



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

ANDREW M. CUOMO
GOVERNOR

JAMES C. COX
MEDICAID INSPECTOR GENERAL

October 18, 2013

Mikhail D. Kapchits, MD
101-24 Queens Boulevard
Suite A
Forest Hills, New York 11375-2703

Re: Revised Final Audit Report
Medicare Crossover Claims
Audit #: 09-1585
NPI #: [REDACTED]
Provider ID #: [REDACTED]

Dear Dr. Kapchits:

Enclosed is The New York State Office of the Medicaid Inspector General (OMIG) Revised Final Audit Report identifying duplicate Medicaid claims paid to Dr. Mikail D. Kapchits (Provider) for dual Medicare/Medicaid eligible individuals covering the period January 1, 2005 to December 31, 2008. Dual eligibles are defined to be recipients with both Medicare A and/or B and NYS Medicaid coverage. 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.

BACKGROUND, PURPOSE AND SCOPE

The New York State Department of Health (Department) is responsible for the administration of the Medicaid program. As an independent office within the Department, the OMIG conducts audits and reviews of providers of Medicaid reimbursable services, equipment and supplies. These audits and reviews are directed at preserving the integrity of the Medicaid program and ensuring provider compliance with applicable laws, regulations, rules and policies of the Medicaid program as set forth in New York Public Health Law, New York Social Services Law, the regulations of the Department of Health (Titles 10, 14 and 18 of the Official Compilation of Codes, Rules and Regulations of the State of New York) and the Department's Medicaid Provider Manuals and Medicaid Update publications.

The OMIG recently completed a review of Medicare Part B claims you submitted to Medicaid with reported Medicare coinsurance amounts. This review has found instances where you appear to have received Medicaid overpayments because the Medicare Coinsurance amount was overstated on the Medicaid Remittance you submitted or the Medicaid claim reimbursement amount was calculated using 100% of the reported Medicare coinsurance amount rather than the regulated 20%.

LAWS, REGULATIONS, RULES AND POLICIES

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

- Department 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 ("MMIS") and eMedNY Provider Manual.
- Department 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)]. Specifically:

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) and (c)

When payment under part B of title XVIII of the federal social security act for items and services provided to eligible persons who are also beneficiaries under part B of title XVIII of the federal social security act... would exceed the amount that otherwise would be made under this title...the amount payable under this title shall be twenty percent of the amount of any co-insurance liability of such eligible persons pursuant to federal law were they not eligible for medical assistance...

Social Services Law 367-a (d)(iii)

Regulations state, "MA program as payment source of last resort. Where a third party, such as a health insurer or responsible person, has a legal liability to pay for MA- covered services on behalf of a recipient, the department or social services district will pay only the amount by which the MA reimbursement rate for the services exceeds the amount of the third party liability".

18 NYCRR Section 360-7.2

Per DOH Medicaid Update (**DOH Medicaid Update December 2005 Vol. 20, No.13**): Medicaid law and regulations require that, when a recipient is eligible for both Medicare and Medicaid or has other insurance benefits: The provider must bill Medicare or the other insurance first for covered services prior to submitting a claim to Medicaid. The Medicaid program is designed to provide payment for medical care and services only after all other resources available for payments have been exhausted; Medicaid is always payor of last resort. Providers must maximize all applicable insurance sources before submitting claims to Medicaid. When coverage is available, payment from other insurance sources must be received before submitting a Medicaid claim.

Per DOH Medicaid Update (**DOH Medicaid Update August 2003 Vol. 18, No.8**): Due to recent legislative change, Medicaid payment for Medicare coinsurance for most Part B services provided to recipients eligible under both the Medicare and Medicaid Programs - dual-eligibles and Qualified Medicare Beneficiaries - will be reduced ... effective July 1, 2003, the Medicaid program will no longer pay the full Medicare Part B coinsurance amount for dual-eligibles, but will instead pay 20% of the Medicare Part B coinsurance for most Part B services (except for ambulance, psychologist, and hospital-based/freestanding clinics).

DETAILED FINDINGS

A Final Audit Report was issued on December 23, 2011 identifying \$385,485 where the Provider received Medicaid overpayments for claims on dual eligible recipients.

In response to the Final Audit Report the Provider submitted documentation contesting a portion of the claims. Upon reviewing the documentation, the OMIG agreed with the Provider and reduced the overpayments in the Draft Audit Report by \$16,153.70 (Attachment I- Changes in Overpayments due to Provider Submissions), resulting in an overpayment of \$369,331.18 (Attachment II) on the attached CD. The Password for the Disc and the cross reference of names will be sent under separate cover.

The total amount of overpayment as defined in 18 NYCRR 518.1, is \$369,331.18 which is due the New York State Department of Health.

PAYMENT OPTIONS

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 Revised 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, B.A.M.
GNARESP Corning Tower, Room 2739
File # 09-1585
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 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


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.

PROVIDER RIGHTS

The Provider 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 Provider wishes 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 [REDACTED]

If a hearing is held, the Provider may have a person represent the Provider or the Provider may represent itself. If the Provider chooses to be represented by someone other than an attorney, the Provider must supply along with the Provider's hearing request a signed authorization permitting that person to represent the Provider the hearing, the Provider may call witnesses and present documentary evidence on the Provider's behalf.

The OMIG reserves the right to conduct further reviews of your participation in the Medicaid program, take action where appropriate, and recover any associated overpayments. If you have any questions regarding the above, please at [REDACTED] or by email at [REDACTED]. Thank you for your cooperation.

Sincerely,

[REDACTED]
Division of Medicaid Audit, Syracuse
Office of the Medicaid Inspector General

Enclosed:CD containing
Attachment I – Changes to the Final Audit Report Exhibit
Attachment II – Revised Final Audit Report Exhibit
CERTIFIED MAIL #7011-2970-0002-2621-5768
RETURN RECEIPT REQUESTED

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

NAME AND ADDRESS OF AUDITEE

Dr. Mikhail D. Kapchits
101-24 Queens Blvd
Suite A
Forest Hills, New York 11375-2703

PROVIDER ID [REDACTED]

AUDIT #09-1585

AUDIT	<input checked="" type="checkbox"/>	PROVIDER
	<input type="checkbox"/>	RATE
	<input type="checkbox"/>	PART B
TYPE	<input type="checkbox"/>	OTHER

AMOUNT DUE: \$369,331.18

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 2739
Albany, New York 12237-0016

Thank you for your cooperation.