

cc: Ms. Daniels Rivera by Scan
Ms. Mailloux by Scan
Ms. Bordeaux by Scan
Ms. Marks by Scan
BOA by scan
SAPA File



Department of Health

KATHY HOCHUL
Governor

JAMES V. McDONALD, MD, MPH
Commissioner

JOHANNE E. MORNE, MS
Executive Deputy Commissioner

August 20, 2025

CERTIFIED MAIL/RETURN RECEIPT

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

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

Yosef Spierer, Administrator
Riverdale SNF, LLC
(a/k/a Schervier Nursing Care Center)
2975 Independence Avenue
Bronx, New York 10463

**RE: In the Matter of Riverdale SNF, LLC
a/k/a Schervier Nursing Care Center**

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

**Riverdale SNF, LLC a/k/a
Schervier Nursing Care Center**
Medicaid Provider #00314269

from a determination to recover Medicaid
Program overpayments.

CCNY

**DECISION
AFTER
HEARING**

Audit No. 21-4040

Before: Kathleen Dix
Administrative Law Judge

Hearing date: February 26, 2025
By WebEx Videoconference
Record closed April 9, 2025

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

Riverdale SNF, LLC a/k/a Schervier Nursing Care Center
2975 Independence Avenue
Bronx, New York 10463
By: Matthew Leonardo, Esq.
Hinman Straub
121 State Street
Albany, New York 12207-1693
mleonardo@hinmanstraub.com

JURISDICTION

The New York State Department of Health (Department) acts as the single state agency to supervise the administration of the Medicaid Assistance (Medicaid) Program in New York State. 42 USC 1396a; Public Health Law (PHL) § 201(1)(v); Social Services Law (SSL) § 363-a. The New York State Office of the Medicaid Inspector General (OMIG), an independent office within the Department, is authorized to investigate and pursue civil and administrative enforcement actions to recover improperly expended Medicaid funds. PHL §§ 31-32.

The OMIG determined to recover Medicaid Program overpayments from Riverdale SNF, LLC, a/k/a Schervier Nursing Care Center (Appellant) for the rate period January 1, 2016 through December 31, 2020. The Appellant requested this hearing pursuant to SSL § 145-a and former Department of Social Services (DSS) regulations at 18 NYCRR 519.4 to review the overpayment determination.

HEARING RECORD

OMIG Witnesses:	Sheroldeen Masters, Audit Manager/Auditor 3
OMIG Exhibits:	A-Q
Appellant Witnesses:	Cynthia Treis, Retired Department Healthcare Fiscal Analyst Jesse Frommer, Healthcare Consultant
Appellant Exhibits:	1-10

A transcript of the hearing was made. (Transcript [T.] pages 1-121.) The record closed on April 9, 2025. Each party submitted one post-hearing brief.

FINDINGS OF FACT

1. At all times relevant hereto, the Appellant was a proprietary residential health care facility, or nursing home, located at 2975 Independence Avenue, in Bronx, New York 10463, licensed under Article 28 of the Public Health Law and enrolled as a provider in the Medicaid Program. (Exhibit G.)
2. In July 2021, the OMIG commenced an audit of the capital portion of the Appellant's Report of Residential Health Care Facility (RHCF) cost reports for each of the calendar years 2014 through 2018. These cost reports (form RHCF-4) are the basis for the capital portion of the daily rate from the Medicaid Program for the period January 1, 2016 through December 31, 2020. (Exhibit A; T. 9, 21; OMIG brief, pages 2-3.)
3. On June 28, 2022, the OMIG advised the Appellant that it had expanded the scope of the audit to include an audit of approved appeal #17670. (Exhibit C.)
4. On November 6, 2023, the OMIG issued a draft audit report (DAR) which identified nine categories of disallowances for claimed property expenses and proposed to recover an estimated Medicaid overpayment of \$2,703,238. The DAR advised the Appellant, pursuant to 18 NYCRR 517.5, that it was entitled to submit objections to the proposed action, which objections were required to include any additional material or documentation that the Appellant wished to be considered. (Exhibit F; T. 23-24.)
5. On December 15, 2023, the Appellant submitted its objections to the DAR, objecting to Findings numbered 2, 5, 7 and 8. (Exhibit G; T. 24-26.)
6. On March 19, 2024, the OMIG issued a final audit report (FAR) which advised the Appellant that upon review of its response to the DAR the disallowance Finding number 5 remained the same, it had reduced the disallowances in Findings

numbered 2 and 7, and eliminated disallowance categories 8 and 9; the overpayment was reduced to \$1,827,664. (Exhibit H; T. 26.-32)

7. By letter dated May 10, 2024, the Appellant requested this hearing to review the determination and findings set forth in the FAR. (Exhibit I; T. 9.)

8. The disallowances which were the subject of this hearing were:

Finding No. 2. Return of Equity Disallowances;
Finding No. 5. Mortgage Expense Amortization Disallowances; and
Finding No. 7. Building/Fixed Equipment Depreciation Disallowances.

(T. 10.)

9. At the hearing and in its brief, the Appellant only addressed its objection to the removal of the land cost from the Medicaid Allowable Transfer Price (MATP) in Finding No. 2.

ISSUES

Was the OMIG's determination to remove land from the MATP calculation, as detailed in the FAR's disallowance 2, correct?

Was the OMIG's determination to remove mortgage expense amortization from allowable capital expenses, as detailed in the FAR's disallowances 2 and 5, correct?

Was the OMIG's determination to remove building and fixed equipment depreciation disallowances from allowable capital expenses, as detailed in the FAR's disallowance 7, correct?

APPLICABLE LAW

Residential health care facilities 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. Except as otherwise provided in 10 NYCRR

Subpart 86-2, allowable costs shall be determined by the application of the principles of reimbursement developed for determining payments under title XVIII of the Federal Social Security Act (Medicare) Program. 10 NYCRR 86-2.17(a). The Provider Reimbursement Manual (PRM-1) prepared by the Centers for Medicare and Medicaid Services (CMS) offers detailed explanations regarding provider costs deemed allowable under the Medicare Program. Additionally, in preparing and submitting its uniform reports, all nursing homes in New York State are required to adopt the policies, methodologies and practices contained in the New York State Residential Health Care Facility Accounting and Reporting Manual (RHCF ARM). Allowable costs shall not include expenses or portions of expenses reported by individual RHCs which are determined by the 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).

Facilities are eligible for reimbursement by payment of a Medicaid daily rate billable for resident beds occupied by Medicaid recipients. 10 NYCRR 86-2.10; PHL § 2808. The per diem rate is established by the Department's Bureau of Nursing Home and Long-Term Care Rate Setting in a computation that reflects costs reported by the facility annually in RHCF-4 cost report. The completion of the financial and statistical report forms shall be in accordance with generally accepted accounting principles as applied to the residential health care facility unless the reporting instructions authorized specific variation in such principles. PHL § 2808; 10 NYCRR 86-2.2, 86-2.4 and 86-2.10.

A facility's basic rate includes an operating and a capital component. 10 NYCRR 86-2.10(b)(1)&(2). The capital component of the rate is facility-specific, and includes depreciation, leases and rentals, interest on capital debt, return of equity, and the costs

of major moveable equipment. 10 NYCRR 86-2.10(a)(9)&(g), 86-2.19, 86-2.20, 86-2.21 and 86-2.22. Operating and capital (property) costs are reimbursed in separate components of the facility's rate. 10 NYCRR 86-2.10(a)(7),(b)&(g).

A facility's rate of payment is provisional and subject to audit. 10 NYCRR 86-2.7. The Department may adjust a payment rate retroactively if an audit determines that costs were inaccurately or improperly reported or are otherwise not includible in the Medicaid rate. SSL § 368-c; 10 NYCRR 86-2.7; 18 NYCRR 517.3. Upon completion of an audit, the Department may require the repayment of any amounts not authorized to be paid by the Medicaid Program. 18 NYCRR 518.1.

If the Department determines to recover an overpayment, the facility has the right to an administrative hearing. 18 NYCRR 519.4. At the hearing, the facility has the burden of showing that the determination of the Department was incorrect and that all costs claimed were allowable. 18 NYCRR 519,18(d)(1). DSS regulations pertinent to this hearing are found at 18 NYCRR Parts 517, 518 and 519, and address the audit, overpayment, and hearing aspects of this case. Department regulations most pertinent to this hearing are at 10 NYCRR Part 86-2.

DISCUSSION

At the hearing, the OMIG presented the audit file and summarized the case, as required by 18 NYCRR 519.17. The Appellant is contesting three disallowances in the final audit report. It is not in dispute whether the disallowed costs were incurred in the amounts reported. The issue is whether they can properly be recognized as capital costs on the Appellant's 2014 through 2018 cost reports. (T. 18-19, 21-22.) The OMIG's determination was that the costs at issue are not allowable for inclusion in the capital

component of the Appellant's Medicaid rate.

A facility's rate setting computation is dependent in part upon the type of facility it is, *i.e.*, voluntary¹ and public residential health care facilities recoup certain costs through *depreciation* (10 NYCRR 86-2.19), while proprietary² residential health care facilities recoup certain costs through *return of equity* (10 NYCRR 86-2.21). At issue herein is the sale of the RHCF from voluntary ownership to proprietary ownership, and the calculation of the capital cost component of the facility after the change in ownership and of ownership type.

MATP

The OMIG determined to adjust the Appellant's capital costs, as explained in disallowance 2 of the FAR:

2. RETURN OF EQUITY DISALLOWANCES

The real property historical cost and accumulated real property reimbursement used to calculate the return of equity were adjusted to reflect audited amounts. The Medicaid Allowable Transfer Price (MATP) was adjusted to remove the cost for land. Additionally, sufficient documentation was not received to support certain cost year 2015 asset additions. Furthermore, the records reviewed indicate that certain asset additions reported in cost year 2015 were related to a private house and apartments, and are not related to patient care at the Facility. Consequently, disallowances were necessary.

Regulations: 10 NYCRR Sections 86-2.17(a) & (d), 86-2.19(g)(2)(i) & (iii), and 86-2.21, PRM-1 Sections 2102.3, 2300 & 2304.

(Exhibit H, bates page 310.)

¹ A "voluntary" RHCF is a private, non-profit facility. See, "Voluntary hospital." Merriam-Webster.com Medical Dictionary, Merriam-Webster, <https://www.merriam-webster.com/medical/voluntary%20hospital> Accessed 23 Jul. 2025.

² A "proprietary" RHCF is a private, for-profit facility. "Proprietary." Merriam-Webster.com Dictionary, Merriam-Webster, <https://www.merriam-webster.com/dictionary/proprietary>. Accessed 23 Jul. 2025.

The Appellant objects to the adjustment which disallowed the cost of land in the MATP. The OMIG asserts that the decision to remove land from the MATP calculation was done in reliance on 10 NYCRR 86-2.19 and 86-2.21, PRM-1 sections 104.10E, 104.23, and 104.6 (citing Transcript p. 40-41) and because “[a]ccording to the Bureau of Nursing Home and Long-Term Care Rate Setting (BNHLTCRS), a MATP calculation is calculated based on historical costs and is comprised of depreciable assets only (OMIG Exhibit H, bates page 320)”. (OMIG brief page 5.)

Sheroldeen Masters, OMIG Auditor 3, who was the audit manager for this audit, testified that when a voluntary facility sells to a proprietary facility, the MATP is calculated to determine the reimbursable amount of the historical costs to the new owner. (T 39, 59.) Ms. Masters testified that the MATP is calculated using a facility’s depreciable assets at the “net-book value,” which she defined as the historical cost less accumulated depreciation. The MATP amount then becomes the historical cost of the facility attributable to the purchaser and is amortized over the remaining useful life of the facility to comprise the proprietary provider’s “return of equity” amount. (T 39-40.) Ms. Masters further testified that “historical cost” is defined in PRM-1 § 104.10E as the cost of the asset less depreciation, and citing PRM-1 §§ 104.6 and 104.10E, Ms. Masters stated that “land” is defined as a non-depreciable asset, which is neither depreciable nor amortizable under any circumstance. Ms. Masters concluded that as the MATP should only include depreciable assets, and that land, a non-depreciable asset, cannot be included therein. (T. 40-41.)

Ms. Masters stated that the decision to remove the cost of the land from the Appellant’s historical costs was based upon the PRM-1 sections mentioned above and

the regulations at 10 NYCRR 86-2.19(g). 10 NYCRR 86-2.19 is entitled "Depreciation for voluntary and public residential health care facilities".³ Ms. Masters relied in particular upon the language in 86-2.19(g)(2)(iii) entitled "Return of Equity" which excludes from reimbursement, for qualified facilities, the equity portion of the MATP attributable to the acquisition of land. Ms. Masters noted that 86-2.19(f) states that in the event of a sale of a facility, the capital cost component of its rate shall continue, and further noted that voluntary facilities do not receive return of equity, therefore Ms. Masters concluded that subsection (g) could not be referring to voluntary facilities. Instead, Ms. Masters opined that because the language of 2.19(g)(2)(iii) states "except for that portion which is attributable to the acquisition of land", she concluded that the cost of land is not included in the MATP when a voluntary facility sells to a proprietary facility. (T. 40-41, 58-60.) Ms. Masters did not believe that the provisions of 10 NYCRR 86-2.19(g)(1)&(2) limiting the language therein to "qualifying facilities," or any part of 10 NYCRR 86-2.21 entitled "Capital cost reimbursement for proprietary residential health care facilities", conflicted with the OMIG's interpretation of 10 NYCRR 86-2.19(g)(2)(iii) or its application of the same to this audit. (T. 55-62.) When asked about the language of 86-2.21(a)(4) which defines "equity" to include assets invested in *land*, Ms. Masters stated that "[i]nvestment in land is referring to land improvements. For example, fences, walls shrubbery, paving." (T. 56.)

Ms. Masters testified that the decision to remove the cost of the land from the MATP was also confirmed through the Department's rate setting bureau. (T. 41-44;

³ 10 NYCRR 86-2.19(g) provides for a waiver of subsection (a) for facilities which qualify thereunder. Subsection (a) states in pertinent part "[r]eported depreciation based on approved historical cost of buildings, fixed equipment and capital improvements thereto is recognized as a proper element of cost for voluntary and public residential health care facilities."

Exhibit M.) Ms. Masters concluded that if the OMIG had “tr[ie]d” to include land among the depreciable assets, [it] would be going against the regulation and against rate setting methodology. So, on audit, [it] decided to remove land supported by the regulations just mentioned. [10 NYCRR 86-2.19(g)].” (T. 41.)

The Appellant contends that New York Statutes, regulations at 10 NYCRR 86-2.21(a)(4)&(6), and Court of Appeals decisions support the inclusion of land acquisition costs as allowable costs in proprietary facility reimbursement. The Appellant also contends that the OMIG’s reliance on the PRM-1 is misplaced because the PRM only controls where Medicaid does not have specific rules for reimbursement, which is not true here, and, even so, the sections of the PRM-1 which the OMIG applied are not controlling as they apply to depreciation, which is not applicable to the Appellant, a proprietary facility. (Appellants brief pages 7-10.)

The Appellant also asserts that the OMIG incorrectly applied 10 NYCRR 86-2.19(g)(2)(iii) because, despite the OMIG’s contention to the contrary, where the language is “listed” does matter⁴; and 86-2.19 only governs voluntary and public facilities. The Appellant is a proprietary facility and is governed by 10 NYCRR 86-2.21, per its title, capital reimbursement for proprietary facilities. The Appellant additionally objects to the use of 10 NYCRR 86-2.19(g)(2) because even if 86-2.19 did apply, the OMIG disregards the qualifying factors of subdivision (g)(1) before applying subdivision (g)(2). Likewise, the Appellant contends that the OMIG has misinterpreted and misapplied 86-2.19(f) as

⁴ “In its Final Audit Report, OMIG addressed the provider’s response to the Draft Audit Report on this point. In its rationale confirming the application of the voluntary regulation to a proprietary facility, OMIG states “[a]lthough this regulation is listed under the voluntary facilities category, the substance of the regulation is what matters, rather than where it is listed.” (OMIG Exhibit H, Attachment F, pages 1-2).” (Appellant brief, page 14.)

well. (Appellants brief pages 13-17.)

Jesse Frommer, a healthcare consultant, testified on behalf of the Appellant. Mr. Frommer has a background in auditing of long-term care facilities and working on Medicaid rate appeals for clients. (T. 100-101, 108-109.) Mr. Frommer testified that he was involved with preparing the MATP calculation submitted to the Department by the Appellant in 2018-2019, and that based upon his discussions with the Department, he included land in the MATP calculation. Mr. Frommer stated that prior to recent OMIG audits which he became aware of, in his experience, land was included in the MATP calculation for proprietary facilities for the purpose of return of equity. (T. 108-109.)

Mr. Frommer testified that there are "a very different set of reimbursement rules for depreciation for the voluntaries and for return of equity for the proprietaries." (T. 104.) Mr. Frommer stated that in [10 NYCRR] 86-2.21(a)(4) "equity" means cash or other assets, net of liabilities, invested by a facility or its operator in land, building and non-moveable equipment; land is included in equity which is reimbursed via return of equity. (T. 104-105.) Mr. Frommer disagreed with the OMIG's use of Medicare rules (PRM-1)⁵ because Medicaid is not silent but "speak[s] very loudly on this issue" and the regulations are very descriptive, *i.e.*, 10 NYCRR 86-2.19 addresses voluntary facilities and in 2.19(g)(2)(iii), removes land from the MATP, while 10 NYCRR 86-2.21(i)(2)(iii) addressing proprietary facilities, does not. (T. 113-115.)

The Appellant notes that the issue herein is one of first impression, that the regulations in dispute are over 40 years old and that in the nearly 20 years that the OMIG

⁵ Referencing 10 NYCRR 86-2.17(a) which states: "Except as otherwise provided in this Subpart,[86-2] or in accordance with specific determination by the commissioner, allowable costs shall be determined by the application of the principles of reimbursement developed for determining payments under title XVIII of the Federal Social Security Act (Medicare) program [PRM-1]."

has existed, this was the first hearing on an audit disallowing the inclusion of land in the MATP. The OMIG's witness speculated that perhaps it was due to a provider failing to bring this issue to hearing, however, the Appellant notes that the OMIG admitted that this audit was the first such audit of its kind. (See, T. 51-52.) The Appellant asserts that these facts undermine the credibility of the OMIG's position that "land has never been allowed in the MATP". (Appellant's brief pages 17-18.)

The Appellant challenges the credibility of its subpoenaed witness, Cynthia Treis, a retired healthcare fiscal analyst for the Department. Ms. Treis testified that her job for the Department included setting the capital component of rates for, and overseeing, nursing homes. As part of her duties, she would calculate the MATP when a nursing home was sold, and she calculated the MATP for the Appellant, relying on PHL § 2808, 10 NYCRR 86-2, and the PRM-1. Ms. Treis stated that an "equity contribution" is an amount determined by the Department that the facility has to contribute when acquiring the home, which is not part of the mortgage. Ms. Treis explained that voluntary facilities are allowed depreciation on depreciable assets minus their equity contribution, and interest as allowable costs; proprietary facilities receive "return of equity" on assets that have not been encumbered by an allowable mortgage, minus their equity contribution, and that the "return of equity" applies to the buildings and additional assets added which are not encumbered by a mortgage. (T. 83-87.)

Ms. Treis testified that when she calculated the MATP for the Appellant she mistakenly added the cost of the land, that the land should not be included in equity calculations because it is not a depreciable asset, it was not allowable through the PRM-1, and because its cost was usually less than or equal to the equity requirement, which

was not to be “returned”. (T. 88-89.) Ms. Treis stated that she did not know of a time when land was included in the MATP and if it was, it was done so mistakenly. (T 89.) The Appellant challenges the credibility of Ms. Treis’ statement in this regard, noting that Ms. Treis was questioned regarding five additional, unrelated facilities, for which the MATP calculation done by the Department, likely herself, all of which included the cost of the land in the MATP, and for which Ms. Treis stated that the inclusion of the land in each of those calculations, just like in this case, was by mistake. (T. 91-96.)

The Appellant notes that Ms. Treis’ testimony “stands in stark contrast to the far more plausible testimony of Mr. Frommer . . . an accountant with four decades of experience in nursing home rate reimbursement . . . [who] stated that, in his experience, it was common practice and policy of DOH to include the cost of land in its MATP calculation”. (Appellant brief page 19, citing T. 116.)

For all the reasons proffered by the Appellant, and finding the testimony of Mr. Frommer credible, the assertion by the Department and the OMIG that inclusion of the cost of the land in the Appellant’s MATP was a “mistake” is rejected.

10 NYCRR 86-2.19 v 2.21

10 NYCRR 86-2.19 entitled *Depreciation for voluntary and public residential health care facilities*, allows depreciation based on approved historical cost of buildings, fixed equipment and capital improvements as a proper element of costs for voluntary and public residential health care facilities. 10 NYCRR 86-2.19(a). Subsection (g) provides a waiver of subsection (a) for facilities that meet the qualifications set forth in 86-2.19(g)(1). 10 NYCRR 86-2.19(g)(2)(iii) does not apply to a facility that is not qualified under its subsection (1).

Similarly, 10 NYCRR 86-2.21 entitled *Capital cost reimbursement for proprietary residential health care facilities*, allows for capital cost reimbursement by way of return of equity for proprietary facilities. 10 NYCRR 86-2.21(e). Subsection (i) provides a waiver of subsection (e) for facilities that meet the qualifications set forth in 86-2.19(e)(1). 10 NYCRR 86-2.21(e)(2)(iii) does not apply to a facility that is not qualified under its subsection (1).

10 NYCRR 86-2.19 and 86-2.21 were amended in 1981 to add subsections 86-2.19(g) and 2.21(i)⁶ for the purpose of reimbursing facilities for assumable mortgage financing where savings could be demonstrated. The regulatory impact statement submitted with the proposed agency action seeking to amend these regulations noted the authority to amend the regulations was contained in PHL § 2808, and stated a clear intention to address voluntary and proprietary facilities separately:

In the case of *voluntary institutions*, the reimbursement schedule is set up to handle debt service and not on the basis of depreciation. This methodology would defer the Medicaid cash flow to the facility, which would normally be funded in a depreciation account for future debt service requirements. In the case of *proprietary institutions*, the formula would remain basically the same, however, payment limitations would be waived in order to accommodate the less expensive financing arrangement.

(Exhibit 10; *Proposed Agency Action Re: Residential Health Care Facility Capital Cost Reimbursement for Assumable Mortgage Financing*, I.D. No. HLT-38-80-00008-P, *Regulatory Impact Statement*, David L. Smith, Director, Bureau of Administrative Analysis, Office of Health Systems Management, N.Y-5, Department of Health, Governor Nelson A. Rockefeller Empire State Plaza, Rm. 1015, Albany, NY 12237, September 17, 1980.) (Emphasis added.)

⁶ It is not alleged that 86-2.21(i) is applicable to or controlling in this matter. References to this portion of 86-2.21 are made by way of background /comparison only.

Contrary to Ms. Masters' opinion that the language of 86-2.19(g) which addresses return of equity "could not be addressing the voluntary facility" because "voluntary facilities do not receive return of equity" (T. 58-59), the impact statement clearly explains the decision of the drafters to add the language "except for that portion which is attributable to the acquisition of the land" in 10 NYCRR 86-2.19(g)(2)(iii) was intentional and purposeful to allow return of equity for a *voluntary* facility when the conditions set forth in 86-2.19(g)(1) are present. (*Emphasis added.*) Nothing in the language of the amendment to the regulation or the regulatory impact statement itself states, or even implies, that 86-2.19(g)(2)(iii) was intended to establish different MATP rules for a proprietary facility when it purchases from a voluntary as opposed to a proprietary owner: the OMIG's assertion to the contrary, and its reliance upon this subsection as a basis to remove the land acquisition costs from the MATP herein, is incorrect. The Appellant is *not* a voluntary facility, nor has it been alleged that it qualifies under 86-2.19(g)(1). 10 NYCRR 86-2.19(g)(2)(iii) does not apply to the Appellant's return of equity component of the capital portion of its Medicaid rate.

10 NYCRR 86-2.21 entitled *Capital cost reimbursement for proprietary residential health care facilities* is the applicable regulation for the Appellant, who *is* a proprietary facility. 86-2.21(e)(4) allows a "return of equity" factor in the capital cost component for a proprietary facility. 10 NYCRR 86-2.21(e)(3) states in pertinent part "[t]he capital indebtedness of a facility, to the extent that the original principal of such debt does not exceed the *initial allowed facility cost* of the facility, shall be recognized . . . " as set forth therein. (*Emphasis added.*) Initial allowed facility cost includes costs "attributable to the *acquisition of land* and the construction, acquisition or renovation of building and

nonmovable equipment.” (*Emphasis added.*) 10 NYCRR 86-2.21(a)(6). This regulation, applicable to the Appellant, provides for the return of equity, which includes amortization of the cost of land. This is consistent with the regulatory definition of equity as “all cash or other assets, net of liabilities, invested by a facility or its operator in *land*, building and nonmovable equipment,. . .” 10 NYCRR 86-2.21(a)(4) (*emphasis added*). The term “investment in land” is not limited to the costs of land improvements as the OMIG asserts (See, T. 56-57.).

As the regulations at 10 NYCRR 86-21 fully address the MATP issue for a proprietary facility, application of the PRM-1 is unnecessary. In addition, the cited PRM-1 sections 104.6 and 104.10E are inapplicable herein regardless as those sections address providers who receive reimbursement including depreciation, of which the Appellant is not one.

The Appellant has established that the OMIG’s determination to remove land from the MATP calculation, as detailed in the FAR’s disallowance 2, was incorrect.

Mortgage Expenses

The OMIG determined to adjust the Appellant’s capital costs as explained in disallowance 5 for certain mortgage expense amortization. The OMIG found that the Provider did not provide sufficient documentation to substantiate reported mortgage expense amortization. Ms. Masters testified that the Appellant did not supply documentation showing the mortgage associated with these expenses or what costs were being amortized, and based upon PRM-1 §§ 2300 and 2304 these expenses were disallowed for lack of supporting documentation. (Exhibit H, bates page 312; T. 46-47.) The Appellant did not address this disallowance at the hearing or in its brief.

Building and Fixed Equipment Depreciation

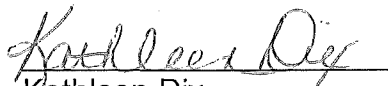
The OMIG determined to adjust the Appellant's capital costs, as explained in disallowances 2 and 7 of the FAR for cost year 2015 asset additions. "Furthermore, the records reviewed indicate that certain asset additions reported in cost year 2015 were related to a private house and apartments, and are not related to patient care at the Facility. Consequently, disallowances were necessary." (Exhibit H, bates pages 310 and 311.) Ms. Masters testified that upon review of the Appellant's documentation the disallowed expenses did not pertain to the nursing home facility but were for an apartment building and a private house and were disallowed pursuant to 10 NYCRR 86-2.17(d) because they were not related to patient care at the facility. (T. 33-39, 47-49.) The Appellant did not address these disallowances at the hearing or in its brief.

DECISION

1. The OMIG's audit report property expense **disallowance 2** is modified, to reverse the OMIG's determination to remove the cost of land from the calculation of the MATP. The remainder of the property expense disallowance 2 is correct and is affirmed.
2. The OMIG's audit report property expense disallowances 5 and 7 are correct and are affirmed.

This decision is made by Kathleen Dix, Bureau of Adjudication, who has been designated to make such decisions.

DATED: Menands, New York
August 20, 2025


Kathleen Dix
Administrative Law Judge

Elliot Smeltzer, Esq.
NYS Office of the Medicaid Inspector General
800 North Pearl Street
Albany, New York 12204
elliot.smeltzer@omig.ny.gov

Matthew Leonardo, Esq.
Hinman Straub
121 State Street
Albany, New York 12207-1693
mleonardo@hinmanstraub.com

Yosef Spierer, Administrator
Riverdale SNF, LLC
(a/k/a Schervier Nursing Care Center)
2975 Independence Avenue
Bronx, New York 10463