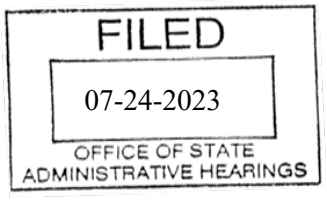
BEFORE THE OFFICE OF STATE ADMINISTRATIVE HEARINGS
STATE OF GEORGIA

UPSON REGIONAL MEDICAL CENTER, **Petitioner,**	**Docket No.: 2318254** **2318254-OSAH-DCH-PROP-145-Barnes**
v.	**Agency Reference No.: P15-0461**
DEPARTMENT OF COMMUNITY HEALTH, **Respondent.**	



INITIAL DECISION

I. Introduction

Petitioner Upson Regional Medical Center ("Upson Regional") requested a fair hearing to appeal the Respondent Department of Community Health's ("Department" or "DCH") determination that Upson Regional had received an overpayment of $5,494.83 in Medicaid reimbursements. An evidentiary hearing was held before the undersigned administrative law judge on June 22, 2023, via telephone. Malcolm Wells, Esq., represented the Department. Dr. Eleanor McCain participated in the hearing on behalf of Upson Regional.

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

II. Findings of Fact

1. On September 7, 2019, Patient G.M., a Medicaid beneficiary whose medical history included type 2 diabetes, hypertension, COPD, and pancreatitis, presented at Upson Regional complaining of leg pain and difficulty walking. His lab work showed extremely high blood glucose levels, and he was diagnosed with hyperglycemic hyperosmolar syndrome (HHS), which has a mortality rate of roughly 20 percent. After receiving fluids and insulin infusions, his blood sugar normalized and he was discharged on September 11, 2019. (Exhibit R-7;

Testimony of Dr. Eleanor McCain[1]).

2. While Patient G.M.'s records occasionally note his diagnosis of HHS, they also make multiple references to a diagnosis of diabetic ketoacidosis (DKA), including a statement that the patient was in "notable ketosis." DKA is similar to HHS, except that it involves the presence of ketones in the blood or urine, which Patient G.M. did not have. DKA is generally seen in patients with type 1 diabetes, while HHS is more common in patients with type 2 diabetes. While DKA has a lower mortality rate than HHS, the two conditions are generally treated identically. Patient G.M.'s chart stated that he was diagnosed with "Type 2 diabetes mellitus with ketoacidosis," which was assigned the corresponding billing code of E11.10. The correct billing code for HHS is E11.00. Because the treatment for the two conditions would have been identical, the reimbursement rate would have been as well. Upson Regional successfully submitted a claim for Medicaid reimbursement for Patient G.M.'s treatment. (Exhibit R-7; Testimony of Dr. McCain).
3. In 2022, Myers & Stauffer, an accounting firm under contract with the Department, conducted a recovery audit of Medicaid claims submitted to the Department by Upson Regional. John Lott, a healthcare data analyst with Myers & Stauffer, performed the audit, which covered the period of 2018 through 2021. Based on that audit, which included 52 total claims, Mr. Lott identified seven claims where the Department had made overpayments to Upson Regional. On October 21, 2022, the Department informed Upson Regional of its intent to issue an overpayment fine of $54,367.24. (Testimony of John Lott; Exhibits R-1, R-2).
4. Upson Regional appealed three of the claims. Myers & Stauffer agreed with its position on one of those claims and issued a final decision letter reducing the overpayment amount to

[1] Dr. McCain testified as an expert.

$48,567.07 on January 6, 2023. Upson Regional subsequently filed a request for an administrative hearing regarding only one claim, which involved Patient G.M. (Testimony of Mr. Lott; Exhibits R-4, R-5, R-6).

5. Mr. Lott explained that Georgia Medicaid requires providers to submit claims with the correct diagnostic codes and to maintain documentation supporting those codes. Because the record for Patient G.M. did not contain any documentation of ketosis, the E11.10 code for DKA was unsupported. (Testimony of Mr. Lott; Testimony of Kathy Striewe;[2] Exhibit R-3).

6. In its November 21, 2022 request for redetermination following receipt of the Department's initial findings letter, Upson Regional stated the following:

> "Documentation in the chart included both hyperglycemic hyperosmolar syndrome as well as diabetic ketoacidosis. The attending physician has been consulted to assist in review of this hospitalization and he adamantly agrees that this patient suffered from, and was treated for diabetic ketoacidosis/hyperglycemic hyperosmolar syndrome therefore, please add the latter code accordingly."

(Exhibit R-4).

7. Dr. Barbara Biggs[3], Myers & Stauffer's medical director, completed an administrative review of Upson's appeal and concluded that, because there was no documentation of ketosis in Patient G.M.'s medical record, Myers & Stauffer's original determination should be maintained. At the hearing, she explained that DKA and HHS are conflicting diagnoses. Mr. Lott said that HHS was "not originally coded on the claim and was outside the scope of our audit." (Testimony of Mr. Lott; Testimony of Dr. Barbara Biggs; Exhibit R-3).

8. Mr. Lott testified that Myers & Stauffer contacted Upson Regional via email on January 4, 2023, prior to issuing its final determination letter, offering the opportunity to further discuss

[2] Ms. Striewe is a registered nurse and a certified patient coder who serves as a healthcare manager at Myers & Stauffer. She testified as an expert.
[3] Dr. Biggs testified as an expert.

the case in a conference call. He said that Upson Regional never responded to that offer.[4] After the final decision letter was issued, Myers & Stauffer again proposed a discussion, but Upson Regional did not accept that offer either. (Testimony of Mr. Lott).

9. Dr. Eleanor McCain served as the representative for Upson Regional. She conceded that the documentation for Patient G.M. made references to both DKA and HHS, but maintained that the treatment for those two conditions is the same and that the patient was treated appropriately. She added that a physician or a nurse would have immediately identified the error, but that the hospital's coders would not have known enough to clarify the proper diagnosis with the treating physician before assigning the code. Having a physician review every chart before a claim is filed would be "financially prohibitive." She stated that the overpayment claim hinged on a technicality and that this level of financial burden on rural hospitals like Upson Regional is "oppressive." (Testimony of Dr. McCain).

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 state opts to participate it must comply with federal statutory and regulatory requirements." *Id.* Each state 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 Department as the "single state agency for the

[4] Carla Cagle, a registered nurse and clinical documentation integrity staff member at Upson Regional, says that she spoke with Mr. Lott following his January 4 email to discuss the rationale for the overpayment decision. However, Mr. Lott says that his only logged communication with Ms. Cagle regarding Patient G.M. was on January 18, and that discussion was regarding the process for Upson Regional to request an administrative hearing. (Testimony of Ms. Cagle; Testimony of Mr. Lott).

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: *Part I Policies and Procedures for Medicaid/Peachcare for Kids* (hereinafter *Medicaid Manual*) and *Part II Policies and Procedures for Hospital Services* (hereinafter *Hospital Services Manual*). 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. The Department is authorized to recoup any payments previously made to a provider upon a finding that it paid the provider "for services, items or drugs that the provider did not perform or provide." *Medicaid Manual* § 407(d). Pursuant to Section 902 of the Department's *Hospital Services Manual*, "[w]ritten records must be maintained which fully disclose the extent, medical necessity and appropriateness of setting for those services provided. The information must identify the patient, support the diagnosis, justify the treatment, and document the course and results accurately."
4. It is undisputed that the records for Patient G.M. reference the conflicting diagnoses of DKA and HHS interchangeably, and that the DKA diagnostic code was used despite the patient not meeting the criteria for that diagnosis. In its request for redetermination, Upson Regional did not provide either reasonable justification of its coding for Patient G.M. or an alternate code for that claim. Finally, Upson Regional did not avail itself of multiple opportunities to further discuss the patient's claim and clarify its position. The Court is sympathetic to Upson

Regional's position and understands the difficulty it faces as an under-resourced hospital. However, the Department nonetheless demonstrated that its policy allows recoupment in cases of inaccurate billing and thus that its finding of an overpayment was authorized.

IV. Decision

IT IS HEREBY ORDERED that the Department's determination of an overpayment in the amount of $5,494.83 is **AFFIRMED**.

SO ORDERED, this 24th day of July, 2023.

Shakara M. Barnes
Administrative Law Judge

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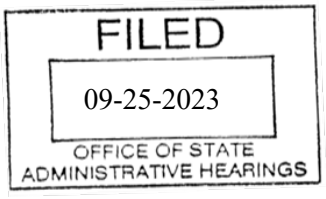

ORDER DENYING MOTION FOR RECONSIDERATION

On July 24, 2023, the undersigned administrative law judge issued an Initial Decision in this matter, upholding the Department of Community Health's determination that Petitioner Upson Regional Medical Center had received an overpayment of $5,494.83 in Medicaid reimbursements. On August 8, 2023, Petitioner filed a Motion for Reconsideration with this Court. On August 23, 2023, the Department filed a Response to Petitioner's Motion.

Petitioner's argument for reconsideration is as follows: "Per past testimony, the code of E11.0 DKA is being removed and code E11.0 HHS is being added. This change is [sic] diagnosis codes did not change the DRG. Since there is not a change in DRG, there should not . . . be a change in reimbursement." (Petitioner's Motion for Reconsideration). The Court assumes that Petitioner is referring to the E11.10 code for diabetic ketoacidosis (DKA) and the E11.00 code for hyperglycemic hyperosmolar syndrome (HHS).

Petitioner's motion does not indicate that reconsideration in this matter would be warranted or appropriate. First, contrary to Petitioner's assertion, there was no testimony offered which indicated that either Myers & Stauffer or the Department had agreed to remove the E11.10 code and replace it with E11.00. To the contrary, the record shows that Petitioner, following its receipt of Myers & Stauffer's initial findings letter, requested that the Department include the codes for

both HHS and DKA, despite there being no evidence in Patient G.M.'s medical record that he met the criteria for a diagnosis of DKA. Because Petitioner provided no medical records or other evidence supporting the DKA diagnosis, the Department denied its request.

Second, the Department is correct that Petitioner did not offer any evidence, besides Dr. McCain's testimony, that the DRG would be the same for both diagnoses. But even if it were, the Department still showed that Petitioner violated the terms of its manual by failing to keep accurate patient records. Therefore, the Department was authorized to recoup payments made for those claims. *See Medicaid Manual § 407(F)* (stating that the Department may recoup payments where "[t]he provider has failed to comply with all terms and conditions of participation related to the service(s) for which a claim has been paid").

Motions for reconsideration are granted in instances where the movant has set forth facts or law showing the discovery of new evidence, an intervening development or change in the controlling law, or the need to correct a clear error or prevent a manifest injustice. Ga. Comp. R. & Regs. 616-1-2-.28(4); *see also Patel v. Epps*, 317 Ga. App. 214, 218 (2012) (citing Ga. Ct. App. R. 37(e)); *Pres. Endangered Areas of Cobb's History v. U.S. Army Corps of Eng'rs*, 916 F. Supp. 1557, 1560 (N.D. Ga. 1995) (reconsideration granted "in certain limited situations, namely the discovery of new evidence, an intervening development or change in the controlling law, or the need to correct a clear error or prevent a manifest injustice").

In this case, Petitioner's motion does not set forth grounds for reconsideration. Therefore, Petitioner's Motion for Reconsideration is **DENIED**.

SO ORDERED, this 25nd day of September, 2023.

Shakara M. Barnes
Administrative Law Judge