating expense. Since the expense is included in the formula to determine the base, mean, and ceiling prices used to establish the indirect expense corridor the reimbursement of telephone depreciation expense in the capital component amounts to duplicate reimbursement. Consequently, telephone depreciation expense was disallowed.
Regulation: 10 NYCRR Section 86-2.17(d)

MCAULEY RESIDENCE - AUDIT # 09-3573
RATE PERIODS JANUARY 1, 2004 THROUGH DECEMBER 31, 2007
PROPERTY EXPENSE DISALLOWANCES/(ALLOWANCES)

	DESCRIPTION	COST CTR.	DISALLOWED (ALLOWED)	TRACE-BACK %	RATE PERIODS		
					2004	2005	2006
5. DISALLOWANCE OF DEPRECIATION IN EXCESS OF HISTORICAL COST							
The Facility received depreciation expense that was in excess of related asset's costs. The asset's 10 year life expired with the Facility receiving full reimbursement of asset costs. Since reimbursement is based on allowable historical cost, the excess depreciation expense was disallowed.							
Regulations: 10 NYCRR Sections 86-2.17(a) & 86-2.19, PRIM-1 Section 2102.3							
	Bldg. Depr.	001	52,489	99.73%	52,347		
	ME Depr.	002	40,544	99.98%	40,536		
6. PROPERTY INSURANCE EXPENSE DISALLOWANCE							
a. The Facility was unable to document the entire amount of property insurance included in the 2007 rates. Since the expense could not be documented or verified on audit, it was disallowed.							
Regulations: 10 NYCRR Section 86-2.17(a), PRIM-1 Section 2304							
b. The Facility's 2004 through 2007 rates included insurance premiums for business interruption insurance. Business interruption insurance does not relate to the loss of or damage to the provider's physical property and consequently is only includable in the operating component of the rate. Since the insurance premiums are not allowable as property insurance, they were disallowed.							
Regulations: 10 NYCRR Section 86-2.17(a)&(d), PRIM-1 Section 2161(a)							
	Property Ins.	005	900	99.96%			900
	Property Ins.	005	3,861	99.91%	3,858		
	Property Ins.	005	4,948	99.96%		4,946	
	Property Ins.	005	2,062	99.96%			2,061
	Property Ins.	005	3,595	99.96%			3,594
7. INVESTMENT INCOME OFFSET ADJUSTMENTS							
a. Reported unrestricted investment income for cost years 2002 through 2004 was not appropriately offset against interest expense in the promulgated rates. Consequently, an offset of unrestricted investment income against interest expense was necessary.							
Regulation: 10 NYCRR Section 86-2.20(c)							
	Invest. Inc.	003	2,142	99.73%	2,136		
	Invest. Inc.	003	327,913	99.80%		327,257	
	Invest. Inc.	003	389,845	99.80%			389,065
b. Reported unrestricted investment income was offset against interest expense in the original 2007 rate computation. However, the OMIG determined that a portion of the investment income was restricted. Consequently, it was necessary to reverse the offset of investment income for the portion that was restricted.							
Regulation: 10 NYCRR Section 86-2.20(c)							
	Invest. Inc.	003	(9,475)	99.80%			(9,456)

