STATE OF NEW YORK
OFFICE OF THE MEDICAID INSPECTOR GENERAL
584 Delaware Avenue
Buffalo, New York 14202

ANDREW M. CUOMO
GOVERNOR

JAMES C. COX
MEDICAID INSPECTOR GENERAL

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[redacted]
SVA Pharmacy Corp.
119-91 Jamaica Avenue
Richmond Hill, NY 11418

Final Audit Report

Audit #11-1030
Provider ID [redacted]

Dear [redacted]

This letter will serve as our final audit report of the recently completed review of payments made to SVA Pharmacy 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 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 SVA Pharmacy Corp. for pharmacy services paid by Medicaid for New York City recipients from January 1, 2006, through December 31, 2009, was recently completed. During the audit period, $6,889,378.06 was paid for 130,041 services rendered. This review consisted of a random sample of 200 services with Medicaid payments of $9,881.43. 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.

SVA Pharmacy 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 $732.84.

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 $287,032. The adjusted lower confidence limit of the amount overpaid is $80,003. We are 95% certain that the actual amount of the overpayment is greater than the adjusted lower confidence limit (Exhibit I).

The following detailed findings reflect the results of our audit. This audit report incorporates consideration of any additional documentation and information presented in response to the draft audit report dated January 13, 2014. 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 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: "Fee-for-service providers. (1) All providers ... must prepare and maintain contemporaneous records demonstrating their right to receive payment . . . All records necessary to disclose the nature and extent of services furnished and the medical necessity therefor ... must be kept by the provider for a period of six years from the date the care, services or supplies were furnished or billed, whichever is later. (2) All information regarding claims for payment submitted by or on behalf of the provider is subject to audit for a period of six years from the date the care, services or supplies were furnished or billed, whichever is later, and must be furnished, upon request, to the department ... for audit and review." *18 NYCRR Section 517.3(b)*

Regulations require that bills for medical care, services and supplies contain patient name, case number and date of service; itemization of the volume and specific types of care, services and supplies provided; the unit price and total cost of the care, services and supplies provided; and a dated certification by the provider that the care, services and supplies itemized have been in fact furnished; that the amounts listed are in fact due and owing; that such records as are necessary to disclose fully the extent of care, services and supplies provided to individuals under the New York State Medicaid program will be kept for a period of not less than six years from the date of payment; and that the provider understands that payment and satisfaction of this claim will be from Federal, State and local public funds and that he or she may be prosecuted under applicable Federal and State laws for any false claims, statements or documents, or concealment of a material fact provided.

18 NYCRR Section 540.7(a)(1)-(3) and (8)

Regulations state: "An overpayment includes any amount not authorized to be paid under the medical assistance program, whether paid as the result of inaccurate or improper cost reporting, improper claiming, unacceptable practices, fraud, abuse or mistake." *18 NYCRR Section 518.1(c)*

Regulations state: "Vendor payments for medical care and other items of medical assistance shall not be made unless such care or other items of assistance have been furnished on the basis of the appropriate authorization prescribed by the rules of the board and regulations of the department."

18 NYCRR Section 540.1

Regulations state: "The department may require repayment from the person submitting an incorrect or improper claim, or the person causing such claim to be submitted, or the person receiving payment for the claim." *18 NYCRR Section 518.3(a)*

Regulations state: "The department may require repayment for inappropriate, improper, unnecessary or excessive care, services or supplies from the person furnishing them, or the person under whose supervision they were furnished, or the person causing them to be furnished...."

18 NYCRR Section 518.3(b)

Regulations state: "Medical care, services or supplies ordered or prescribed will be considered excessive or not medically necessary unless the medical basis and specific need for them are fully and properly documented in the client's medical record." *18 NYCRR Section 518.3(b)*

1. **Missing 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 also state: "When used in the context of an order for a prescription item, the order must also meet the requirements for a prescription under section 6810 of the Education Law. When used in the context of a nonprescription item, the order must also contain the following information: name of the item, quantity ordered, size, catalog number as necessary..."

18 NYCRR Section 505.5(b)(3)

Regulations state, regarding emergency oral prescriptions for hypodermic syringes and needles, the pharmacist shall: "(i) 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 needles 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 prescription. If the pharmacist fails to receive such prescription, he shall record on the oral prescription memorandum: "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...;...(5) the quantity of dosage units prescribed..."

10 NYCRR Section 80.67(b)(1) and (5)

Regulations state: "Emergency oral prescriptions for schedule II controlled substances or those schedule III or schedule IV controlled substances listed in section 80.67(a) of this Part 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 ... of the prescriber ...name ... of the ultimate user, ... name and quantity of drugs prescribed, ... and the fact that it is a telephone order..." and "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..."

10 NYCRR Section 80.73(g)(1) & (i)

Regulations state, regarding Schedule III, IV and V substances, that the official New York State prescription shall contain the following: "(1) name... of the ultimate user for whom the substance is intended...;...(5) the quantity of dosage units prescribed..."

10 NYCRR Section 80.69(b)(1) and (5)

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 memoranda the date filled, the signature of the pharmacist filling the prescription and the pharmacy prescription number 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 an official New York State prescription. If the pharmacist fails to receive such prescription, he shall record on the memorandum for said oral prescription this notation: "Official 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 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 ... 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(g)*
10 NYCRR Section 80.69(l)
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 ... drug name or name of the ultimate user. *10 NYCRR Section 80.67(h)*
10 NYCRR Section 80.69(m)
10 NYCRR Section 80.73(n)
10 NYCRR Section 80.74(h)

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 or 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)*

Medicaid policy states: "All prescriptions and fiscal orders must bear . . . " the name of the patient for whom it is intended... the name, strength, if applicable, and the quantity of the drug prescribed... and the name... of the prescriber who has initiated or written the fiscal order or prescription..."

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

Medicaid policy states: "Drugs 'carved out' and billed directly to Medicaid are subject to refill, quantity and prior authorization/approval requirements as described in this Manual."

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

In 5 instances pertaining to 5 patients, the prescription or fiscal order did not contain all of the required information. In 2 instances, the patient's first name was missing (Sample #'s 8 and 200); in 2 instances, the quantity was missing (Sample #'s 56 and 96); in 1 instance, the prescriber's name was missing on the telephone order (Sample #128). This resulted in a sample overpayment of $288.64 (Exhibit II).

2. **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

Medicaid policy states that "medical supplies can only be obtained by presenting a signed written order from a qualified prescriber. . . ."
MMIS Provider Manual for Pharmacy Version 2004-1, Section 2.2.4

In 2 instances pertaining to 2 patients, 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 $185.11 (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. **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 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

Medicaid policy requires the billing provider to enter the Medicaid ID Number **or** the NPI of the ordering/prescribing provider. If the NPI is not known and the orderer/prescriber is not enrolled in the Medicaid program, enter his/her License number. If a license number is indicated, the Profession Code that identifies the ordering/prescribing provider's profession must be entered. For orders originating in a hospital, clinic, or other health care facility, the following rules apply: When a prescription is written by an unlicensed intern or resident, the supervising physician's Medicaid ID number, NPI or license number should be entered in this field. When

prescriptions have been written by a Physician's Assistant, the supervising physician's Medicaid ID number, NPI or license number should be entered in this field. Certified Nurse Practitioners with licenses that contain six digits not preceded by the letter F can only write fiscal orders. If the prescribing provider is a Nurse Practitioner certified to write prescriptions, enter his/her Medicaid ID number, NPI or license number in this field. **Note: If the Medicaid ID, NPI or State License number of an authorized prescriber is not on the prescription, it is the pharmacist's responsibility to obtain it.**

NYS Medicaid Program Pharmacy Manual Billing Guidelines Version 2008-2, Section II
NYS Medicaid program Pharmacy Manual Billing Guidelines Version 2008-3, Section II

Medicaid policy requires the billing provider to enter the NPI of the ordering/prescribing provider. For orders originating in a hospital, clinic, or other health care facility, the following rules apply: When a prescription is written by an unlicensed intern or resident, the supervising physician's NPI should be entered in this field. When prescriptions have been written by a Physician's Assistant, the supervising physician's NPI should be entered in this field. If the prescribing provider is a Nurse Practitioner certified to write prescriptions, enter his/her NPI in this field. **Note: If the NPI of an authorized prescriber is not on the prescription, it is the pharmacist's responsibility to obtain it.**

NYS Medicaid Program Pharmacy Manual Billing Guidelines Version 2009-1, Section II
NYS Electronic Medicaid System eMedNY 000301 Billing Guidelines Pharmacy Version 2010-01, Section 2.4.1

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 8 instances pertaining to 8 patients, the ordering prescriber conflicts with the claim prescriber. This resulted in a sample overpayment of $106.73 (Exhibit IV). 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.

4. **Non-Controlled Prescription/Fiscal Order Filled More Than 60 Days After It Has Been Initiated by the Prescriber 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)*

Medicaid policy 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 Version 2006-1, Section I

In 2 instances pertaining to 2 patients, a non-controlled prescription or fiscal order was filled more than 60 days after it was initiated by the prescriber. This resulted in a sample overpayment of $95.96 (Exhibit V).

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

State law requires: "Every prescription written in this state by a person authorized to issue such prescription shall be on prescription forms containing one line for the prescriber's signature. The prescriber's signature shall validate the prescription."
Education Law Article 137 Section 6810.6(a)

State Law established: "...The imprinted or stamped name shall not be employed as a substitute for, or fulfill any legal requirement otherwise mandating that the prescription be signed by the prescriber." *Education Law Article 137 Section 6810.8*

State Law establishes: " It shall be a class A misdemeanor for...Any person to forge, counterfeit, simulate, or falsely represent, or without proper authority using any mark, stamp, tag, label, or other identification device authorized or required by rules and regulations promulgated under the provisions of this article..."
Education Law Article 137 Section 6811.15

The Rules of the Board of Regents state that unprofessional conduct in the practice of pharmacy includes "dispensing a written prescription which does not bear . . . the name, address, telephone number, profession and signature of the prescriber; . . . ."
8 NYCRR Section 29.7(a)(1)

Regulations state: "The terms written order or fiscal order are used interchangeably in this section and mean any original, signed written order of a practitioner which requests durable medical equipment, prosthetic or orthotic appliances and devices, medical/surgical supplies, or orthopedic footwear." *18 NYCRR Section 505.5 (a)(8)*

Regulations state: "Written order or fiscal order . . . refer[s] to any original, signed written order of a practitioner" including any faxed transmitted order "which requests a pharmacy to provide a drug to a medical assistance recipient." *18 NYCRR Section 505.3(a)(6)*

Medicaid policy states: "All prescriptions and fiscal orders must bear . . . [the] signature of the prescriber who has written or initiated the prescription or fiscal order."
NYS Medicaid Program Pharmacy Manual Policy Guidelines Version 2006-1, Section I

In 2 instances pertaining to 2 patients, the prescriber's signature was missing on the prescription/fiscal order. This resulted in a sample overpayment of $25.23 (Exhibit VI).

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

State law establishes: "Any person, who . . . puts up a greater or lesser quantity of any ingredient specified in any such prescription, order or demand than that prescribed, ordered or demanded, except where required pursuant to paragraph (g) of subdivision two of section three hundred sixty-five-a of the social services law . . . is guilty of a misdemeanor."
Education Law Article 137 Section 6816.1.a

Regulations state: "By enrolling the provider agrees...to submit claims on officially authorized claim forms in the manner specified by the department in conformance with the standards and procedures for claims submission" and "that the information provided in relation to any claim for payment shall be true, accurate and complete." *18 NYCRR Sections 504.3(f) and (h)*

Medicaid policy states that quantities for prescription drugs shall be dispensed in the amount prescribed, taking into consideration those drugs should be ordered in a quantity consistent with the health needs of the recipient and sound medical practice. For non-prescription drug and medical/surgical supply orders, if the ordering practitioner requests a quantity that does not correspond to the pre-packaged unit, the pharmacist may supply the drug in the pre-packaged quantity that most closely approximates the ordered amount.
NYS Medicaid Program Pharmacy Manual Policy Guidelines Version 2006-1, Section I

In 2 instances pertaining to 2 patients, the pharmacy billed for a quantity that exceeded the prescribed quantity. This resulted in a sample overpayment of $10.61 (Exhibit VII).

7. **Pharmacy Billed for Different Strength 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, 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; provided that the pharmacist may record on the prescription the address and age of the patient, the strength and quantity of the drug prescribed, the directions for use and the prescriber's address, telephone number and profession if these are missing or unclear..."
8 NYCRR Section 29.7(a)(1)

The Rules of the Board of Regents state that unprofessional conduct in the practice of pharmacy shall 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, 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 prescription, the reason for the change and his or her signature. The pharmacist shall also indicate the change on the prescription and initial the change." *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. The pharmacist shall write the date he or she received the oral authorization on the prescription, reason for the change and his or her signature. The pharmacist shall also indicate the change on the prescription and initial the change." *10 NYCRR Section 80.69(m)*

In 2 instances pertaining to 2 patients, the pharmacy billed for a different strength than ordered. This resulted in a sample overpayment of $10.48 (Exhibit VIII).

8. **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)(4)(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 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 Version 2006-1, Section I

Medicaid policy 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 Version 2006-1, Section I

In 1 instance the claim exceeded the authorized and/or allowed number of refills. This resulted in a sample overpayment of $5.06 (Exhibit IX).

9. **Missing DEA Number on Controlled Substance Prescription**

Regulations state, for Schedule II and certain other substances, that the official prescription shall contain the following: "the printed name, address, Drug Enforcement Administration registration number, telephone number and handwritten signature of the prescribing practitioner..." *10 NYCRR Section 80.67(b)(2)*

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

10 NYCRR Section 80.67(g)

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

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

10 NYCRR Section 80.69(l)

In 1 instance, the DEA number was missing on the controlled substance prescription. This resulted in a sample overpayment of $5.02 (Exhibit X).

Total sample overpayments for this audit amounted to $732.84.

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 $80,003, one of the following repayment options must be selected within 20 days from the date of this letter:

OPTION #1: Make full payment by check or money order within 20 days of the date of the final audit report. The check should be made payable to the New York State Department of Health and be sent with the attached Remittance Advice to:

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

OPTION #2: Enter into a repayment agreement with the Office of the Medicaid Inspector General. If your repayment terms exceed 90 days from the date of the final audit report, recoveries of amounts due are subject to interest charges at the prime rate plus 2%. If the process of establishing the repayment agreement exceeds 20 days from the date of the final audit report, the OMIG will impose a 50% withhold after 20 days until the agreement is established. OMIG acceptance of the repayment agreement is based on your repaying the Medicaid overpayment as agreed. The OMIG will adjust the rate of recovery, or require payment in full, if your unpaid balance is not being repaid as agreed. In addition, if you receive an adjustment in your favor while you owe funds to the State, such adjustment will be applied against any amount owed. If you wish to enter into a repayment agreement, please contact the Bureau of Collections Management within 20 days at the following:

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

If you choose not to settle this audit through repayment of the adjusted lower confidence limit, you have the right to challenge these findings by requesting an administrative hearing where the OMIG would seek and defend the adjusted meanpoint estimate of $287,032. As allowed by state regulations, you must make your request for a hearing, in writing, within sixty (60) days of the date of this report to:

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

Questions regarding the request for a hearing should be directed to Office of Counsel at [redacted]

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

At the hearing you have the right to:

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

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

Should you have any questions, please contact [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-2.1
Fin-3/19/13

cc: [redacted]

NEW YORK STATE
OFFICE OF THE MEDICAID INSPECTOR GENERAL
REMITTANCE ADVICE

NAME AND ADDRESS OF AUDITEE	PROVIDER ID [redacted]
[redacted] SVA Pharmacy Corp. 119-91 Jamaica Avenue Richmond Hill, NY 11418	AUDIT #11-1030
AMOUNT DUE: $80,003	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:

[redacted]
New York State Department of Health
Medicaid Financial Management, B.A.M.
GNARESP Corning Tower, Room 2739
File #11-1030
Albany, New York 12237-0048

Thank you for your cooperation.

EXHIBIT I

SVA PHARMACY CORP
PHARMACY SERVICES AUDIT
AUDIT #11-1030
AUDIT PERIOD: 01/01/06 – 12/31/09

EXTRAPOLATION OF SAMPLE FINDINGS

Total Sample Overpayments	$	732.84
Less Overpayments Not Projected*		(291.84)
Sample Overpayments for Extrapolation Purposes	$	441.00
Services in Sample		200
Overpayments Per Sampled Service	$	2.2050
Services in Universe		130,041
Meanpoint Estimate	$	286,740
Add Overpayments Not Projected*		292
Adjusted Meanpoint Estimate	$	287,032
Lower Confidence Limit	$	79,711
Add Overpayments Not Projected*		292
Adjusted Lower Confidence Limit	$	80,003

* The actual dollar disallowance for the "**Ordering Prescriber Conflicts with Claim Prescriber 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.

SVA PHARMACY CORP

MMIS # / NPI #: [redacted]

Audit #: 11-1030

Missing Information from Prescription/Fiscal Order

Sample #	Date of Service	Formulary Code	Amount Disallowed
8	08/13/08	00310027110	$116.93
56	11/01/08	00172376060	$5.54
96	03/28/06	00065064710	$124.61
128	02/21/06	A4259	$5.06
200	09/03/06	00168027046	$36.50
Total Services:	5		$288.64

SVA PHARMACY CORP

MMIS # / NPI #: [redacted]

Audit #: 11-1030

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

Sample #	Date of Service	Formulary Code	Amount Disallowed
99	02/17/07	A4259	$5.06
172	08/24/09	B4154	$180.05
Total Services:	2		$185.11

SVA PHARMACY CORP

MMIS # / NPI #: [redacted]

Audit #: 11-1030

Ordering Prescriber Conflicts with Claim Prescriber

Sample #	Date of Service	Formulary Code	Amount Disallowed
2	12/28/07	57664037708	$21.91
35	10/25/06	00536440901	$3.94
50	04/07/06	17714001210	$2.60
67	03/17/09	54838012540	$3.22
110	10/02/09	49884077805	$4.26
176	12/20/08	52152015002	$14.23
180	10/10/06	00065401303	$52.88
191	01/11/08	00536197072	$3.69
Total Services:	**8**		**$106.73**

SVA PHARMACY CORP

MMIS # / NPI #: [redacted]

Audit #: 11-1030

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
47	11/15/07	00781507701	$19.38
185	07/21/09	A4253	$76.58
Total Services:	2		$95.96

SVA PHARMACY CORP

MMIS # / NPI #: [redacted]

Audit #: 11-1030

Prescriber's Signature Missing on Prescription/Fiscal Order

Sample #	Date of Service	Formulary Code	Amount Disallowed
65	04/14/09	A4245	$0.39
116	11/24/07	53489046705	$24.84
Total Services:	2		$25.23

SVA PHARMACY CORP

MMIS # / NPI #: [redacted]

Audit #: 11-1030

Pharmacy Billed in Excess of Prescribed Quantity

Sample #	Date of Service	Formulary Code	Amount Disallowed
127	01/21/08	00172208380	$3.46
168	03/03/08	00378111005	$7.15
Total Services:	2		$10.61

SVA PHARMACY CORP

MMIS # / NPI #: [redacted]

Audit #: 11-1030

Pharmacy Billed for Different Strength than Ordered

Sample #	Date of Service	Formulary Code	Amount Disallowed
39	04/29/09	00472083123	$8.50
119	05/06/09	49348030423	$1.98
Total Services:	2		$10.48

SVA PHARMACY CORP

MMIS # / NPI #: [redacted]

Audit #: 11-1030

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

Sample #	Date of Service	Formulary Code	Amount Disallowed
13	02/19/09	A4259	$5.06
Total Services:	1		$5.06

SVA PHARMACY CORP

MMIS # / NPI #: [redacted]

Audit #: 11-1030

Missing DEA # on Controlled Substance Prescription

Sample #	Date of Service	Formulary Code	Amount Disallowed
92	09/23/08	00378041501	$5.02
Total Services:	**1**		**$5.02**

SVA PHARMACY CORP
MMIS # / NPI #: [redacted]
Audit #: 11-1030

Additional Findings Pertaining to Sampled Items

Sample #	Date of Service	Primary Finding	Other Findings Pertaining to Sampled Items
56	11/1/2008	Missing Information from Prescription/Fiscal Order	Ordering Prescriber Conflicts with Claim Prescriber
119	5/6/2009	Pharmacy Billed for Different Strength than Ordered	Ordering Prescriber Conflicts with Claim Prescriber
128	2/21/2006	Missing Information from Prescription/Fiscal Order	Missing Follow-Up Hard Copy Order for Medical Supplies and/or Enteral Nutrition