NEW YORK STATE | Office of the Medicaid Inspector General

**FRANK T. WALSH, JR.**
Acting Medicaid Inspector General

# Audit of Medicaid Claims with Dates of Service after a Medicaid Recipient's Date of Death Paid from January 1, 2017 to December 31, 2019

## Final Audit Report
## Audit #: 2022Z12-121S

# Invictus Pharmacy Corp.

## Provider ID #: 05283436

NEW YORK STATE | Office of the Medicaid Inspector General

**KATHY HOCHUL**
Governor

**FRANK T. WALSH, JR.**
Acting Medicaid Inspector General

August 31, 2022

Invictus Pharmacy Corp.
2749 Pitkin Avenue
Brooklyn, New York 11208-3119

Final Audit Report
Audit #: 2022Z12-121S
Provider ID #: 05283436

Dear Provider:

This is the Office of the Medicaid Inspector General's (OMIG) Final Audit Report for Invictus Pharmacy Corp. (Provider).

In accordance with Title 18 of the Official Compilation of the Codes, Rules and Regulations of the State of New York Part 517, the attached Final Audit Report represents the final determination on the issues found during OMIG's audit.

The Provider did not respond to OMIG's July 7, 2022 Draft Audit Report. As a result, the overpayments identified in this Final Audit Report remain unchanged from those cited in the Draft Audit Report. The total amount due is $2,420.16, including interest to date.

To obtain the password for the enclosed disc, please email [redacted] If you have any questions or comments concerning this report, please contact [redacted] or through email at [redacted] Please refer to audit number 2022Z12-121S in all correspondence.

Sincerely,

[redacted]

System Match and Recovery
Division of Systems Utilization and Review
Office of the Medicaid Inspector General

Enclosure
Certified Mail #: 7018 0680 0002 0998 9364
Return Receipt Requested

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## Background, Objective, and Audit Scope

### Background

The New York State Department of Health (DOH) is the single state agency responsible for the administration of the Medicaid program. As part of its responsibility as an independent entity within DOH, 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 assessing 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 DOH (Titles 10 and 18 of the New York Codes Rules and Regulations), the regulations of the Office of Mental Hygiene (Title 14 of the New York Codes Rules and Regulations), DOH's Medicaid Provider Manuals and *Medicaid Update* publications.

The OMIG performed an audit of Medicaid claims with dates of service after a Medicaid recipient's date of death. This review matched the recipient's Medicaid payment history against Medicaid death records and New York State Vital Statistics death records.

To accomplish this review, Medicaid claims with dates of service after a recipient's date of death with payment dates from January 1, 2017 through December 31, 2019 were reviewed.

### Objective

The objective of this audit was to assess the Provider's adherence to applicable laws, regulations, rules, and policies governing the New York State Medicaid program and to:

- determine if the Provider improperly billed for services after a Medicaid recipient's date of death.

### Audit Scope

An audit of Medicaid claims paid with dates of service after a Medicaid recipient's date of death with payment dates in the period beginning January 1, 2017 through December 31, 2019 was completed.

*Please note that due to the implementation of the National Provider Identifier (NPI) on September 1, 2008, there may be multiple Provider Identification Numbers associated with the Primary Provider Identification Number. The NPI is linked to the Primary Provider Identification Number. The Primary Provider Identification Number is used for correspondence and recoupment.*

## Audit Findings

OMIG issued a Draft Audit Report to the Provider on July 7, 2022 that identified $2,420.16 in Medicaid overpayments. The Provider did not respond to the Draft Audit Report. As a result, the overpayments identified in this Final Audit Report remain unchanged from those cited in the Draft Audit Report.

The following audit criteria resulted in an audit finding and overpayment determination, as outlined below and in the enclosed exhibit:

1. **Improperly Billed Claims with Dates of Service after a Medicaid Recipient's Date of Death**

By enrolling, the provider agrees... 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;

*18 NYCRR 504.3(e)*

By enrolling the provider agrees ... that the information provided in relation to any claim for payment shall be true, accurate, and complete;

*18 NYCRR 504.3(h)*

By enrolling, the provider agrees... to comply with the rules, regulations and official directives of the department.

*18 NYCRR 504.3(i)*

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 518.1(c)*

Automatic Refill. **Automatic refilling** is not allowed under the Medicaid program. **Automatic-refill programs** offered by pharmacies are **not** an option for beneficiaries.

eMedNY *Pharmacy Manual Policy Guidelines*
*Version 2015-1 (effective November 2015), Page 7*
*Version 2019-1 (effective October 2019), Page 8*

Refills...Faxed refill authorization requests are not allowed under the Medicaid Program.

eMedNY *Pharmacy Manual Policy Guidelines*
*Version 2015-1 (effective November 2015), Page 7*
*Version 2019-1 (effective October 2019), Page 7*

Delivery of prescription drugs, over-the-counter products, medical/surgical supplies, and durable medical equipment (DME) is an **optional** service that can be provided to Medicaid beneficiary's home or current residence including facilities and shelters.
Pharmacies/DME providers **must obtain a signature** from the Medicaid beneficiary, their caregiver or their designee to confirm receipt of the prescription drugs, over-the-counter products, medical/surgical supplies, or DME items. Claim submission is not proof that the prescription or fiscal order was actually furnished.

eMedNY *Pharmacy Manual Policy Guidelines*
*Version 2015-1 (effective November 2015), Page 8*
*Version 2019-1 (effective October 2019), Page 9*

Guidelines for the Delivery of: Prescription Drugs, Over-the-Counter Products, Medical/Surgical Supplies, and Durable Medical Equipment... The pharmacy or DME provider must first contact the recipient or caregiver to ensure that a delivery is needed. Confirmation of needed delivery shall be maintained in the patient's record. Automatic refills are not permitted.

*DOH Medicaid Update, November 2003, Vol.18, No.11*

Automatic refill programs offered by pharmacies are **NOT** an option for Medicaid beneficiaries. Automatic refilling of prescriptions/orders for prescription drugs, over-the-counter products, medical surgical supplies, and enteral products are **NOT** allowed under New York State Medicaid.

*DOH Medicaid Update, May 2010, Vol.26, No.7*

Automatic refill programs offered by pharmacies are **not** an option for Medicaid recipients. Automatic refilling of prescriptions/orders for prescription drugs, over-the-counter products, medical surgical supplies, and enteral products are **not** allowed under New York State Medicaid. This policy does not preclude other adherence programs. All laws, regulations, and policies must be followed.

*DOH Medicaid Update, March 2018, Vol. 34, No. 3*

Pharmacy Providers: Auto Refill Policy
The following Refill Requests are allowed:

- **Requests for a refill** by a Medicaid recipient or designated caregiver who initiates the request for a refill to the pharmacy.
- **Provider directly initiates** refill by contacting a Medicaid recipient to determine if a refill is necessary, by phone, or electronic means (e.g., text message). Documentation of the need for each refill shall be maintained in the patient record. The documentation must include the date and time of recipient contact, the Medicaid recipient's or designated caregiver's name with response, and the name of the pharmacy staff member who contacted the recipient or caregiver (if by phone), or electronic method. The documentation must be available for audit purposes. Compliance with HIPAA privacy guidelines is mandatory.

*DOH Medicaid Update, March 2018, Vol. 34, No. 3*

Reminder: Pharmacy Delivery Policy
Prior to processing a drug claim, the pharmacy must confirm the drug is needed and that the drug had not been discontinued, changed, or is no longer necessary (e.g., the recipient had changed pharmacy provider); the confirmation must be maintained in the recipient's patient record. **Automatic refills are not permitted.**

*DOH Medicaid Update, July 2019, Vol. 35. No. 8*

Exhibit A is a list of Medicaid claims with dates of service after a Medicaid recipient's date of death. As a result, OMIG has determined that **$2,147.56** was inappropriately billed to Medicaid, resulting in Medicaid overpayments.

In accordance with 18 NYCRR Section 518.4, interest may be collected on any overpayments identified in this audit and will accrue at the current rate from the date of the overpayment. Interest on the overpayments identified in this Final Audit Report was calculated from the date of each overpayment through the date of the Draft Audit Report, using the Federal Reserve Prime Rate. For the overpayments identified in this audit, OMIG has determined that accrued interest of **$272.60** (Exhibit A) is now owed.

Based on this determination, the total amount due to DOH, as defined in 18 NYCRR Section 518.1, is **$2,420.16** (Exhibit A), including interest to date.

**Do not submit claim voids or adjustments in response to this Final Audit Report. Repayment instructions are outlined on the next page.**

## Repayment Options

In accordance with 18 NYCRR Part 518, which regulates the collection of overpayments, your repayment options are described below.

**Option #1:** Make a full payment by check, money order, or OMIG's Online Payment Portal 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, should include *the audit number on the memo line,*** and be mailed with the attached remittance advice to:

  New York State Office of the Medicaid Inspector General
  Bureau of Collections Management
  800 North Pearl Street
  Albany, New York 12204
  [redacted]

- If you elect to pay electronically through OMIG's Online Payment Portal, please visit https://omig.ny.gov/online-payment-portal or contact OMIG's Bureau of Collections Management by telephone or email, at the above number or address.

**Option #2:** Enter into a repayment agreement with OMIG. 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%. OMIG's acceptance of a repayment agreement is based on your repaying the Medicaid overpayment as agreed. OMIG will adjust the rate of recovery, or require payment in full, if your unpaid balance is not being repaid as agreed. If you wish to enter into a repayment agreement, please contact the Bureau of Collections Management within 20 days, by telephone or email, as provided above.

Should you fail to select a payment option above within 20 days of the date of this Report, OMIG will initiate recoupment by withholding all or a part of your payments otherwise payable, in accordance with 18 NYCRR 518.6. Additionally, OMIG reserves the right to use any remedy allowed by law to collect the amount due. Pursuant to the State Finance Law Section 18(5), a collection fee equal to twenty two percent (22%) of the amount due, including interest, may be added to the amount owed.

## Hearing 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 within sixty (60) days of the date of this notice to:

General Counsel
New York State
Office of the Medicaid Inspector General
Office of Counsel
800 North Pearl Street
Albany, New York 12204

Questions regarding the request for a hearing should be directed to Office of Counsel, at [redacted]

If a hearing is held, the Provider may have a person represent it 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 its hearing request a signed authorization permitting that person to represent the Provider at the hearing; the Provider may call witnesses and present documentary evidence on its behalf.

For a full listing of hearing rights please see 18 NYCRR Part 519.

## Contact Information

[redacted]

Office Address:

New York State
Office of the Medicaid Inspector General
Division of Systems Utilization and Review
800 North Pearl Street
Albany, New York 12204

## Mission

The mission of the Office of the Medicaid Inspector General is to enhance 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 while promoting high quality patient care.

## Vision

To be the national leader in promoting and protecting the integrity of the Medicaid program.

NEW YORK STATE | Office of the Medicaid Inspector General

# REMITTANCE ADVICE

**Invictus Pharmacy Corp.**
**2749 Pitkin Avenue**
**Brooklyn, New York 11208-3119**

**Provider ID #: 05283436**

**Audit #: 2022Z12-121S**

**Audit Type**
- ☐ **Managed Care**
- ☒ **Fee-for-Service**
- ☐ **Rate**

**Amount Due: $2,420.16**

## 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 the check to:

New York State Office of the Medicaid Inspector General
Bureau of Collections Management
800 North Pearl Street
Albany, New York 12204
[redacted]

If you elect to pay electronically through OMIG's Online Payment Portal, please visit https://omig.ny.gov/online-payment-portal or contact OMIG's Bureau of Collections Management by telephone or email, at the above number or address.