



Dave Yost • Auditor of State

Ohio Medicaid Program

*Audit of Medicaid Reimbursements Made to
Kenneth K. Akabutu, LPN*

A Compliance Audit by the:

Medicaid/Contract Audit Section

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Dave Yost • Auditor of State

November 10, 2011

Mr. Kenneth Akabutu, LPN
3898 Farm Brook Lane
Columbus, Ohio 43204

Dear Mr. Akabutu:

We enclose our report on Medicaid reimbursements made to Kenneth K. Akabutu, LPN, Medicaid provider number 2715682, for the period July 1, 2006 to June 30, 2009. The audit was performed according to our authority in Ohio Rev. Code § 117.10 and our Letter of Arrangement with the Ohio Department of Job and Family Services (ODJFS). We identified \$103,046.43 in findings for improper charges to Ohio Medicaid plus \$15,674.35 in interest totaling \$118,720.78 that is due and payable to ODJFS. The findings in the report are a result of non-compliance with Medicaid reimbursement rules published in the Ohio Administrative Code. After November 10, 2011, additional interest will accrue at \$22.59 per day until repayment occurs. Interest is calculated pursuant to Ohio Admin. Code § 5101:3-1-25.

We are forwarding this report to ODJFS because it is the state agency charged with administering Ohio's Medicaid program. ODJFS is responsible for making a final determination regarding recovery of our findings and any accrued interest. If you agree with the findings contained herein, you may expedite repayment by contacting ODJFS' Office of Legal Services at (614) 466-4605.

Copies of this report are also being sent to the Medicaid Fraud Control Unit of the Ohio Attorney General's Office; the U.S. Department of Health and Human Services/Office of Inspector General; and the Ohio Board of Nursing. In addition, copies are available on the Auditor of State website at www.auditor.state.oh.us.

Mr. Kenneth K. Akabutu, LPN
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Questions regarding this report should be directed to Charles Brown, III, Chief,
Medicaid/Contract Audit Section, at (614) 466-7894 or toll free at (800) 282-0370.

Sincerely,

A handwritten signature in black ink that reads "Dave Yost". The signature is written in a cursive style with a large, looping "D" and "Y".

Dave Yost
Auditor of State

cc: Ohio Attorney General, Medicaid Fraud Control Unit
Ohio Department of Job and Family Services, Surveillance and Utilization Review
Section
U. S. Department of Health and Human Services/Office of Inspector General
Ohio Board of Nursing

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ACRONYMS

AOS	Auditor of State
ASP	All Service Plan
CMN	Certification of Medical Necessity
CMS	Centers for Medicare and Medicaid Services
HC	Home Care
HCPCS	Healthcare Common Procedural Coding System
HIPAA	Health Insurance Portability and Accountability Act
LPN	Licensed Practical Nurse
MMIS	Medicaid Management Information System
ODJFS	Ohio Department of Job and Family Services
PDN	Private Duty Nursing
POC	Plan of Care
RDOS	Recipient Date of Service

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SUMMARY OF RESULTS

The Auditor of State performed an audit of Kenneth K. Akabutu, LPN, Medicaid provider number 2715682, doing business at 3898 Farm Brook Lane, Columbus, OH 43204 (Provider). Within the Medicaid program, the Provider is listed as furnishing private duty nursing (PDN) services and waiver nursing services to Medicaid recipients.

We performed our audit of Medicaid reimbursements to the Provider for nursing services between July 1, 2006 and June 30, 2009, according to Ohio Rev. Code § 117.10 and our letter of arrangement with the Ohio Department of Job and Family Services (ODJFS). As a result of this audit, we identified \$103,046.43 in findings for improper charges, based on reimbursements that did not meet the rules of the Ohio Administrative Code in effect at the time the services were provided. Additionally, we assessed accrued interest of \$15,674.35 according to Ohio Admin. Code § 5101:3-1-25 for a total finding of \$118,720.78. The total amount of findings and interest is due and payable to ODJFS as of the release of this audit report. Additional interest of \$22.59 per day will accrue after November 10, 2011, until repayment.

BACKGROUND

Title XIX of the Social Security Act, known as Medicaid, provides federal cost-sharing for each state's Medicaid program. Medicaid provides health coverage to families with low incomes, children, pregnant women, and people who are aged, blind, or who have disabilities. In Ohio, the Medicaid program is administered by ODJFS.

Hospitals, long-term care facilities, managed care organizations, individual practitioners, laboratories, medical equipment suppliers, and others (all called “providers”) render medical, dental, laboratory, and other services to Medicaid patients. The rules and regulations that providers must follow are specified by ODJFS in the Ohio Administrative Code and the Ohio Medicaid Provider Handbook. A fundamental concept underlying the Medicaid program is medical necessity of services: defined as services which are necessary for the diagnosis or treatment of disease, illness, or injury, and which, among other things, meet requirements for reimbursement of Medicaid covered services. *See* Ohio Admin. Code § 5101:3-1-01 (A).

The Auditor of State performs audits to assess compliance with reimbursement rules to ensure that services billed to Ohio Medicaid are properly documented and consistent with professional standards of care, medical necessity, and sound fiscal, business, or medical practices. According to Ohio Admin. Code § 5101:3-1-17.2 (D), Medicaid providers must “maintain all records necessary and in such form so as to fully disclose the extent of services provided and significant business transactions” for a period of six years or until any audit initiated within the six year period is completed. When the AOS identifies fraud, waste or abuse by a provider in its audits,¹ “any amount in excess of that legitimately due to the provider will be recouped by ODJFS

¹ “Fraud” is an intentional deception, false statement, or misrepresentation made with the knowledge that the deception, false statement, or misrepresentation could result in some unauthorized benefit to oneself or another person. “Waste and abuse” are defined as practices that are inconsistent with professional standards of care; medical necessity; or sound fiscal, business, or, medical practices; and that constitute an overutilization of Medicaid covered services and result in an unnecessary cost to the Medicaid program. Ohio Admin. Code § 5101:3-1-29 (A)(2).

through its office of fiscal and monitoring services, the state auditor, or the office of the attorney general.” Ohio Admin. Code § 5101:3-1-29 (B).

Some Ohio Medicaid patients may be eligible to receive private duty nursing (PDN) services provided by a registered nurse (RN) or by a licensed practical nurse (LPN) under the supervision of an RN. *See* Ohio Admin. Code § 5101:3-12-02 (A). Qualifying PDN services must be medically necessary and greater than four but no more than 12 hours in length, unless an authorized exception applies. Ohio Admin. Code § 5101:3-12-02 (A).

All LPNs providing PDN services, such as the Provider here, must be supervised by an RN. LPNs providing PDN services at the direction of an RN must maintain records for each patient containing all of the information listed in Ohio Admin. Code § 5101:3-12-03 (B) and (C)(4)² including:

- Signed and dated certification by treating physician of treatment plans at least every 60 days (§ 5101:3-12-03 (B)(3)(b));
- Contents of plans of care (POC) specifying the services to be performed, the identity of the professionals performing them, and the nature, frequency, scope, and duration of each service provided (§ 5101:3-12-03 (B)(3)(b)); and
- Clinical records (including all signed orders) and time keeping records documenting the details of each visit including the date, type and time span of services provided (§ 5101:3-12-03 (C)(4)(a) and (b)²).

Ohio Medicaid cannot pay the private duty nurse for services not specified by the POC. Ohio Admin. Code § 5101:3-12-02 (C)(2).

Home Care (HC) nursing services under Ohio Medicaid may include PDN services, waiver nursing services, or both. *See, e.g.,* Ohio Admin. Code §§ 5101:3-12-02 and 5101:3-46-04. When a private duty nursing patient receiving traditional nursing care is also on an ODJFS administered waiver nursing program, an all services plan (ASP) is required in addition to the POC. *See* Ohio Admin. Code § 5101:3-12-03.1 (C). The ASP lists all Medicaid home health services approved for the patient including private duty nursing services, and services under the waiver program such as the type, frequency and duration. The ASP also specifies which providers can render services and subsequently bill Ohio Medicaid for them. *See* Ohio Admin. Code § 5101:3-45-01 (D).

Here the Provider only provided traditional PDN services to Medicaid patients who also received waived nursing or aide services from another provider. As such, the Provider was required to comply with the waiver program requirement of an ASP for each patient. *See* Ohio Admin Code 5101:3-12-03.1 (C).

² Section number changed from (C)(3) to (C)(4) on November 8, 2007 with no change to content.

PURPOSE, SCOPE, AND METHODOLOGY

The purpose of this audit was to determine whether the Provider's Medicaid claims for reimbursement of private duty nursing services complied with regulations and to identify, if appropriate, any findings resulting from non-compliance.

We held an entrance conference with the Provider on September 14, 2010, to discuss the purpose and scope of our audit. The scope of our audit was limited to claims for which the Provider rendered services to Ohio Medicaid patients and received payment during the period of July 1, 2006 to June 30, 2009. The Provider was reimbursed \$222,085.95 for 960 services rendered on 956 recipient dates of service (RDOS) during the audit period. A recipient date of service (RDOS) is defined as all services for a given patient on a specific date of service. ODJFS' Surveillance and Utilization Review Section (SURS) previously made findings for 37 services with reimbursement of \$8,238; those services were removed from our audit claims review.

We reviewed the Provider's paid claims history from the ODJFS' Medicaid Management Information System (MMIS) database of services billed to and paid by the Medicaid program. This claims data included: patient name, patient identification number, date of service, and service rendered.

A pilot statistical random sample was initially selected of 50 recipient dates of service (RDOS) to facilitate a timely and efficient audit of the Provider's nursing services. All supporting documentation was requested for the services on the selected RDOS.

Our review of the pilot sample determined there was an issue with the Provider furnishing and billing more private duty nursing services than specified via the plan of care (POC). See Ohio Admin. Code § 5101:3-12-02 (B)(2). According to Ohio Admin. Code § 5101:3-12-02 (C)(2), services which are not specified in the POC are not reimbursable to the provider. Therefore, we changed our methodology from a statistical sample of the billed PDN services to a 100 percent review of all POCs for the patients who received services during the audit period.

Our fieldwork was performed between September 2010 and May 2011.

RESULTS

We identified findings of \$103,046.43 from our 100 percent review of the Provider's POCs, the bases of which are discussed below.

A. Testing of Private Duty Nursing Services

We reviewed the POCs submitted by the Provider for the patients for whom he billed Ohio Medicaid for PDN services during the audit period. During our review we calculated the number of hours of PDN services authorized by the treating physician via the POC. The number of *authorized* hours was then compared, by patient, to the number of hours *billed* for PDN services for the date span of each POC.

Our comparison revealed instances where the Provider billed the Ohio Medicaid program for more PDN services than were authorized by the attending physician via the POC. We also found POCs where the certification span appeared to have been altered without authorizing signatures or dates. Each issue is discussed below in more detail.

1. Unauthorized Private Duty Nursing Services

By comparing the number of authorized PDN services to the number of billed PDN services, we determined that 2,629 hours, or 10,517 units, were billed to Ohio Medicaid which were over and above those authorized via the POCs. The Ohio Medicaid rules are clear that PDN services not specified in a POC are not reimbursable. Ohio Admin. Code § 5101:3-12-02 (C)(2).

We contacted the Provider to determine if there were any extenuating circumstances which caused him to render more services than authorized by the signed POC. The Provider submitted correspondence which he sent to the patients' case managers. Those additional hours, acknowledged by the case managers, were removed from the finding calculation. We therefore reduced our initial findings by 164 hours, or 656 units. Hours not documented and/or acknowledged by the case manager were considered unauthorized or excessive PDN services and remained findings.

We calculated the amount reimbursed to the Provider for these unauthorized PDN services and a finding is made for \$70,480.04.

2. Altered Plans of Care

During our reviews, we noticed that for five of the 26 POCs supplied by the Provider, the certification date span appeared altered. The dates contained in the certification span are those for which the treating physician authorized PDN services on that specific POC.

We found POC certification span areas where: a) both the date span was blacked-out and another date span was written-in, or b) the information in that area appeared to have been erased and a date written-in. None of these changes were initialed and/or dated by the attending physician.

We also found instances where the authorizing physician's signature was dated the year before, or the year after, the re-written date span. Therefore, we are unable to determine whether these POC's contained the correct date spans of coverage.

We disallowed the reimbursement received by the Provider for the dates of service covered by the altered POCs and a finding is made for \$32,566.39.

B. Matter for Attention

Although the following matter did not result in monetary findings during the current audit, we bring it to the attention of the Provider as an area of possible non-compliance that could result in

future findings. We also bring this issue to the attention of ODJFS as it is well positioned to educate providers concerning this issue.

1. All Services Plans not Consistent with Plans of Care

When a PDN patient is also on an ODJFS administered Home and Community Based Service waiver, an all services plan (ASP) is required in addition to the POC. PDN services not specified in the POC are not reimbursable. *See* Ohio Admin. Code § 5101:3-12-02 (C)(2). For consumers enrolled on an HCBS waiver, the providers of PDN services must provide the amount, scope, duration, and the type of service within the plan of care as identified on the ASP. PDN services not identified on the ASP are not reimbursable. *See* Ohio Admin Code § 5101:3-12-02 (C)(2)(a).

The services we audited were for waiver patients receiving state plan Medicaid services rendered by the Provider. As such, both an ASP and POC were required. However, we noticed during our review of the Provider's documentation that the number of hours specified on the plan of care was not the same as the number of hours for the Provider's services according to the ASP. This appeared to be an ongoing discrepancy resulting in no reconciliation between the two documents during the audit period. While the patient's physician consistently authorized 36 hours per week via the POCs, the Provider was billing as many as 84 hours per week.

Furthermore, the Provider rendered services in a group setting. Services for these patients were almost always billed identically. However, the ASPs were not necessarily the same for each of the patients. In these cases, the billing followed neither the POC nor the ASP. Rather, it appears as if there were after-the-fact revisions made to the ASP based on what the Provider worked, and neither the POC nor the ASP was used as an actual authorization.

The POC and ASP should be coordinated. Only the hours of nursing services specified in the POC by a treating physician is reimbursable. When the hours in the ASP approved for payment exceed the hours in the POC, the number of hours in the POC is controlling. In our conversations with ODJFS, it is the Provider's responsibility to ensure these documents agree and that billing is proper. ODJFS through its contracted case manager, CareStar, should clearly communicate this expectation to providers so there is no confusion.

In addition, the amount of our findings is not insubstantial for a solo practitioner like the Provider here. We believe that ODJFS should consider requiring providers to maintain a bond or insurance payable to the Ohio Medicaid fund in the event of over reimbursement of services. Such a requirement would help insure the recovery of some or all of the findings for fraud, waste and abuse in the Ohio Medicaid fund.

CONCLUSION

We found the Provider was overpaid by Ohio Medicaid for PDN services between July 1, 2006 and June 30, 2009 in the amount of \$103,046.43.

This finding is the sum of \$70,480.04 from findings for unauthorized PDN services and \$32,566.39 services billed on POC's with uncertain coverage dates. This finding plus interest in the amount of \$15,674.35 through November 10, 2011 totaling \$118,720.78, is immediately due and payable to ODJFS as of the date of release of this audit report. After November 10, 2011,

additional interest will accrue at the rate of \$22.59 per day until the finding and interest is paid in full.

PROVIDER'S RESPONSE

A draft report along with a detailed list of services for which we took findings was mailed to the Provider on September 23, 2011. We held an exit conference with the Provider on October 5, 2011. The Provider subsequently supplied additional documents to support some of his charges for services. Our final determination of findings was made after reviewing the supplemental documentation.



Dave Yost • Auditor of State

KENNETH K. AKABUTU, LPN

FRANKLIN COUNTY

CLERK'S CERTIFICATION

This is a true and correct copy of the report which is required to be filed in the Office of the Auditor of State pursuant to Section 117.26, Revised Code, and which is filed in Columbus, Ohio.

Susan Babbitt

CLERK OF THE BUREAU

**CERTIFIED
NOVEMBER 15, 2011**