



STATE OF NEW YORK
OFFICE OF THE MEDICAID INSPECTOR GENERAL
800 North Pearl Street
Albany, New York 12204

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MEDICAID INSPECTOR GENERAL

December 28, 2010

[REDACTED]
GSR RX Corp
266 New Main Street
Yonkers, New York 10701-4168

Final Audit Report
Audit #09-4170
Provider ID # [REDACTED]
County Demonstration Project –
Westchester County

Dear [REDACTED]

This letter will serve as our final audit report of the recently completed review of payments made to GSR RX Corp under the New York State Medicaid Program.

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 ensuring 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 GSR RX Corp for pharmacy services paid by Medicaid for Westchester County recipients from January 1, 2005, through December 31, 2008, was recently completed. During the audit period, \$6,613,859.36 was paid for 95,246 services rendered. This review consisted of a random sample of 200 services with Medicaid payments of \$12,854.17. The purpose of the audit was to ensure 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.

GSR RX Corp'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 \$433.48.

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 \$206,436.00. The lower confidence limit of the amount overpaid is \$81,277.00. 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 of \$81,277.00.

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 report dated September 14, 2010.

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: "All bills for medical care, services and supplies shall contain: . . . (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)

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: "An unacceptable practice is conduct by a person which is contrary to: . . . (2) the published fees, rates, claiming instructions or procedures of the department" and "(3) the official rules and regulations of the Departments of Health, Education and Mental Hygiene. . . ."
18 NYCRR Section 515.2(a)

Furthermore, according to regulations, all providers must prepare and maintain contemporaneous records demonstrating their right to receive payment under the medical assistance program. In addition, the provider must keep, for a period of six years, all records necessary to disclose the nature and extent of services furnished and the medical necessity therefor, including any prescription or fiscal order for the service or supply. This information is subject to audit for a period of six years and must be furnished, upon request.
18 NYCRR Section 517.3(b)

1. Missing Follow-Up Hard Copy Order for Medical Supplies

Regulations state: "The terms written order or fiscal order . . . 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 also state: "All durable medical equipment, medical/surgical supplies, orthotic and prosthetic appliances and devices, and orthopedic footwear may be furnished only upon a written order of a practitioner."
18 NYCRR Section 505.5(b)

The Medicaid Pharmacy Manual states: "Medical/surgical supplies can only be obtained by presenting a signed, written order (fiscal order) from a qualified prescriber."
NYS Medicaid Program Pharmacy Manual Policy Guidelines, Section I

The MMIS Provider Manual states that "medical supplies can only be obtained by presenting a signed written order from a qualified prescriber."
MMIS Provider Manual for Pharmacy, Section 2.2.4

In 6 instances pertaining to 5 patients, a signed written order, as a follow-up to a telephone order for medical supplies, was missing. This resulted in a sample overpayment of \$273.44 (Exhibit II).

2. 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

The Medicaid Pharmacy Manual 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, Section I

In 2 instances pertaining to 2 patients, the pharmacy billed for a quantity that exceeded the ordered amount. The price of the billed item was reduced to the amount of the ordered item. This resulted in a sample overpayment of \$95.90 (Exhibit III).

3. Ordering Prescriber Conflicts with Claim Prescriber

Regulations state: "The identity of the practitioner who ordered the . . . medical/surgical supply, . . . must be recorded by the provider on the claim for payment by entering in the license or MMIS provider identification number of the practitioner where indicated."

18 NYCRR Section 505.5(c)(1)

The MMIS Provider Manual directs the billing provider to complete the ordering/prescribing provider section of the claim for prescriptions from private practitioners by entering the "MMIS ID Number of the prescriber. If the prescriber is not enrolled in MMIS, enter his/her State License number . . . For orders originating in a hospital, clinic or other health care facility, the facility's MMIS ID Number may be entered only when the prescriber's MMIS ID or State License number is unavailable. When a prescription is written by an unlicensed intern or resident, the supervising physician's MMIS ID Number should be entered. If the supervising physician is not enrolled in MMIS, his/her State License number may be entered. When these numbers are unavailable, enter the facility's MMIS ID Number . . . When prescriptions have been written by a physician's assistant, the supervising physician's MMIS ID Number should be entered. If the supervisor is not enrolled in MMIS, enter his/her State License number. If these numbers are unavailable and the prescription originated in a facility, enter the facility's MMIS ID Number . . . If the MMIS ID or State License number is not on the prescription . . . it is the pharmacist's responsibility to obtain it."

*MMIS Provider Manual for Pharmacy 3.0
Billing Section, Revision 1/92 in 2/95 Manual*

*MMIS Provider Manual for Pharmacy,
Revision 1/92 in April 2004 Manual*

The Medicaid Pharmacy Manual also directs the billing provider to enter the Medicaid ID Number of the ordering/prescribing provider or, if the ordering prescriber is not enrolled in the Medicaid Program, to enter his/her license number. The supervising MD's MMIS or license number should be entered for an unlicensed intern or resident for a prescription from a facility, and the facility's Medicaid ID number may be entered **only** when the prescriber's or supervising physician's Medicaid ID or License number is unavailable. When prescriptions have been written by a Physician's Assistant, the supervising physician's Medicaid ID number or license number should be entered. [There is no provision here for entering facility MMIS ID number in absence of the supervising MD number for a prescription written by a Physician's Assistant.] **If the Medicaid ID or State License number of an authorized prescriber is not on the prescription, it is the pharmacist's responsibility to obtain it.**

In addition, if a license number is indicated, the Profession Code that identifies the ordering/prescribing provider's profession must be entered. Directions are given to obtain profession codes.

*NYS Medicaid Program Pharmacy Manual Billing Guidelines
Version 2005-1 (4/1/05)*

The Medicaid Updates provide direction on identifying the ordering prescriber on the Medicaid claim.

*DOH Medicaid Update March 2004
DOH Medicaid Update October 2004
DOH Medicaid Update September 2005*

The Medicaid Update identifies the State Education Department's (SED) website to obtain or verify prescriber license numbers.

DOH Medicaid Update March 2000

The Medicaid Update describes it as an unacceptable practice to report erroneous information on Medicaid claims. It also identifies the SED website to obtain or verify prescriber license numbers.

DOH Medicaid Update June 2006

The Medicaid Update states that it is inappropriate to use a facility's Medicaid identification number as the ordering/referring/prescribing provider.

DOH Medicaid Update January 2008

In 7 instances pertaining to 7 patients, the ordering prescriber conflicts with the claim prescriber. For each instance, a partial disallowance no greater than \$4.50 was taken. This resulted in a sample overpayment of \$25.45 (Exhibit IV).

4. Prescription/Fiscal Order Refilled Without Prescriber's Authorization

State law establishes: "A prescription may not be refilled unless it bears a contrary instruction and indicates on its face the number of times it may be refilled. A prescription may not be refilled more times than allowed on the prescription."

Education Law Article 137 Section 6810.2

Regulations state: "(1) A written order may not be refilled unless the practitioner has indicated the number of allowable refills on the order." In addition, a written order for drugs may not be refilled more than five times within a six month period.

18 NYCRR Section 505.3(d)

The Medicaid Pharmacy Manual states, "A prescription or fiscal order may not be refilled unless the prescriber has indicated on the prescription or fiscal order the number of refills." Also, no more than five refills are allowed for prescriptions or fiscal orders.

NYS Medicaid Program Pharmacy Manual Policy Guidelines, Section I

The Medicaid Pharmacy Manual states: "Automatic refilling of prescriptions for prescription drugs, or fiscal orders for non-prescription drugs, medical surgical supplies or enteral products is not allowed under the Medicaid Program."

NYS Medicaid Program Pharmacy Manual Policy Guidelines, Section I

In 1 instance, the billed item exceeded the allowable number of refills. This resulted in a sample overpayment of \$20.42 (Exhibit V).

5. **Pharmacy Billed for Different Drug Than Ordered**

State law establishes: "Any person, who . . . substitutes or dispenses a different article for or in lieu of any article prescribed, ordered, or demanded, except where required pursuant to section sixty-eight hundred sixteen-a of this article . . . or otherwise deviates from the terms of the prescription, order or demand by substituting one drug for another, except where required pursuant to section sixty-eight hundred sixteen-a of this article, is guilty of a misdemeanor."

Education Law Article 137 Section 6816.1.a

The Rules of the Board of Regents state that unprofessional conduct in the practice of pharmacy shall include "dispensing a written prescription which does not bear . . . the name, strength, if applicable, and the quantity of the drug prescribed; . . ."

8 NYCRR Section 29.7(a)(1)

The Rules of the Board of Regents state that unprofessional conduct in the practice of pharmacy shall also include "using or substituting without authorization one or more drugs in the place of the drug or drugs specified in a prescription."

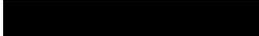
8 NYCRR Section 29.7(a)(5)

In 2 instances pertaining to 2 patients, the pharmacy billed for a drug different than the drug ordered. This resulted in a sample overpayment of \$18.27 (Exhibit VI).

Total sample overpayments for this audit amounted to \$433.48.

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 \$81,277.00, 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 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, B.A.M.
 GNARESP Corning Tower, Room 1237
 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 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 report, the OMIG will impose a 15% withhold after 20 days until the agreement is established.

Furthermore, the OMIG may require financial information from you to establish the terms of the repayment agreement. If additional information is requested, the OMIG must receive the information within 30 days of the request or a 50% withhold will be imposed. 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. The OMIG will notify you no later than 5 days after initiating such

action. If you wish to enter into a repayment agreement, you must forward your written request within 20 days to the following:

Bureau of Collections Management
 New York State Office of the Medicaid Inspector General
 800 North Pearl Street
 Albany, New York 12204

If within 20 days, you fail to make full payment or contact the OMIG to make repayment arrangements, the OMIG will establish a withhold equal to 50% of your Medicaid billings to recover payment and liquidate the lower confidence limit amount, interest and/or penalty, not barring any other remedy allowed by law. The OMIG will provide notice to you no later than 5 days after the withholding of any funds. In addition, if you receive an adjustment in your favor while you owe funds to the State, such adjustment will be applied against the amount owed.

If you choose not to settle this audit through repayment of the 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 \$206,436.00. 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 [REDACTED] Esq., 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 [REDACTED] at [REDACTED]

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

Sincerely,

[REDACTED]

County Demonstration Project

cc: [REDACTED]

Enclosure

Ver-30.3
Fin-18.2

Certified Mail # [REDACTED]
Return Receipt Requested

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

NAME AND ADDRESS OF AUDITEE

GSR RX Corp
266 New Main Street
Yonkers, New York 10701-4168

PROVIDER ID # [REDACTED]

AUDIT #09-4170

County Demo

AMOUNT DUE: \$81,277.00

AUDIT

PROVIDER

RATE

PART B

TYPE

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:

[REDACTED]
New York State Department of Health
Medicaid Financial Management, B.A.M.
GNARESP Corning Tower, Room 1237
File #09-4170 County Demo
Albany, New York 12237-0048

Thank you for your cooperation.