

HEALTH CARE
&
HUMAN
SERVICES

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OMIG to Set Sights on OMRDD Providers

As everyone in the New York health care industry knows, the Office of the Medicaid Inspector General (OMIG) is currently auditing numerous providers and is seeking recovery of hundreds of millions of dollars of already paid Medicaid funds. Prior to focusing on a particular section of the health care industry for these audits, OMIG prepares audit protocols for the particular industry segment, preparing its auditors for the issues that will lead to OMIG disallowing claims. Recently, protocols have been circulated for two services provided by almost all providers licensed by the Office of Mental Retardation and Developmental Disabilities (OMRDD) – Medicaid Service Coordination and Residential Habilitation. Further, OMIG plans to move auditors from OMRDD to OMIG to conduct these audits over the course of this new project.

As we have described in prior Legal Alerts, the Medicaid audit process is detailed and complex. The provider has important procedural and substantive rights throughout this multi-step process. Thus it is important for the provider to retain counsel as soon as the provider becomes aware that an audit is about to begin.

It is important to note that in conducting its audits, OMIG typically creates a sample and then extrapolates its findings over a multi-year universe of claims. As such, even a small mistake (missing a monthly summary, for example) can equate to thousands of dollars in audit recoveries.

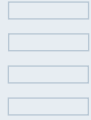
In addition to very large recoupment demands, OMIG may seek to exclude the provider from the Medicaid Program; and in some instances refer the matter to the Medicaid Fraud Control Unit for criminal prosecution. So once again, it is important that the provider seek assistance as soon as it is notified that an audit is being commenced.

The Medicaid Service Coordination Protocols note a number of issues that OMIG will review in the course of a Medicaid Service Coordination audit. These items include:

- Missing Consumer Record;
- Missing Level of Care Determination;
- Missing Signatures on Level of Care Determination;
- No Documentation of Services;
- Services Provided by Unqualified Medicaid Service Coordinator;
- Missing Medicaid Service Coordination Agreement;
- Completion of the Initial ISP Exceeds the 60-Day Timeframe;
- Missing ISP;
- Medicaid Service Coordination Caseload Exceeds Caseload Requirements;
- Incorrect Rate Code Billed;
- Missing Required Elements of MSC Note;

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- Missing Medicaid Service Coordination Note;
- Missing Required Element of the ISP;
- Missing ISP Review;
- Distribution of the ISP Exceeds 45 Days;
- Missing Service Coordination Observation Report; and
- Claims Submitted Over 90 Days of Service.

Similarly, the Residential Habilitation Protocols include:

- Missing Consumer Record;
- No Documentation of Service;
- No Diagnosis of Developmental Disability;
- Missing Level of Care Determination;
- Missing Signature on Level of Care Determination;
- Missing ISP;
- Unauthorized IRA Residential Habilitation Services Provider;
- Missing Residential Habilitation Plan;
- Missing Residential Habilitation Service;
- Missing Required Elements in Residential Habilitation Services Note;
- Required Number of Countable Service Days Not Met;
- Consumer Absent from IRA on Counted Service Day;
- Billing for Unauthorized IRA Residential Habilitation Services; and
- Missing IRA Residential Habilitation Progress (Service) Note.

It is important to note that OMIG has a tendency to take extremely restrictive positions in analyzing a provider's compliance with these rules, which maximizes the opportunity for OMIG recoupment.

With the preparation of these protocols, we expect providers of Medicaid Service Coordination and Residential Habilitation to be audited in the near future. Hiscock & Barclay, LLP has substantial experience in representing providers in the OMRDD field, both large and small, by providing: assistance with the development and implementation of compliance programs, reviewing internal audits and compliance techniques, performing mock audits and suggesting areas for improvement, assisting with audits, investigations and self-disclosure issues, HIPAA compliance, and providing compliance and HIPAA training for Boards of Directors, management and staff. Please contact David Glasel, James Grossman, Melissa Zambri or any member of our Health Care & Human Services Practice Area if we can be of assistance. ■

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