VALMOOR L.L.C. DBA VALKO AND ASSOCIATES
LUCAS COUNTY

MEDICAID COMPLIANCE EXAMINATION REPORT

FOR THE PERIOD JANUARY 1, 2009 THROUGH DECEMBER 31, 2011

Dave Yost · Auditor of State

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VALMOOR L.L.C. DBA VALKO AND ASSOCIATES
LUCAS COUNTY

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INDEPENDENT AUDITOR'S REPORT ON COMPLIANCE WITH REQUIREMENTS OF THE MEDICAID PROGRAM APPLICABLE TO PSYCHOTHERAPY AND EVALUATION AND MANAGEMENT SERVICES

Valmoor L.L.C.DBA Valko and Associates
Tim R. Valko, M.D., Director
3130 Executive Parkway, Floor 8
Toledo, Ohio 43606

RE: *Medicaid Provider Number 2952603*

Dear Dr. Valko:

We examined Valmoor L.L.C. DBA Valko and Associates' (the Provider's) compliance with specified Medicaid requirements for provider qualifications, service documentation and treatment plans related to the provision of psychotherapy and evaluation and management services (office or other outpatient visit) during the period of January 1, 2009 through December 31, 2011. We tested service documentation to verify that there was support for the date of service and the procedure code paid by Ohio Medicaid. We also determined if there were treatment plans present when required and examined provider qualifications. The accompanying Compliance Examination Report identifies the specific requirements examined.

Provider's Responsibility

The Provider entered into an agreement with the Ohio Department of Medicaid (ODM) to provide services to Medicaid recipients (the Provider Agreement). The Provider Agreement outlines the responsibility to adhere to the terms of the agreement, state statutes and rules, federal statutes and rules, and the regulations and policies set forth in the Medicaid Handbook including the duty to maintain records supporting claims for reimbursement made by Ohio Medicaid. Therefore, the Provider is responsible for complying with the requirements and laws outlined by the Medicaid program.

Auditor's Responsibility

Our responsibility is to express an opinion and report on the Provider's compliance with the specified Medicaid requirements based on our examination. Our examination was performed under our authority in Section 117.10 of the Ohio Revised Code and conducted in accordance with the American Institute of Certified Public Accountants' attestation standards and, accordingly, included examining, on a test basis, evidence supporting the Provider's compliance with those Medicaid requirements and performing such other procedures as we considered necessary in the circumstances. We believe our examination provides a reasonable basis for our opinion. However, our examination does not provide a legal determination on the Provider's compliance with the specified Medicaid requirements.

Internal Control Over Compliance

The Provider is responsible for establishing and maintaining effective internal control over compliance with the Medicaid requirements. We did not perform any test of the internal controls and we did not rely on the internal controls in determining our examination procedures. Accordingly, we do not express an opinion on the effectiveness of the Provider's internal control over compliance.

Basis for Adverse Opinion on Medicaid Services

The Provider is a professional medical group that employed non-physicians who rendered psychotherapy services during our examination period; however, these services were not performed under the general or direct supervision of a physician, as required, and were billed without a modifier to indicate a non-physician rendered the service. In addition, in a material number of instances the Provider did not have required treatment plans or service documentation to support reimbursed psychotherapy services. Finally, in a material number of instances, the Provider did not have documentation to support the Current Procedure Terminology (CPT) code billed.

Adverse Opinion on Compliance

In our opinion, the Provider has not complied, in all material respects, with the aforementioned requirements pertaining to provider qualifications, service documentation and service authorization for the period of January 1, 2009 through December 31, 2011.

Our testing was limited to the specified Medicaid requirements detailed in the Compliance Examination Report. We did not test other requirements and, accordingly, we do not express an opinion on the Provider's compliance with other requirements.

We found the Provider was overpaid by Ohio Medicaid for services rendered between January 1, 2009 and December 31, 2011 in the amount of $45,933.97. This finding plus interest in the amount of $4,147.27 totaling $50,081.24 is due and payable to the Ohio Department of Medicaid (ODM) upon ODM's adoption and adjudication of this examination report. When the Auditor of State identifies fraud, waste or abuse by a provider in an examination,[1] any payment amount in excess of that legitimately due to the provider will be recouped by ODM through its Fiscal Operations, the state auditor, or the office of the attorney general. Ohio Admin. Code § 5160-1-29(B)

This report is intended solely for the information and use of the Ohio Department of Medicaid, 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 other regulatory and oversight bodies, and is not intended to be, and should not be used by anyone other than these specified parties. In addition, copies are available to the public on the Auditor of State website at www.ohioauditor.gov.

Dave Yost
Auditor of State

December 23, 2014

[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 practices that are inconsistent with professional standards of care; medical necessity; or sound fiscal, business, or medical practices; and that constitutes an overutilization of Medicaid covered services and result in an unnecessary cost to the Medicaid program. Ohio Admin. Code § 5160-1-29(A)

COMPLIANCE EXAMINATION REPORT FOR VALKO AND ASSOCIATES

Background

Title XIX of the Social Security Act, known as Medicaid, provides federal cost-sharing for each state's Medicaid program. The rules and regulations that providers must follow are specified in the Ohio Administrative Code and the Ohio Revised Code. The 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 § 5160-1-01(A) According to Ohio Admin. Code § 5160-1-17.2(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. Providers must furnish such records for audit and review purposes. Ohio Admin. Code § 5160-1-17.2(E)

During the examination period, the Provider furnished services for the diagnosis and treatment of mental and emotional disorders to 243 Medicaid recipients and received reimbursement of $131,309.86 for 2,209 services rendered on 566 dates of service. The services included psychiatric diagnostic interviews, individual psychotherapy with and without medical evaluation and management services, family psychotherapy including the patient, medication management, and evaluation and management (office or other outpatient visit) for established patients. The Provider employees a staff of psychologists, psychiatrists, clinical nurse specialists, professional clinical counselors, licensed professional counselors and licensed independent social workers. All services were billed with Tim Valko, M.D. or Valko and Associates as the rendering provider.

The levels of evaluation and management services include examinations, evaluations, treatments, conferences with/or concerning recipients, and similar medical services, such as the determination of the need and/or location for appropriate care. Medical screening includes the history, examination, and medical decision-making required to determine the need and/or location for appropriate care and treatment. The evaluation and management procedure codes vary depending on the level of history and evaluation conducted along with the complexity of medical decision making on the part of the physician. Providers must select and bill the appropriate visit code. *See* Ohio Admin. Code § 5160-4-06(B)

Ohio Medicaid recipients may be eligible to receive services for the diagnosis and treatment of mental and emotional services performed by a physician or by a licensed social worker, professional counselor or professional clinical counselor who is employed by or under contract with a physician or clinic. See Ohio Admin. Code § 5160-4-29(C)

Purpose, Scope, and Methodology

The purpose of this examination was to determine whether the Provider's Medicaid claims for reimbursement complied with Ohio Medicaid regulations. Please note that all rules and code sections relied upon in this report were those in effect during the examination period and may be different from those currently in effect.

The scope of the engagement was limited to individual psychotherapy, in office setting, 20 to 30 minutes of face-to-face time with recipient with evaluation and management services (procedure code 90805); individual psychotherapy, in office setting, 45 to 50 minutes of face-to-face time with recipient (procedure code 90806) and evaluation and management of an established patient office or other outpatient visit typically 25 minutes (procedure code 99214) that the Provider rendered to

Medicaid recipients and received payment during the period of January 1, 2009 through December 31, 2011.

We received the Provider's claims history from the Medicaid Management Information System (MMIS) and the Medicaid Information Technology System (MITS) database of services billed to and paid by Ohio's Medicaid program. We removed any voids, services paid at zero, and services with third-party or Medicare co-payments. From the remaining subpopulation we extracted all evaluation and management of an established patient services (procedure code 99214) into a separate subpopulation. We also extracted all individual psychotherapy, in office setting, 20 to 30 minutes with evaluation and management services and individual psychotherapy 45 to 50 minutes, without evaluation and management services (procedure codes 90805 and 90806) into a separate subpopulation. From each of these two subpopulations, we selected a simple random sample to facilitate a timely and efficient examination of the Provider's services as permitted by Ohio Admin. Code § 5160-1-27(B)(1).

An engagement letter was sent to the Provider August 20, 2014 setting forth the purpose and scope of the examination. An entrance conference was held on September 16, 2014. During the entrance conference the Provider described its documentation practices and processes for submitting billing to the Ohio Medicaid program. Our fieldwork was performed following the entrance conference.

Results

We examined 241 psychotherapy services (procedure codes 90805 and 90806) and identified 455 errors. As a result, we identified the total amount paid by Ohio Medicaid during our examination period for procedures codes 90805 and 90806, or $31,973.61, as an overpayment. We also examined 303 evaluation and management services (procedure code 99214) and identified 54 errors in 48 services. Based on this error rate, we calculated the Provider's correct payment amount for this subpopulation, which was $74,164, with a 95 percent certainty that the actual correct payment amount fell within the range of $70,927 to $77,401 (+/- 4.36 percent). We then calculated findings by subtracting the correct subpopulation amount ($74,164) from the amount paid to the Provider for this subpopulation ($88,124.36), which resulted in a finding of $13,960.36. A detailed summary of our statistical sample and projection results is presented in **Appendix I**.

The non-compliance found during our examination and the basis for our findings is described below in more detail. While certain services had more than one error, only one finding was made per service.

A. Provider Qualifications

Ohio Admin. Code § 5101:3-4-01(A)(1) states that a physician is an individual currently licensed under state of Ohio law or under another state's law to practice medicine and surgery or osteopathic medicine and surgery.

All rules set forth in Ohio Admin. Code § 5101:3-4 that pertain to services a physician is legally authorized to perform under Ohio law shall apply to advance practice nurses except the term "physician" as it is defined in Ohio Admin. Code § 5101:3-4-01 shall be replaced with the term "advanced practice nurse." *See* Ohio Admin. Code § 5101:3-8-23(B)

Services for the diagnosis and treatment of mental and emotional disorders are covered as physician services when the services are performed by a licensed social worker, professional counselor, or professional clinical counselor who is employed by or under contract with the physician or clinic as long as the services provided are within the within the licensed social

worker's, professional counselor's, or professional clinical counselor's scope of practice. *See* Ohio Admin. Code § 5101:3-4-29(C)

Services performed by a clinical social worker or professional clinical counselor must be provided under the general supervision of a physician. Services performed by a professional counselor or a licensed social worker, who does not meet the requirements of a clinical social worker, must be provided under the direct supervision of a physician. Services rendered by non-physicians may only be billed by and reimbursed to the employing or contracting physician or clinic when the supervision provisions are met. The physician must provide supervision which, at a minimum includes discussion about the progress of the patient toward specified goals; updating treatment plans as needed; and periodic participation in therapy sessions. *See* Ohio Admin. Code §§ 5101:3-4-29(C) and (D)

Services personally provided by a licensed psychologist must be medically necessary for the diagnosis and treatment of an illness or injury to be a covered Medicaid service. Services must be billed by a psychology group practice only if the psychologist is employed by a group medical practice. *See* Ohio Admin. Code § 5101:3-8-05(B).

We verified through the Ohio e-License Center that Dr. Tim Valko and Dr. Diane Hysell were licensed through the Ohio Medical Board with specialties in psychiatry and that their licenses were in active status during the examination period. We also verified that Dr. Rebecca Alperin was licensed as a psychologist through the Ohio Psychology Board and that her license was in active status during our examination period.

We identified two clinical nurse specialists who rendered services during our examination period. We verified their licensure status through the Ohio Nursing Board and noted that their licenses were in active status during the examination period.

We identified six non-physicians who rendered services during the examination period, including one professional counselor, three professional clinical counselors and two licensed independent social workers. We verified their licensure status through the Ohio Counselor, Social Worker and Marriage and Family Therapy Board and noted that all of their licenses were in active status during the examination period.

During the entrance conference and field work Dr. Valko indicated that he does not provide direct or general supervision to non-physicians in his employ because he was not aware of the Medicaid requirement to do so. He provided documentation to show that he holds monthly supervisory meetings where some cases are discussed and he stated that he is available to non-physicians on an as need basis. We found no evidence of required supervision in any recipient file examined.

Statistical Sample of Individual Psychotherapy Services

We reviewed 241 individual psychotherapy services (procedure codes 90805 and 90806) and identified 101 services rendered by a non-physician who was not supervised by a physician or the name of the provider was not indicated. These 101 errors are included in the finding amount of $31,973.61.

In addition, we noted the Provider did not properly modify procedure codes when a non-physician rendered services.

Statistical Sample of Evaluation and Management Services

We reviewed 303 evaluation and management services (procedure code 99214) and identified six services where the name of the provider was not indicated. These six errors were used in the overall finding projection of $13,960.36.

Recommendation

The Provider should develop and implement procedures to ensure services provided by non-physicians to Medicaid recipients are done so under the appropriate level of supervision. The Provider should address the identified issues to ensure compliance with Medicaid rules and avoid future findings.

B. Modifiers

According to Ohio Admin. Code § 5101:3-4-29(G) procedure codes for services rendered by a clinical psychologist will be reimbursed as stated in Ohio Admin. Code § 5101:3-8-05 and services rendered by non-physicians must be modified to signify the level of educational training of the non-physician. For individual therapy provided by non-physicians, services will be reimbursed at the lesser of the provider's billed charge or 50 percent of the Medicaid maximum for the individual therapy code. Ohio Admin. Code § 5101:3-8-05 states ODM will pay 85 percent of the Medicaid rate for services performed by a licensed psychologist.

We reviewed 241 individual psychotherapy services and identified 76 services rendered by a psychologist or non-physician and the procedure code was not modified to signify a psychologist rendered the service or for the educational training of the non-physician. As such, these services were over reimbursed by 15 percent for services rendered by a psychologist and by 50 percent for services rendered by non-physicians. These 76 errors are included in the finding amount of $31,973.61.

Recommendation

The Provider should develop and implement procedures to bill services using the proper modifier to signify the level of educational training of a non-physician. The Provider should address the identified issues to ensure compliance with Medicaid rules and avoid future findings.

C. Service Documentation

Ohio Admin. Code § 5101:3-4-29(H) states the recipient's medical record must substantiate the nature of the services billed including: the medical necessity of the services billed; information regarding the type, duration, and frequency of services, including dates of treatment sessions; the face-to-face time spent with the patient; and test results.

All Medicaid providers are required to keep such records that are necessary to establish medical necessity, and to fully disclose the basis for the type, extent, and level of the services provided to Medicaid recipients. *See* Ohio Admin. Code § 5101:3-1-27(A).

We limited our examination to ensuring documentation was present for services rendered and that the activity noted in the documentation generally support the procedure code billed. We obtained the description of the procedure code from the American Medical Association's Code Manager®. If the documentation did not reflect the activity consistent with the procedure code billed, we noted it as an error.

Statistical Sample of Individual Psychotherapy Services

We reviewed 241 individual psychotherapy services and identified 28 services with no documentation and nine services in which the face-to-face time spent with the recipient was not documented. These 37 errors are included in the finding amount of $31,973.61.

Statistical Sample of Evaluation and Management Services

We reviewed 303 evaluation and management services and identified 11 services with no documentation. In addition, we identified 37 services in which some of the documentation was a flow sheet – which appeared to be a nursing log with no provider identified and no signature. These flow sheets included a brief statement on recipient status and a recommendation of care but did not include the basis for the type, extent and level of services provided to the recipient. The other documentation provided was a Consultation and Referral form; however, these did not document a detailed history or examination as required for the 99214 procedure code. These 48 errors were used in the overall finding projection of $13,960.36.

The Provider stated that the 37 services with incomplete or insufficient documentation were rendered to Medicaid recipients at a group home and additional documentation that would have included the complete details of the services rendered were not maintained.

We also noted in the Provider's electronic record system that many of the records were electronically signed by Dr. Valko within days of the entrance conference. The Office Manager indicated that in preparation for the examination, they realized not all records were signed and as such, could be altered. At that point, Dr. Valko electronically signed the records in order to "lock them down."

Recommendation:

The Provider should develop and implement procedures to ensure that all service documentation fully complies with requirements contained in Ohio Admin. Code §§ 5160-1-27 and 5160-4-29. In addition, the Provider should implement a quality review process to ensure that documentation is complete and accurate prior to submitting claims for reimbursement. Finally, the Provider should ensure electronic records are secure and not subject to alteration in a timely manner. The Provider should address the identified issues to ensure compliance with Medicaid rules and avoid future findings.

D. Treatment Plans for Psychotherapy Services

Ohio Admin. Code § 5101:3-4-29(H)(2) states that the recipient's medical record must substantiate the nature of the services billed including a treatment plan which is signed and dated by the physician prior to initiating therapy.

Statistical Sample of Individual Psychotherapy Services

We reviewed 241 psychotherapy services (procedure codes 90805 and 90806) and identified 240 services with no treatment plan and one service in which the treatment plan was not signed by a physician and a licensed professional clinical counselor rendered services. These 241 errors are included in the finding amount of $31,973.61.

During the entrance conference, Dr. Valko indicated that he did not require treatment plans and he did not sign any treatment plan that may have prepared because he was not aware of the Medicaid requirement to do so.

Recommendation:

The Provider should ensure a treatment plan is present and signed and dated by a physician prior to rendering services when the service is being provided by counselors or social workers. The Provider should address the identified issues to ensure compliance with Medicaid rules and avoid future findings.

Provider Response:

The Provider submitted an official response to the results of this examination which is presented below. We did not examine the Provider's response and, accordingly, we express no opinion on it.

The Provider stated it hired a consultant in order to assist with immediate implementation of the Auditor's recommendations. The Provider stated that, per the Auditor's recommendations, it is implementing new policies addressing supervision; treatment plans; and quality review of documentation. The Provider also stated it recently upgraded to a new EHR system which will allow it to follow provider documentation progress; follow chart signage; and create many other reports to help with quality and review.

APPENDIX I

POPULATION
The population is all paid Evaluation and Management procedure code 99214 services, net of any adjustments, where the service was performed and payment was made during the examination period.

SAMPLING FRAME
The sampling frame was paid and processed claims from MMIS and MITS. These systems contain all Medicaid payments and all adjustments made to Medicaid payments by the State of Ohio.

SAMPLE UNIT
The sampling unit was a service.

SAMPLE DESIGN
We used a simple random sample.

Summary of Sample Record Analysis
For the period January 1, 2009 to December 31, 2011

Description	Results
Number of Services in Population	1,439
Number of Services Sampled	303
Number of Services Sampled with Errors	48
Total Medicaid Amount Paid for Population	$88,124.36
Amount Paid for Services Sampled	$18,555.72
Projected Correct Population Payment Amount	$74,164
Upper Limit Correct Population Payment Estimate at 95% Confidence Level	$77,401
Lower Limit Correct Population Payment Estimate at 95% Confidence Level	$70,927
Projected Overpayment Amount = Actual Amount Paid for Population Services – Projected Correct Population Payment Amount	**$13,960.36**
Precision of Estimated Correct population Payment Amount as the 95% Confidence Level	$3,237 (+/- 4.36%)

Source: Analysis of MMIS and MITS information and the Provider's records.

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Dave Yost • Auditor of State

VALMOOR L.L.C. DBA VALKO AND ASSOCIATES

LUCAS 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
MARCH 26, 2015

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