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June 24, 2013

[REDACTED]
Gardners Pharmacy, Inc.
371 Broadway
Brooklyn, NY 11211

Final Audit Report

Audit #09-4528

Provider ID [REDACTED]

Dear [REDACTED]:

This letter will serve as our final audit report of the recently completed review of payments made to Gardners Pharmacy, Inc. 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 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 Gardners Pharmacy, Inc. for pharmacy services paid by Medicaid for New York City recipients from January 1, 2004, through December 31, 2008, was recently completed. During the audit period, \$12,637,941.61 was paid for 168,862 services rendered. This review consisted of a random sample of 200 services with Medicaid payments of \$15,114.51. 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.

Gardners Pharmacy, Inc.'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 \$2,645.07.

The statistical sampling methodology employed allows for extrapolation of the sample findings to the universe of services (18 NYCRR Section 519.18). The adjusted mean per unit point estimate of the amount overpaid is \$724,316. The adjusted lower confidence limit of the amount overpaid is \$356,711. We are 95% certain that the actual amount of the overpayment is greater than the adjusted lower confidence limit (Exhibit I). This audit may be settled through repayment of the adjusted lower confidence limit amount of \$356,711.

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 revised draft audit report dated November 26, 2012. The information provided resulted in no change to any of the disallowances. The findings in the final audit report are identical to those in the revised draft audit report.

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)*

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. Ordering Prescriber Conflicts with Claim Prescriber

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 requires 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 Version 2004-1, Section 3

Medicaid policy requires 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 prescribing provider is a Nurse Practitioner certified to write prescriptions, enter his/her Medicaid ID number or license number in this field. **Note: 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, Section II
NYS Medicaid Program Pharmacy Manual Billing Guidelines Version 2007-1, Section II
NYS Medicaid Program Pharmacy Manual Billing Guidelines Version 2008-1, Section II

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 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 24 instances pertaining to 24 patients, the ordering prescriber conflicts with the claim prescriber. This resulted in a sample overpayment of \$1,286.77 (Exhibit II). For this category of findings, OMIG will disallow only the actual amount of the sample overpayment and will not extrapolate the sample findings to the universe of services.

2. Imprint/Stamp of Printed Name of Prescriber Missing on Prescription

State law requires: "Every prescription . . . written in this state by a person authorized to issue such prescription and containing the prescriber's signature shall, in addition to such signature, be imprinted or stamped legibly and conspicuously with the printed name of the prescriber who has signed the prescription."

Education Law Article 137 Section 6810.8

Regulations state: "When used in the context of an order for a prescription drug, the order must also meet the requirements for a prescription under section 6810 of the Education Law and 10 NYCRR Part 910..."

18 NYCRR Section 505.3(b)(3)

Regulations state, for Schedule II and certain other substances, that: "...The printed name of the prescriber who has signed the prescription shall be imprinted or stamped legibly and conspicuously on the prescription, shall appear in an appropriate location on the prescription form and shall not be entered in or upon the space or line reserved for the prescriber's signature..."

10 NYCRR Section 80.67 (b)(2)

Regulations state, for Schedule III, IV, V substances, that the official New York State prescription shall contain the following: "...The printed name of the prescriber who has signed the prescription shall be imprinted or stamped legibly and conspicuously on the prescription, shall appear in an appropriate location on the prescription form and shall not be entered in or upon the space or line reserved for the prescriber's signature..."

10 NYCRR Section 80.69 (b)(2)

Regulations state, for Schedule III, IV and V substances, that the written prescription shall contain the following: "...The printed name of the prescriber who has signed the prescription shall be imprinted or stamped legibly and conspicuously on the prescription, shall appear in an appropriate location on the prescription form and shall not be entered in or upon the space or line reserved for the prescriber's signature..."

10 NYCRR Section 80.69(b)(2)

In 2 instances pertaining to 2 patients, the imprint/stamp of the printed name of the prescriber was missing on the prescription. This resulted in a sample overpayment of \$424.79 (Exhibit III). For this category of findings, OMIG will disallow only the actual amount of the sample overpayment and will not extrapolate the sample findings to the universe of services.

3. **Prescription/Fiscal Order Refilled More Than 180 Days After It Has Been Initiated By The Prescriber**

Regulations state: "No written order for drugs may be refilled more than six months after the date of issuance. . . ." *18 NYCRR Section 505.3(d)(2)*

Regulations state: "All . . . medical/surgical supplies . . . may be furnished only upon a written order of a practitioner." An order cannot be refilled more than 180 days from the original date ordered. *18 NYCRR Section 505.5(b)(1)and (4)(iii)*

Medicaid policy states: "No prescription or fiscal order for a drug or supply may be refilled 180 days after it has been initiated by the prescriber."

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

Medicaid policy states: "No prescription or fiscal order for a drug or supply may be refilled 180 days from the original date ordered."

MMIS Provider Manual for Pharmacy Version 2004-1, Section 2.2.4

In 7 instances pertaining to 7 patients, a prescription or fiscal order was refilled more than 180 days after the date initiated by the prescriber. This resulted in a sample overpayment of \$270.54 (Exhibit IV).

4. **Non-Controlled Prescription/Fiscal Order Filled More Than 60 Days After It Has Been Initiated by the Prescriber and/or Controlled Prescription Filled More Than 30 Days After the Date Such Prescription Was Signed by the Authorized Practitioner**

Regulations state that: "Except as provided in sections 80.67 and 80.73 of the Part, a licensed, registered pharmacist, or a pharmacy intern acting in conformity with the provisions of section 6808 of the Education Law and regulations thereunder, in a registered pharmacy may, in good faith and in the course of his professional practice, dispense to an ultimate user, controlled substances in schedule III, IV or V provided they are dispensed pursuant to an official New York State prescription presented within 30 days of the date such prescription was signed by an authorized practitioner." *10 NYCRR Section 80.74(a)*

Regulations state that: "A licensed, registered pharmacist, or a pharmacy intern acting in conformity with the provisions of section 6806 of the Education Law and regulations thereunder in a registered pharmacy, may, in good faith and in the course of his/her professional practice, sell and dispense to an ultimate user schedule II controlled substances or those schedule III or schedule IV controlled substances listed in section 80.67(a) of the Part, provided they are dispensed pursuant to an official New York State prescription, delivered within 30 days of the date such prescription was signed by the authorized practitioner or an oral prescription where permitted." *10 NYCRR Section 80.73(a)*

Regulations state that: "Except as provided in sections 80.67 and 80.73 of the Part, a licensed, registered pharmacist, or a pharmacy intern acting in conformity with the provisions of section 6808 of the Education Law and regulations thereunder, in a registered pharmacy may, in good faith and in the course of his professional practice, dispense to an ultimate user, controlled substances in schedule III, IV or V upon delivery of such pharmacist of a written prescription within 30 days of the date such prescription was signed by an authorized practitioner."

10 NYCRR Section 80.74(a)

Regulations state that: "A licensed, registered pharmacist, or a pharmacy intern acting in conformity with the provisions of section 6806 of the Education Law and regulations thereunder in a registered pharmacy, may, in good faith and in the course of his professional practice, sell and dispense to an ultimate user controlled substances, provided they are dispensed pursuant to an official New York State prescription, or a written prescription, presented within 30 days of the date such prescription was signed by the authorized practitioner or an oral prescription where permitted."
10 NYCRR Section 80.73(a)

Medicaid policy states: "A pharmacist may not fill an original prescription or fiscal order more than 14 days after it has been initiated by the prescriber." However, an October 21, 1998 Department of Health letter to pharmacy providers states that the MMIS Manual will be updated to read that a pharmacist may not fill an original prescription or fiscal order more than 60 days after it has been initiated by the provider.

MMIS Provider Manual for Pharmacy Version 2004-1, Section 2.2.4

In 3 instances pertaining to 3 patients, a non-controlled prescription or fiscal order was filled more than 60 days after it was initiated by the prescriber (sample 17, 37 and 45). This resulted in a sample overpayment of \$192.00 (Exhibit V).

5. 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(i)

Regulations state, for Schedule III, IV and V substances, that the written prescription shall contain the following: "...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 substances, that: "When a written 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 back of 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 and address 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(j)

In 2 instances pertaining to 2 patients, the DEA number was missing on the controlled substance prescription. This resulted in a sample overpayment of \$172.23 (Exhibit VI).

6. Missing Prescription

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: "When used in the context of an order for a prescription drug, the order must also meet the requirements for a prescription under section 6810 of the Education Law and 10 NYCRR Part 910." *18 NYCRR Section 505.3(b)(3)*

Regulations also state: "A pharmacy must keep on file the signed written order of the practitioner for audit by the department, or other authorized agency, for six years from the date of payment for any drug dispensed." *18 NYCRR Section 505.3(c)*

Regulations state: "All providers, who are not paid at rates or fees approved by the State Director of the Division of the Budget based upon their allowable costs of operation but who are paid in accordance with the rates, fees and schedules established by the department, must prepare and maintain contemporaneous records demonstrating their right to receive payment under the medical assistance program. All records necessary to disclose the nature and extent of services furnished and the medical necessity therefor, including any prescription or fiscal order for the service or supply, 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." *18 NYCRR Section 517.3(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: "Prescription drugs can be obtained by presenting a signed written order from a qualified prescriber."

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

In 2 instances pertaining to 2 patients, an original prescription was missing. This resulted in a sample overpayment of \$167.32 (Exhibit VII).

7. Missing Follow-Up Hard Copy Order for Medical Supplies and/or Enteral Nutrition

Regulations state: "Medical/surgical supplies means items for medical use other than drugs, prosthetic or orthotic appliances, durable medical equipment, or orthopedic footwear which have been ordered by a practitioner in the treatment of a specific medical condition and which are usually: (i) consumable; (ii) nonreusable; (iii) disposable; (iv) for a specific rather than incidental purpose; and (v) generally have no salvageable value." *18 NYCRR Section 505.5(a)(2)*

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 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)(1)*

Medicaid policy 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 Version 2006-1, Section I

In 1 instance, a signed written order, as a follow-up to a telephone or fax order for medical supplies or enteral nutrition, was missing. This resulted in a sample overpayment of \$77.76 (Exhibit VIII). For this category of findings, OMIG will disallow only the actual amount of the sample overpayment and will not extrapolate the sample findings to the universe of services.

8. Missing Information From Prescription/Fiscal Order

The Rules of the Board of Regents state: "Unprofessional conduct in the practice of pharmacy shall include all conduct prohibited by sections 29.1 and 29.2 of this Part . . . and shall also include . . . (1) Dispensing a written prescription which does not bear the name ...of the patient for whom it is intended; ... the name, strength, if applicable, and the quantity of the drug prescribed; ... the name ...of the prescriber. . . ." *8 NYCRR Section 29.7(a)(1)*

Regulations state: "All orders for drugs must show the ordering practitioner's name. . . All orders must also contain the name of the recipient for whom ordered." *18 NYCRR Section 505.3(b)(2)*

Regulations state: "When used in the context of an order for a prescription drug, the order must also meet the requirements for a prescription under section 6810 of the Education Law and 10 NYCRR Part 910. When used in the context of a nonprescription drug, the order must also contain the following information: name of the drug; quantity ordered; strength or dosage; ingredient information..." *18 NYCRR Section 505.3(b)(3)*

Regulations state, regarding emergency oral prescriptions for syringes and hypodermic needles, that the pharmacist shall: "contemporaneously reduce such oral prescription to a written memorandum indicating the name, address and phone number of the prescriber, name and address of the ultimate user, date on which the hypodermic needle and/or syringe was ordered, quantity prescribed, directions for use, and the fact that it is a telephone order; and...(4) Within 72 hours after authorizing such an oral prescription, the prescribing practitioner shall cause to be delivered to the pharmacist a written prescription. If the pharmacist fails to receive such prescription, he shall record on the oral prescription memorandum: "Written prescription not received", and sign and date the recording." *10 NYCRR Section 80.131(b)(1)(i) and (b)(4)*

Regulations state, regarding Schedule II and certain other substances, that the official prescription shall contain the following: "(1) name...of the ultimate user for whom the substance is intended..." *10 NYCRR Section 80.67(b)(1)*

Regulations state: "Emergency oral prescriptions for controlled substances requiring official New York State prescription forms may be dispensed by a pharmacist to an ultimate user in an emergency situation, provided the pharmacist shall: (1) contemporaneously reduce such prescriptions to written memoranda and shall indicate on such memoranda the name and address of the prescriber and his/her Drug Enforcement Administration registration number, name and address of the ultimate user, date on which it is ordered, name and quantity of drugs prescribed, directions for use and the fact that it is a telephone order...;(f) Within 72 hours after authorizing an emergency oral prescription, the prescribing practitioner shall cause to be

delivered to the pharmacist the official New York State prescription. Such prescription shall, in addition to the information otherwise required,..." *10 NYCRR Section 80.73(d)(1) & (f)*

Regulations state that substances in schedule III, IV or V shall be prescribed by a practitioner only by written prescription which shall contain the following: "(1) name... of the ultimate user for whom the substance is intended..." *10 NYCRR Section 80.69(b)(1)*

Regulations state, regarding oral prescriptions for schedule III, IV, and V substances, that the pharmacist shall: "(1) contemporaneously reduce such prescriptions to written memoranda indicating the name and address of the prescriber and the practitioner's Drug Enforcement Administration registration number, name and address of ultimate user, date on which the controlled substance was ordered, name and quantity of controlled substances prescribed, directions for use and the fact that it is a telephone order. The memoranda for such oral prescriptions shall be filed in the schedule III, IV and V prescription file. The pharmacist filling such oral orders shall indicate on the face of the memoranda the date filed, the signature of the pharmacist filling the prescription and the serial number of the prescription under which it is recorded in the pharmacy prescription file;...(c) Within 72 hours after authorizing such an oral prescription, the prescribing practitioner shall cause to be delivered to the pharmacist a written prescription. If the pharmacist fails to receive such prescription, he shall record on the memorandum for said oral prescription this notation: "Written prescription not received," the name of the pharmacist and the date of the recording."

10 NYCRR Section 80.70(a)(1) and (c)

Regulations state: "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...This procedure shall not apply to ... where the name and/or quantity of the controlled substance is not specified or where the name of the ultimate user is missing..." *10 NYCRR Section 80.67(i)*

Regulations state: "When a written 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 back of 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 and address or the ultimate user is missing..." *10 NYCRR Section 80.69(j)*

Regulations state: "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 back of the prescription and shall affix his or her signature. This procedure shall not apply ...where the name and/or quantity of the controlled substance is not specified or where the name of the ultimate user is missing..."

10 NYCRR Section 80.73(i)

Regulations state, for schedule III, IV, and V substances, that: "When a written 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 back of 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..."

10 NYCRR Section 80.74(d)

Regulations state, for Schedule II and certain other substances, that: "A practitioner may orally authorize a pharmacist to change information on an official New York State prescription form. This procedure shall not apply to the practitioner's signature, date the prescription was signed by the practitioner, drug name or name of the ultimate user. The pharmacist shall write the date he or she received the oral authorization on the back of the prescription, the reason for the change and his or her signature. The pharmacist shall also indicate the change on the face of the prescription and initial the change." *10 NYCRR Section 80.67(j)*

Regulations state: "A practitioner may orally authorize a pharmacist to change information on a controlled substance prescription. This procedure shall not apply to the practitioner's signature, date the prescription was signed by the practitioner, drug name or name of the ultimate user. The pharmacist shall write the date he or she received the oral authorization on the back of the prescription, reason for the change and his or her signature. The pharmacist shall also indicate the change on the face of the prescription and initial the change." *10 NYCRR Section 80.69(k)*

Regulations state: "A practitioner may orally authorize a pharmacist to change information on an official New York State prescription. This procedure shall not apply to the practitioner's signature, date the prescription was signed by the practitioner, drug name or name of the ultimate user. The pharmacist shall write the date he or she received the oral authorization on the back of the prescription, reason for the change and his or her signature. The pharmacist shall also indicate the change on the face of the prescription and initial the change." *10 NYCRR Section 80.73(j)*

Regulations state that, for schedule III, IV and V substances: "A practitioner may orally authorize a pharmacist to change information on a controlled substance prescription. This procedure shall not apply to the practitioner's signature, date the prescription was signed by the practitioner, drug name or name of the ultimate user. The pharmacist shall write the date he or she received the oral authorization on the back of the prescription, reason for the change and his or her signature. The pharmacist shall also indicate the change on the face of the prescription and initial the change." *10 NYCRR Section 80.74(e)*

In 1 instance, the prescription or fiscal order did not contain all of the required information. In 1 instance, the patient name was missing (sample #151). This resulted in a sample overpayment of \$48.48 (Exhibit IX).

9. 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)

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: "A practitioner may orally authorize a pharmacist to change information on an official New York State prescription form. This procedure shall not apply to the practitioner's signature, date the prescription was signed by the practitioner, drug name or name of the ultimate user..." *10 NYCRR Section 80.67(h)*

Regulations state: "A practitioner may orally authorize a pharmacist to change information on a controlled substance prescription. This procedure shall not apply to the practitioner's signature, date the prescription was signed by the practitioner, drug name or name of the ultimate user..." *10 NYCRR Section 80.69(m)*

Regulations state for Schedule II and certain other substances: "A practitioner may orally authorize a pharmacist to change information on an official New York State prescription form. This procedure shall not apply to the practitioner's signature, date the prescription was signed by the practitioner, drug name or name of the ultimate user. The pharmacist shall write the date he or she received the oral authorization on the back of the prescription, the reason for the change and his or her signature. The pharmacist shall also indicate the change on the face of the prescription and initial the change." *10 NYCRR Section 80.67(j)*

Regulations state for Schedule III, IV and V substances: "A practitioner may orally authorize a pharmacist to change information on a controlled substance prescription. This procedure shall not apply to the practitioner's signature date the prescription was signed by the practitioner, drug name or name of the ultimate user. The pharmacist shall write the date he or she received the oral authorization on the back of the prescription, reason for the change and his or her signature. The pharmacist shall also indicate the change on the face of the prescription and initial the change." *10 NYCRR Section 80.69(k)*

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 \$5.18 (Exhibit X).

Total sample overpayments for this audit amounted to \$2,645.07.

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

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 adjusted lower confidence limit amount of \$356,711, 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, B.A.M.
 GNARESP Corning Tower, Room 2266
 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 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 adjusted 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 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 adjusted meanpoint estimate of \$724,316. 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], 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 our staff during this audit.

Sincerely,

[REDACTED]

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

[REDACTED]
Enclosure
Ver-1.0
Fin-3/19/13

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

NAME AND ADDRESS OF AUDITEE

████████████████████
Gardners Pharmacy, Inc.
371 Broadway
Brooklyn, NY 11211

PROVIDER ID ██████████

AUDIT #09-4528

AMOUNT DUE: \$356,711

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 #09-4528
Albany, New York 12237-0048

Thank you for your cooperation.

EXHIBIT I

**GARDNERS PHARMACY INC.
PHARMACY SERVICES AUDIT
AUDIT #09-4528
AUDIT PERIOD: 01/01/04 – 12/31/08**

EXTRAPOLATION OF SAMPLE FINDINGS

Total Sample Overpayments	\$ 2,645.07
Less Overpayments Not Projected*	<u>(1,789.32)</u>
Sample Overpayments for Extrapolation Purposes	\$ 855.75
Services in Sample	200
Overpayments Per Sampled Service	\$ 4.2788
Services in Universe	168,862
Meanpoint Estimate	\$ 722,527
Add Overpayments Not Projected*	1,789
Adjusted Meanpoint Estimate	<u>\$ 724,316</u>
Lower Confidence Limit	\$ 354,922
Add Overpayments Not Projected*	1,789
Adjusted Lower Confidence Limit	<u>\$ 356,711</u>

* The actual dollar disallowance for the "Ordering Prescriber Conflicts with Claim Prescriber", "Imprint/Stamp of Printed Name of Prescriber Missing on Prescription" and "Missing Follow-Up Hard Copy Order for Medical Supplies and/or Enteral Nutrition" findings was subtracted from the total sample overpayment and added to the Meanpoint Estimate and the Lower Confidence Limit. The dollars associated with these findings were not used in the extrapolation.

GARDNERS PHARMACY INC

MMIS # / NPI #: [REDACTED]

Audit #: 09-4528

Ordering Prescriber Conflicts with Claim Prescriber

Sample #	Date of Service	Formulary Code	Amount Disallowed
1	03/24/05	65086071110	\$61.85
5	05/10/05	53746013105	\$4.99
13	06/16/05	00597004137	\$52.52
20	08/12/05	17714001110	\$3.10
25	09/14/05	00078037563	\$176.47
28	10/28/05	00025141160	\$164.43
34	12/06/05	00071015723	\$103.54
38	02/06/06	57664016618	\$6.50
53	05/27/06	17714001110	\$0.58
59	08/19/06	62436000301	\$226.68
77	11/28/06	00069153068	\$47.08
81	01/17/07	00172290860	\$5.19
89	04/19/07	59762503201	\$12.50
91	06/04/07	00182008601	\$1.02
93	06/11/07	50383002615	\$3.69
116	12/21/07	00603085794	\$1.78
122	02/16/08	00182616039	\$5.68
149	01/16/04	00071015723	\$99.69
155	03/02/04	59762737902	\$9.66
162	05/06/04	00781165510	\$14.50
163	05/12/04	10337065715	\$80.53
165	06/15/04	59390000113	\$2.81

GARDNERS PHARMACY INC

MMIS # / NPI #: [REDACTED]

Audit #: 09-4528

Ordering Prescriber Conflicts with Claim Prescriber

Sample #	Date of Service	Formulary Code	Amount Disallowed
171	06/30/04	00002411260	\$156.30
189	12/07/04	49884059301	\$45.68
Total Services:	24		\$1,286.77

GARDNERS PHARMACY INC

MMIS # / NPI #: [REDACTED]

Audit #: 09-4528

Imprint/ Stamp of Printed Name of Prescriber Missing on Prescription

Sample #	Date of Service	Formulary Code	Amount Disallowed
75	11/15/06	00002411730	\$322.31
181	09/24/04	00008084181	\$102.48
Total Services:	2		\$424.79

GARDNERS PHARMACY INC

MMIS # / NPI #: [REDACTED]

Audit #: 09-4528

Prescription/Fiscal Order Refilled More Than 180 Days After it has Been Initiated by the Prescriber

Sample #	Date of Service	Formulary Code	Amount Disallowed
27	10/10/05	00456132201	\$13.23
35	12/29/05	00186504031	\$136.85
43	04/18/06	57664016618	\$8.00
105	09/17/07	00536354701	\$0.39
118	01/18/08	00378024401	\$31.08
145	01/05/04	A4245	\$0.43
175	08/05/04	00378024401	\$80.56
Total Services:	<u>7</u>		<u>\$270.54</u>

GARDNERS PHARMACY INC

MMIS # / NPI #: [REDACTED]

Audit #: 09-4528

**Non-Controlled Prescription/Fiscal Order Filled More Than 60 Days After it
has Been Initiated by the Prescriber**

Sample #	Date of Service	Formulary Code	Amount Disallowed
17	07/23/05	00172444160	\$37.66
37	01/30/06	A4253	\$78.76
45	05/02/06	E0607	\$75.58
Total Services:	3		\$192.00

GARDNERS PHARMACY INC

MMIS # / NPI #: [REDACTED]

Audit #: 09-4528

Missing DEA Number on Controlled Substance Prescription

Sample #	Date of Service	Formulary Code	Amount Disallowed
16	07/21/05	63402019310	\$100.47
182	10/05/04	00024540131	\$71.76
Total Services:	2		\$172.23

GARDNERS PHARMACY INC

MMIS # / NPI #: [REDACTED]

Audit #: 09-4528

Missing Prescription

Sample #	Date of Service	Formulary Code	Amount Disallowed
86	03/23/07	00024552131	\$103.98
153	02/11/04	00069154068	\$63.34
Total Services:	<u>2</u>		<u>\$167.32</u>

GARDNERS PHARMACY INC

MMIS # / NPI #: [REDACTED]

Audit #: 09-4528

Missing Follow-Up Hard Copy Order for Medical Supplies and/or Enteral Nutrition

Sample #	Date of Service	Formulary Code	Amount Disallowed
71	10/24/06	A4253	\$77.76
Total Services:	1		\$77.76

GARDNERS PHARMACY INC

MMIS # / NPI #: [REDACTED]

Audit #: 09-4528

Missing Information from Prescription/ Fiscal Order

Sample #	Date of Service	Formulary Code	Amount Disallowed
151	02/02/04	00310027510	\$48.48
Total Services:	1		\$48.48

GARDNERS PHARMACY INC

MMIS # / NPI #: [REDACTED]

Audit #: 09-4528

Pharmacy Billed for Different Drug Than Ordered

Sample #	Date of Service	Formulary Code	Amount Disallowed
29	10/28/05	54838012540	\$2.59
54	05/30/06	54838012540	\$2.59
Total Services:	2		\$5.18

GARDNERS PHARMACY INC

MMIS #: [REDACTED]

Audit #: 09-4528

Additional Findings Pertaining to Sampled items

Sample #	Date of Service	Primary Finding	Other Findings Pertaining to Sampled
27	10/10/2005	Prescription/Fiscal Order Refilled More Than 180 Days After it has Been Initiated by the Prescriber	Ordering Prescriber Conflicts with Claim Prescriber
37	1/30/2006	Non-Controlled Prescription/Fiscal Order Filled More Than 60 Days After it has Been Initiated by the Prescriber	Ordering Prescriber Conflicts with Claim Prescriber
182	10/5/2004	Missing DEA Number on Controlled Substance Prescription	Prescription/Fiscal Order Refilled in Excess of Prescriber's Authorization and/or Refilled in Violation of Medicaid Regulations

***Prescription/Fiscal Order Refilled in Excess of Prescriber's Authorization and/or Refilled In Violation of Medicaid Regulations**

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 refillings on the order. (2) No written order for drugs may be refilled more than six months after the date of issuance, nor more than five times within a six month period. (3) Refills must bear the prescription number of the original written order."
18 NYCRR Section 505.3(d)(1),(2),(3)

Regulations state: "An order for medical/surgical supplies will not be refilled unless the ordering practitioner has indicated the number of refills on the order. All refills must reference the original order."
18 NYCRR Section 505.5 (b)(-1)(i)

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...."
18 NYCRR Section 505.3(a)(6)

Medicaid policy states: "A fiscal order or prescription for drugs and supplies may not be refilled unless the prescriber has indicated on the prescription/order form the number of refills."
MMIS Provider Manual for Pharmacy Version 2004-1, Section 2.2.4