

HHS Has Its Eye On Medicaid Personal Care Service

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Speaking at last week's American Health Lawyers Association conference in Baltimore, Gregory Demske, chief counsel for the U.S. Department of Health and Human Services Office of Inspector General, stated that home health-related services currently are one of the two top anti-fraud priorities for his agency.[1]

The government investigates home health agencies for a number of reasons, including improper billing, rendering unnecessary services or employing people who are not eligible to work in the health care field.[2] A new area that is receiving increased scrutiny is the use of Medicaid personal care service (PCS), an optional program provided by states that increases the quality of life for certain Medicaid beneficiaries, but can be problematic for home health agencies.[3] Indeed, the most recent statistics available, indicated that 31 percent of Medicaid Fraud Control Unit criminal cases involved PCS attendants or other home care aids during fiscal year 2015 — making PCS attendants or other home care aids the number one type of provider prosecuted and convicted of a crime.[4]

The Medicaid Personal Care Service Program

The PCS program is a service provided to Medicaid beneficiaries who qualify for home health services.[5] This program enables a patient to remain in his or her home while a PCS aide visits periodically to assist the patient in performing activities of daily living (ADL) or instrumental activities of daily living (IADL). The Centers for Medicare & Medicaid Services defines ADLs as “activities a beneficiary engages in to meet fundamental needs on a daily basis, such as eating, bathing, dressing, ambulation and transfers from one position to another.”[6] Similarly, IADLs are “day-to-day tasks that allow an individual to live independently, but are not considered necessary for fundamental daily functioning,” such as “meal preparation, hygiene, light housework, and shopping for food and clothing”.[7]

The program allows beneficiaries to remain in their own homes instead of residing in an institution, such as a nursing facility, which keeps Medicaid costs low.[8] The benefits have been recognized and supported by HHS and the Affordable Care Act.[9] However, the program is also vulnerable to fraud and abuse by the way it is governed and supervised, and home health agencies have consequently faced numerous allegations of violations within their PCS programs.[10]



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HHS-OIG has noted that “PCS attendants and agencies that commit fraud often bill for impossibly or improbably large volumes of services; for services that conflict with one another (e.g., an attendant purports to provide many hours of services to multiple beneficiaries on the same dates); or for services that could not have been performed as claimed because of geographical distances between beneficiaries purportedly served by the same attendant on the same day.”[11] Other fraudulent claims involve services rendered to ineligible beneficiaries, such as those who are in a hospital or nursing home, or services furnished by unauthorized caregivers who do not meet federal or state requirements.[12]

Issues with the Medicaid Personal Care Service Program

The Medicaid PCS program is supervised by state governments.[13] This structure creates different standards for the types of services that are covered under Medicaid and makes it difficult for home health agencies to know when a violation has occurred.

Each state is responsible for setting the requirements that staff members must meet in order to be a PCS aide. Some states have much more stringent criteria than others.[14] These discrepancies, coupled with the types of services rendered, can make the program susceptible to fraud and abuse. For example, some states require that PCS aides undergo training, while others do not, leaving home health agencies to set their own training requirements.

PCS aides are distinguishable from home health aides, adding to the confusion. Home health aides must meet federal Medicare standards for training, because they may provide skilled nursing services to beneficiaries and may bill at a higher paying code than PCS aides. Home health aides can also provide ADLs and IADLs, and may also bill those services at a higher paying code than PCS aides,[15] which can cause confusion when an agency must distinguish between services rendered by a home health aide and a PCS aide when submitting claims to Medicaid.

To further complicate matters, in some states, family members can act as PCS aides and collect Medicaid payments for services rendered (while in other states this is expressly prohibited).[16] This is a fairly common practice as PCS beneficiaries are receiving nonmedical assistance at home. However, family members may have very little training in how to properly document their services and may have difficulty in distinguishing between activities covered under the PCS program and activities that are not reimbursable when submitting claims, posing risks for home health agencies who utilize family members in these roles.

The differences in training, reimbursement rates, and the type of work that a PCS aide may be asked to perform are factors that leave home health agencies providing PCSs vulnerable to fraud and abuse enforcement actions by the government. HHS-OIG has noted these vulnerabilities and has stated that it expects ongoing fraud issues with the PCS program to continue.[17]

PCS aides provide necessary services and help home health agencies meet the needs of their patients. However, home health agencies should fully understand the risks involved when offering this service.

Recent Enforcement Actions

The OIG estimates that over 500 home health agencies and over 4,500 physicians, who supervise home health agencies, may have engaged in suspicious practices.[18] Recently, a number of home health agencies and/or their employees received sanctions for violations in their PCS programs.

For example, Speqtrum Inc., a PSC home health agency, was recently ordered to pay over \$6 million for false claims made to the Washington, D.C., Medicaid program.[19] After executing a search warrant on Speqtrum's offices, the government found records with forged signatures and falsified time sheets, all of which had been brought to the attention of Speqtrum's president, who failed to correct the errors. In ruling for the government, the federal judge overseeing the case noted "egregious and willful" inconsistencies in the billing statements for services provided by Speqtrum's personal care services, including "cooking of the books, overbilling for hours not worked, charging ... for clients it did not service, and forging physician signatures on its paperwork." [20]

In New York, CenterLight Health Care and CenterLight Health System (CenterLight) agreed to pay \$47 million to state and federal authorities to settle civil allegations that they violated New York's Medicaid program.[21] The government alleged that CenterLight fraudulently enrolled over 1,200 Medicaid recipients in its managed long-term care plan, which included personal care services, even though these patients did not qualify for such services. Additionally, CenterLight entered into a compliance agreement that requires it to report to an independent compliance monitor.[22]

Similarly, Deaconess Home Health Inc. pled guilty to a felony for committing fraud against the Wisconsin Medicaid program by submitting improper billing for personal care services, while its owner, Lazarus Bonilla, entered into a deferred prosecution agreement.[23] Additionally, Deaconess and Bonilla agreed to pay over \$3.7 million in settlement of related False Claims Act violations. Deaconess admitted that it provided medically unnecessary services under the PCS program, instructed nurses to inflate patient assessments that were provided to Medicaid, failed to provide supervisory visits to patients' homes to ensure that the PCSs performed were appropriate and medically necessary, and hired physicians as medical directors, who signed treatment plans without examining patients. As part of the resolution, Bonilla was excluded from participating in any federal health care program for 15 years.[24]

In Illinois, a personal care service aide pled guilty to felony charges that she engaged in a scheme to steal from a health care program and that she committed two related mail frauds.[25] The aide fraudulently billed the Illinois Medicaid program for services rendered to a patient by improperly billing for hours of services that she did not perform, such as when she was actually in Costa Rica and again when she was on a Caribbean cruise. The aide was sentenced to five years of probation, with the first six months to be served in home detention and was ordered to pay over \$34,000 to the home services program.[26]

Similarly, in Massachusetts, a personal care service aide pled guilty to Medicaid fraud and larceny over \$250 by false pretenses for making duplicative claims for personal care services by double-billing MassHealth for more than \$140,000.[27] The aide was both a personal care attendant and an adult foster care surrogate and submitted forged time sheets. The aide was sentenced to five years of probation, ordered to pay restitution, and is prohibited from receiving or causing payment of MassHealth funds.

These recent enforcement actions demonstrate a variety of ways in which fraud and abuse can occur with PCS programs. Given the recent emphasis by HHS-OIG, CMS and other government agencies on a perceived lack of sufficient internal controls regulating the PCS program nationwide, it is likely that Medicaid fraud units will continue to investigate PCS programs in an attempt to prevent not only financial loss to the Medicaid program, but also harm to patients.[28]

Recommendations for Home Health Agencies

Home health agencies should actively work on preventing issues and fraud within their PCS programs. Preemptive action can mitigate any sanctions assessed by the government against an agency, prevent civil or criminal charges from being filed, and help avoid paying civil monetary penalties or even exclusion from federal health care programs. Below are recommendations for home health agencies which provide personal care services:

- Home health agencies should conduct (and comprehensively document) periodic billing audits to ensure that all claims submitted to the Medicaid program for reimbursement by a PCS aide are accurate.[29]
- In such audits, home health agencies should also be on the lookout for double billing, upcoding, incorrect dates of service, or documentation of services that are not reimbursable under the PCS program, among other billing issues.
- In states where legally responsible relatives are not eligible to act as a beneficiaries' PCS aide, compliance programs should employ safeguards to ensure that such family members are not providing care pursuant to PCS programs.
- Home health agencies should conduct (and document) monthly sanction screenings to ensure that all employed PCS aides are not excluded from participating in any federal or state health care programs.[30] Sanction screenings should also be a requirement of employment.
- Home health agencies should require ongoing training for PCS aides to ensure adherence to agency policy and procedures. A home health agency should audit the attendance forms for missing names, misspelled names, missing dates, etc., to ensure full attendance at each training program by PCS aides.
- Home health agencies should address PCS employee concerns promptly and investigate any allegations of unlawful activity. To encourage participation, home health agencies can create an anonymous hotline for an employee to call if he or she believes unlawful activity is occurring within their PCS program.
- Home health agencies should conduct (and document) "spot check" audits of home visits by sending a PCS aide supervisor to observe the PCS aide while working. The supervisor can observe and, if necessary, correct the aide.

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information purposes and is not intended to be and should not be taken as legal advice.

[1] James Swann, Prescription Drugs, Home Health Top Government Anti-Fraud Priorities, BNA Health Care Daily Report – Afternoon Briefing (March 29, 2017).

[2] Press Release, Federal Bureau of Investigation, Owner of Home Health Care Agency Admits Fraud, Bribery, and Other Charges (April 20, 2015); Press Release, United States Department of Justice, Amedisys Home Health Companies Agree to Pay \$150 Million to Resolve False Claim Act Allegations (April 23, 2014).

[3] Centers for Medicare & Medicaid Services, Preventing Medicaid Improper Payments for Personal Care Services (July 2016), <https://www.cms.gov/Medicare-Medicaid-Coordination/Fraud-Prevention/Medicaid-Integrity-Education/Downloads/pcs-booklet.pdf>; Office of Inspector General, Investigative Advisory on Medicaid Fraud and Patient Harm Involving Personal Care Services, (Oct. 3, 2016).

[4] OIG Report, Medicaid Fraud Control Units, Fiscal Year 2015 Annual Report, Sept. 2016, OEI-07-16-00050 (also noting that 71 percent of Medicaid Fraud Unit convictions during FY 2015 involved fraud, which, of these almost half involved unlicensed providers, including PCS attendants and other home care aides).

[5] Centers for Medicare & Medicaid Services, Preventing Medicaid Improper Payments for Personal Care Services (July 2016), <https://www.cms.gov/Medicare-Medicaid-Coordination/Fraud-Prevention/Medicaid-Integrity-Education/Downloads/pcs-booklet.pdf>.

[6] *Id.* at 4.

[7] *Id.*

[8] Centers for Medicare & Medicaid Services, Informational Bulletin, Strengthening Program Integrity in Medicaid Personal Care Services (Dec. 13, 2016).

[9] Office of Inspector General, Investigative Advisory on Medicaid Fraud and Patient Harm Involving Personal Care Services, (Oct. 3, 2016); Centers for Medicare & Medicaid Services, Preventing Medicaid Improper Payments for Personal Care Services (July 2016), <https://www.cms.gov/Medicare-Medicaid-Coordination/Fraud-Prevention/Medicaid-Integrity-Education/Downloads/pcs-booklet.pdf>.

[10] Centers for Medicare & Medicaid Services, Preventing Medicaid Improper Payments for Personal Care Services (July 2016), <https://www.cms.gov/Medicare-Medicaid-Coordination/Fraud-Prevention/Medicaid-Integrity-Education/Downloads/pcs-booklet.pdf>.

[11] Office of Inspector General, Investigative Advisory on Medicaid Fraud and Patient Harm Involving Personal Care Services, at 4 (Oct. 3, 2016).

[12] Centers for Medicare & Medicaid Services, Informational Bulletin, Strengthening Program Integrity in Medicaid Personal Care Services, at 3, 9-10 (Dec. 13, 2016).

[13] Centers for Medicare & Medicaid Services, Preventing Medicaid Improper Payments for Personal Care Services (July 2016).

[14] Id.

[15] Id.

[16] For example, in New Jersey, legally responsible family members are prohibited from being PCS aides, as set forth in N.J. Admin. Code § 10:60-3.8(b):

Except as specified in this subsection, personal care assistant services provided by a family member shall not be considered covered services and shall not be reimbursed by the New Jersey Medicaid or NJ FamilyCare-Plan B and C programs. No exceptions will be granted for legally responsible relatives (that is, a spouse, or a parent of a minor child). Exceptions for other family members or relatives to provide personal care assistant services may be granted on a case-by-case basis at the discretion of the Director of the Division of Disability Services, if requested by the PCA provider agency.

[17] Office of Inspector General, Investigative Advisory on Medicaid Fraud and Patient Harm Involving Personal Care Services, (Oct. 3, 2016).

[18] OIG Report, Nationwide Analysis of Common Characteristics in OIG Home Health Fraud Cases, June 21, 2016, OEI-05-16-00031.

[19] Press Release, United States Department of Justice, Home Health Care Agency Ordered to Pay Over \$6 Million For False Claims Made to D.C. Medicaid (Sept. 30, 2016).

[20] Id.

[21] Press Release, New York State Office of the Attorney General, A.G. Schneiderman Announces \$47 Million Settlement With Centerlight Healthcare for Fraudulently Using Social Day Care Centers To Enroll Ineligible Members (Jan. 21, 2016).

[22] Id.

[23] Press Release, Federal Bureau of Investigation, Deaconess Home Health Inc. and Owner Agree to Criminal and Civil Resolution of Health Care Fraud Charges (Nov. 18, 2015).

[24] Id.

[25] Press Release, United States Attorney's Office Southern District of Illinois, O'Fallon Woman Sentenced for Healthcare Fraud (Feb. 11, 2016).

[26] Id.

[27] Press Release, Attorney General of Massachusetts, Middleborough Woman Pleads Guilty, Sentenced for Defrauding State's Medicaid Program (Feb. 21, 2017).

[28] Office of Inspector General, Investigative Advisory on Medicaid Fraud and Patient Harm Involving

Personal Care Services, (Oct. 3, 2016).

[29] CMCS has noted that “improper payments for PCS occur when, among other things, claims are not supported by sufficient documentation.” Centers for Medicare & Medicaid Services, Informational Bulletin, Strengthening Program Integrity in Medicaid Personal Care Services, at 8 (Dec. 13, 2016).

[30] The Office of the Inspector General is required to exclude from participation in all federal health care programs individuals and entities convicted of criminal offenses such as: Medicare or Medicaid fraud; patient abuse or neglect; felony convictions for other health care-related fraud, theft or other financial misconduct; and felony convictions relating to controlled substances offenses. OIG Exclusions Background Information, <http://oig.hhs.gov/exclusions/background.asp>. See 42 U.S.C. § 1320a-7a. OIG also recommends that all PCS attendants have criminal background checks. Centers for Medicare & Medicaid Services, Informational Bulletin, Strengthening Program Integrity in Medicaid Personal Care Services, at 7 (Dec. 13, 2016).