

“Vendor payments for medical care and other items of medical assistance shall not be made unless such care or other items of assistance have been furnished on the basis of the appropriate authorization prescribed by the rules of the board and regulations of the department.” *18 NYCRR Section 540.1*

“The department may require repayment from the person submitting an incorrect or improper claim, or the person causing such claim to be submitted, or the person receiving payment for the claim.” *18 NYCRR Section 518.3(a)*

“The department may require repayment for inappropriate, improper, unnecessary or excessive care, services or supplies from the person furnishing them, or the person under whose supervision they were furnished, or the person causing them to be furnished....” *18 NYCRR Section 518.3(b)*

“Medical care, services or supplies ordered or prescribed will be considered excessive or not medically necessary unless the medical basis and specific need for them are fully and properly documented in the client’s medical record.” *18 NYCRR Section 518.3(b)*

“The governing authority shall ensure for each health care service provided that: (1) written policies and procedures consistent with current professional standards of practice are developed and implemented for each service and are reviewed and revised as necessary; (2) that the delivery of each service is documented in the clinical record;...(b) For purposes of this Part, health care services shall include nursing...” *10 NYCRR Section 766.2(a) and (b)*

“The governing authority or operator, as defined in Part 700 of this Title, of a licensed home care services agency shall: (a) be responsible for the management and the operation of the agency; (b) ensure compliance of the home care services agency with all applicable Federal, State and local statutes, rules and regulations.” *10 NYCRR Section 766.9(a) and (b)*

“Private duty nursing services means nursing services for beneficiaries who require more individual and continuous care than is available from a visiting nurse or routinely provided by the nursing staff of the hospital or skilled nursing facility. These services are provided (a) By a registered nurse or a licensed practical nurse; (b) Under the direction of the beneficiary’s physician; and (c) To a beneficiary in one or more of the following locations at the option of the State (1) His or her home; (2) A hospital; (3) A skilled nursing facility.” *42 CFR Section 440.80*

“...Nursing services as medically needed shall be provided to medical assistance recipients in the patient’s home or in a hospital. (b)(1) Nursing care to patients in New York shall be provided by a person possessing a license and current registration from the New York State Education Department to practice as a registered professional nurse or licensed practical nurse.” *10 NYCRR Section 85.33(a) and (b)(1)*

“...Nursing services, as medically needed, may be provided to a medical assistance recipient in the person’s home or in a hospital and, with respect to a child receiving nursing services pursuant to an individualized education program or an interim or final individualized family services plan, also in a school, an approved pre-school or a natural environment, including home and community settings, where such child would otherwise be found. (b)(1) Nursing care to patients in New York State shall be provided by a person possessing a license and current registration from the New York State Education Department to practice as a registered practical nurse or licensed practical nurse.” *18 NYCRR Section 505.8(a) and (b)(1)*

---

## Regulations of General Application

---

Each audit finding is supported by relevant regulations, policy statements and manuals. In addition, the audit findings in this audit are supported by regulations of general application to the Medicaid program. These regulations are provided below.

“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*

“Fee-for-service providers. (1) All providers . . . must prepare and maintain contemporaneous records demonstrating their right to receive payment under the medical assistance program. All records necessary to disclose the nature and extent of services furnished and the medical necessity therefor . . . must be kept by the provider for a period of six years from the date the care, services or supplies were furnished or billed, whichever is later. (2) All information regarding claims for payment submitted by or on behalf of the provider is subject to audit for a period of six years from the date the care, services or supplies were furnished or billed, whichever is later, and must be furnished, upon request, to the department . . . for audit and review.”

*18 NYCRR Section 517.3(b)*

“All bills for medical care, services and supplies shall contain: (1) patient name, case number and date of service; (2) itemization of the volume and specific types of care, services and supplies provided (including for a physician, his final diagnosis, and for drugs, the prescription filled); (3) the unit price and total cost of the care, services and supplies provided; . . . and (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)(1)-(3) and (8)*

“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)*