NEW YORK STATE | Office of the Medicaid Inspector General

ANDREW M. CUOMO
Governor

DENNIS ROSEN
Medicaid Inspector General

July 13, 2016

[redacted]
Pro Life Apothecary Corporation
d/b/a Vitahealth Apothecary
1235 First Avenue
New York, New York 10065-6311

Re: Final Audit Report
Audit #: 16-2473
Provider ID #: [redacted]

Dear [redacted]

The New York State Office of the Medicaid Inspector General (OMIG) has reviewed Report 2013-S-59 from the Office of the State Comptroller (OSC), which examined Medicaid payments made to Pro Life Apothecary Corp. dba Vitahealth Apothecary for controlled substances from January 1, 2009, through December 31, 2013 (the "Review period"). In accordance with Section 517.5 of Title 18 of the Official Compilation of Codes, Rules, and Regulations of the State of New York (NYCRR), this notice shall serve as our final audit report of the recently completed review of payments made to Pro Life Apothecary Corp. dba Vitahealth Apothecary under the New York State Medicaid Program.

BACKGROUND, PURPOSE, AND SCOPE

The New York State Department of Health (DOH) is responsible for the administration of the Medicaid program. As part of this responsibility, the 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 NYCRR) and the Medicaid Management Information System (MMIS) Provider Manuals.

OSC is responsible for overseeing the fiscal affairs of State agencies, public authorities and local government agencies, as well as their compliance with relevant statutes and their observance of good business practices. This fiscal oversight is accomplished, in part, through audits performed pursuant to authority under Article V, Section 1 of the State Constitution and Article II, Section 8 of the State Finance Law. OSC audits identify opportunities for improving operations, strategies for reducing costs, and strengthening controls.

The New York State Controlled Substances Act (Public Health Law, Article 33) limits the quantities of controlled substances that pharmacies can dispense when prescriptions are ordered by telephone or facsimile. These supply limits vary depending on the schedule of the controlled substance.

The purpose of this audit was to identify overpayments for controlled substance pharmacy claims that exceeded the dispensing limits allowed by the New York State Controlled Substances Act for telephone or facsimile prescriptions. The audit covers claims paid by Medicaid from January 1, 2009, through December 31, 2013 (the "Review period").

OMIG has determined that the Pro Life Apothecary Corp. dba Vitahealth Apothecary's failure to comply with New York State Social Services Law and Titles 8, 10 and/or 18 of the Official Compilation of Codes, Rules and Regulations of the State of New York (NYCRR) resulted in a total overpayment of $249.90.

REGULATIONS OF GENERAL APPLICATION

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)*

AUDIT FINDINGS

The following audit 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 May 20, 2016.

The attached Bridge Schedule indicates any changes to the findings as a result of your response.

Billed in Excess of Dispensing Limits for Controlled Substances Ordered via Telephone or Facsimile

State Law Establishes: "Emergency oral prescriptions for schedule II drugs and certain other controlled substances. 1. In an emergency situation, as defined by rule or regulation of the department, a practitioner may orally prescribe and a pharmacist may dispense to an ultimate user controlled substances in schedule II and those schedule III or schedule IV controlled substances as the commissioner may, by regulation, require; provided however the pharmacist shall: (a) contemporaneously reduce such prescription to writing or to the extent authorized by federal requirements, to an electronic record;... 2. No oral prescription shall be filled for a quantity of controlled substances which would exceed a five day supply if the substance were used in accordance with the directions for use..."
NYS Public Health Law Article 33 Title 4 Section 3334

State Law Establishes: "Oral prescriptions schedule III, IV and V substances. 1. Except as provided in section thirty-three hundred thirty-four of this title, a practitioner may orally prescribe and a pharmacist may dispense to an ultimate user controlled substances in schedules III, IV or V provided however the pharmacist shall: (a) contemporaneously reduce such prescription to writing or, to the extent authorized by federal requirements, an electronic record;... 2. No oral prescription shall be filled for a quantity of controlled substances which would exceed a five day supply if the controlled substance were used in accordance with the directions for use, except that with respect to a schedule IV substance such prescription shall not exceed a thirty-day supply or one hundred dosage units, whichever is less; provided, however, that this provision shall not apply to any schedule IV controlled substance limited to a five day supply by section thirty-three hundred thirty-four of this title..."
NYS Public Health Law Article 33 Title 4 Section 3337

Regulations state: "No oral prescription shall be filled for a quantity of controlled substances which would exceed a five-day supply if the substance were used in accordance with the directions for use."
10 NYCRR Section 80.68(b)

Regulations state: "No oral prescription shall be filled for a quantity of controlled substances which would exceed a five-day supply, or with respect to schedule IV substances a 30-day supply or 100 dosage units whichever is less, if the substances were used in accordance with the directions for use; provided, however, that this provision shall not apply to any schedule IV controlled substance limited to a five day supply by section 80.68 of this Part." *10 NYCRR Section 80.70(b)*

Official directive states: "Can a pharmacist dispense faxed official prescription for a controlled substance? Yes. Under the same parameters as dispensing an oral prescription. Except for in the case of a schedule IV non-benzodiazepine substance, the quantity on a faxed prescription is limited to a 5 days supply and the practitioner must send the original official prescription to the pharmacy within 72 hours."

NYS Department of Health, Bureau of Narcotics, Questions and Answers for Pharmacists Regarding the New Official Prescription Program, April 25 2006

Official directive states: "Faxed Official Prescriptions for Controlled Substances...All other faxed prescriptions for controlled substances must comply with requirement for oral prescriptions for controlled substances."

NYS Department of Health, Bureau of Narcotics, Letter to All New York State Pharmacies on Controlled Substance and Official Prescription Program Update, January 2007

In 13 claims, pertaining to 7 patients, the controlled substance claim exceeded the allowed dispensing limit. This resulted in an overpayment of $249.90 (Exhibit 1).

PROVIDER RIGHTS

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 total overpayment amount of $249.90, 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:

New York State Department of Health
Medicaid Financial Management
GNARESP Corning Tower, Room 2739
File #16-2473
Albany, New York 12237

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
Phone #:
Fax#:

If you choose not to settle this audit through repayment of the total overpayment, you have the right to challenge these findings by requesting an administrative hearing where the OMIG would seek and defend the total overpayment of $249.90. 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, NY 12204

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

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.

If you have any questions, or should you wish to make arrangements to settle this audit, please contact me at

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

Division of Medicaid Audit, Albany Office
Office of the Medicaid Inspector General

NEW YORK STATE
OFFICE OF THE MEDICAID INSPECTOR GENERAL
REMITTANCE ADVICE

NAME AND ADDRESS OF AUDITEE
[redacted]
Pro Life Apothecary Corporation
d/b/a Vitahealth Apothecary
1235 First Avenue
New York, New York 10065-6311

PROVIDER ID # [redacted]

AUDIT #16-2473

AUDIT TYPE	[X] PROVIDER [ ] RATE [ ] PART B [ ] OTHER:

AMOUNT DUE: $249.90

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:

[redacted]
New York State Department of Health
Medicaid Financial Management, B.A.M.
GNARESP Corning Tower, Room 2739
Audit #16-2473
Albany, New York 12237-0048

Thank you for your cooperation.

EXHIBIT 1

FINAL DISPOSITION FOR SAMPLED SELECTIONS CHANGED FROM DRAFT TO FINAL AUDIT REPORT

Pro Life Apothecary Corp. dba Vitahealth Apothecary
OSC AUDIT# 2013-S-59 OMIG AUDIT# 16-2473 PROVIDER# [redacted]
AUDIT PERIOD: 01/01/2009 - 12/31/2013

BRIDGE SCHEDULE

DATE OF SERVICE	FINDING	DRAFT REPORT AMOUNT DISALLOWED	FINAL REPORT AMOUNT DISALLOWED	CHANGE
2/21/2013	Billed Excess Dispensing Limits for Controlled Substance	$31.48	$31.48	$0.00
1/17/2013	Billed Excess Dispensing Limits for Controlled Substance	$31.48	$31.48	$0.00
10/30/2012	Billed Excess Dispensing Limits for Controlled Substance	$5.40	$5.40	$0.00
7/26/2012	Billed Excess Dispensing Limits for Controlled Substance	$107.66	$0.00	($107.66)
7/12/2012	Billed Excess Dispensing Limits for Controlled Substance	$388.05	$0.00	($388.05)
7/6/2012	Billed Excess Dispensing Limits for Controlled Substance	$36.07	$36.07	$0.00
5/3/2012	Billed Excess Dispensing Limits for Controlled Substance	$36.07	$36.07	$0.00
4/9/2012	Billed Excess Dispensing Limits for Controlled Substance	$4.68	$4.68	$0.00
8/4/2011	Billed Excess Dispensing Limits for Controlled Substance	$5.15	$5.15	$0.00
7/19/2011	Billed Excess Dispensing Limits for Controlled Substance	$86.87	$0.00	($86.87)
7/7/2011	Billed Excess Dispensing Limits for Controlled Substance	$31.06	$31.06	$0.00
5/24/2011	Billed Excess Dispensing Limits for Controlled Substance	$3.71	$3.71	$0.00
5/6/2011	Billed Excess Dispensing Limits for Controlled Substance	$3,246.18	$0.00	($3,246.18)
4/27/2011	Billed Excess Dispensing Limits for Controlled Substance	$3.36	$3.36	$0.00
4/13/2011	Billed Excess Dispensing Limits for Controlled Substance	$7.91	$7.91	$0.00
3/17/2011	Billed Excess Dispensing Limits for Controlled Substance	$2.51	$2.51	$0.00
2/25/2011	Billed Excess Dispensing Limits for Controlled Substance	$3,720.77	$0.00	($3,720.77)
2/23/2011	Billed Excess Dispensing Limits for Controlled Substance	$51.01	$51.01	$0.00
TOTALS		$7,799.43	$249.90	-$7,549.53