BEFORE THE OFFICE OF STATE ADMINISTRATIVE HEARINGS
STATE OF GEORGIA

MOBILE MED, INC.,
Petitioner,

v.

DEPARTMENT OF COMMUNITY HEALTH,
Respondent.

Docket No.: 1732250
1732250-OSAH-DCH-PROP-57-Woodard

Agency Reference No.: P15-0129

FILED
OSAH
JUN 26 2017
Kevin Westray, Legal Assistant

INITIAL DECISION

I. Introduction

Petitioner Mobile Med, Inc. (hereinafter "Mobile Med") requested a hearing to contest the Department of Community Health's (hereinafter "Respondent") determination that it had received an overpayment of $76,949.44 in Medicaid reimbursements. An evidentiary hearing was held before the undersigned administrative law judge on June 1, 2017, at the Office of State Administrative Hearings in Atlanta, Georgia. Ifuero Obaseki, Esq., represented Respondent in this matter. Donna Sheriff, Mobile Med's billing analyst, participated in the hearing on behalf of Mobile Med.

For the reasons indicated below, the Respondent's determination of an overpayment is **AFFIRMED.**

II. Findings of Fact

1. Mobile Med is a Medicaid-enrolled provider of durable medical equipment, and is enrolled in the Georgia Medicaid Program. During the relevant period, Mobile Med provided equipment rental services to Medicaid-eligible individuals. *Respondent's Exhibits 5, 6, 7, 8, 9, 10, and 11.*

2. As a condition of becoming a Medicaid-enrolled provider, Mobile Med entered into a Statement of Participation with Respondent. This Statement of Participation included the following provision:

> Provider acknowledges that payment of claims submitted by or on behalf of provider will be from federal and state funds, and the Department [Respondent] may withhold, recoup or recover payments as a result of Provider's failure to abide by the Department's requirements. . . .

Respondent's Exhibits 11.

3. Between 2014 and 2015,[1] Mobile Med supplied six Medicaid beneficiaries—K.H., R.W., A.B., C.H., W.P., and B.V.[2]—with two ventilators each. These ventilators were "pressure support ventilator[s] for use with an invasive interface." Under the Healthcare Common Procedural Coding System, Level II, rental of ventilators of this type was designated with the procedure code "E0463." *Respondent's Exhibits 5–10, 13, 14.*

4. According to Micah Taylor, owner of Mobile Med, it is common practice to supply beneficiaries with two ventilators: one primary ventilator and one portable, or backup, ventilator. The primary and portable ventilators were identical types of equipment with different settings. As the ventilator settings could only be reset by a skilled professional, it was preferable and more cost-efficient to supply the beneficiaries with two ventilators, each with its own setting, rather than employ such a professional to continuously change the settings of a single ventilator. *Testimony of Micah Taylor.*

5. Mobile Med supplied the ventilator equipment to the six Medicaid beneficiaries between 2014 and 2015 in accordance with a physician's determination that such equipment was medically necessary. *Respondent's Exhibits 5–10.*

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[1] While the entire alleged overpayment period ranges from 2013 to 2015, Mobile Med first sought reimbursement for providing two ventilators per beneficiary in July 2014. *Respondent's Exhibit 1.*

[2] The beneficiaries are referred to by their initials in this decision to maintain their privacy.

6. Mobile Med obtained prior authorization from Respondent through its designated agent, the Georgia Medical Care Foundation (GMCF), before it received reimbursement for supplying the above-described ventilator equipment to the six Medicaid beneficiaries. *Respondent's Exhibits 5, 6, 7, 8, 9, and 10; Testimony of Micah Taylor; Testimony of Martha Moore, Subject Matter Expert, Department of Community Health.*

7. Mobile Med was initially unsuccessful when it attempted to bill for two ventilator units for each beneficiary in 2014. However, when Mr. Taylor contacted GMCF by telephone, a representative instructed him to submit a claim for the primary ventilator and then wait one day before submitting a claim for the second ventilator. Mobile Med successfully submitted claims for two ventilators per beneficiary using this methodology, and consistently submitted claims in this manner through 2015. *Testimony of Micah Taylor.*

8. Respondent always approved Mobile Meds' claims for reimbursement for the two ventilators provided to each of the above-identified Medicaid beneficiaries from 2014 through 2015. *Respondent's Exhibits 5-10.*

9. In 2016, Myers & Stauffer LC (hereinafter "Myers & Stauffer"), an accounting firm under contract with the Respondent, conducted a recovery audit of Medicaid claims submitted to Respondent by Mobile Med. John Lott, a manager with Myers & Stauffer, performed this recovery audit. Based on this audit, Mr. Lott determined that, from 2013 to 2015, Respondent made an overpayment in the amount of $76,949.44 to Mobile Med. *Respondent's Exhibits 1-3; Testimony of John Lott.*

10. The majority of the overpayment amount ($75,367.67) was attributable to instances in which Mobile Med was reimbursed for providing a beneficiary with two ventilator units per month, when according to Respondent it was only entitled to receive reimbursement for one

ventilator unit per beneficiary, per month. Mr. Lott counted all Medicaid reimbursements that Mobile Med received for the secondary ventilator units toward the overpayment amount. For example, beneficiary K.H. received services from Mobile Med for 36 months, and Mr. Lott determined that Mobile Med was entitled to obtain reimbursement for a ventilator 36 times. The 37th reimbursement and all reimbursements Mobile Med received thereafter were considered overpayments. *Respondent's Exhibits 1-3; Testimony of John Lott.*

11. Respondent notified Mobile Med of its determination of an overpayment in a letter dated September 16, 2016. In response, Mobile Med requested an administrative review of Respondent's determination in a letter dated October 13, 2016. In its responsive letter, Mobile Med argued that Respondent's policy regarding the maximum number of ventilator units for which a provider could be reimbursed was not in place until July 2015. Mobile Med further asserted that it was entitled to reimbursement for supplying both ventilators because they were indisputably medically necessary, and as Mobile Med had obtained prior authorization from Respondent to supply each beneficiary with the primary ventilator and the backup. In an attestation statement attached to the letter, Mr. Taylor recounted his interactions with Respondent during the billing process, including the above-described exchange in which Mobile Med was directed to submit two claims on separate days in order to be reimbursed for both ventilators. *Respondent's Exhibits 1, 2.*

12. In a letter dated March 17, 2017, Respondent notified Mobile Med that it was upholding its initial determination of an overpayment. Mobile Med filed its request for an administrative hearing shortly thereafter. *Respondent's Exhibits 3, 4.*

13. At the hearing, Mobile Med challenged Respondent's determination of an overpayment on the grounds originally expressed in its request for administrative review filed October 13,

2016. Mobile Med contended that Respondent erred in its determination of an overpayment because (1) the policies on which Respondent based its determination were not in effect during the overpayment period; (2) the primary and backup ventilators were medically necessary; (3) Mobile Med obtained prior authorization from Respondent before supplying the services in question and submitting its claims; and (4) Mobile Med's billing practice was developed based on advice from GMCF, Respondent's agent. *Testimony of Donna Sheriff; Testimony of Micah Taylor.*[3]

14. Respondent cited provisions in three of its manuals, as they appeared during the relevant period, in support of its determination of an overpayment: (1) Part I Policies and Procedures for Medicaid/Peachcare for Kids (hereinafter Medicaid Manual); (2) Part II Policies and Procedures for Durable Medical Equipment Services [hereinafter DME Services Manual]; and (3) the Schedule of Maximum Allowable Payments for Durable Medical Equipment Services. Martha Moore, Respondent's subject matter expert, could not cite a specific provision of federal law underlying Respondent's "one ventilator" policy, but opined that it was likely based on policies passed by the Center for Medicare and Medicaid Services. *Respondent's Exhibits 12, 13, 14; Testimony of Martha Moore.*

III. Conclusions of Law

1. Medicaid is a joint federal-state program that provides comprehensive medical care for certain classes of eligible recipients whose income and resources are determined to be insufficient to meet the costs of necessary medical care and services. 42 U.S.C. §§ 1396 et seq.; Moore v. Reese, 637 F.3d 1220, 1232 (11th Cir. 2011). Participation is voluntary, "but once a

[3] In its responsive letter and at the hearing, Mobile Med disputed the overpayment finding only with respect to Respondent's conclusion that it was entitled to reimbursement for one ventilator unit per beneficiary, per month during the overpayment period. Accordingly, the Court **AFFIRMS** Respondent's determination regarding the remainder of the overpayment.

state opts to participate it must comply with federal statutory and regulatory requirements." Id. All states have opted to participate and, thus, each must designate a single state agency to administer its Medicaid plan. Id.; 42 C.F.R. § 431.10(a), (b)(1). Georgia has designated the Respondent as the "single state agency for the administration" of Medicaid. O.C.G.A. § 49-2-11(f).

2. The relationship between Medicaid providers and the Department is governed by the terms of the Department's manuals and the Statement of Participation that all providers are required to enter into as a prerequisite to enrollment. Both the Department and participating providers are contractually bound by the terms of the manuals. See Pruitt Corp. v. Ga. Dep't of Cmty. Health, 284 Ga. 158, 160 (2008); ABC Home Health Servs., Inc. v. Ga. Dep't of Med. Assistance, 211 Ga. App. 461, 463 (1993); State v. Stuckey Health Care, 189 Ga. App. 126, 129 (1989).

3. Pursuant to Section 807 of Respondent's DME Services Manual, which went into effect January 2014:

> Providers are not permitted to bill for the rental or purchase of two different pieces of equipment that are considered to be the same or similar (i.e., E0100 and E0105 canes, E0176 and E2609 cushions, E0305 and E0130 bed side rails, etc.) during the same rental month for rental items . . . . This type of billing will result in claim denials or recoupment of payments.

DME Services Manual § 807 (2014).

4. For Medicaid billing purposes, Respondent has adopted the Healthcare Common Procedure Coding System (HCPCS), Level II coding procedures prescribed by the Center for Medicare and Medicaid Services (CMS). HCPCS, Level II is

> a standardized coding system that is used primarily to identify products, supplies, and services not included in the CPT [Current Procedural Terminology] code set jurisdiction, such as ambulance services and durable medical equipment, prosthetics, orthotics, and supplies . . . when used outside a physician's office.

Ctr. for Medicare and Medicaid Servs., Healthcare Common Procedure Coding System (HCPCS) Level II Coding Procedures (2015), available at https://www.cms.gov/Medicare/Coding/MedHCPCSGenInfo/Downloads/HCPCSLevelIICodingProcedures7-2011.pdf. Respondent adopted the HCPCS, Level II coding system as the standardized coding system for submitting claims for DME services pursuant to 45 C.F.R. 162.1002, which CMS published in 2000 in order to implement the HIPAA requirement for a standardized coding system to be used in healthcare transactions. Id.; Schedule of Maximum Allowable Payments for Durable Medical Equipment Services. During the overpayment period, the services at issue—rental of pressure ventilators—were coded E0463 according to the HCPCS, Level II coding system.

5. In July 2009, Respondent developed the Schedule of Maximum Allowable Payments for Durable Medical Equipment (hereinafter "the Schedule"), which itemized approved DME services and set the maximum allowable payment for such services. The Schedule also set allowable service levels and limitations. Effective July 2009, the Schedule indicated that a provider could seek reimbursement for a "max unit" of one for procedure code E0463. Schedule of Maximum Allowable Payments for Durable Medical Equipment Services, at 7. The Schedule, taken into consideration with the provision in the DME Services Manual, limited Mobile Med to reimbursement for renting one ventilator per beneficiary, per month.

6. It is disconcerting to this administrative court that Petitioner's billing practice and, thus, the majority of the overpayment, was partially attributable to the faulty advice of GMCF, Respondent's agent. Further, the Court questions Respondent's policy of denying reimbursement for services that a physician has deemed medically necessary. However, the Court lacks the authority to invalidate Respondent's finding of an overpayment based solely on equitable and/or policy considerations. Although the Court finds no wrongdoing on Petitioner's

part, Respondent nonetheless demonstrated that its policy prohibited the billing practice at issue and, thus, that its finding of an overpayment was authorized.

IV. Decision

IT IS HEREBY ORDERED that Respondent's determination of an overpayment in the amount of $76,949.44 is **AFFIRMED**.

SO ORDERED, this 26th day of June, 2017.

M. PATRICK WOODARD, JR.
Administrative Law Judge