



STATE OF NEW YORK  
OFFICE OF THE MEDICAID INSPECTOR GENERAL

445 Hamilton Avenue, Suite 506  
White Plains, New York 10601

ANDREW M. CUOMO  
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MEDICAID INSPECTOR GENERAL

September 5, 2013

[REDACTED]  
Jacobson Robert Surgical Pharmacy, Inc.  
359 East Main Street  
Mount Kisco, New York 10549

Final Audit Report

Audit #08-4240

Provider ID [REDACTED]

Dear [REDACTED]:

This letter will serve as our final audit report of the recently completed review of payments made to Jacobson Robert Surgical Pharmacy, Inc. under the New York State Medicaid Program.

The New York State Department of Health is responsible for the administration of the Medicaid program. As part of this responsibility, the Office of the Medicaid Inspector General (OMIG) conducts audits and reviews of various providers of Medicaid reimbursable services, equipment and supplies. These audits and reviews are directed at assessing provider compliance with applicable laws, regulations, rules and policies of the Medicaid program as set forth by the Departments of Health and Education [Titles 8, 10, and 18 of the Official Compilation of Codes, Rules and Regulations of the State of New York (8 NYCRR, 10 NYCRR, 18 NYCRR)] and the Medicaid Management Information System (MMIS) Provider Manuals.

Pharmacy is a professional practice, which includes a number of activities that are necessary for the provision of drugs for patients as ordered by persons authorized under State law to prescribe drugs. Pharmacies, which are licensed and currently registered by the New York State Board of Pharmacy, Department of Education, may dispense drugs and other medical/surgical supplies. The pharmacy must comply with all applicable provisions of State Law including Article 137 of the Education Law, Articles 1 and 33 of the Public Health Law, and the Pharmacy Guide to Practice (Pharmacy Handbook) issued by the Department of Education. The specific standards and criteria for pharmacies are outlined in Title 10 NYCRR Parts 80 and 85.20-22 and Title 18 NYCRR Section 505.3. The MMIS Provider Manual for Pharmacy also provides program guidance for claiming Medicaid reimbursement for pharmacy services.

A review of payments to Jacobson Robert Surgical Pharmacy, Inc. for pharmacy services paid by Medicaid from January 01, 2004, through December 31, 2007, was recently completed. During the audit period, \$8,024,479.77 was paid for 76,695 services rendered. This review consisted of a random sample of 200 services with Medicaid payments of \$20,509.13. 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.

Jacobson Robert Surgical Pharmacy, Inc.'s failure to comply with Titles 8, 10, and/or 18 of the Official Compilation of Codes, Rules and Regulations of the State of New York (NYCRR), the MMIS Provider Manual for Pharmacy, and the Pharmacy Guide to Practice resulted in a total sample overpayment of \$1,601.34.

The statistical sampling methodology employed allows for extrapolation of the sample findings to the universe of cases (18 NYCRR Section 519.18). The adjusted mean per unit point estimate of the amount overpaid is \$545,290. The adjusted lower confidence limit of the amount overpaid is \$146,849. We are 95% certain that the actual amount of the overpayment is greater than the adjusted lower confidence limit (Exhibit I). This audit may be settled through repayment of the adjusted lower confidence limit amount of \$146,849.

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 June 21, 2013. The information provided resulted in no change to any of the disallowances. The findings in the final audit report are identical to those in the revised draft audit report.

## **DETAILED FINDINGS**

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

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

Regulations state: "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. Invalid Prescription/Fiscal Order**

Regulations state: "...In addition to the requirements of section sixty-eight hundred ten of the education law or article thirty-three of this chapter, all prescriptions written in this state by a person authorized by this state to issue such prescriptions shall be on serialized official New York state prescription forms provided by the department..."

*NYS Public Health Law Article 1 Title 2 Section 21*

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: "Drugs may be obtained only upon the written order of a practitioner, except for telephone and electronic orders for drugs filled in compliance with this section and 10 NYCRR Part 910..."

*18 NYCRR Section 505.3(b)(1)*

Regulations state: "A telephone order must be recorded by the pharmacy in the format required by subdivision (4) of section 6810 of the Education Law, recording the time of the call and the initials of the person taking the call and the dispenser, prior to dispensing the drug..."

*18 NYCRR Section 505.3(b)(5)*

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: "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)*

In 4 instances pertaining to 4 patients, the prescription was invalid. Three prescriptions (Samples #'s 71, 94 and 108) are not on a required Official NYS Prescription form. One prescription (Sample #102) is post-dated 3/4/04. This resulted in a sample overpayment of \$944.95 (Exhibit II).

## **2. Missing Information from Prescription/Fiscal Order**

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

*8 NYCRR Section 29.7(a)(1)*

Regulations state: "All orders for drugs must show the ordering practitioner's name. . . All orders must also contain the name of the recipient for whom ordered."

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

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

*18 NYCRR Section 505.3(b)(3)*

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

*10 NYCRR Section 80.131(b)(1)(i) and (b)(4)*

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

Regulations state: "Emergency oral prescriptions for controlled substances requiring official New York State prescription forms may be dispensed by a pharmacist to an ultimate user in an emergency situation, provided the pharmacist shall: (1) contemporaneously reduce such prescriptions to written memoranda and shall indicate on such memoranda the name and address of the prescriber and his/her Drug Enforcement Administration registration number, name and address of the ultimate user, date on which it is ordered, name and quantity of drugs prescribed, directions for use and the fact that it is a telephone order...;(f) Within 72 hours after authorizing an emergency oral prescription, the prescribing practitioner shall cause to be delivered to the pharmacist the official New York State prescription. Such prescription shall, in addition to the information otherwise required..."  
*10 NYCRR Section 80.73(d)(1) & (f)*

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

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

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

Regulations state: "When an official New York State prescription prepared by a practitioner is incomplete, the practitioner may orally furnish the missing information to the pharmacist and authorize him or her to enter such information on the prescription...This procedure shall not apply to ... where the name and/or quantity of the controlled substance is not specified or where the name of the ultimate user is missing..."  
*10 NYCRR Section 80.67(i)*

Regulations state: "When a written prescription prepared by a practitioner is incomplete, the practitioner may orally furnish the missing information to the pharmacist and authorize him or her to enter the missing information on the prescription. The pharmacist shall write the date he or she received the oral authorization on the back of the prescription and shall affix his or her signature. This procedure shall not apply to unsigned or undated prescriptions or where the name and/or quantity of the controlled substances is not specified or where the name and address or the ultimate user is missing..."  
*10 NYCRR Section 80.69(j)*

Regulations state: "When an official New York State prescription prepared by a practitioner is incomplete, the practitioner may orally furnish the missing information to the pharmacist and authorize him or her to enter such information on the prescription. The pharmacist shall write the date he or she received the oral authorization on the back of the prescription and shall affix his or her signature. This procedure shall not apply ...where the name and/or quantity of the controlled substance is not specified or where the name of the ultimate user is missing..."

*10 NYCRR Section 80.73(i)*

Regulations state, for schedule III, IV, and V substances, that: "When a written prescription prepared by a practitioner is incomplete, the practitioner may orally furnish the missing information to the pharmacist and authorize him or her to enter the missing information on the prescription. The pharmacist shall write the date he or she received the oral authorization on the back of the prescription and shall affix his or her signature. This procedure shall not apply to unsigned or undated prescriptions or where the name and/or quantity of the controlled substance is not specified or where the name of the ultimate user is missing..."

*10 NYCRR Section 80.74(d)*

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

*10 NYCRR Section 80.67(j)*

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

*10 NYCRR Section 80.69(k)*

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

*10 NYCRR Section 80.73(j)*

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

*10 NYCRR Section 80.74(e)*

In 3 instances pertaining to 3 patients, the prescription did not contain all of the required information. In 3 instances, the quantity was missing from the prescription. This resulted in a sample overpayment of \$464.40 (Exhibit III).

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

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

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

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

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

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

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

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

*DOH Medicaid Update March 2004*

*DOH Medicaid Update October 2004*

*DOH Medicaid Update September 2005*

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

*DOH Medicaid Update March 2000*

In 5 instances pertaining to 5 patients, the ordering prescriber conflicts with the claim prescriber. This resulted in a sample overpayment of \$179.84 (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. Invalid Fax Prescription/Fiscal Order

Regulations state: "...In addition to the requirements of section sixty-eight hundred ten of the education law or article thirty-three of this chapter, all prescriptions written in this state by a person authorized by this state to issue such prescriptions shall be on serialized official New York state prescription forms provided by the department..."

*NYS Public Health Law Article 1 Title 2 Section 21*

Regulations state that by enrolling the provider agrees to comply with the rules, regulations and official directives of the department.

*18 NYCRR Section 504.3(i)*

Regulations state: "Drugs may be obtained only upon the written order of a practitioner, except for telephone and electronic orders for drugs filled in compliance with this section and 10 NYCRR Part 910."

*18 NYCRR Section 505.3(b)(1)*

Regulations state: "Written order or fiscal order are terms which are used interchangeably in this section and refer to any original, signed written order of a practitioner including any faxed transmitted order which requests a pharmacy to provide a drug to a medical assistance recipient. All written orders and fiscal orders shall comply with the provisions of Section 21 of the Public Health Law and regulations promulgated thereunder or contained in this section including but not limited to requirements for prescribing brand necessary drugs."

*18 NYCRR Section 505.3(a)(6)*

Medicaid policy states: "...The source fax number must be clearly visible on the fax that is received."

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

In 1 instance, the order was not a valid fax prescription/fiscal order. It is missing the source fax number. This resulted in a sample overpayment of \$6.99 (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 1 instance, the prescriber’s signature was missing on the prescription/fiscal order. This resulted in a sample overpayment of \$4.21 (Exhibit VI).

## **6. Missing Fiscal Order**

Regulations state: “Drugs may be obtained only upon the written order of a practitioner, except for telephone and electronic orders for drugs filled in compliance with this section and 10 NYCRR Part 910.”

*18 NYCRR Section 505.3(b)(1)*

Regulations 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: “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: “All. . . medical/surgical supplies, . . . may be furnished only upon a written order of a practitioner.”

*18 NYCRR Section 505.5(b)(1)*

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 therefore, including any prescription or fiscal order for the service or supply, must be kept by the provider for a period of six years from the date the care, services or supplies were furnished or billed, whichever is later.”

*18 NYCRR Section 517.3(b)(1)*

Regulations state: "Written order or fiscal order are terms which are used interchangeably in this section and refer to any original, signed written order of a practitioner including any faxed transmitted order which requests a pharmacy to provide a drug to a medical assistance recipient. All written orders and fiscal orders shall comply with the provisions of Section 21 of the Public Health Law and regulations promulgated thereunder or contained in this section including but not limited to requirements for prescribing brand necessary drugs."

*18 NYCRR Section 505.3(a)(6)*

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

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

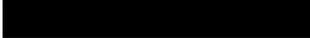
In 1 instance, an original fiscal order was missing. This resulted in a sample overpayment of \$0.95 (Exhibit VII).

Total sample overpayments for this audit amounted to \$1,601.34.

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

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 \$146,849, 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  
 Albany, New York 12237-0048

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

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

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

**If within 20 days, you fail to make full payment or contact the OMIG to make repayment arrangements, the OMIG will establish a withhold equal to 50% of your Medicaid billings to recover payment and liquidate the adjusted lower confidence limit amount, interest and/or penalty, not barring any other remedy allowed by law. The OMIG will provide notice to you no later than 5 days after the withholding of any funds. In addition, if you receive an adjustment in your favor while you owe funds to the State, such adjustment will be applied against the amount owed.**

If you choose not to settle this audit through repayment of the adjusted lower confidence limit, you have the right to challenge these findings by requesting an administrative hearing where the OMIG would seek and defend the adjusted meanpoint estimate of \$545,290. 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

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, White Plains  
Office of the Medicaid Inspector General

[REDACTED]  
CERTIFIED MAIL # [REDACTED]  
RETURN RECEIPT REQUESTED

cc: [REDACTED]

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

**NAME AND ADDRESS OF AUDITEE**

Jacobson Robert  
Surgical Pharmacy, Inc.  
359 East Main Street  
Mount Kisco, New York 10549

**PROVIDER ID** [REDACTED]

**AUDIT #**08-4240

**AMOUNT DUE:** \$146,849

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:

[REDACTED]  
New York State Department of Health  
Medicaid Financial Management, B.A.M.  
GNARESP Corning Tower, Room 2739  
File #08-4240  
Albany, New York 12237-0048

Thank you for your cooperation.

JACOBSON ROBERT SURGICAL PHARMACY, INC.  
 PHARMACY SERVICES AUDIT  
 AUDIT #08-4240  
 AUDIT PERIOD: 1/1/04 – 12/31/07

EXTRAPOLATION OF SAMPLE FINDINGS

Total Sample Overpayments	\$ 1,601.34
<b>Less Overpayments Not Projected*</b>	<u>(179.84)</u>
Sample Overpayments for Extrapolation Purposes	\$ 1,421.50
Services in Sample	200
Overpayments Per Sampled Service	\$ 7.1075
Services in Universe	76,695
Meanpoint Estimate	\$ 545,110
<b>Add Overpayments Not Projected*</b>	180
Adjusted Meanpoint Estimate	<u>\$ 545,290</u>
Lower Confidence Limit	\$ 146,669
<b>Add Overpayments Not Projected*</b>	180
Adjusted Lower Confidence Limit	<u>\$ 146,849</u>

\* The actual dollar disallowance for the "Ordering Prescriber Conflicts with Claim Prescriber" finding was subtracted from the total sample overpayment and added to the Meanpoint Estimate and the Lower Confidence Limit. The dollars associated with this finding were not used in the extrapolation.

## JACOBSON ROBERT SURGICAL PHARMACY, INC.

Provider Number: [REDACTED]

Audit Number: 08-4240

## Invalid Prescription/Fiscal Order

<u>Sample #</u>	<u>Date of Service</u>	<u>Formulary Code</u>	<u>Amount Disallowed</u>
71	06/05/07	50458032006	\$388.46
94	09/27/07	00456201001	\$233.72
102	01/29/04	59730640101	\$42.75
108	11/30/06	00310027910	<u>\$280.02</u>
<b>Total Services:</b>		<u>4</u>	<u>\$944.95</u>

JACOBSON ROBERT SURGICAL PHARMACY, INC.  
Provider Number: [REDACTED]  
Audit Number: 08-4240

Missing Information from Prescription/Fiscal Order

<u>Sample #</u>	<u>Date of Service</u>	<u>Formulary Code</u>	<u>Amount Disallowed</u>
82	08/22/05	59148000813	\$318.39
100	06/16/05	00093722298	\$33.80
194	06/23/05	00074621453	<u>\$112.21</u>
<b>Total Services:</b>		<u>3</u>	<u>\$464.40</u>

## JACOBSON ROBERT SURGICAL PHARMACY, INC.

Provider Number: [REDACTED]

Audit Number: 08-4240

## Ordering Prescriber Conflicts with Claim Prescriber

Sample #	Date of Service	Formulary Code	Amount Disallowed
22	10/18/04	00003517805	\$87.78
28	01/05/04	00904005320	\$2.72
59	01/09/06	00006384130	\$30.35
79	06/29/04	53489013901	\$6.79
150	12/02/04	00310027510	<u>\$52.20</u>
<b>Total Services:</b>		<u>5</u>	<u>\$179.84</u>

JACOBSON ROBERT SURGICAL PHARMACY, INC.

Provider Number: [REDACTED]

Audit Number: 08-4240

Invalid Fax Prescription/Fiscal Order

Sample #	Date of Service	Formulary Code	Amount Disallowed
200	05/10/07	L3909	\$6.99
Total Services:		<u>1</u>	<u>\$6.99</u>

JACOBSON ROBERT SURGICAL PHARMACY, INC.

Provider Number: [REDACTED]

Audit Number: 08-4240

Prescriber's Signature Missing on Prescription/Fiscal Order

Sample #	Date of Service	Formulary Code	Amount Disallowed
60	10/19/06	00904188352	\$4.21
Total Services:		<u>1</u>	<u>\$4.21</u>

JACOBSON ROBERT SURGICAL PHARMACY, INC.

Provider Number: [REDACTED]

Audit Number: 08-4240

Missing Fiscal Order

Sample #	Date of Service	Formulary Code	Amount Disallowed
147	07/30/07	00536308610	<u>\$0.95</u>
	Total Services:	<u>1</u>	<u>\$0.95</u>

JACOBSON ROBERT SURGICAL PHARMACY, INC.  
Provider Number: [REDACTED]  
Audit Number: 08-4240

Additional Findings Pertaining to Sampled Items

Sample #	Date of Service	Primary Finding	Other Findings Pertaining to Sampled Item
60	10/19/2006	Prescriber's Signature Missing on Prescription/Fiscal Order	Imprint/Stamp of Printed Name of Prescriber Missing on Prescription*
194	6/23/2005	Missing Information from Prescription/Fiscal Order	Imprint/Stamp of Printed Name of Prescriber Missing on Prescription*
200	5/10/2007	Invalid Fax Prescription/Fiscal Order	Missing Follow-Up Hard Copy Order for Medical Supplies and/or Enteral Nutrition**

\* **Imprint/Stamp of Printed Name of Prescriber Missing on Prescription**

State law requires: "Every prescription . . . written in this state by a person authorized to issue such prescription and containing the prescriber's signature shall, in addition to such signature, be imprinted or stamped legibly and conspicuously with the printed name of the prescriber who has signed the prescription."  
*Education Law Article 137 Section 6810.8*

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

Regulations state, for Schedule II and certain other substances, that: "...The printed name of the prescriber who has signed the prescription shall be imprinted or stamped legibly and conspicuously on the prescription, shall appear in an appropriate location on the prescription form and shall not be entered in or upon the space or line reserved for the prescriber's signature..."  
*10 NYCRR Section 80.67 (b)(2)*

Regulations state, for Schedule III, IV, V substances, that the official New York State prescription shall contain the following: "...The printed name of the prescriber who has signed the prescription shall be imprinted or stamped legibly and conspicuously on the prescription, shall appear in an appropriate location on the prescription form and shall not be entered in or upon the space or line reserved for the prescriber's signature..."  
*10 NYCRR Section 80.69 (b)(2)*

Regulations state, for Schedule III, IV and V substances, that the written prescription shall contain the following: "...The printed name of the prescriber who has signed the prescription shall be imprinted or stamped legibly and conspicuously on the prescription, shall appear in an appropriate location on the prescription form and shall not be entered in or upon the space or line reserved for the prescriber's signature..."  
*10 NYCRR Section 80.69(b)(2)*

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**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*