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

ANDREW M. CUOMO
GOVERNOR

JAMES G. SHEEHAN
MEDICAID INSPECTOR GENERAL

Kinetic Pharmacy Inc.
Attn: Brian Liu, Owner
6009 8th Avenue
Brooklyn, NY 11220

Revised Final Audit Report
County Demonstration Project – NYC HRA
Audit # 09 - 4218
Provider ID # [redacted]

Dear Mr. Liu:

This letter will serve as our final audit report of the recently completed review of payments made to Kinetic 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 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 Kinetic 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, $6,012,372.67 was paid for 106,529 services rendered. This review consisted of a random sample of 200 services with Medicaid payments of $10,418.93. 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.

Kinetic 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 $385.69.

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 $205,436.00. The lower confidence limit of the amount overpaid is $23,117.00. 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 $23,117.00.

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 January 3, 2011.

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. **Controlled Prescription Filled Beyond 30 Days of Issuance or Non-Controlled Prescription/Fiscal Order Filled Beyond 60 Days of Issuance**

Regulations state that a licensed pharmacist may "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 pharmacist may "sell and dispense to an ultimate user schedule II controlled substances . . . " and certain other controlled substances, "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 a licensed pharmacist may "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 pharmacist may "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)*

The Medicaid Pharmacy Manual states: "A pharmacist may not fill an original prescription more than sixty (60) days after it has been initiated by the prescriber." Also, "a pharmacist may not fill an original fiscal order for a non-prescription drug more than sixty (60) days after it has been initiated by the prescriber." Furthermore, a provider may not fill an original fiscal order for medical/surgical supplies more than sixty (60) days after it has been initiated by the prescriber.
NYS Medicaid Program Pharmacy Manual Policy Guidelines, Section I

The MMIS Provider Manual 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, Section 2.2.4

In 2 instances pertaining to 2 patients, a non-controlled prescription or fiscal order was filled more than 60 days, or a controlled prescription was filled more than 30 days, after it was issued by the prescriber. This resulted in a sample overpayment of $226.15 (Exhibit II).

2. **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

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: "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)*

The Medicaid Pharmacy Manual 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, Section I

In 1 instance, the prescriber's signature was missing on the prescription/fiscal order. This resulted in a sample overpayment of $109.25 (Exhibit III).

3. **Prescription/Fiscal Order Did Not Contain All of the Required Information**

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, address and age of the patient for whom it is intended; the date on which it was written; the name, strength, if applicable, and the quantity of the drug prescribed; directions for use, if applicable; and, the name, address, telephone number, profession and signature of the prescriber. . . ."

8 NYCRR Section 29.7(a)

The Rules of the Board of Regents state that unprofessional conduct in the practice of pharmacy shall include "failure to number prescriptions consecutively and file them in a numerical or other form which provides for ready retrieval of the prescriptions; . . . ."

8 NYCRR Section 29.7(a)(7)

Regulations state, regarding Schedule II substances, that within 72 hours after authorizing an emergency oral prescription, the prescribing practitioner shall cause to be delivered to the pharmacist an official New York State prescription. Such prescription shall, in addition to the information otherwise required, also have written or typed upon its face the words: "Authorization for emergency dispensing." If the pharmacist fails to receive such prescription, he/she shall notify the department in writing within seven days from the date of dispensing the substance. Also, within 72 hours after transmitting a prescription to a pharmacist by facsimile in accordance with subdivision (e) or (f) of section 80.67 of this Part, the prescribing

practitioner shall cause to be delivered to the pharmacist the original New York State prescription. If the pharmacist fails to receive such prescription, he/she shall notify the Department in writing within 7 days from the date of dispensing the substance.

10 NYCRR Section 80.73(i)&(j)

Regulations state, regarding Schedule III, IV and V substances, that within 72 hours after transmitting a prescription to a pharmacist by facsimile in accordance with subdivision (e) or (f) of section 80.69 of this Part, the prescribing practitioner shall cause to be delivered to the pharmacist the original New York State prescription. Such original prescription shall be attached to the official prescription transmitted by facsimile. If the pharmacist fails to receive such original prescription, he/she shall notify the Department in writing within 7 days from the date of dispensing the substance. Also, the pharmacist filling the official prescription shall endorse on such prescription his/her signature, the date of filling, and the number of the prescription under which it is recorded in the pharmacy prescription file. Such endorsed prescription shall be retained by the proprietor of the pharmacy for a period of five years. Prescription information from the filling of such prescription shall be filed with the department in accordance with section 80.73(f) of this Part. *10 NYCRR Section 80.74(d)&(e)*

Regulations also state: "All orders for drugs must show the ordering practitioner's name, address, telephone number, United States Drug Enforcement Agency (DEA) number (if applicable). . . ." *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, as necessary; directions for use; date ordered; and number of refills, if any." *18 NYCRR Section 505.3(b)(3)*

Regulations further state 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. This procedure shall not apply to unsigned or updated 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 80.73(m)
10 NYCRR Section 80.74(g)

Additionally, regulations state that a practitioner may orally authorize a pharmacist to change information on a 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 80.73(n)
10 NYCRR Section 80.74(h)

The MMIS Provider Manual instructs the provider to enter the original date the prescription/order was prescribed as it appears on the prescription/order signed by the prescriber, when completing the claim for pharmacy services.

MMIS Provider Manual for Pharmacy Billing Guidelines

The Medicaid Update states: "All prescriptions/fiscal orders written for Medicaid recipients must bear: . . . the date on which it was written" and the DEA number, if applicable.

DOH Medicaid Update December 2003

In 1 instance, the prescription or fiscal order did not contain all of the required information. In 1 instance, the date was missing (sample #198). This resulted in a sample overpayment of $32.82 (Exhibit IV).

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4. Ordering Prescriber Conflicts with Claim Prescriber

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 5 instances pertaining to 5 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 $15.52 (Exhibit V).

5. Missing Fiscal Order

Regulations state: "Drugs may be obtained only upon the written order of a practitioner, except for non-prescription emergency contraceptive drugs as described in subparagraph (i) of this paragraph, and 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: "All . . . medical/surgical supplies, . . . may be furnished only upon a written order of a practitioner." *18 NYCRR Section 505.5(b)(1)*

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)*

The Medicaid Pharmacy Manual states: "Non-prescription drugs, also known as over-the-counter (OTC) drugs, can only be obtained by presenting a signed written order (fiscal order) from a qualified prescriber . . . 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

In 1 instance, a signed written fiscal order was missing. This resulted in a sample overpayment of $1.95 (Exhibit VI).

Total sample overpayments for this audit amounted to $385.69.

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

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 $23,117.00, 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:

Mr. Donald Collins
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
Phone #: (518) 474-5878
Fax#: (518) 408-0593

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 $205,436.00. 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 Charlene D. Fleszar, Esq., Office of Counsel, at (518) 408-5811.

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 Sonia Arroyo at (518) 474-9747.

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

Sincerely,

Date: 3/29/11

Katherine Napoli, Director
County Demonstration Project
Office of the Medicaid Inspector General

cc: Sonia Arroyo, OMIG
Helen Discala, NYC HRA

Enclosure
Ver-31.3
Fin-18.2

Certified Mail # 7002 0510 0001 3575 5416
Returned Receipt Requested

NEW YORK STATE
OFFICE OF THE MEDICAID INSPECTOR GENERAL
REMITTANCE ADVICE

NAME AND ADDRESS OF AUDITEE

Kinetic Pharmacy Inc.
6009 8th Avenue
Brooklyn, NY 11220
Attn: Brian Liu, Owner

AMOUNT DUE: $23,117.00

PROVIDER ID # [redacted]

AUDIT #09-4218 **County Demo**

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

Mr. Donald Collins
New York State Department of Health
Medicaid Financial Management, B.A.M.
GNARESP Corning Tower, Room 1237
File #09-4218 (County Demo)
Albany, New York 12237-0048

Thank you for your cooperation.