



Office of the
Medicaid Inspector
General

ANDREW M. CUOMO
Governor

DENNIS ROSEN
Acting Medicaid Inspector General

February 10, 2016

[REDACTED]
Wegmans Pharmacy #092
1577 Military Road
Niagara Falls, New York 14304

Final Audit Report
County Demonstration Project
Niagara County
Audit #14-2356
Provider ID # [REDACTED]

Dear [REDACTED]:

This letter will serve as our final audit report of the recently completed review of payments made to Wegmans Pharmacy #092 under the New York State Medicaid Program. Since you did not respond to our draft audit report dated October 7, 2015, the findings in the final audit report are identical to those in the draft audit report.

The New York State Department of Health is responsible for the administration of the Medicaid program. As part of this responsibility, 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 by the Departments of Health and Education [Titles 8, 10, and 18 of the Official Compilation of Codes, Rules and Regulations of the State of New York (8 NYCRR, 10 NYCRR, 18 NYCRR)] and the Medicaid Management Information System (MMIS) Provider Manuals.

Pharmacy is a professional practice, which includes a number of activities that are necessary for the provision of drugs for patients as ordered by persons authorized under State law to prescribe drugs. Pharmacies, which are licensed and currently registered by the New York State Board of Pharmacy, Department of Education, may dispense drugs and other medical/surgical supplies. The pharmacy must comply with all applicable provisions of State Law including Article 137 of the Education Law, Articles 1 and 33 of the Public Health Law, and the Pharmacy Guide to Practice (Pharmacy Handbook) issued by the Department of Education. The specific standards and criteria for pharmacies are outlined in Title 10 NYCRR Parts 80 and 85.20-22 and Title 18 NYCRR Section 505.3. The MMIS Provider Manual for Pharmacy also provides program guidance for claiming Medicaid reimbursement for pharmacy services.

A review of payments to Wegmans Pharmacy #092 for pharmacy services paid by Medicaid for Niagara County recipients January 1, 2009, through December 31, 2011, was recently completed. During the audit period, \$1,107,240.29 was paid for 18,627 services rendered. This review consisted of a random sample of 100 services with Medicaid payments of \$4,303.14. The purpose of this audit was to verify that: prescriptions were properly ordered by a qualified practitioner; the pharmacy had sufficient documentation to substantiate billed services; appropriate formulary codes were billed; patient related records contained the documentation required by the regulations; and claims for payment were submitted in accordance with New York State laws, Department regulations and the Provider Manuals for Pharmacy.

Wegmans Pharmacy #092's failure to comply with Titles 8, 10, and/or 18 of the Official Compilation of Codes, Rules and Regulations of the State of New York (NYCRR), the MMIS Provider Manual for Pharmacy, and the Pharmacy Guide to Practice resulted in a total sample overpayment of \$587.76.

The statistical sampling methodology employed allows for extrapolation of the sample findings to the universe of cases (18 NYCRR Section 519.18). The mean per unit point estimate of the amount overpaid is \$109,482. The lower confidence limit of the amount overpaid is \$5,594. We are 95% certain that the actual amount of the overpayment is greater than the lower confidence limit (Exhibit I). This audit may be settled through repayment of the lower confidence limit amount of \$5,594.

The following detailed findings reflect the results of our audit. This audit report incorporates consideration of any additional documentation and information presented in response to the draft audit report dated October 7, 2015. Since you did not respond to the draft audit report, the findings remain the same.

DETAILED FINDINGS

In addition to any specific detailed findings, rules and/or regulations which may be listed below, the following regulations pertain to all audits:

Regulations state: "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

Regulations state: "Fee-for-service providers. (1) All providers ... must prepare and maintain contemporaneous records demonstrating their right to receive payment . . . 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)

Regulations require that bills for medical care, services and supplies contain patient name, case number and date of service; itemization of the volume and specific types of care, services and supplies provided; the unit price and total cost of the care, services and supplies provided; and a dated certification by the provider that the care, services and supplies itemized have been in fact furnished; that the amounts listed are in fact 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)

Regulations state: "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)

Regulations state: "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

Regulations state: "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)

Regulations state: "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)

Regulations state: "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)

1. Missing DEA Number on Controlled Substance Prescription

Regulations state, for Schedule II and certain other substances, that the official prescription shall contain the following: "the printed name, address, Drug Enforcement Administration registration number, telephone number and handwritten signature of the prescribing practitioner..."

10 NYCRR Section 80.67(b)(2)

Regulations state, for Schedule II controlled substances, that "When an official New York State prescription prepared by a practitioner is incomplete, the practitioner may orally furnish the missing information to the pharmacist and authorize him or her to enter such information on the prescription. The pharmacist shall write the date he or she received the oral authorization on the prescription and shall affix his or her signature. This procedure shall not apply to unsigned or undated prescriptions or where the name and/or quantity of the controlled substance is not specified or where the name of the ultimate user is missing. The pharmacist is not required to obtain authorization from the practitioner to enter the patient's address, sex or age if the pharmacist obtains this information through a good-faith effort."

10 NYCRR Section 80.67(g)

Regulations state, for Schedule III, IV, and V controlled substances, that the official prescription shall contain the following: "the printed name, address, Drug Enforcement Administration registration number, telephone number and handwritten signature of the prescribing practitioner..."
10 NYCRR Section 80.69(b)(2)

Regulations state, for Schedule III, IV, and V controlled substances, that "When a prescription prepared by a practitioner is incomplete, the practitioner may orally furnish the missing information to the pharmacist and authorize him or her to enter the missing information on the prescription. The pharmacist shall write the date he or she received the oral authorization on the prescription and shall affix his or her signature. This procedure shall not apply to unsigned or undated prescriptions or where the name and/or quantity of the controlled substances is not specified or where the name of the ultimate user is missing. The pharmacist is not required to obtain authorization from the practitioner to enter the patient's address, sex or age if the pharmacist obtains the information through a good-faith effort."
10 NYCRR Section 80.69(l)

In 1 instance the DEA number was missing on the controlled substance prescription. This resulted in a sample overpayment of \$315.58 (Exhibit II).

2. Invalid Prescription/Fiscal Order

Regulations state: "...In addition to the requirements of section sixty-eight hundred ten of the education law or article thirty-three of this chapter, all prescriptions written in this state by a person authorized by this state to issue such prescriptions shall be on serialized official New York state prescription forms provided by the department..."
NYS Public Health Law Article 1 Title 2 Section 21

Regulations state: "By enrolling the provider agrees...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" and "that the information provided in relation to any claim for payment shall be true, accurate and complete."
18 NYCRR Sections 504.3(f) and (h)

Regulations state: "Drugs may be obtained only upon the written order of a practitioner, except for telephone and electronic orders for drugs filled in compliance with this section and 10 NYCRR Part 910..."
18 NYCRR Section 505.3(b)(1)

Regulations state: "A telephone order must be recorded by the pharmacy in the format required by subdivision (4) of section 6810 of the Education Law, recording the time of the call and the initials of the person taking the call and the dispenser, prior to dispensing the drug..."
18 NYCRR Section 505.3(b)(5)

Regulations state: "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)

Regulations state: "Written order or fiscal order are terms which are used interchangeably in this section and refer to any original, signed written order of a practitioner including any faxed transmitted order which requests a pharmacy to provide a drug to a medical assistance recipient. All written orders and fiscal orders shall comply with the provisions of Section 21 of the Public Health Law and regulations promulgated thereunder or contained in this section including but not limited to requirements for prescribing brand necessary drugs."
18 NYCRR Section 505.3(a)(6)

In 5 instances pertaining to 5 patients, the prescription/fiscal order was invalid. In 5 instances, the prescription was not written on a serialized Official New York State prescription form (Sample #53, #62, #65, #71, and #94). This resulted in a sample overpayment of \$169.43 (Exhibit III).

3. **Prescriber's Signature Missing on Prescription/Fiscal Order**

State law requires: "Every prescription written in this state by a person authorized to issue such prescription shall be on prescription forms containing one line for the prescriber's signature. The prescriber's signature shall validate the prescription."

Education Law Article 137 Section 6810.6(a)

State Law established: "...The imprinted or stamped name shall not be employed as a substitute for, or fulfill any legal requirement otherwise mandating that the prescription be signed by the prescriber."

Education Law Article 137 Section 6810.8

State Law establishes: "It shall be a class A misdemeanor for...Any person to forge, counterfeit, simulate, or falsely represent, or without proper authority using any mark, stamp, tag, label, or other identification device authorized or required by rules and regulations promulgated under the provisions of this article..."

Education Law Article 137 Section 6811.15

The Rules of the Board of Regents state that unprofessional conduct in the practice of pharmacy includes "dispensing a written prescription which does not bear . . . the name, address, telephone number, profession and signature of the prescriber; . . ."

8 NYCRR Section 29.7(a)(1)

Regulations state: "The terms written order or fiscal order are used interchangeably in this section and mean any original, signed written order of a practitioner which requests durable medical equipment, prosthetic or orthotic appliances and devices, medical/surgical supplies, or orthopedic footwear."

18 NYCRR Section 505.5 (a)(8)

Regulations state: "Written order or fiscal order . . . refer[s] to any original, signed written order of a practitioner" including any faxed transmitted order "which requests a pharmacy to provide a drug to a medical assistance recipient."

18 NYCRR Section 505.3(a)(6)

Medicaid policy states: "All prescriptions and fiscal orders must bear . . . [the] signature of the prescriber who has written or initiated the prescription or fiscal order."

NYS Medicaid Program Pharmacy Manual Policy Guidelines Version 2006-1, Section I

In 3 instances pertaining to 3 patients, the prescriber's signature was missing on the prescription/fiscal order. This resulted in a sample overpayment of \$96.75 (Exhibit IV).

4. **Pharmacy Billed in Excess of Prescribed Quantity**

State law establishes: "Any person, who . . . puts up a greater or lesser quantity of any ingredient specified in any such prescription, order or demand than that prescribed, ordered or demanded, except where required pursuant to paragraph (g) of subdivision two of section three hundred sixty-five-a of the social services law . . . is guilty of a misdemeanor."

Education Law Article 137 Section 6816.1.a

Regulations state: "By enrolling the provider agrees...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" and "that the information provided in relation to any claim for payment shall be true, accurate and complete." *18 NYCRR Sections 504.3(f) and (h)*

Medicaid policy states that quantities for prescription drugs shall be dispensed in the amount prescribed, taking into consideration those drugs should be ordered in a quantity consistent with the health needs of the recipient and sound medical practice. For non-prescription drug and medical/surgical supply orders, if the ordering practitioner requests a quantity that does not correspond to the pre-packaged unit, the pharmacist may supply the drug in the pre-packaged quantity that most closely approximates the ordered amount.

NYS Medicaid Program Pharmacy Manual Policy Guidelines Version 2006-1, Section I

In 1 instance the pharmacy billed for a quantity that exceeded the prescribed quantity. This resulted in a sample overpayment of \$6.00 (Exhibit V).

Total sample overpayments for this audit amounted to \$587.76.

Additional reasons for disallowance exist regarding certain findings. These findings are identified in Exhibit VI.

In accordance with 18 NYCRR Part 518 which regulates the collection of overpayments, your repayment options are described below. If you decide to repay the lower confidence limit amount of \$5,594, one of the following repayment options must be selected within 20 days from the date of this letter:

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, B.A.M.
GNARESP Corning Tower, Room 2739
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 50% withhold after 20 days until the agreement is established. 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. In addition, if you receive an adjustment in your favor while you owe funds to the State, such adjustment will be applied against any amount owed. If you wish to enter into a repayment agreement, please contact the Bureau of Collections Management within 20 days at 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 you choose not to settle this audit through repayment of the adjusted lower confidence limit, you have the right to challenge these findings by requesting an administrative hearing where the OMIG would seek and defend the meanpoint estimate of \$109,482. As allowed by state regulations, you must make your request for a hearing, in writing, within sixty (60) days of the date of this report 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 Office of Counsel at [REDACTED]

Issues you may raise shall be limited to those issues relating to determinations contained in the final audit report. Your hearing request may not address issues regarding the methodology used to determine the rate, or any issue that was raised at a proceeding to appeal a rate determination.

At the hearing you have the right to:

- a) be represented by an attorney or other representative, or to represent yourself;
- b) present witnesses and written and/or oral evidence to explain why the action taken is wrong; and
- c) cross examine witnesses of the Department of Health and/or the OMIG.

The OMIG reserves the right to conduct further reviews of your participation in the Medicaid Program, take action where appropriate, and recover monies owed through the initiation of a civil lawsuit or other legal mechanisms including but not limited to the recovery of state tax refunds pursuant to Section 206 of the Public Health Law and Section 171-f of the State Tax Law.

Should you have any questions, please contact me at [REDACTED]

Thank you for the cooperation and courtesy extended to our staff during this audit.

Sincerely,

[REDACTED]

Division of Medicaid Audit
Office of the Medicaid Inspector General

[REDACTED]
Enclosure

cc: [REDACTED]
[REDACTED]

CERTIFIED MAIL # [REDACTED]
RETURN RECEIPT REQUESTED

[REDACTED]

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

██████████
WEGMANS PHARMACY #092
1577 MILITARY ROAD
NIAGARA FALLS, NY 14304

PROVIDER ID # ██████████

AUDIT #14-2356

AMOUNT DUE: \$5,594

AUDIT	<input checked="" type="checkbox"/> PROVIDER
	<input type="checkbox"/> RATE
	<input type="checkbox"/> PART B
TYPE	<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:

██████████
New York State Department of Health
Medicaid Financial Management, B.A.M.
GNARESP Corning Tower, Room 2739
File #14-2356
Albany, New York 12237-0048

Thank you for your cooperation.

EXHIBIT I

**WEGMANS PHARMACY #092
PHARMACY SERVICES AUDIT
AUDIT #14-2356
AUDIT PERIOD: 01/01/09 – 12/31/11**

EXTRAPOLATION OF SAMPLE FINDINGS

Total Sample Overpayments	\$	587.76
Services in Sample		100
Overpayments Per Sampled Service	\$	5.8776
Services in Universe		18,627
Meanpoint Estimate	\$	109,482
Lower Confidence Limit	\$	5,594

WEGMANS PHARMACY #092

MMIS # / NPI #: [REDACTED]

Audit #: 14-2356

Missing DEA Number on Controlled Substance Prescription

Sample #	Date of Service	Formulary Code	Amount Disallowed
100	10/27/09	63459020101	\$315.58
Total Services:	1		\$315.58

WEGMANS PHARMACY #092

MMIS # / NPI #: [REDACTED]

Audit #: 14-2356

Invalid Prescription/Fiscal Order

Sample #	Date of Service	Formulary Code	Amount Disallowed
53	07/03/10	65862015699	\$17.10
62	03/17/10	00430053014	\$66.03
65	01/03/11	00591071860	\$10.87
71	05/28/10	50111099001	\$21.18
94	06/21/10	99999999999	\$54.25
Total Services:	<u>5</u>		<u>\$169.43</u>

WEGMANS PHARMACY #092

MMIS # / NPI #: [REDACTED]

Audit #: 14-2356

Prescriber's Signature Missing on Prescription/Fiscal Order

Sample #	Date of Service	Formulary Code	Amount Disallowed
36	03/19/11	53746046505	\$4.33
57	11/22/10	00781145210	\$3.00
73	05/04/10	00378200493	\$89.42
Total Services:	3		\$96.75

WEGMANS PHARMACY #092

MMIS # / NPI #: [REDACTED]

Audit #: 14-2356

Pharmacy Billed in Excess of Prescribed Quantity

Sample #	Date of Service	Formulary Code	Amount Disallowed
6	04/07/09	00093104810	\$6.00
Total Services:	1		\$6.00

**WEGMANS PHARMACY #092
PHARMACY SERVICES AUDIT
AUDIT #14-2356
AUDIT PERIOD: 01/01/09 – 12/31/11**

ADDITIONAL FINDINGS PERTAINING TO SAMPLED ITEMS

<u>Sample #</u>	<u>Primary Finding</u>	<u>Other Findings Pertaining to Sampled Item</u>
53	Invalid Prescription/Fiscal Order	Prescriber's Signature Missing on Prescription/Fiscal Order
57	Prescriber's Signature Missing on Prescription/Fiscal Order	*Invalid Fax Prescription/Fiscal Order – Missing the Fax Source Number
62	Invalid Prescription/Fiscal Order	Prescriber's Signature Missing on Prescription/Fiscal Order
65	Invalid Prescription/Fiscal Order	Prescriber's Signature Missing on Prescription/Fiscal Order
71	Invalid Prescription/Fiscal Order	Prescriber's Signature Missing on Prescription/Fiscal Order

* **Invalid Fax Prescription/Fiscal Order – Missing the Fax Source Number**

Regulations state: "...In addition to the requirements of section sixty-eight hundred ten of the education law or article thirty-three of this chapter, all prescriptions written in this state by a person authorized by this state to issue such prescriptions shall be on serialized official New York state prescription forms provided by the department..."

NYS Public Health Law Article 1 Title 2 Section 21

Regulations state that by enrolling the provider agrees to comply with the rules, regulations and official directives of the department.

18 NYCRR Section 504.3(i)

Regulations state: "Drugs may be obtained only upon the written order of a practitioner, except for telephone and electronic orders for drugs filled in compliance with this section and 10 NYCRR Part 910."

18 NYCRR Section 505.3(b)(1)

Regulations state: "Written order or fiscal order are terms which are used interchangeably in this section and refer to any original, signed written order of a practitioner including any faxed transmitted order which requests a pharmacy to provide a drug to a medical assistance recipient. All written orders and fiscal orders shall comply with the provisions of Section 21 of the Public Health Law and regulations promulgated thereunder or contained in this section including but not limited to requirements for prescribing brand necessary drugs."

18 NYCRR Section 505.3(a)(6)

Medicaid policy states: "...The source fax number must be clearly visible on the fax that is received."

NYS Medicaid Program Pharmacy Manual Policy Guidelines Version 2006-1, Section II