



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

May 29, 2013

Sem & Sam Corp.  
1071 Ogden Avenue  
Bronx, NY 10452  
[REDACTED]

Final Audit Report

Audit #09-5366

Provider ID [REDACTED]

Dear [REDACTED]:

This letter will serve as our final audit report of the recently completed review of payments made to Sem & Sam Corp. under the New York State Medicaid Program. Since you did not respond to our revised draft audit report dated January 14, 2013, the findings in the final audit report are identical to those in the draft audit report.

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 Sem & Sam Corp. for pharmacy services paid by Medicaid for New York City recipients from January 1, 2004, through December 31, 2008, was recently completed. During the audit period, \$12,265,681.73 was paid for 182,687 services rendered. This review consisted of a random sample of 200 services with Medicaid payments of \$12,342.38. 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.

Sem & Sam 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 \$2,555.87 (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 revised draft audit report dated January 14, 2013. Since you did not respond to the revised draft audit report, the findings remain the same.

### **DETAILED FINDINGS**

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

Regulations state: "By enrolling the provider agrees: (a) to prepare and to maintain contemporaneous records demonstrating its right to receive payment . . . and to keep for a period of six years from the date the care, services or supplies were furnished, all records necessary to disclose the nature and extent of services furnished and all information regarding claims for payment submitted by, or on behalf of, the provider . . . (e) to submit claims for payment only for services actually furnished and which were medically necessary or otherwise authorized under the Social Services Law when furnished and which were provided to eligible persons; (f) to submit claims on officially authorized claim forms in the manner specified by the department in conformance with the standards and procedures for claims submission; . . . (h) that the information provided in relation to any claim for payment shall be true, accurate and complete; and (i) to comply with the rules, regulations and official directives of the department."  
*18 NYCRR Section 504.3*

Regulations state: "All bills for medical care, services and supplies shall contain: . . . (8) a dated certification by the provider that the care, services and supplies itemized have in fact been furnished; that the amounts listed are due and owing . . .; that such records as are necessary to disclose fully the extent of care, services and supplies provided to individuals under the New York State Medicaid program will be kept for a period of not less than six years from the date of payment . . .; and that the provider understands that payment and satisfaction of this claim will be from Federal, State and local public funds and that he or she may be prosecuted under applicable Federal and State laws for any false claims, statements or documents, or concealment of a material fact provided. . . ."  
*18 NYCRR Section 540.7(a)*

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

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

#### 1. Ordering Prescriber Conflicts with Claim Prescriber

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

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)*

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

*MMIS Provider Manual for Pharmacy Version 2004-1, Section 3*

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

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

*NYS Medicaid Program Pharmacy Manual Billing Guidelines Version 2005-1, Section II*  
*NYS Medicaid Program Pharmacy Manual Billing Guidelines Version 2007-1, Section II*  
*NYS Medicaid Program Pharmacy Manual Billing Guidelines Version 2008-1, Section II*

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*

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 26 instances pertaining to 25 patients, the ordering prescriber conflicts with the claim prescriber. This resulted in a sample overpayment of \$2,364.69 (Exhibit II).

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

Regulations state: "No written order for drugs may be refilled more than six months after the date of issuance. . . ."

*18 NYCRR Section 505.3(d)(2)*

Regulations state: "All . . . medical/surgical supplies . . . may be furnished only upon a written order of a practitioner." An order cannot be refilled more than 180 days from the original date ordered.

*18 NYCRR Section 505.5(b)(1) and (4)(iii)*

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

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

In 1 instance, a prescription or fiscal order was refilled more than 180 days after the date initiated by the prescriber. This resulted in a sample overpayment of \$179.00 (Exhibit III).

3. **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 1 instance, 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 \$6.02 (Exhibit IV).

4. **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: "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 Version 2004-1, Section 2.2.4*

In 1 instance, the pharmacy billed for a quantity that exceeded the prescribed quantity. This resulted in a sample overpayment of \$4.77 (Exhibit V).

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

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

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

Regulations also state: "All durable medical equipment, medical/surgical supplies, orthotic and prosthetic appliances and devices, and orthopedic footwear may be furnished only upon a written order of a practitioner." *18 NYCRR Section 505.5(b)(1)*

Medicaid policy states: "Medical/surgical supplies can only be obtained by presenting a signed, written order (fiscal order) from a qualified prescriber."

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

In 1 instance, a signed written order, as a follow-up to a telephone or fax order for medical supplies or enteral nutrition, was missing. This resulted in a sample overpayment of \$1.39 (Exhibit VI).

Total sample overpayments for this audit amounted to \$2,555.87.

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 total sample overpayment amount of \$2,555.87, one of the following repayment options must be selected within 20 days from the date of this letter.

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

  
 New York State Department of Health  
 Medicaid Financial Management, B.A.M.  
 GNARESP Corning Tower, Room 2739  
 File # 09-5366  
 Albany, New York 12237-0048

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

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

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

**If within 20 days, you fail to make full payment or contact the OMIG to make repayment arrangements, the OMIG will establish a withhold equal to 50% of your Medicaid billings to recover payment and liquidate the total sample overpayment 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 total sample overpayment amount, 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]

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

At the hearing you have the right to:

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

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

Should you have any questions, please contact [REDACTED] at [REDACTED]

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

Sincerely,

[REDACTED]

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

[REDACTED]  
Enclosure  
Ver-2.0  
Fin-3/19/13

cc: [REDACTED]

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

**NAME AND ADDRESS OF AUDITEE**

████████████████████  
Sem & Sam Corp.  
1071 Ogden Avenue  
Bronx, NY 10452

**PROVIDER ID** ██████████

**AUDIT #** 09-5366

**AMOUNT DUE:** \$2,555.87

AUDIT	<input checked="" type="checkbox"/>	PROVIDER
	<input type="checkbox"/>	RATE
	<input type="checkbox"/>	PART B
TYPE	<input type="checkbox"/>	OTHER:

**CHECKLIST**

1. To ensure proper credit, please enclose this form with your check.
2. Make checks payable to: *New York State Department of Health*
3. Record the Audit Number on your check.
4. Mail check to:

████████████████████  
New York State Department of Health  
Medicaid Financial Management, B.A.M.  
GNARESP Corning Tower, Room 2739  
File #09-5366  
Albany, New York 12237-0048

*Thank you for your cooperation.*

**SEM & SAM CORP**  
**Audit #: 09- 5366**  
**Audit: 1/1/2004 to 12/31/2008**

Summary of Findings

Finding Description	Total Recipients	Total Services	Total \$ Disallowance	Exhibit
Ordering Prescriber Conflicts with Claim Prescriber	25	26	\$2,364.69	II
Prescription/Fiscal Order Refilled More Than 180 Days After It Has Been Initiated by the Prescriber	1	1	179.00	III
Non-Controlled Prescription/Fiscal Order Filled More Than 60 Days After It Has Been Initiated by the Prescriber	1	1	6.02	IV
Pharmacy Billed in Excess of Prescribed Quantity	1	1	4.77	V
Missing Follow-Up Hard Copy Order for Medical Supplies and/or Enteral Nutrition	1	1	<u>1.39</u>	VI
<b>Totals</b>	<b><u>29</u></b>	<b><u>30</u></b>	<b><u>\$2,555.87</u></b>	

SEM & SAM CORP

MMIS #: [REDACTED]

Audit #: 09-5366

Ordering Prescriber Conflicts with Claim Prescriber

Sample #	Date of Service	Formulary Code	Amount Disallowed
35	12/24/05	00173093308	\$152.43
46	05/10/06	00024542150	\$105.23
49	06/12/06	00536439135	\$1.58
54	07/21/06	50111088603	\$4.87
57	08/01/06	00093001416	\$8.73
62	09/19/06	50458033006	\$455.67
74	02/05/07	60951060568	\$43.60
86	05/12/07	00093029001	\$27.58
91	06/25/07	00169633910	\$163.90
96	07/24/07	65162012711	\$31.11
97	07/31/07	00006074754	\$72.97
101	09/06/07	00781711455	\$404.11
102	09/26/07	37000045502	\$20.55
103	09/28/07	59762453801	\$48.17
104	10/22/07	00406206890	\$14.87
106	11/12/07	49884077905	\$4.74
118	12/24/07	00071015623	\$112.16
119	01/02/08	00173069600	\$187.12
126	02/16/08	49884077805	\$4.65
127	03/01/08	55111019905	\$15.87
131	04/05/08	T4524	\$179.00
138	07/05/08	00591544310	\$5.71

SEM & SAM CORP

MMIS #: [REDACTED]

Audit #: 09-5366

**Ordering Prescriber Conflicts with Claim Prescriber**

Sample #	Date of Service	Formulary Code	Amount Disallowed
147	09/10/08	00182402810	\$0.15
160	12/03/08	17270072101	\$14.18
177	08/26/04	00364290130	\$167.60
189	01/14/05	A4253	\$118.14
<b>Total Services:</b>	<b>26</b>		<b>\$2,364.69</b>

**SEM & SAM CORP**

MMIS #: [REDACTED]

Audit #: 09-5366

**Prescription/Fiscal Order Refilled More Than 180 Days After It Has Been Initiated by the Prescriber**

Sample #	Date of Service	Formulary Code	Amount Disallowed
50	06/16/06	T4524	\$179.00
<b>Total Services:</b>	<b>1</b>		<b>\$179.00</b>

SEM & SAM CORP

MMIS #: [REDACTED]

Audit #: 09-5366

**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
121	01/10/08	49884003510	\$6.02
<b>Total Services:</b>	<b>1</b>		<b>\$6.02</b>

**SEM & SAM CORP**

MMIS #: [REDACTED]

Audit #: 09-5366

**Pharmacy Billed in Excess of Prescribed Quantity**

Sample #	Date of Service	Formulary Code	Amount Disallowed
5	05/10/05	B4150	\$4.77
<b>Total Services:</b>	<b>1</b>		<b>\$4.77</b>

**SEM & SAM CORP**

MMIS #: [REDACTED]

Audit #: 09-5366

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

Sample #	Date of Service	Formulary Code	Amount Disallowed
70	11/22/06	A4245	\$1.39
<b>Total Services:</b>	<b>1</b>		<b>\$1.39</b>