



OHIO AUDITOR OF STATE  
**KEITH FABER**





**DANIEL P. MILLER  
FRANKLIN COUNTY**

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# OHIO AUDITOR OF STATE KEITH FABER



Medicaid Contract Audit  
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## **INDEPENDENT AUDITOR'S REPORT ON COMPLIANCE WITH REQUIREMENTS OF THE MEDICAID PROGRAM APPLICABLE TO ACUPUNCTURE AND RELATED EVALUATION AND MANAGEMENT SERVICES**

Ohio Department of Medicaid  
50 West Town Street, Suite 400  
Columbus, Ohio 43215

RE: Daniel P. Miller  
Ohio Medicaid Number: 0257098 NPI: 1174792493

We examined Daniel P. Miller (the Provider's) compliance with specified Medicaid requirements for service coverage, provider qualifications, and service documentation related to the provision of acupuncture services and related evaluation and management (E&M) services during the period of January 1, 2018 through December 31, 2019.

The Provider entered into an agreement (the Provider Agreement) with the Ohio Department of Medicaid (ODM) to provide services to Medicaid recipients and to adhere to the terms of the agreement, state statutes and rules, federal statutes and rules, including the duty to maintain records supporting claims for reimbursement made by Ohio Medicaid. The Provider is responsible for its compliance with the specified requirements. The accompanying Compliance Examination Report identifies the specific requirements examined. Our responsibility is to express an opinion on the Provider's compliance with the specified Medicaid requirements based on our examination.

Our examination was conducted in accordance with attestation standards established by the American Institute of Certified Public Accountants. Those standards require that we plan and perform the examination to obtain reasonable assurance about whether the Provider complied, in all material respects, with the specified requirements referenced above. An examination involves performing procedures to obtain evidence about whether the Provider complied with the specified requirements. The nature, timing and extent of the procedures selected depend on our judgment, including an assessment of the risks of material noncompliance, whether due to fraud or error. We believe the evidence we obtained is sufficient and appropriate to provide a reasonable basis for our opinion. Our examination does not provide a legal determination on the Provider's compliance with the specified 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***

As described in the attached Compliance Examination Report, the Provider did not obtain confirmation of a diagnostic examination by a physician or chiropractor for any of the acupuncture services examined, and did not provide a written recommendation to the recipient to obtain such a diagnostic examination. The Provider acknowledged that he was not aware of this requirement.

In addition, there was no documentation to support payments for 42 percent of the acupuncture services and 21 percent of the E&M services selected for this examination. For the E&M services with documentation, payment was made for both an E&M service and an acupuncture service rendered by the same provider to the same individual on the same day and the notes did not support an allowable E&M service. We confirmed that the Provider improperly billed these services based on the coverage limitation.

***Adverse Opinion on Compliance***

In our opinion, the Provider has not complied, in all material respects, with the aforementioned requirements pertaining to acupuncture services and E&M services for the period of January 1, 2018 through December 31, 2019.

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 identified improper Medicaid payments in the amount of \$30,051.14. This finding plus interest in the amount of \$1,225.51 (calculated as of March 7, 2021) totaling \$31,276.65 is due and payable to the ODM upon its adoption and adjudication of this examination report. Services billed to and reimbursed by the ODM, which are not validated in the records, are subject to recoupment through the audit process. See Ohio Admin. Code § 5160-1-27 In addition, if fraud, waste and abuse<sup>1</sup> are suspected or apparent, the ODM and/or the office of the attorney general will take action to gain compliance and recoup inappropriate or excess payments in accordance with rule 5160-1-27 of the Administrative Code.

This report is intended solely for the information and use of the Provider, the ODM and other regulatory and oversight bodies and is not intended to be, and should not be used by anyone other than these specified parties.



Keith Faber  
Auditor of State  
Columbus, Ohio

March 7, 2021

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<sup>1</sup> "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**

### **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 prevention, diagnosis, evaluation or treatment of an adverse health condition. See Ohio Admin. Code § 5160-1-01(A) and (B)

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 from receipt of payment or until any audit initiated within the six year period is completed. Providers must furnish such records for audit and review purposes. See Ohio Admin. Code § 5160-1-17.2(D) and (E)

Ohio Medicaid recipients may be eligible to receive acupuncture services if the service meets the coverage conditions which include that the service is medically necessary; is performed at the written order of a practitioner in accordance with section 4762.10 of the Revised Code; the service is rendered by a practitioner enrolled in the Medicaid program; and the service is rendered for the treatment of low back pain or migraines. See Ohio Admin. Code § 5160-8-51(D)(1)

Daniel P. Miller is a licensed acupuncturist located in Worthington, Ohio. The Provider Agreement identifies the Provider as an individual practitioner with a legal entity name of Wholistic Acupuncture LLC which is registered with the Ohio Secretary of State. There is no associated provider number for Wholistic Acupuncture LLC in the Medicaid Information Technology System.

Under the provider number examined, the Provider received payment of \$30,051 during the examination period for 802 acupuncture and E&M services<sup>2</sup>.

### **Purpose, Scope, and Methodology**

The purpose of this examination was to determine whether the Provider's claims for payment 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 an examination of acupuncture and E&M services as specified below for which the Provider billed with dates of service from January 1, 2018 through December 31, 2019 and received payment.

We received the Provider's fee-for-service claims history from the Medicaid database of services billed to and paid by Ohio's Medicaid program. We also requested claims data for the Providers services paid by three of the Medicaid managed care organizations (MCOs). The MCO's claims data showed that the services rendered by the Provider were paid to the tax identification number of Wholistic Acupuncture LLC.

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<sup>2</sup> Totals reported include fee-for-service payments of \$6,304.10 and managed care payments of \$23,747.04 from the following Medicaid managed care organizations: CareSource, Molina Healthcare and United HealthCare.

**Purpose, Scope, and Methodology (Continued)**

From the combined fee-for-service and managed care population, we removed all services paid at zero. We identified 24 E&M services (procedure codes 99203, 99213 and 99214) and all of these 24 services were billed with the modifier 25 and were billed on the same day as an acupuncture service to the same recipient. The modifier 25 is used to indicate an E&M service by the same practitioner on the same day of the procedure. We selected all E&M services to examine in their entirety (census).

From the remaining population, we summarized the acupuncture services (procedure codes 97810, 97811, 97813 and 97814) by recipient date of service (RDOS). An RDOS is defined as all services for a given recipient on a specific date of service. We used a random sampling approach to examine these services in order to facilitate a timely and efficient examination. We selected a random sample of 30 RDOS.

The selected services are shown in **Table 1**.

<b>Table 1: Selected Services</b>			
<b>Universe</b>	<b>Population Size</b>	<b>Sample Size</b>	<b>Selected Services</b>
<b>Census</b>			
E&M Services (99203, 99213, 99214)	24		24
<b>Sample</b>			
Acupuncture Services (97810, 97811, 97813, 97814)	382 RDOS	30 RDOS	60
<b>Total</b>		<b>30 RDOS</b>	<b>84</b>

A notification letter was sent to the Provider setting forth the purpose and scope of the examination. During the entrance conference, the Provider described his documentation practices and billing process. During fieldwork, we reviewed service documentation and personnel records. We sent preliminary results to the Provider and no additional documentation was provided.

**Results**

The summary results of the compliance examination are shown in **Table 2**. While certain services had more than one error, only one finding was made per service. The non-compliance and basis for findings is discussed below in more detail.

<b>Table 2: Results</b>				
<b>Universe</b>	<b>Services Examined</b>	<b>Non-compliant Services</b>	<b>Non-compliance Errors</b>	<b>Improper Payment</b>
<b>Census</b>				
E&M Services	24	24	24	\$1,297.89
<b>Sample</b>				
Acupuncture Services	60	60	85	\$28,753.25
<b>Total</b>	<b>84</b>	<b>84</b>	<b>109</b>	<b>\$30,051.14</b>

Due to the 100 percent error in all 84 services examined and confirmation by the Provider that all of the remaining paid services were also non-compliant with the Medicaid requirements, we identified the full payment for all acupuncture and E&M services for the examination period as an improper payment.



**A. Provider Qualifications**

Per Ohio Admin. Code § 5160-1-17.2(H), in signing the Medicaid provider agreement, the Provider agrees that the individual practitioner or employee of the company is not currently subject to sanction under Medicare, Medicaid, or Title XX; or, is otherwise prohibited from providing services to Medicaid beneficiaries.

We compared the Provider's name to the Office of Inspector General exclusion database and the ODM's exclusion or suspension list. We found no match on the exclusion or suspension list. We also compared the identified Clinic Manager to the exclusion or suspension list and found no match.

According to Ohio Admin. Code § 5160-8-51(B)(2), acupuncture services require a valid certificate to practice as an acupuncturist or oriental medicine practitioner.

We verified via the Ohio e-License Center website that the Provider was licensed by the Ohio Medical Board as an acupuncturist and the license was current and valid during the examination period.

**B. Service Documentation**

All Medicaid providers are required by Ohio Admin. Code § 5160-1-27(A) to keep records to establish medical necessity and meet requirements that include, but are not limited to, disclosing the type, extent and duration of services provided to Medicaid recipients. We applied these requirements to the exception tests and the acupuncture services sample.

*E&M Services*

The 24 services examined contained five instances (21 percent) in which there was no documentation to support the payment. These five errors are included in the improper payment of \$1,297.89.

*Acupuncture Services Sample*

The 60 services examined contained 25 instances (42 percent) in which there was no documentation to support the payment. These errors are included in the improper payment of \$28,753.25.

The documentation that was present for the remaining services was limited in information to support the treatment. Examples are included in the Appendix. These examples are indicative of the content found in the remaining notes.

**Recommendation**

The Provider should establish a system to verify there is documentation to support services before they are billed. The Provider should address the identified issues to ensure compliance with Medicaid rules and avoid future findings.

**C. Medicaid Coverage**

Medicaid payment may be made only for an acupuncture service that is medically necessary in accordance with Ohio Admin. Code § 5160-1-01 which specifies that services meet generally accepted standards of medical practice.

### **C. Medicaid Coverage (Continued)**

In addition, the services must be performed in accordance with section 4762.10 of the Ohio Rev. Code which requires that an acupuncturist, prior to treatment, confirm whether the patient has undergone, within the last six months, a diagnostic examination that was related to the condition for which the patient is seeking acupuncture and was performed by a physician or chiropractor before receiving acupuncture services. If the patient does not confirm the diagnostic examination, the acupuncturist must provide to the patient a written recommendation to undergo a diagnostic examination by a physician or chiropractor.

In addition, no separate payment is made for both an E&M service and an acupuncture service rendered by the same provider to the same individual on the same day. See Ohio Admin. Code § 5160-8-51(D)(3)

#### *E&M Services*

The 24 services examined contained 19 instances in which the documentation did not support an allowable E&M service on the same day as an acupuncture service. In some cases, there was no discernable difference in the documentation when a separate E&M visit was billed on same date as the acupuncture service. See Appendix for examples. These 19 errors are included in the improper payment of \$1,297.89.

The Provider indicated he was unaware of the limitation to bill both an E&M service and an acupuncture service to the same individual on the same day.

#### *Acupuncture Services Sample*

The 60 services examined were rendered after the conclusion of the Provider's supervisory period. There was no confirmation of a diagnostic examination by a physician or chiropractor, nor did the Provider provide a written recommendation to obtain a diagnostic examination for any of the services examined. The Provider indicated he was unaware of these requirements.

Due to the 100 percent error and the Provider's acknowledgement that the confirmation or written recommendations were never completed during the examination period, we identified the total amount paid of \$28,753.25 as an improper payment.

### **Recommendation**

The Provider should develop and implement controls to ensure that confirmation of a diagnostic examination by a physician or chiropractor is obtained or a written recommendation is provided to the recipient to undergo such an examination prior to services being rendered. The Provider should also ensure that services billed to Medicaid are consistent with the benefits covered by the Program. The Provider should address these issues to ensure compliance with Medicaid rules and avoid future finding.

### **Official Response**

The Provider declined to submit an official response to the results noted above.

# S.O.A.P NOTE

Appendix

Auditor of State Note: This documentation supports a service in which an E&M and acupuncture service was billed on the same date for the same recipient.

Date 3 / 15 / 19

Session Type \_\_\_\_\_ Duration \_\_\_\_\_

## SUBJECTIVE

Client symptoms and information given by referring healthcare provider and by client

Low Back Pain  
stress, not sleeping well

## OBJECTIVE

Clinical observations derived from interviews, palpation, visual exam and posture assessment

\_\_\_\_\_  
\_\_\_\_\_

## ASSESSMENT

Treatment used and client response to treatment

Acupuncture 1hr

## PLAN OF TREATMENT

Treatment options, recommendations and self-care plan

\_\_\_\_\_  
\_\_\_\_\_

## ADDITIONAL NOTES

Insurance ID number \_\_\_\_\_ Date of injury \_\_\_\_\_

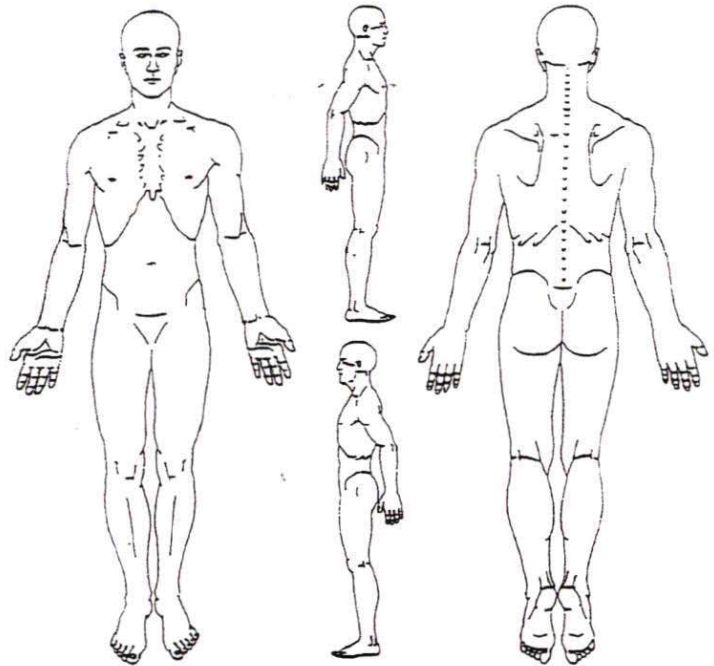
Modality Type (code): \_\_\_\_\_  
\_\_\_\_\_

Modality Type (code): \_\_\_\_\_  
\_\_\_\_\_

Current medications: \_\_\_\_\_  
\_\_\_\_\_

Symptoms:

Location/intensity/Duration/Frequency/Onset



✕	Adhesion	≈	Spasm
↻	Rotation	⊙	Inflammation
○	Pain	9	Trigger Point
●	Tender Point	/	Elevation
≡	Hypertonicity		

Add Additional Notes  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

# S.O.A.P NOTE

Auditor of State Note: This documentation supports a service in which an acupuncture service was billed.

Date 8 / 31 / 19

Session Type \_\_\_\_\_ Duration \_\_\_\_\_

## SUBJECTIVE

Client symptoms and information given by referring healthcare provider and by client

Lower back pain  
some insomnia

## OBJECTIVE

Clinical observations derived from interviews, palpation, visual exam and posture assessment

## ASSESSMENT

Treatment used and client response to treatment

Acupuncture 1hr

## PLAN OF TREATMENT

Treatment options, recommendations and self-care plan

## ADDITIONAL NOTES

Insurance ID number \_\_\_\_\_ Date of injury \_\_\_\_\_

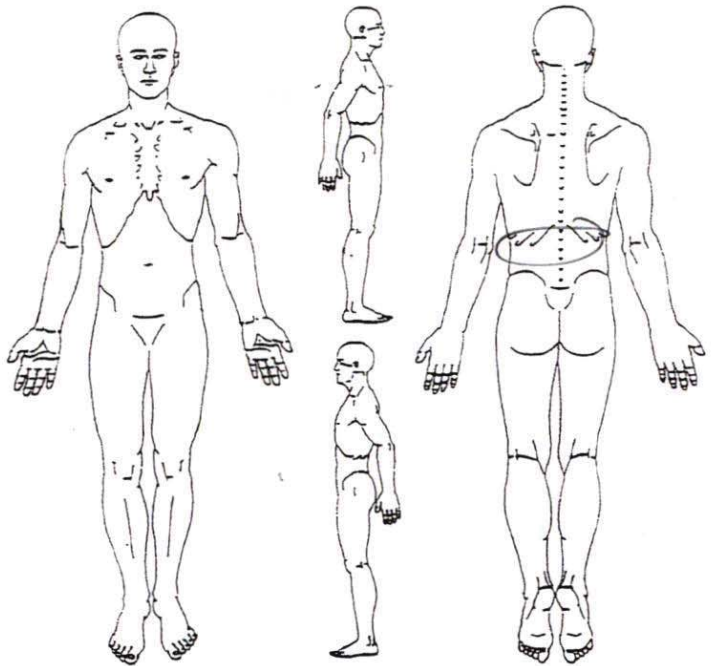
Modality Type (code): \_\_\_\_\_

Modality Type (code): \_\_\_\_\_

Current medications: \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

## Symptoms:

Location/intensity/Duration/Frequency/Onset



✕	Adhesion	≈	Spasm
↻	Rotation	⊙	Inflammation
○	Pain	9	Trigger Point
●	Tender Point	/	Elevation
≡	Hypertonicity		

Add Additional Notes  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

# OHIO AUDITOR OF STATE KEITH FABER



**DANIEL P. MILLER**

**FRANKLIN COUNTY**

## **AUDITOR OF STATE OF OHIO CERTIFICATION**

This is a true and correct copy of the report, which is required to be filed pursuant to Section 117.26, Revised Code, and which is filed in the Office of the Ohio Auditor of State in Columbus, Ohio.



**Certified for Release 3/23/2021**

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This report is a matter of public record and is available online at  
[www.ohioauditor.gov](http://www.ohioauditor.gov)