



OHIO AUDITOR OF STATE
KEITH FABER



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INDEPENDENT AUDITOR'S REPORT ON COMPLIANCE WITH REQUIREMENTS OF THE MEDICAID PROGRAM APPLICABLE TO SELECT NURSING FACILITY SERVICES

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

RE: Westlake Acres Nursing & Rehabilitation Center, LLC
Ohio Medicaid Number: 0169879 National Provider Identifier (NPI): 1487002796

We were engaged to examine compliance with specified Medicaid requirements for provider qualifications, service documentation and service authorization related to the following select payments: 18 respiratory services for 14 unique recipients and 28 long term care services for 16 unique recipients. In addition, we tested compliance for the following:

- Staffing ratios based on the daily census;
- Protocols for staff coverage; and
- Emergency disaster plan.

This examination covered the period of July 1, 2020 through June 30, 2022. Westlake Acres Nursing & Rehabilitation Center, LLC (hereafter referred to as Westlake Acres), entered into an agreement with the Ohio Department of Medicaid (the Department) to provide services to Medicaid recipients and to adhere to the terms of the provider agreement, Ohio Revised Code, Ohio Administrative Code, and federal statutes and rules, including the duty to maintain all records necessary and in such form so as to fully disclose the extent of services provided and significant business transactions. Management of Westlake Acres is responsible for its compliance with the specified requirements. The Compliance Section of this report identifies the specific requirements examined.

Internal Control over Compliance

Westlake Acres 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 Westlake Acres' internal control over compliance.

Basis for Disclaimer of Opinion

During the examination, Westlake Acres indicated that it was unable to obtain all of the requested documentation. Accordingly, we did not receive all of information and records needed to complete the compliance examination. The facility operated by Westlake Acres closed on June 2, 2023.

In addition, attestation standards established by the American Institute of Certified Public Accountants require that we request a written statement from Westlake Acres confirming, to the best of their knowledge and belief, their representations made to us during the course of our examination. We requested that Westlake Acres provide such a statement but Westlake Acres declined to do so.

Disclaimer of Opinion

Our responsibility is to express an opinion on Westlake Acres's compliance with select Medicaid requirements based on conducting the examination in accordance with attestation standards established by the American Institute of Certified Public Accountants. Because of the limitations on the scope of our examination discussed in the preceding paragraph, the scope of our work was not sufficient to enable us to express, and we do not express, an opinion on Westlake Acres' compliance with the specified Medicaid requirements for the period July 1, 2020 through June 30, 2022.

We identified improper Medicaid payments in the amount of \$42,482.44. This finding plus interest in the amount of \$4,630.00 (calculated as of November 15, 2023) totaling \$47,112.44 is due and payable to the Department upon its adoption and adjudication of this examination report. Services billed to and reimbursed by the Department, which are not validated in the records, are subject to recoupment through the audit process. See Ohio Admin. Code § 5160-1-27. If waste and abuse are suspected or apparent, the Department and/or the Office of the Attorney General will take action to gain compliance and recoup inappropriate or excess payments.¹ Ohio Admin. Code § 5160-1-29(B).

We are required to be independent of Westlake Acres and to meet our ethical responsibilities, in accordance with the ethical requirements established by the American Institute of Certified Public Accountants related to our compliance examination. This report is intended solely for the information and use of the Department 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

November 15, 2023

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

COMPLIANCE SECTION

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 for the program are specified in the Ohio Administrative Code and the Ohio Revised Code. 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).

Per Ohio Admin. Code § 5160-3-02(B), a provider of a nursing facility is required to execute the provider agreement, apply for and maintain a valid license to operate if required by law and comply with the provider agreement and all applicable federal, state, and local laws and rules. Per Ohio Admin. Code § 3701-17-02(A), all nursing homes must comply with rules 3701-17-01 to 3701-17-26 of the Administrative Code and the applicable provisions of Chapter 3721 of the Revised Code.

Westlake Acres operated a nursing facility licensed by the Ohio Department of Health (type 86 provider) and received payment of \$3,534,410 under the provider number examined for 608 fee-for-service claims. Westlake Acres also received \$8,924,926 for 9,306 managed care claims² which were not included in the scope of the examination.

Westlake Acres Realty, LLC owned the property and building located in Westlake, Ohio and Westlake Acres operated the facility. Between July 1, 2020 and December 21, 2022, Westlake Acres contracted with Crocker Road Consulting, LLC dba Solivita of Westlake to provide consulting services with respect to the management and operation of the facility. Westlake Acres had multiple registered trade names during and subsequent to the examination period including The Greens at Westlake, Westlake Rehab and Nursing Center, and Asbury Care Center at the Lake.

Purpose, Scope, and Methodology

The purpose of this examination was to determine whether Westlake Acres' 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 select fee-for-service payments for respiratory services and long-term care services as specified below for which Westlake Acres billed with dates of service from July 1, 2020 through June 30, 2022 and received payment. We obtained Westlake Acres' claims history from the Medicaid database of services billed to and paid by Ohio's Medicaid program. We removed services paid at zero and excluded services paid by an Ohio Medicaid managed care entity.

From the total paid services population, we extracted all respiratory services (revenue code 0410) and other respiratory services (revenue code 0419) which resulted in 83 services. We judgmentally selected one month of service for each of the 14 unique recipients who received these respiratory services resulting in a selection of 18 services.

² Payment data from Ohio Medicaid Information Technology System (MITS)

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From the remaining revenue codes, we randomly selected four unique recipients from each of the four six-month periods³ in our examination period and selected one month of service for each recipient resulting in a selection of 28 services.

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

Table 1: Selected Payments			
Universe	Population Size	Recipients	Selected Services
Selected Payments			
Respiratory Services ¹	83	14	18
Long Term Care Services ²	491	16	28
Total	574	30	46

¹ Includes respiratory services (revenue code 0410) and other respiratory services revenue code 0419)

² Includes all-inclusive room and board services (revenue code 0101), room and board, other general services (revenue code 0160), leave of absence (revenue code 0185), other leave of absence (revenue code 0189) and special charges services (revenue code 0220).

A notification letter was sent to Westlake Acres setting forth the purpose and scope of the examination. During the entrance conference, Westlake Acres described its documentation practices and billing process. During fieldwork, we reviewed service authorizations, service documentation and personnel records. We sent preliminary results to Westlake Acres and it subsequently submitted additional documentation which we reviewed for compliance prior to the completion of our fieldwork.

Results

The summary results 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 further detail.

Table 2: Results				
Universe	Services Examined	Non-compliant Services	Non-compliance Errors	Improper Payment
Samples				
Respiratory Services	18	5	7	\$35,599.02
Long Term Care Services	28	6	6	\$6,883.42
Total	46	11	13	\$44,482.44

A. Provider Qualifications

Exclusion or Suspension List

Per Ohio Admin. Code § 5160-1-17.2(H), in signing the Medicaid provider agreement, a 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.

³ The six-month periods included July 1 to December 31 of 2020; January 1 to June 30 of 2021; July 1 to December 31 of 2021 and January 1 to June 30 of 2022.

A. Provider Qualifications (Continued)

We identified 76 nurses, 96 aides and 12 non-certified/licensed practitioners in the service documentation for the selected services and compared their names to the Office of Inspector General exclusion database and the Department's exclusion/suspension list. We found three name matches on the HHS/OIG exclusion list and requested additional identifying information for these individuals from Westlake Acres but received no response. Accordingly, we could not determine if the three individuals were excluded from providing services. We also compared identified administrative staff names to the same database and exclusion/suspension list and found no matches.

Ohio Admin. Code § 3701-17-07(I) states that all individuals used by the nursing home who function in a professional capacity shall meet the standards applicable to that profession, including but not limited to, possessing a current Ohio license, registration, or certification, if required by law.

Based on the e-License Ohio Professional Licensure System, licenses for 73 of the 76 nurses were current on the first date of service on our testing and were valid during the remainder of the examination period. We could not locate licensure information for two individuals identified as nurses and one name had three potential listings. We requested clarification for the three names from Westlake Acres but received no response. Accordingly, we could not determine if these three individuals were licensed nurses on the date of service tested.

For the 108 identified aides, data from the Ohio Department of Health's Nurse Aide Registry indicated that 86 were certified on the first date of service on our testing and were valid during the remainder of the examination period. The remaining 22 individuals either rendered services before or after a period of certification or had no certification; however, the Centers for Medicare and Medicaid Services posted a blanket waiver in April 2020 which allowed facilities to use nurse aides not yet listed on the Nurse Aide Registry beyond four months if the facility found the aide competent. The emergency blanket waiver ended June 6, 2022. The services rendered by these 22 practitioners were during this waiver period.

B. Service Documentation

Documentation requirements for long term care institutional services include nursing and care notes, a medication administration record and progress notes. See Ohio Admin. Code § 3701-17-19(A). We requested at least one of the documents for each recipient and date of service tested to determine if the recipient was in the facility on the date tested.

Respiratory Services

The 18 services examined contained one instance in which there was no documentation to support that the recipient was in the facility and three instances in which documentation supported a bed hold day rather than a respiratory services day. These four errors are included in the improper payment amount of \$35,599.02. The improper payment for the three bed hold days is based on the difference in the amount paid and the amount that should have been paid.

Long Term Care Services

The 28 services examined contained five instances in which there was no documentation to support the payment. These five errors are included in the improper payment of \$6,883.42.

C. Authorization to Provide Services

Per Ohio Admin. Code § 3701-17-10 (D), the nursing home is required to perform a comprehensive assessment within 14 days after the individual begins to reside in the facility and subsequently perform a comprehensive assessment at least annually thereafter.

In addition, nursing homes must initiate a plan of care upon admission and review the plan of care whenever there is a change in the resident's condition, needs, or preferences that warrants a change in the services, supplies or equipment, and at least quarterly. See Ohio Admin. Code § 3701-17-14 (A).

Respiratory Services

The 18 services examined contained one instance in which there was not a comprehensive assessment and two instances in which the plan of care did not authorize services. These three errors are included in the improper payment of \$ 35,599.02.

Long Term Care Services

The 28 services examined contained one instance in which the comprehensive assessment was not signed. This one error is included in the improper payment of \$6,883.42.

D. Compliance Testing

Census Staffing Days Sample

Per Ohio Admin. Code § 3701-17-19 the provider is required to keep records showing the name and hours of duty of all personnel who work in the home. In addition, Ohio Admin. Code § 3701-17-08 requires that each nursing home shall have sufficient direct care staff on each shift to meet the needs of the residents in an appropriate and timely manner to provide a minimum daily average of two and one-half hours of direct care and services per resident per day.

We attempted to test staffing ratios for 24 dates of service within the compliance examination period. For 10 of the 24 selected service dates, Westlake Acres did not have detailed documentation with employees' names, positions or hours worked needed to verify direct care staff hours. For these 10 service dates Westlake Acres did provide Calculated Time Summary reports which gave total hours by department. These reports indicated that on one of these 10 service dates, Westlake Acres did not have sufficient staffing to provide two and a half hours of direct care per recipient.

On one of the remaining 14 service dates with detailed staffing information, Westlake Acres did not have sufficient staffing to provide two and a half hours of direct care per recipient⁴.

Protocol for Staff Coverage

Per Ohio Admin. Code § 3701-17-08, the nursing home shall have protocol for staff coverage that includes coverage during vacations, emergency situations, and long-term absences due to illness and unexpected absences and a contingency plan for back-up coverage. Westlake Acres submitted a staff coverage protocol.

⁴ Of the two service dates without sufficient staffing, one date was short one hour and the second date was short three hours.

D. Compliance Testing (Continued)

Emergency Disaster Plan

Per Ohio Admin. Code § 5160-3-02.7, each facility shall have a detailed written plan of procedures to be followed in the event of an emergency or disaster and that each facility shall train all employees in the facility's emergency and disaster procedures when they begin to work in the facility, periodically review the procedures with existing staff, and carry out unannounced staff drills using those procedures. Westlake Acres submitted an emergency disaster plan.

We performed no further testing of the protocol for staff coverage or the emergency disaster plan as we received notification of the facility's closing.

Subsequent Event

On July 20, 2023, Westlake Acres notified us that the facility it had operated closed on June 2, 2023 and the property and building were sold. This closure was confirmed via a site visit conducted by the Ohio Department of Health.

Official Response

Westlake Acres declined to submit an official response to the results noted above.

OHIO AUDITOR OF STATE KEITH FABER



WESTLAKE ACRES NURSING & REHABILITATION CENTER, LLC

CUYAHOGA 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 1/16/2024

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This report is a matter of public record and is available online at
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