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Department of Health

KATHY HOCHUL
Governor

JAMES V. McDONALD, MD, MPH
Commissioner

JOHANNE E. MORNE, MS
Executive Deputy Commissioner

November 13, 2025

CERTIFIED MAIL/RETURN RECEIPT

Elliot Smeltzer, Esq.
NYS Office of the Medicaid Inspector General
800 North Pearl Street
Albany, New York 12204

Matthew J. Leonardo, Esq.
Hinman Straub, P.C.
121 State Street
Albany, New York 12207

RE: In the Matter of Beth Abraham Center for Rehabilitation and Nursing

Dear Parties:

Enclosed please find the Decision After Hearing in the above referenced matter.

If the appellant did not win this hearing, the appellant may appeal to the courts pursuant to the provisions of Article 78 of the Civil Practice Law and Rules. If the appellant wishes to appeal this decision, the appellant may wish to seek advice from the legal resources available (e.g. the appellant's attorney, the County Bar Association, Legal Aid, OEO groups, etc.). Such an appeal must be commenced within four (4) months after the determination to be reviewed becomes final and binding.

Sincerely,

Natalie J. Bordeaux
Chief Administrative Law Judge
Bureau of Adjudication

NJB: cmg
Enclosure

STATE OF NEW YORK
DEPARTMENT OF HEALTH

In the Matter of the Appeal of	:	
	:	
Beth Abraham Center for	:	Decision without
Rehabilitation and Nursing	:	hearing pursuant to
Provider #00310756	:	18 NYCRR 519.23
	:	
	:	#22-1903
From a determination to recover Medicaid Program	:	
overpayments.	:	

Before: John Harris Terepka
Administrative Law Judge

Held: Submitted on papers
Record closed October 30, 2025

Parties: New York State Office of the Medicaid Inspector General
800 North Pearl Street
Albany, New York 12204
By: Elliot Smeltzer, Esq.
Elliot.Smeltzer@omig.ny.gov

Beth Abraham Center for Rehabilitation and Nursing
612 Allerton Avenue
Bronx, New York 10467-7404
By: Matthew J. Leonardo, Esq.
Hinman Straub, P.C.
121 State Street
Albany, New York 12207-1693
mleonardo@hinmanstraub.com

JURISDICTION

The Department of Health (DOH) acts as the single state agency to supervise the administration of the Medicaid Program in New York State. PHL 201(1)(v); SSL 363-a. The New York State Office of the Medicaid Inspector General (OMIG), an independent office within DOH, has responsibility for Medicaid Program audit functions, including the prevention, detection and investigation of fraud and abuse in the Medicaid Program and recovery of improperly expended Medicaid funds. PHL 30, 31, 32.

The OMIG conducted an audit of Beth Abraham Center for Rehabilitation and Nursing (the Appellant), as is authorized by PHL 32(14) and 18 NYCRR Part 517, and issued a final audit report in which it determined to seek restitution of Medicaid Program reimbursement. (Exhibits A, E & 4.) The Appellant requested a hearing pursuant to SSL 145-a and former Department of Social Services regulations at 18 NYCRR 519.4 to review the determination.

A hearing was scheduled for June 19 and rescheduled to August 19, 2025. At a prehearing conference on June 18, the parties agreed to seek a decision without hearing pursuant to 18 NYCRR 519.23. The Appellant accordingly submitted a September 12, 2025 request and OMIG submitted its response to the request on October 23, 2025.

With its request for a decision without hearing, the Appellant submitted the decision and transcript from a previously held and decided Part 519 administrative hearing, Riverdale SNF, LLC, a/k/a Schervier Nursing Care Center (#21-4040, issued August 20, 2025, ALJ Kathleen Dix) (Exhibit 1); the hearing decision in Triboro Center for Rehabilitation and Nursing (#22-2392, issued September 4, 2025, ALJ Jeanne Arnold) (Exhibit 2); OMIG audit worksheets (Exhibits 3 & 5); and the OMIG final audit

report under review in this proceeding (Exhibit 4). The OMIG submitted Exhibits A - H with its response.

SUMMARY OF FACTS

1. Beth Abraham Center for Rehabilitation and Nursing is a proprietary residential health care facility (RHCF), or nursing home, in the Bronx, New York City. It is licensed under PHL Article 28 and enrolled as a provider in the Medicaid Program.

2. Auditors from OMIG reviewed the capital portion of the Appellant's Residential Health Care Facility cost reports (RHCF-4) for the period January 1, 2015 through December 31, 2018. The reported costs were the basis for the capital component of the Appellant's January 1, 2017 through December 31, 2020 Medicaid reimbursement rates.

3. By final audit report dated January 3, 2025, the OMIG identified several property disallowances and advised the Appellant of its determination to recover Medicaid Program overpayments in the total amount of \$386,286.

4. The Appellant, a proprietary nursing home operator, purchased Beth Abraham Center from a voluntary nursing home operator in March 2017. At the time of the transfer, DOH calculated a Medicaid Allowable Transfer Price (MATP) to be assigned as the Appellant's historical cost for capital reimbursement purposes. The DOH rate setters included the cost of land in the MATP.

5. On audit, OMIG recalculated the Appellant's property reimbursement rate for the audit period by removing the cost of land from the MATP.

ISSUE

Has the Appellant established that OMIG's audit determination to remove the cost of land from its MATP was not correct?

APPLICABLE LAW

A residential health care facility can receive reimbursement from the Medicaid Program for costs that are properly chargeable to necessary patient care. 10 NYCRR 86-2.17. As a general rule, these kinds of costs are reimbursable if they are actually incurred and the amount is reasonable. Allowable costs shall not include expenses or portions of expenses reported by individual residential health care facilities which are determined by the DOH commissioner not to be reasonably related to the efficient production of service because of either the nature or amount of the particular item. 10 NYCRR 86-2.17(d).

The facility is reimbursed by means of a per diem rate established by DOH in a rate setting computation that reflects costs reported by the facility. PHL 2808; 10 NYCRR 86-2.10. Operating and property costs are separately reported and reimbursed in separate components of the facility's rate. 10 NYCRR 86-2.10(a)(7), (b)&(g). Reimbursement regulations may differentiate based upon the form of ownership of the facility. PHL 2808(2-a). Allowable property costs for voluntary facilities include reimbursement in form of an allowance for depreciation. 10 NYCRR 86-2.19. Allowable property costs for proprietary facilities include reimbursement in the form of an allowance for return on equity. 10 NYCRR 86-2.21.

A facility's rate is provisional and its reported costs are subject to audit. If an OMIG audit identifies an inaccurately reported cost it can retroactively adjust the facility's rate and require the repayment of any amounts not authorized to be paid under the Medicaid Program. SSL 368-c; PHL 31(1), 32(14); 10 NYCRR 86-2.7; 18 NYCRR 504.8, 517.3(a), 518.1. If OMIG determines to recover an overpayment, the facility has the right to an administrative hearing at which the facility has the burden of showing that

the OMIG audit determination was incorrect and that all costs claimed were allowable. 18 NYCRR 519.4, 519.18(d)(1).

Former Department of Social Services regulations addressing the audit and hearing aspects of this OMIG audit are found at 18 NYCRR Parts 517 and 519. DOH regulations at 10 NYCRR Part 86-2 address reporting and rate certifications for RHCs. In particular, section 86-2.19 addresses the capital component of the rate for voluntary facilities, while section 86-2.21 addresses the capital component for proprietary facilities. Unless otherwise provided in Part 86-2 or in accordance with specific determination by the commissioner, allowable costs are also determined by the application of the principles of reimbursement developed for determining payments under the Medicare Program. 10 NYCRR 86-2.17(a). These are primarily found at 42 CFR Chapter IV, and in the Medicare Provider Reimbursement Manual (PRM-1).

DISCUSSION

With its application for a decision without hearing, the Appellant submitted and relied upon two previous administrative hearing decisions issued by this bureau that reversed OMIG audit determinations identical to the determination it made in this case. OMIG failed to distinguish those hearing decisions or establish any error in them that calls for a different result herein. As was determined in Riverdale SNF, LLC, a/k/a Schervier Nursing Care Center and Triboro Center for Rehabilitation and Nursing, supra (Exhibits 1&2), the Appellant has met its burden of proving that OMIG's audit determination to recover Medicaid reimbursement attributable to the inclusion of land in its MATP during the audit period was not correct.

DOH rate setting and OMIG audit functions.

As in the previous administrative hearings, it is undisputed that the nature and amount of the land costs at issue had been fully and accurately reported to DOH, which then included land cost when it calculated and established the Appellant's MATP. The Appellant, understandably, did not challenge that rate setting determination pursuant to 10 NYCRR 86-2.13 because it included land in the MATP. It now objects to OMIG's determination in this audit to remove land from the MATP calculated by DOH.

In Atlanticare Management, LLC d/b/a Putnam Ridge v. Erin Ives, as Acting Medicaid Inspector General, 212 AD3d 132, 180 NYS3d 700 (3rd Dept. 2022), *lv. den.* 40 NY3d 902 (2023), DOH had denied approval of certain mortgage refinancing arrangements after learning of and reviewing them. In affirming a subsequent OMIG audit disallowance of the mortgage related costs, Atlanticare discussed the relative roles of DOH in rate setting and OMIG in auditing for reported costs:

OMIG officials who participated in the audit insisted that they were constrained to utilize the rate methodology chosen by DOH that would be applicable to the audited rate periods. Indeed, OMIG's primary contention in its posthearing submission was that petitioner was improperly seeking to challenge DOH's methodology determination as part of OMIG's audit.

...

[W]eaved into its various arguments concerning OMIG's audit, petitioner, in essence, asks that we determine whether DOH properly adjusted its rate reimbursement methodology to increase its return of equity and disallow mortgage-related costs. Said differently, petitioner's contentions necessarily implicate DOH's interpretation and application of its own rate-setting regulations contained in 10 NYCRR Part 86-2, which, fundamentally, implicate the rate methodology itself [*citations omitted*].

While petitioner suggests that DOH and OMIG "jointly determined" the methodology imposed, that contention misses the mark, as the audit process precipitating this appeal concerns the actions of OMIG, an independent office within the DOH charged with "implement[ing] the DOH rules and regulations intended to recover unjustified Medicaid payments [*citations omitted*]." It is DOH that is charged with setting the rates for those facilities participating in the

Medicaid program [citations omitted], and OMIG's ensuing obligation is to audit a facility's rates "to determine whether the costs reported were accurate, and, if the audit uncovers discrepancies, [to] adjust the rates to account for any inaccuracies" [citations omitted]... As we have already noted, the roles of OMIG and DOH are distinct.

In this case, there were no inaccuracies or discrepancies in the land costs reported by the Appellant and relied on by DOH to set its MATP. As was noted in the Triboro Center hearing decision:

The Department exercised its judgment in including land in its MATP calculation... It is undisputed that the nature and amount of the land cost at issue in this case was fully and accurately reported to the Department when it calculated the MATP. The OMIG's audit adjustment was not a correction of a mistake of fact but rather a rejection of the Department's judgment of how the MATP, used for the rate period under review, was calculated. (Exhibit 2, pages 8, 10.)

Atlanticare and the administrative hearing decisions of this bureau are consistent in affirming that DOH rate setting determinations are not reviewable in an OMIG 18 NYCRR Part 517 audit of reported costs. As no mistake of fact was involved when DOH established the Appellant's MATP, in this case it is OMIG, rather than the provider facility, that is "improperly seeking to challenge DOH's methodology determination as part of OMIG's audit." This constitutes an impermissible attempt to retroactively overturn, in an OMIG audit, a DOH judgmental rate setting determination regarding methodology used to calculate the MATP.

The OMIG audit adjustment.

Part 517 audit reports "must clearly advise the provider... of the nature and amount of the audit findings, the basis for the action and the legal authority therefore." 18 NYCRR 517.5(a), 517.6(b). The draft and final audit reports cite 10 NYCRR 86-2.19(g)(2)(i)&(iii) and 86-2.21 as authority for the audit adjustment. (Exhibits 4, B, E;

Draft and Final audit reports attachment C, page 1.) Final audit report comments state: “Based on the regulations, the cost of land cannot be included in historical cost” and further invoke Medicare PRM-1 sections 104.10E, 104.23 and 104.6 as legal authority. (Final audit report attachment E, pages 1-2.)

The OMIG’s reliance on 10 NYCRR 86-2.19 is misplaced because the Appellant, whose capital reimbursement is under review, is a proprietary not a voluntary facility. Capital cost reimbursement for proprietary facilities is addressed by 10 NYCRR 86-2.21, which recognizes land as a facility cost. The OMIG specifically relies on 10 NYCRR 86-2.19(g)(2)(i)&(iii), but there is no evidence, nor does either party even suggest, that the Appellant is a “qualifying facility” under that subsection, which required that it have assumed the seller’s remaining mortgage repayment schedule when it acquired the facility. The OMIG’s further assertion “Although this regulation is listed under the voluntary facilities category, the substance of the regulation is what matters, rather than where it is listed” (Final audit report attachment E, page 2) is hardly persuasive when a regulation “listed under” the proprietary facilities category is, word-for-word, identical except for the repeated and conspicuous omission of the words “except for that portion [of the indebtedness] which is attributable to the acquisition of land.” *Compare*, 10 NYCRR 86-2.19(g)(2)(i)&(iii); 86-2.21(i)(2)(i)&(iii).

The OMIG also repeatedly claimed to rely on Medicare PRM-1 sections 104.10E, 104.23 and 104.6. (Final audit report attachment E, pages 1-2; OMIG brief, pages 12-18.) These cited principles of reimbursement developed for determining payments under the Medicare Program address depreciation, but nowhere even mention return of equity, the Medicaid MATP, or the distinction between 10 NYCRR 86-2.19 voluntary and 10

NYCRR 86-2.21 proprietary facilities, all of which are provided for in Medicaid rules and regulations. 10 NYCRR 86-2.17(a).

Richmond Center.

The OMIG now also relies, in this proceeding, on Richmond Center for Rehabilitation and Specialty Healthcare v. McDonald, et. al. (Albany County SC #911390-23, December 30, 2024), claiming “[t]he decision in Richmond Center shows that land is not included in a MATP calculation for a for-profit facility.” (OMIG brief, page 19.)

Richmond Center affirmed a DOH rate setting determination to remove land from a facility’s MATP. It did not involve or review any OMIG audit determination. The OMIG is not a party to, nor indeed is OMIG or its audit function even mentioned in the Richmond Center decision. The Respondents in Richmond Center are the New York State DOH and DOB. The absence of any mention of an OMIG role in Richmond Center is consistent with the view of the administrative hearing decisions of this bureau that the inclusion of land in MATP calculation is a matter of rate setting methodology within DOH’s discretion to determine and apply, and not within the authority of OMIG to retroactively change in an OMIG audit.

Richmond Center does not hold that DOH, let alone OMIG in an 18 NYCRR Part 517 audit, is required to exclude land from the MATP. Richmond Center held “the evidence supports a finding that [the DOH] determination as it relates to Richmond Center was not irrational, arbitrary, capricious or contrary to law.” *Id.* Nowhere does the Richmond Center decision mention the regulations or PRM-I provisions relied upon by OMIG in this audit as having any relevance or providing any support for that court’s

decision to affirm a DOH rate setting determination to remove land from a provider's MATP. Richmond Center instead relies on PHL 2807 and case law, primarily Concourse Rehabilitation & Nursing Ctr. v. Zucker, 217 AD3d 1189 (3rd Dept 2023), for a holding limited to deciding that the DOH determination was within its discretionary authority and “not irrational, arbitrary, capricious or contrary to law.” The court’s holding therefore places the issue of including land in the MATP within the realm of DOH rate setting judgment and discretion, not regulatory mandate or OMIG audit authority.

Richmond Center held that it was within DOH’s authority to depart from the “particular precedent” it set for one facility in setting a rate for another facility because “duplicating such error would be contrary to law.” That holding, for which the court cited Atlanticare, *supra*, does not support any OMIG audit authority to depart from a rate setting determination made by DOH for a particular facility without identifying an inaccuracy or discrepancy in that facility’s reported costs.

It is noted that OMIG’s October 23, 2025 brief (page 18) calls Richmond Center a “recent” court decision, but it was issued December 30, 2024, two months before the Riverdale and Triboro Center administrative hearings commenced and four months before they closed in April 2025. The OMIG’s failure even to mention, let alone rely on Richmond Center in either of those administrative hearings, is entirely consistent with the view that Richmond Center is irrelevant to an OMIG audit finding because it is entirely about DOH authority to determine, or change, its rate setting methodology, not OMIG authority to “correct” such a determination in an OMIG audit.

There are no loose ends regarding the different outcomes in the court decision in Richmond Center and the administrative hearing decisions in Riverdale and Triboro.

They reach different results but for the same reason. Richmond Center upheld a DOH rate setting determination on the grounds that DOH was entitled to make it. Riverdale and Triboro also upheld DOH rate setting determinations on the grounds that it was DOH, not OMIG, that was entitled to make them. All three decisions are consistent with Atlanticare.

Conclusion.

The OMIG's function is to detect fraud, abuse and improper Medicaid payments. PHL 30. It is not to review and determine or "correct" DOH Medicaid rate setting policy or methodology determinations, which is the responsibility of DOH and is not reviewable in this OMIG audit administrative hearing. 18 NYCRR 519.18(a); Atlanticare, *supra* at 138-140. Atlanticare held "OMIG's reliance on a DOH rate-setting action was not irrational." In this case, OMIG is attempting not to rely on but to disregard and overturn a DOH rate-setting action.

In its effort to characterize its removal of land from the MATP as within its audit authority, OMIG cites several regulatory and PRM-1 provisions, none of which explains why, or requires that, the MATP for a proprietary transferee may not include land. OMIG then claims that to "mak[e] sure they were correct in their determination" it "reached out" to DOH "to confirm that land should not be included." (OMIG brief, pages 7-8; Exhibit F.) However, as was discussed in Atlanticare, any suggestion "that DOH and OMIG 'jointly determined' the methodology imposed... misses the mark, as the audit process precipitating this appeal concerns the actions of OMIG, an independent office within the DOH." Atlanticare, *supra*. Indeed, to the extent the OMIG claims to have relied on DOH to "confirm" the OMIG adjustment, it is conceding the issue for the

adjustment is about rate setting methodology to begin with, which is not within the OMIG audit authority to change.

The OMIG argues that the inclusion of land in the calculation of the Appellant's MATP was a "mistake," not a rate setting decision within DOH authority, made when, according to OMIG:

[T]his error occurred multiple times as [a DOH rate setter] had to set the rate for 600 nursing homes under a time constraint, and during the last 15 years she was performing an increased volume of MATP calculations due to the rise in sales of voluntary facilities becoming proprietary facilities. Furthermore, at this time DOH was having staffing issues which required her to make spur-of-the-moment decisions, some at 2 a.m. (OMIG brief, page 9.)

If DOH concludes that earlier rate setting determinations it made "multiple times" when voluntary facilities became propriety facilities were a "mistake," it may determine to change its methodology, as it did in Richmond Center, and depart from a "particular precedent" to avoid "duplicating such error." DOH's determination can then be challenged in a 10 NYCRR 86-2.13 rate appeal and/or Article 78 appeal such as was taken in that case. The OMIG cannot, in an 18 NYCRR Part 517 audit, step in and retroactively impose such a departure, particularly when the "particular precedent" being departed from was set by DOH for the very facility under audit.


The Appellant's request for a decision without hearing and OMIG's response evidence no unresolved material issue of fact and the request is accordingly granted. The OMIG final audit report finding disallowing land costs from the Appellant's MATP is reversed.

DECISION:

The OMIG's audit report property expense disallowance removing the cost of land from the Appellant's MATP is reversed.

This decision is made by John Harris Terepka, Bureau of Adjudication, who has been designated to make such decisions.

DATED: Rochester, New York
November 13, 2025



John Harris Terepka
Bureau of Adjudication