STATE OF NEW YORK
OFFICE OF THE MEDICAID INSPECTOR GENERAL
584 Delaware Avenue
Buffalo, New York 14202

DAVID A. PATERSON
GOVERNOR

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MEDICAID INSPECTOR GENERAL

September 7, 2010

[redacted]

St. John's Episcopal Hospital
327 Beach 19th Street
Far Rockaway, New York 11691

Final Audit Report
Epogen/Aranesp Acquisition Cost Review

Audit #09-5485
Provider ID #[redacted]

Dear [redacted]

This letter will serve as our final audit report of the recently completed review of payments made to St. John's Episcopal Hospital under the New York State Medicaid Program.

The New York State Department of Health is responsible for the administration of the Medicaid program. As part of this responsibility, the Office of the Medicaid Inspector General (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)], Medicaid Management Information System (MMIS) Provider Manuals, and Program Policy published in Medicaid Updates.

Ordered Ambulatory Services (OAS) are specific services performed by a hospital or diagnostic and treatment center on an ambulatory basis upon the order of a qualified physician, nurse practitioner, physician's assistant, dentist, podiatrist or the appropriate staff of a clinic not affiliated with the hospital or diagnostic and treatment center which is providing the ordered ambulatory service (the ordered ambulatory provider). The ordered ambulatory service is to test, diagnose or treat a recipient or a specimen taken from a recipient. Such services may include a singular occasion of service or a series of tests or treatments provided by or under the direction of a qualified practitioner.

The OMIG conducted a review of payments to St. John's Episcopal Hospital for the drug Epoetin Alpha **("Epogen" – procedure code J0886)** paid as an ordered ambulatory service by Medicaid for the service date period January 1, 2007 through March 31, 2009. For the services examined, St. John's Episcopal Hospital was paid $388,263.00. The purpose of the review was to ensure the propriety of claims submitted to the Program for the drug Epoetin Alpha. OMIG examined facility documentation to determine whether the actual acquisition cost of Epoetin Alpha was used at the time of claim submission.

St. John's Episcopal Hospital's failure to comply with stated Medicaid Policy has resulted in a calculated overpayment of $194,743.62 while claiming Epoetin Alpha. The calculation is based on an examination of detailed Medicaid claims for the review period against the actual acquisition costs incurred by your facility. Our office previously furnished supporting claim detail in electronic format, and has accepted the calculation of overpayment based on the claim detail and documented acquisition cost.

The following detailed findings reflect the results of our audit. This audit report incorporates consideration of any additional documentation and information presented in response to the draft report dated July 20, 2010.

DETAILED FINDINGS AND REQUIREMENTS

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)*

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 therefor, 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)*

Failure to Claim Epogen at Acquisition Cost

The MMIS Manual states: "Reimbursement for supplies and materials (including drugs, vaccines and immune globulins) furnished by practitioners to their patients is based on the acquisition cost to the practitioner. For all items furnished in this fashion, it is expected that the practitioner will maintain auditable records of the actual itemized invoice cost represented on the invoice. New York State Medicaid does not intend to pay more than the acquisition cost, as established by invoice, to the practitioner. Regardless of whether an invoice must be submitted to Medicaid for payment, the practitioner is expected to limit his or her Medicaid claim amount to the actual invoice cost of the item provided. Itemized invoices must document acquisition cost, the line item cost from a manufacturer or wholesaler net of any rebates, discounts or other valuable considerations."

MMIS Provider Manual for Ordered Ambulatory Services, Fee Schedule General Information Section

The MMIS Manual states: "Payment will be made for ordered ambulatory goods only on a fee-for-service basis and will be limited to the lower of the actual acquisition cost of the goods or the New York State – approved fee."

MMIS Policy Guidelines Manual for Article 28 Certified Clinic, page 11

The Medicaid Update also states, with regard to claiming Epogen, that "As a continuation of this new billing policy for hemodialysis drugs, Epogen will no longer be billable as a separate rate code on or after January 1, 2007. Instead, as like Aranesp, it will be billed as an OAS using the procedure code **J0886 effective as of January 1, 2007**. The rate codes for Epogen will become inactive for dates of service as noted above. Please Note: reimbursement for drugs administered by providers to their patients is based on the acquisition cost to the provider for the drug dose administered to the patient. For all drugs administered in this fashion, it is expected that the provider will maintain auditable records of actual itemized invoice cost of the drug, including the numbers of doses of the drug represented on the invoice."

DOH Medicaid Update, November 2006, Vol. 21, No. 12

In accordance with 18 NYCRR Part 518 which regulates the collection of overpayments, your repayment options for the current audit are described below. If you decide to repay the calculated overpayment of $194,743.62, you have the following options:

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:

[redacted]
New York State Department of Health
Medicaid Financial Management, B.A.M.
GNARESP Corning Tower, Room 1237
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 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.

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 to the following:

Collections Management Group
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 recover 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.

If you choose not to settle this audit through repayment, you have the right to challenge these findings by requesting an administrative hearing. 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.

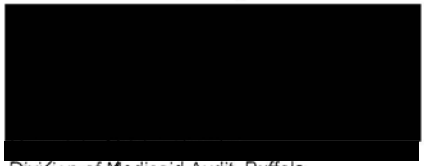
At the hearing you have the right to:

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.

Should you have any questions, please contact [redacted]

Thank you for the cooperation and courtesy extended to our staff during this audit.



Division of Medicaid Audit, Buffalo
Office of the Medicaid Inspector General

Enclosure
Ver-1.0
Fin-1.0

NEW YORK STATE
OFFICE OF THE MEDICAID INSPECTOR GENERAL
REMITTANCE ADVICE

NAME AND ADDRESS OF AUDITEE	PROVIDER ID #[redacted]
St. John's Episcopal Hospital 327 Beach 19th Street Far Rockaway, New York 11691	AUDIT #09-5485
	AUDIT TYPE [X] PROVIDER [ ] RATE [ ] PART B [ ] OTHER:
AMOUNT DUE: $194,743.62	

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 1237
File #09-5485
Albany, New York 12237-0048

Thank you for your cooperation.