



STATE OF NEW YORK
OFFICE OF THE MEDICAID INSPECTOR GENERAL

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ANDREW M. CUOMO
GOVERNOR

JAMES C. COX
MEDICAID INSPECTOR GENERAL

January 31, 2013

[REDACTED]
Nathan Miller Center for Nursing Care, LLC
c/o New Surfside Nursing Home
22-41 New Haven Avenue
Far Rockaway, New York 11691

Re: Medicaid Rate Audit #09-5176
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 Nathan Miller Center for Nursing Care's (the "Facility") Medicaid rates for the rate period November 1, 2004 through December 31, 2008. 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 November 29, 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 Medicaid overpayment shown in the draft audit 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 \$234,080. 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.

The overpayment does not reflect the impact on rates subsequent to 2008 that utilized the November 1, 2004 through October 31, 2005 base period for operating expense. Any overpayment resulting from operating expense disallowances in the November 1, 2004 through October 31, 2005 base period report for rates subsequent to 2008 will be addressed in the future.

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 #09-5176
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 me at [REDACTED]

Sincerely,

[REDACTED]
Bureau of Rate Audit
Division of Medicaid Audit
Office of the Medicaid Inspector General

Enclosures

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 - Operating Expense Disallowances/(Allowances)
EXHIBIT IV - Property Expense Disallowances/(Allowances)

CERTIFIED MAIL # [REDACTED]
RETURN RECEIPT REQUESTED

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

NAME AND ADDRESS OF AUDITEE

Nathan Miller Center for Nursing Care,
LLC
37 DeKalb Avenue
White Plains, New York 10605

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

AUDIT #09-5176

AMOUNT DUE: \$234,080

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 #09-5176
Albany, New York 12237-0048

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

[REDACTED]
CORRECT PROVIDER NUMBER

**NATHAN MILLER CENTER FOR NURSING CARE, LLC - AUDIT #09-5176
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 report adjustments after consideration of the Facility's draft report response comments.

EXHIBIT III COMMENTS

Operating Adjustment #2 - Insufficient Documentation Disallowances

Facility Comment

Nathan Miller Center for Nursing Care, LLC was tax exempt under the old ownership. However, the new entity is a taxable proprietary entity. The facility has been paying full real estate, school and town taxes since its inception under new ownership. There is no reason to deny reimbursement for taxes that have been paid timely and in full for years 2005–2008 due to a technical timing difference that occurred during the rate setting period.

OMIG Response

According to BLTCR Medicaid Rate Methodology, for rate periods November 1, 2004 through December 31, 2006, allowable real estate taxes were reimbursed based upon allowable costs included in the base period November 1, 2004 through October 31, 2005. Since additional documentation was not provided, a reduction in the OMIG audit disallowance is not warranted.

Disposition: The draft report disallowance remains the same.

EXHIBIT IV COMMENTS

Property Adjustment #2 - Real Estate Tax Disallowance

Facility Comment

Nathan Miller Center for Nursing Care, LLC was tax exempt under the old ownership. However, the new entity is a taxable proprietary entity. The facility has been paying full real estate, school and town taxes since its inception under new ownership. There is no reason to deny reimbursement for taxes that have been paid timely and in full for years 2005-2008 due to a technical timing difference that occurred during the rate setting period.

OMIG Response

According to BLTCR Medicaid Rate Methodology, for rate periods January 1, 2007 through December 31, 2007, allowable real estate taxes were reimbursed based upon allowable costs included in the base period November 1, 2004 through October 31, 2005. Since additional documentation was not provided, a reduction in the OMIG audit disallowance is not warranted.

Disposition: The draft report disallowance remains the same.

Property Adjustment #3 - Working Capital Interest Disallowance

Facility Comment

The facility has determined that the cheapest way of repayment of a loan which can be called at any time is by utilizing what appears to be a non-amortizing plan. In fact the loan is technically repaid every night. The purpose of this loan is to provide cash for delinquent and deficient Medicaid accounts receivable. It is disingenuous of the State to disallow interest on a loan that was necessary due to Medicaid late payments.

OMIG Response

Necessary interest on current indebtedness is an allowable cost. However, the line of credit loan in this instance was not current indebtedness as defined in the regulations. In addition, the payments were for interest only. The stated purpose and necessity of the loan do not exempt it from the applicable regulations or determinations of the Commissioner regarding interest expense reimbursement methodology. Therefore, a reduction in the OMIG audit disallowance is not warranted.

Disposition: The draft report disallowance remains the same.

Property Adjustment #9 - Property Insurance Disallowance

Facility Comment

Business income insurance is currently included in property costs. This insurance protects financial status of the property in case of business interruption. This guarantees that the mortgage on the property will be paid regardless of business interruption. It is no different than mortgage insurance for H.U.D. mortgages which are reimbursed as property by Department of Health.

OMIG Response

Insurance expenses guaranteeing income does not relate to the loss of or damage to the provider's physical property and consequently are only includable in the operating component of the rate. Therefore, there is no change in the OMIG's position.

Disposition: The draft report disallowance remains the same.

NATHAN MILLER CENTER FOR NURSING
RATE PERIODS NOVEMBER 1, 2004 THROUGH DECEMBER 31, 2008
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>
11/01/04 - 11/30/04	\$184.10	\$179.70	\$4.40	1,359	\$ 5,980
12/01/04 - 12/31/04	190.87	186.43	4.44	1,416	6,287
01/01/05 - 01/31/05	200.65	192.69	7.96	1,467	11,677
02/01/05 - 04/30/05	197.93	189.97	7.96	4,288	34,132
05/01/05 - 06/30/05	193.76	185.82	7.94	3,146	24,979
07/01/05 - 07/31/05	193.76	185.82	7.94	1,703	13,522
08/01/05 - 10/31/05	191.16	183.22	7.94	4,867	38,644
11/01/05 - 12/31/05	192.95	185.01	7.94	3,329	26,432
01/01/06 - 01/31/06	199.39	191.12	8.27	1,644	13,596
02/01/06 - 03/31/06	212.42	204.10	8.32	2,926	24,344
04/01/06 - 04/30/06	211.93	203.63	8.30	1,539	12,774
05/01/06 - 07/31/06	217.48	209.16	8.32	4,599	38,264
08/01/06 - 10/31/06	227.14	218.79	8.35	4,415	36,865
11/01/06 - 12/31/06	227.79	219.45	8.34	2,882	24,036
01/01/07 - 03/31/07	231.06	231.97	(0.91)	4,232	(3,851)
04/01/07 - 06/30/07	229.80	230.68	(0.88)	4,829	(4,250)
07/01/07 - 08/31/07	226.98	227.86	(0.88)	3,324	(2,925)
09/01/07 - 12/31/07	226.98	227.86	(0.88)	6,286	(5,532)
01/01/08 - 03/31/08	236.76	240.11	(3.35)	4,708	(15,772)
04/01/08 - 06/30/08	232.22	235.53	(3.31)	4,586	(15,180)
07/01/08 - 12/31/08	237.22	240.53	(3.31)	9,046	(29,942)
TOTAL MEDICAID OVERPAYMENT					<u>\$ 234,080</u>

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

NATHAN MILLER CENTER FOR NURSING
RATE PERIODS NOVEMBER 1, 2004 THROUGH DECEMBER 31, 2008
SUMMARY OF MEDICAID RATES AUDITED

The Facility's Medicaid utilization was approximately 93 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 audit report represent rate changes made subsequent to our audit. These changes remain open to future audit by the OMIG.

<u>RATE PERIOD</u>	<u>ISSUED MEDICARE PART B & D NON-ELIGIBLE RATES *</u>
11/01/04 - 11/30/04	\$184.10
12/01/04 - 12/31/04	190.87
01/01/05 - 01/31/05	200.65
02/01/05 - 04/30/05	197.93
05/01/05 - 07/31/05	193.76
08/01/05 - 10/31/05	191.16
11/01/05 - 12/31/05	192.95
01/01/06 - 01/31/06	199.39
02/01/06 - 03/31/06	212.42
04/01/06 - 04/30/06	211.93
05/01/06 - 07/31/06	217.48
08/01/06 - 10/31/06	227.14
11/01/06 - 12/31/06	227.79
01/01/07 - 03/31/07	231.06
04/01/07 - 06/30/07	229.80
07/01/07 - 12/31/07	226.98
01/01/08 - 03/31/08	236.76
04/01/08 - 06/30/08	232.22
07/01/08 - 12/31/08	237.22

* 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.

NATHAN MILLER CENTER FOR NURSING
RATE PERIODS NOVEMBER 1, 2004 THROUGH DECEMBER 31, 2008
OPERATING EXPENSE DISALLOWANCES/(ALLOWANCES)

		OPERATING EXPENSE COMPONENT			
		DIRECT	INDIRECT	NON- COMP.	NON- COMP.
COST	CTR.	11/01/04- 12/31/06	11/01/04- 12/31/06	01/01/07- 12/31/08	01/01/07- 12/31/08
		\$ 2,556,789	\$ 1,428,542	\$ 347,705	\$ 86,025

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

1. UTILITY EXPENSE DISALLOWANCE/(ALLOWANCE)

Audited gas and electricity expenses varied from the amount allowed in the rate. Consequently, adjustments were necessary.

Regulations: 10 NYCRR Sections 86-2.17(a) & 86-2.4, PRM-1 Section 2102.2

2. INSUFFICIENT DOCUMENTATION DISALLOWANCES

Facilities receiving payments on the basis of reimbursable costs are required to provide adequate cost data based on financial and statistical records that can be verified on audit. Cost data must be current, accurate, and in sufficient detail. The Facility could not provide sufficient documentation for real estate taxes and water expense. Consequently, the expenses were disallowed.

Regulations: 10 NYCRR Sections 86-2.7 & 86-2.17(a), PRM-1 Sections 2102.2, 2300 & 2304

3. REAL ESTATE TAX ALLOWANCE

Effective with the 2007 rate, real estate taxes are reimbursed as a non-trended expense in the property component of the rate. Accordingly, real estate taxes are removed from operating expenses on Schedule I of the HE-12B. In rate years 2007 and 2008, real estate taxes were erroneously removed twice from the operating component on Schedule I. The non-comparable component of the 2007 and 2008 rates was adjusted to correct the duplication.

Regulations: 10 NYCRR Sections 86-2.17(a) & (d)

4. RECLASSIFICATION OF IMPROPERLY CATEGORIZED EXPENSES

The Facility included premiums for business income insurance in reported property insurance expense. Since business income insurance is considered an operating expense, a reclassification was necessary to transfer the expense from the property component to the operating component of the rate.

See corresponding adjustment #9 in Exhibit IV.

Regulations: 10 NYCRR Sections 86-2.10(d)&(g), 86-2.17(a)&(d), and 455.5, PRM-1 Sections 2161 & 2806.2

Total Disallowances/(Allowances)

TOTAL AUDITED OPERATING EXPENSE BY COMPONENT

	-	\$ (2,674)	\$ 96,726	\$ (106,124)
	\$ 2,556,789	\$ 1,431,216	\$ 250,979	\$ 192,149

NATHAN MILLER CENTER FOR NURSING
RATE PERIODS NOVEMBER 1, 2004 THROUGH DECEMBER 31, 2008
PROPERTY EXPENSE DISALLOWANCES/(ALLOWANCES)

DESCRIPTION	COST CTR.	RATE PERIODS				
		11/01/04-12/31/04	2005	2006	2007	2008
		\$ 115,760	\$ 189,929	\$ 193,844	\$ 272,277	\$ 357,875

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

1. EQUIPMENT RENT EXPENSE DISALLOWANCE

a) Reported movable equipment rental expense was included twice in the 2005 and 2006 rates. The duplicated expense was disallowed.

Regulations: 10 NYCRR Sections 86-2.17(a) and (d)

b) Facilities receiving payment on the basis of reimbursable costs must provide adequate cost data based on financial and statistical records that can be verified on audit. Audited equipment rental expense varied from the expenses allowed in the promulgated rates resulting in disallowances.

Regulations: 10 NYCRR Sections 86-2.17(a) and (d)

2. REAL ESTATE TAX DISALLOWANCE

The Facility did not provide sufficient documentation in support of reported real estate tax expense. Providers receiving payments based on reimbursable costs must provide adequate cost data that can be verified on audit. Consequently, disallowances were necessary.

Regulations: 10 NYCRR Sections 86-2.7 & 86-2.17(a), PRM-1 Section 2300

3. WORKING CAPITAL INTEREST DISALLOWANCE

The Facility reported interest on a non-amortizing loan as working capital interest. Interest is allowable on current indebtedness; however, a non-amortizing loan is not current. In addition, it has been determined by the Commissioner that interest expense related to working capital loans that are considered "interest only" is not reimbursable for Medicaid purposes. Therefore, the interest related to the non-amortizing loan was disallowed.

Regulations: 10 NYCRR Sections 86-2.17(a) and (d), 82-2.20 and 451.71, PRM-1 Section 202.1

4. TELEPHONE RENTAL EXPENSE DISALLOWANCE

The Bureau of Long Term Care Reimbursement has determined the nature of telephone expense to be an operating expense. Since such expense is included in the formula to determine the base, mean, and ceiling prices used to establish the indirect operating expense corridor, the reimbursement of telephone expense in the capital component amounts to duplicate reimbursement. As a result, the expense was disallowed.

Regulation: 10 NYCRR Section 86-2.17(d)

DESCRIPTION	COST CTR.	11/01/04-12/31/04	2005	2006	2007	2008
Rent E	004		63,726	63,726		
Rent B	004					1,181
R. E Taxes	006				72,010	
WCI	005		4,929	4,929	4,929	17,384
Rent A	002					7,914

NATHAN MILLER CENTER FOR NURSING
RATE PERIODS NOVEMBER 1, 2004 THROUGH DECEMBER 31, 2008
PROPERTY EXPENSE DISALLOWANCES/(ALLOWANCES)

	COST DESCRIPTION	CTR.	RATE PERIODS				
			11/01/04- 12/31/04	2005	2006	2007	2008
5. ORGANIZATION COSTS DISALLOWANCE/(ALLOWANCE)							
a. The Facility was not fully reimbursed for organization costs for rate years 2007 and 2008. Necessary and proper organization costs are allowable in the property component. Therefore, adjustments to organization expenses were necessary. Regulations: 10 NYCRR Section 86-2.17(a), PRM-1 Section 2132	Org. Costs	005		(1,064)	(2,294)		
b. In the 2006 rate, organization costs were included twice in promulgated rates. The duplicated expense was disallowed. Regulations: 10 NYCRR Sections 86-2.17(a) and (d)	Org. Costs	005	1,064				
6. UNRESTRICTED INVESTMENT INCOME OFFSET REVERSAL							
Reported investment income was appropriately offset against interest expense in the 2005 promulgated rate. However, all interest expense was disallowed on audit in adjustment #3. Consequently, it was necessary to reverse the offset of investment income in the 2005 rate. See corresponding adjustment #3 in Exhibit IV. Regulation: 10 NYCRR Section 86-2.20(c)	Inv. Income	003	(2,851)				
7. MOVABLE EQUIPMENT DEPRECIATION EXPENSE ALLOWANCE							
The Facility was not fully reimbursed for movable equipment depreciation expenses for rate year 2004. Necessary and proper movable equipment depreciation expenses are allowable in the property component. Therefore, an adjustment to allow movable equipment depreciation expenses was necessary. Regulations: 10 NYCRR Section 86-2.17(a), PRM-1 Section 2102.1	ME Depr.	002	(4,584)				
8. AUTO INSURANCE EXPENSE ALLOWANCE							
The Facility was not fully reimbursed for auto insurance expenses for rate year 2004. Necessary and proper auto insurance expenses are allowable in the property component. Therefore, an adjustment to allow auto insurance expenses was necessary. Regulations: 10 NYCRR Section 86-2.17(a), PRM-1 Section 2102.1	Auto Ins.	005	(3,775)				
9. PROPERTY INSURANCE DISALLOWANCE							
The Facility included premiums for business income insurance in reported property insurance expense. Since business income insurance is considered an operating expense, a reclassification was necessary to transfer the expense from the property component to the operating component of the rate. See corresponding adjustment #4 in Exhibit III. Regulations: 10 NYCRR Sections 86-2.10(d)&(g), 86-2.17(a)&(d), and 455.5, PRM-1 Sections 2161 & 2806.2	Prop. Ins.	005	2,674	2,674	2,674	2,674	2,620
Total Disallowances/(Allowances)			\$ (5,685)	\$ 68,478	\$ 72,393	\$ 78,549	\$ 26,805
TOTAL AUDITED PROPERTY EXPENSE			\$ 121,445	\$ 121,451	\$ 121,451	\$ 193,728	\$ 331,070