



STATE OF NEW YORK
OFFICE OF THE MEDICAID INSPECTOR GENERAL
217 Broadway – 9th Floor
New York, New York 10007

ANDREW M. CUOMO
GOVERNOR

JAMES G. SHEEHAN
MEDICAID INSPECTOR GENERAL

[REDACTED]
Kabsil Corporation
988 Southern Boulevard
Bronx, New York 10459
MMIS Provider No: [REDACTED]
NPI # [REDACTED]

**NOTICE OF FINAL AGENCY ACTION
UNDER THE MEDICAID PROGRAM
AUDIT #08-1006**

[REDACTED]
Kabsil Corporation
988 Southern Boulevard
Bronx, New York 10459
MMIS Provider No. [REDACTED]
NPI # [REDACTED]

To the above named:

THE NEW YORK STATE OFFICE OF THE MEDICAID INSPECTOR GENERAL (“OMIG”) IS CENSURING KABSIL CORPORATION AND MR. ANDREW P. SILVERMAN, SUPERVISING PHARMACIST, INDIVIDUALLY, AND IS SEEKING TO RECOVER \$634,011.19 IN RESTITUTION FOR MEDICAID OVERPAYMENTS PLUS INTEREST.

1. The OMIG is an independent office in the New York State Department of Health (the Department). The OMIG has determined that Kabsil Corporation has committed unacceptable practices under the Medicaid program, as defined in 18 NYCRR Section 515.2, and has received Medicaid overpayments, as defined in 18 NYCRR Section 518.1.
2. Kabsil Corporation (“Kabsil”) is enrolled as a provider in the Medicaid program, with the Medicaid Management Information System (MMIS provider number) of [REDACTED]. Mr. Silverman is a registered pharmacist who was enrolled in the Medicaid program as Kabsil Corporation’s Supervising Pharmacist, with the MMIS provider number of [REDACTED]. Mr. Silverman had direct or indirect control of the operation of Kabsil Corporation and is an affiliate of Kabsil Corporation pursuant to 18 Section NYCRR 504.1(d)(1). Pursuant to 18 NYCRR Section 515.3(c) and (d), affiliates may be sanctioned for the acts of entities they own and/or control. Affiliates are also liable for Medicaid overpayments made to entities they own or where they supervise the furnishing of medical care, services or supplies pursuant to 18 NYCRR Sections 518.3 and 518.6.
3. The OMIG’s determination is based on a review of Kabsil Corporation pharmacy records relating to Medicaid payments for services during the period of January 1, 2005 through December 31, 2006. This review demonstrated a lack of compliance with Department rules and regulations, and the documentation in the pharmacy records failed to support Medicaid claims submitted. Previously, a Draft Audit Report was issued on March 12, 2009, to which you provided a response on April 10, 2009.

The post-fieldwork documentation submitted in response to our Draft Audit Report was not contemporaneous with the delivery of service. The specific reasons for this determination are set forth in the Final Findings Report, attached hereto and hereby made a part of this Notice.

4. As a result of this determination and in accordance with 18 NYCRR Section 515.3, the OMIG will:
 - a. Censure Kabsil within the Medicaid program and censure Mr. Andrew P. Silverman, individually, and as Supervising Pharmacist, within the Medicaid program; and,
 - b. Recover restitution of Medicaid overpayments in the amount of \$643,011.19 plus interest, as stated in the attached Final Findings Report, from Kabsil Corporation and Mr. Silverman jointly and severally.
5. The OMIG has determined that Kabsil and Mr. Silverman have violated several provisions of the Department's regulations that define an unacceptable practice under the Medicaid program. Specifically, Kabsil Corporation and Mr. Silverman have violated the following provisions of the Medicaid regulations in Title 18 of the NYCRR:

Section 515.2(a)(1): An unacceptable practice is conduct by a person which is contrary to the official rules and regulations of the Department.

Section 515.2(a)(2): An unacceptable practice is conduct by a person which is contrary to the claiming instructions or procedures of the Department.

Section 515.2(b): An unacceptable practice is conduct which constitutes fraud or abuse and includes the practices specifically enumerated in this subdivision.

Section 515.2(b)(2) False Statements. (i) Making, or causing to be made any false, fictitious or fraudulent statement or misrepresentation of material fact in claiming a Medicaid payment, or for use in determining the right to payment.

Section 515.2(b)(6) Unacceptable Recordkeeping. Failing to maintain or to make available for purposes of audit or investigation records necessary to fully disclose the medical necessity for, and the nature and extent of, the medical care, services or supplies furnished, or to comply with other requirements of this Title.

Section 515.3(c): Whenever the Department sanctions a person, it may also sanction any affiliate of that person.

Kabsil and Mr. Silverman violated Section 504.3 of the Regulations which require a provider:

(a) to prepare and to maintain contemporaneous records demonstrating its right to receive payment under the medical assistance program and to keep for a period of six years from the date the care, service 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 and to furnish such records and information, upon request, to the Department, the Secretary of the United States Department of Health and Human Services, the Deputy Attorney General for Medicaid Fraud Control and the New York State Department of Health;

(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 submissions;

(h) to provide information in relation to any claim for payment that is true, accurate and complete; and,

(i) to comply with the rules, regulations and official directives of the Department.

Kabsil and Mr. Silverman violated Section 540.7(a) of the regulations which require that 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 and that, except as noted, no part thereof has been paid; 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 unless otherwise required by regulation, 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.

Kabsil and Mr. Silverman violated Section 505.3(b) of the regulations, which require:

(b) Drugs may be obtained only upon the written order of a practitioner, except for telephone orders for prescription drugs filled in compliance with this section.

Furthermore, Kabsil and Mr. Silverman violated NYS Medicaid Program Pharmacy Manual Policy Guidelines, Section I, which states, "Prescription drugs can be obtained by presenting a signed written order from a qualified prescriber." This is a violation of policy in that they:

- dispensed medication for strengths or quantities not prescribed or based on incomplete prescriptions/orders;
- failed to maintain prescriptions/orders as required by the Medicaid program; and,
- submitted claims that did not accurately reflect prescription information.

These violations are in addition to those set forth in the Detailed Findings Section of this Report.

6. Section 515.9 states that any overpayments identified pursuant to any investigation under this Part may be recovered in conjunction with a proceeding under this Part and in accordance with Parts 518 and 520 of Title 18.
7. This determination is further based on OMIG's proposed finding that you have engaged in unacceptable practices in the Medicaid program by your violation of the following provisions of the NYS Education Law, Section 6808. Registering and Operating Establishments.
 - 2c. Both the owner and the supervising pharmacist shall be responsible for carrying out the provisions of this article.
 - 2e. Conduct of a pharmacy. Every owner of a pharmacy or every pharmacist in charge of a pharmacy shall be responsible for the proper conduct of this pharmacy.
8. The sanction of censure means a warning that continued conduct of the type or nature cited may result in a more severe sanction. A censure may serve as a basis for imposition of a more severe sanction against the same person or an affiliate on a subsequent matter, whether or not the subsequent matter is related to the matter for which a censure was issued.
9. The OMIG reserves the right to conduct further reviews of Kabsil and/or Mr. Silverman's participation in the Medicaid Program, and to take other administrative or legal action where appropriate, and to recover any Medicaid overpayments through the initiation of a set off or withholding of payments, a civil lawsuit or any other lawful means.

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 amount of \$643,011.19, one of the following repayment options must be selected within 20 days from the date of this letter:

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


 New York State Department of Health
 Medicaid Financial Management, B.A.M.
 GNARESP Corning Tower, Room 1237
 Albany, New York 12237-0048

OPTION #2: Enter into a repayment agreement with the Office of the Medicaid Inspector General. If your repayment terms exceed 90 days from the date of the final report, recoveries of amounts due are subject to interest charges at the prime rate plus 2%. If the process of establishing the repayment agreement exceeds 20 days from the date of the final report, the OMIG will impose a 15% withhold after 20 days until the agreement is established.

Furthermore, the OMIG may require financial information from you to establish the terms of the repayment agreement. If additional information is requested, the OMIG must receive the information within 30 days of the request or a 50% withhold will be imposed. OMIG acceptance of the repayment agreement is based on your repaying the Medicaid overpayment as agreed. The OMIG will adjust the rate of recovery, or require payment in full, if your unpaid balance is not being repaid as agreed. The OMIG will notify you no later than 5 days after initiating such action. If you wish to enter into a repayment agreement, you must forward your written request within 20 days to the following:

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

If within 20 days, you fail to make full payment or contact the OMIG to make repayment arrangements, the OMIG will establish a withhold equal to 50% of your Medicaid billings to recover payment and liquidate the 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, you have the right to challenge these findings by requesting an administrative hearing. 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]

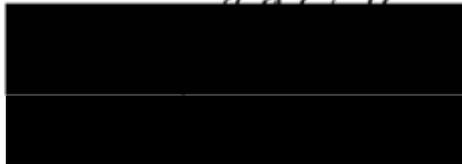
At the hearing you have the right to:

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

Issues you may raise shall be limited to those issues relating to determinations contained in the Notice of final Agency Action. 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.

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

Sincerely,



Deputy Medicaid Inspector General

Dated: 5/16/11



Attachment

cc:



Certified Mail #. 
Return Receipt Requested

**KABSIL CORPORATION
PHARMACY SERVICES AUDIT
MEDICAID PAYMENTS FROM JANUARY 01, 2005, THROUGH DECEMBER 31, 2006
AUDIT #08-1006
PROVIDER ID [REDACTED]
FINAL FINDINGS REPORT**

PURPOSE AND SCOPE

The purpose of the audit was to ensure provider compliance with applicable federal and State laws, regulations, rules and policies governing the New York State Medicaid program and 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 applicable laws, regulations and the appropriate Provider Manuals.

A review of payments to Kabsil Corporation for pharmacy services paid by Medicaid for New York City recipients from January 1, 2005, through December 31, 2006, was recently completed. During the audit period, \$10,146,731.15 was paid for 154,441 services rendered. This review consisted of a random sample of 200 services with Medicaid payments of \$11,003.36.

SUMMARY

Based on this audit, sample overpayments totaled \$821.04 (Exhibit I). The following detailed findings reflect the results of the audit.

DETAILED FINDINGS

In addition to any specific detailed findings, rules and/or regulations which may be listed below, the following regulations pertain to this audit:

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 fee-for-service 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. 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) (Schedule II controlled substances)

10 NYCRR Section 80.74(g) (Schedule III, IV and V controlled substances)

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) (Schedule II controlled substances)

10 NYCRR Section 80.74(h) (Schedule III, IV and V controlled substances)

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, April 2005**

**Does not cover the entire audit period*

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 5 instances, pertaining to 5 patients, the prescription or fiscal order did not contain all of the required information. In 5 instances, the quantity was missing (sample #71, #89 and #160) and in 2 instances, the DEA number was missing (sample #56 and #196). This resulted in a sample overpayment of \$353.57 (Exhibit II).

2. Missing Prescription

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)

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: "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)

In 5 instances pertaining to 5 patients, a signed written prescription was missing. This resulted in a sample overpayment of \$171.44 (Exhibit III).

3. Ordering Prescriber Conflicts with Claim Prescriber

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

18 NYCRR Section 505.5(c)(1)

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

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

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

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

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

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

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

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

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

DOH Medicaid Update March 2000

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

DOH Medicaid Update June 2006

In 41 instances pertaining to 40 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 \$149.22 (Exhibit IV).

4. **Prescription/Fiscal Order Refilled Beyond 180 Days of Issuance**

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)*

The Medicaid Pharmacy Manual 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, Section I

The MMIS Provider Manual 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, Section 2.2.4

In 2 instances pertaining to 2 patients, a prescription or fiscal order was refilled more than 180 days after the date of issuance. This resulted in a sample overpayment of \$118.42 (Exhibit V).

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

Regulations state: "An unacceptable practice is conduct by a person which is contrary to: . . . (3) the official rules and regulations of the Departments of Health, Education and Mental Hygiene. . . ." *18 NYCRR Section 515.2(a)*

The MMIS Provider Manual states: "Prescribed quantities for legend drugs shall be dispensed in the amount prescribed." For non-prescription drugs and medical supplies, if the ordering practitioner requests a quantity that does not correspond to the pre-packaged unit, the pharmacist should supply the drug or medical supply in the pre-packaged quantity that most closely approximates the ordered amount.

MMIS Provider Manual for Pharmacy, Section 2.2.4(rev. 11/02)

In 1 instance, the pharmacy billed for a quantity that exceeded the ordered amount. The price of the billed item was reduced to the amount of the ordered item. This resulted in a sample overpayment of \$11.66 (Exhibit VI).

6. **Pharmacy Billed for Different Strength Than Ordered**

The Rules of the Board of Regents state that unprofessional conduct in the practice of pharmacy shall include "[d]ispensing 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 include "[u]sing 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: "An unacceptable practice is conduct by a person which is contrary to: . . . (3) the official rules and regulations of the Departments of Health, Education and Mental Hygiene. . . ." *18 NYCRR Section 515.2(a)*

In 1 instance, the pharmacy billed for a strength different than the strength ordered. This resulted in a sample overpayment of \$8.73 (Exhibit VII).

7. Imprinted or Stamped Name of Prescriber Missing on Prescription/Fiscal Order

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."
NY Education Law Section 6810(8)

Regulations state: "An unacceptable practice is conduct by a person which is contrary to: . . . (3) the official rules and regulations of the Departments of Health, Education and Mental Hygiene. . . ."
18 NYCRR Section 515.2(a)

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)

In 1 instance, the imprinted or stamped name of the prescriber was missing on the prescription/fiscal order. a partial disallowance equal to the dispensing fee of \$4.50 was taken. If the drug dispensed was generic, the dispensing fee of \$4.50 was taken, while if a brand name drug was dispensed, a disallowance of \$3.50 was taken. In either case, should the item for which a prescription was rendered cost less than the dispensing fee, the actual cost is taken as the disallowance. This resulted in a sample overpayment of \$4.50 (Exhibit VIII).

8. Missing Supervising MD on Prescription/Fiscal Order by Physician's Assistant

Regulations state: "A registered physician's assistant may write prescriptions for a patient who is under the care of the physician responsible for the supervision of the registered physician's assistant. The prescription shall be written on the form of the supervising physician and shall include the name, address and telephone number of the physician. The prescription shall also bear the name, the address, the age of the patient and the date on which the prescription was written."
10 NYCRR Section 94.2(e)(1)

Regulations state: "The registered physician's assistant shall sign all such prescriptions by printing the name of the supervising physician, printing his/her own name and additionally signing his/her own name followed by the letters R.P.A. and his/her State Education Department registration number."
10 NYCRR Section 94.2 (e)(4)

The MMIS Provider Manual states: "The registered physician's assistant shall sign such a prescription/order by printing his/her name followed by the letters R.P.A. and his/her registration number. The registered physician's assistant must also include on the prescription/order form the physician's license number and all other information required of the physician except the physician's signature."
MMIS Provider Manual for Pharmacy, Section 2.2.1(rev. 11/02)

In 1 instance, the prescription or fiscal order written by a physician's assistant did not contain the name of the supervising physician. If the drug dispensed was generic, the dispensing fee of \$4.50 was taken, while if a brand name drug was dispensed, a disallowance of \$3.50 was taken. In either case, should the item for which a prescription was rendered cost less than the dispensing fee, the actual cost is taken as the disallowance. This resulted in a sample overpayment of \$3.50 (Exhibit IX).

Total sample overpayments for this audit amounted to \$821.04.

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

IMPACT

The statistical sampling methodology employed allows for extrapolation of the sample findings to the universe of services (18 NYCRR Section 519.18). The point estimate of the amount overpaid is \$634,011.00 (Exhibit I).

EXHIBIT I

**KABSIL CORPORATION
PHARMACY SERVICES AUDIT
AUDIT #08-1006
AUDIT PERIOD: 01/01/05 – 12/31/06**

EXTRAPOLATION OF SAMPLE FINDINGS

Sample Overpayments	\$	821.04
Services in Sample		200
Overpayments Per Sampled Service	\$	4.1052
Services in Universe		154,441
Point Estimate	\$	634,011.00