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

REVIEW OF ABBOTT HOUSE
CLAIMS FOR IRA RESIDENTIAL HABILITATION SERVICES
PAID FROM
APRIL 1, 2003 – DECEMBER 31, 2007

FINAL AUDIT REPORT
AUDIT #09-1849

James C. Cox
Medicaid Inspector General

June 27, 2013

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

June 27, 2013

[redacted]
Abbott House
100 North Broadway
Irvington, New York 10533

Re: Final Audit Report
Audit #: 09-1849

Dear [redacted]

Enclosed is the Office of the Medicaid Inspector General (OMIG) final audit report entitled "Review of Abbott House" (Provider) paid claims for IRA residential habilitation services covering the period April 1, 2003, through December 31, 2007.

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. This final audit report incorporates consideration of any additional documentation and information presented in response to the revised draft audit report dated November 7, 2011. The mean point estimate overpaid is $991,427. The lower confidence limit of the amount overpaid is $254,357. We are 95% certain that the actual amount of the overpayment is greater than the lower confidence limit. This audit may be settled through repayment of the lower confidence limit of $254,357.

If the Provider has any questions or comments concerning this final audit report, please contact at or through email at Please refer to report number 09-1849 in all correspondence.

Sincerely,

Coordinator, Medical Facilities Audit
Division of Medicaid Audit, Albany Office
Office of the Medicaid Inspector General

Enclosure

CERTIFIED MAIL #
RETURN RECEIPT REQUESTED

Ver-3.0

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 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 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.

People with developmental disabilities can enjoy meaningful relationships with family, friends and other people in their lives, experience personal health and growth, live in the home of their choice and fully participate in their communities. People with developmental disabilities may have difficulty learning as quickly as others, expressing themselves clearly, or taking care of their physical needs. But it is difficult to define the limits of people with developmental disabilities; what they need most, therefore, is not only encouragement and understanding – but an opportunity to become part of the community they live in. This is where the significance of the Home and Community Based Services (HCBS) waiver has its greatest impact. In providing residential habilitation services, the HCBS waiver helps people achieve a functional connection to supports and services in the person's residence.

Outpatient services provided to persons with developmental disabilities are offered at programs licensed by the Office for People With Developmental Disabilities (OPWDD). The purpose of these programs is to offer a comprehensive system of services, which has as its primary purpose the promotion and attainment of independence, inclusion, and productivity for persons with mental retardation and developmental disabilities. These services are furnished at clinic and day treatment facilities and through a home and community based Federal waiver program. The waiver program, established under the authority of section 1915 [c] of the Social Security Act, is intended for persons with mental retardation and developmental disabilities who would otherwise need the level of care provided in an intermediate care facility. The specific standards and criteria for OPWDD services are outlined in Title 14 NYCRR Parts 671, 679, and 690.

PURPOSE AND SCOPE

The purpose of this audit was to determine whether the the Provider's claims for Medicaid reimbursement for IRA residential habilitation services complied with applicable federal and state laws, regulations, rules and policies governing the New York State Medicaid Program. With respect to IRA residential habilitation services, this audit covered services paid by Medicaid from April 1, 2003, through December 31, 2007.

SUMMARY OF FINDINGS

We inspected a random sample of 100 services with $757,703.98 in Medicaid payments. Of the 100 services in our random sample, 33 services had at least one error and did not comply with state requirements. Of the 33 noncompliant services, one contained more than one deficiency. Specifics are as follows:

Error Description	Number of Errors
Missing Required Elements in the IRA Residential Habilitation Service Note	31
Improper Number of Countable Service Days (Full Month)- Supervised Individualized Residential Alternative	2
Missing Residential Habilitation Plan	2

Based on the procedures performed, the OMIG has determined the Provider was overpaid $243,414.60 in sample overpayments with an extrapolated point estimate of $991,427. The lower confidence limit of the amount overpaid is $254,357.

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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 IRA residential habilitation 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 IRA Residential Habilitation Program

Outpatient services provided to persons with developmental disabilities are offered at programs licensed by the Office for People With Developmental Disabilities (OPWDD). The purpose of these programs is to offer a comprehensive system of services, which has as its primary purpose the promotion and attainment of independence, inclusion, and productivity for persons with mental retardation and developmental disabilities. These services are furnished at clinic and day treatment facilities and through a home and community based Federal waiver program. The waiver program, established under the authority of section 1915 [c] of the Social Security Act, is intended for persons with mental retardation and developmental disabilities who would otherwise need the level of care provided in an intermediate care facility. The specific standards and criteria for OPWDD services are outlined in Title 14 NYCRR Parts 671, 679, and 690.

PURPOSE, SCOPE, AND METHODOLOGY

Purpose

The purpose of this audit was to determine whether the Provider's claims for Medicaid reimbursement for IRA residential habilitation services 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 the Provider for IRA residential habilitation services paid by Medicaid from April 1, 2003, through December 31, 2007. Our audit universe consisted of 4,251 claims totaling $32,374,374.37.

During our audit, we did not review the overall internal control structure of the Provider. 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 the Provider's management personnel to gain an understanding of the IRA residential habilitation Service program;
- ran computer programming application of claims in our data warehouse that identified 4,251 paid IRA residential habilitation service claims, totaling $32,374,374.37;
- selected a random sample of 100 services from the population of 4,251 services; and,
- estimated the overpayment paid in the population of 4,251 services.

For each sample selection we inspected, as available, the following:

- Medicaid electronic claim information

- Recipient record, including, but not limited to:
  - ICF/MR level of care eligibility determination
  - residential habilitation plans
  - developmental disabilities profile
  - individualized service plans (ISP's)
  - residential habilitation daily check lists
  - monthly summary notes;
  - operating certificates
  - staff training records
  - 24 hour on–call procedures
  - OPWDD operating certificates
  - site reviews relating to the review period
  - site reviews were made to two locations and included interviews with staff

- Any additional documentation deemed by the Provider 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, 14 NYCRR Parts 635 and 671, and 18 NYCRR Section 540.6.

- OPWDD Administrative Memorandum #2002-01

- 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 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 the Provider from April 1, 2003, through December 31, 2007, identified 33 claims with at least one error, for a total sample overpayment of $243,414.60 (Attachment C).

		Sample Selection
1.	**Missing Required Elements in the IRA Residential Habilitation Service Note** OPWDD Administrative Memorandum #2002-01 states, "IRA residential habilitation service note documentation must include the following: <u>Required Elements</u> 1. Recipient 's name and Medicaid number . . . 2. Identification of category of waiver service provided . . . 3. **A description of the individualized service provided by staff** . . . 4. The recipient's response to the service . . . 5. The date the service was provided. 6. The primary service location . . . 7. Verification of service provision by **the staff person delivering the service** (initials are permitted, if a "key" is provided which identifies the title, signature and full name associated with the staff initials). 8. The signature and title of the staff person writing the note. 9. The date the note was written." *OPWDD Administrative Memorandum #2002-01, p. 6* In 31 instances pertaining to 25 recipients, the recipient's response to the service given was missing in the IRA residential habilitation service note.	7, 9, 11, 12, 13, 14, 17, 20, 24, 29, 31, 34, 36, 38, 39, 40, 48, 50, 51, 53, 61, 67, 78, 79, 82, 84, 89, 90, 97, 98, 100
2.	**Improper Number of Countable Service Days (Full Month) – Supervised Individualized Residential Alternative (IRA)** Regulations state, "The full month supervised IRA residential habilitation price shall be paid for services provided to an individual who meets the enrollment requirement in subparagraph (11)(i) of this subdivision and who receives face-to-face residential habilitation services in accordance with the individual's individualized service plan (ISP)	37, 89

and residential habilitation plan on each of the 22 days of the enrollment requirement. These are known as countable service days."

14 NYCRR Section 635-10.5(b)(8)(iii)(a)

Regulations also state, "For supervised IRAs only: in determining countable service days the provider may include days when an individual consumer is away from the IRA, for purposes such as vacations and visits with family and friends, only when staff from the consumer's IRA deliver and document services to that consumer that are similar in scope, frequency and duration to the residential habilitation services typically delivered to the consumer at the IRA.

(a) No more than 14 days in a calendar month that meet the conditions of this subparagraph may be countable service days for a full month supervised IRA price.

(b) No more than seven days in a calendar month that meet the conditions of this subparagraph may be countable service days for one-half of a full month supervised IRA price."

14 NYCRR Section 635-10.5(b)(12)(iii)(a) and (b)

In 2 instances pertaining to 2 recipients, the recipient did not receive residential habilitation service for the required number of countable days.

3. Missing Residential Habilitation Plan 89, 93

Regulations state: "If habilitation services are provided (i.e., residential habilitation, day habilitation, supported employment, pre-vocational services), the relevant habilitation plan(s) must be developed, and on a semiannual basis thereafter, reviewed and revised as necessary by the habilitation service provider. The service coordinator shall attach the relevant habilitation plan(s) to the ISP."

14 NYCRR Section 635-99.1(bk)

OPWDD Administrative Memorandum #2002-01 states, "In addition to the service note(s) supporting each monthly IRA residential habilitation claim, your agency must maintain the following documentation: . . .

- The Residential Habilitation Plan covering the time period of the claim developed by your agency. The Residential Habilitation Plan is attached to the person's ISP. For supportive IRAs, the Residential Habilitation Plan must state the number of service visits residential habilitation staff will provide to meet the consumer's individualized need. This service visit number can be expressed as a range."
  OPWDD Administrative Memorandum #2002-01, pp. 7-8

In 2 instances pertaining to 2 recipients, the residential habilitation plan valid for the service date was not available.

PROVIDER RIGHTS

In accordance with 18 NYCRR Part 518 which regulates the collection of overpayments, your repayment options are described below. If you decide to repay the lower confidence limit amount of $254,357, one of the following repayment options must be selected within 20 days from the date of this letter:

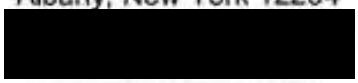
OPTION #1: Make full payment by check or money order within 20 days of the date of the final audit report. The check should be made payable to the New York State Department of Health and be sent with the attached Remittance Advice to:

New York State Department of Health
Medicaid Financial Management
GNARESP Corning Tower, Room 2739
File #09-1849
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 lower confidence limit, you have the right to challenge these findings by requesting an administrative hearing where the OMIG would seek and defend the point estimate of $991,427. 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.