Dave Yost · Auditor of State

# Ohio Medicaid Program

## *Audit of Medicaid Reimbursements Made to Lincare, Inc. dba America's Best Medical Equipment*

*A Compliance Audit by the:*

**Medicaid/Contract Audit Section**

# Dave Yost • Auditor of State

August 23, 2011

Ms. Jenna Pedersen,
Corporate Compliance Officer
Lincare, Inc.
19387 US 19N
Clearwater, Florida 33764

Dear Ms. Pedersen:

We enclose our audit report on Medicaid reimbursements made to Lincare, Inc. dba America's Best Medical Equipment, Medicaid provider number 2595437, for the period November 1, 2007 to October 29, 2009. Our audit was performed according to our authority in Ohio Rev. Code § 117.10 and our letter of arrangement with the Ohio Department of Job and Family Services (ODJFS). We identified $12,728.92 in findings for improper charges to Ohio Medicaid plus $1,461.91 in interest totaling $14,190.83 that is due and payable to ODJFS. The findings in the report are a result of non-compliance with Medicaid reimbursement rules published in the Ohio Administrative Code. After August 23, 2011, additional interest will accrue at $2.79 per day until repayment occurs. Interest is calculated pursuant to Ohio Admin. Code § 5101:3-1-25.

We are forwarding this report to ODJFS because it is the state agency charged with administering Ohio's Medicaid program. ODJFS is responsible for making a final determination regarding recovery of our findings and any accrued interest. However, if you agree with the findings contained herein, you may expedite repayment by contacting ODJFS' Office of Legal Services at (614) 466-4605.

Copies of this report are being sent to 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 the Ohio Respiratory Care Board. In addition, copies are available on the Auditor of State website at (www.auditor.state.oh.us).

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Questions regarding this report should be directed to Charles H. Brown, III, Chief Auditor, Medicaid/Contract Audit Section, at (614) 466-7894 or toll free at (800) 282-0370.

Sincerely,

Dave Yost
Auditor of State

cc: Stacey Murphy, Region Reimbursement Manager, Lincare, Inc.
Ohio Department of Job and Family Services
Ohio Attorney General, Medicaid Fraud Control Unit
U. S. Department of Health and Human Services/Office of Inspector General
Ohio Respiratory Care Board

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## ACRONYMS

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|---|---|
| AOS | Auditor of State |
| CMN | Certification of Medical Necessity |
| CMS | Centers for Medicare and Medicaid Services |
| CPT | Current Procedural Terminology |
| HCPCS | Healthcare Common Procedural Coding System |
| HIPAA | Health Insurance Portability and Accountability Act |
| LTCF | Long Term Care Facility |
| MMIS | Medicaid Management Information System |
| ODJFS | Ohio Department of Job and Family Services |

## *SUMMARY OF RESULTS*

The Auditor of State performed an audit of Lincare, Inc., provider number 2595437, doing business at 1566 Akron Pennisula Road #2, Akron, Ohio 44313 (Lincare or the Provider). The Provider's parent corporation is a national supplier of durable medical equipment with offices in cities all over the United States and throughout Ohio. The Provider was one of 34 separate Lincare, Inc. operations in Ohio during the audit period. Within the Ohio Medicaid program, the Provider is listed as a supplies and medical equipment provider.

We performed our audit of Medicaid reimbursements to the Provider for volume ventilator and oxygen concentrator services between November 1, 2007 and October 29, 2009, according to Ohio Rev. Code § 117.10 and our letter of arrangement with the Ohio Department of Job and Family Services (ODJFS). As a result of this audit, we identified $12,728.92 in findings for improper charges to Ohio Medicaid, based on reimbursements that did not meet the rules of the Ohio Administrative Code in effect during the audit period. Additionally, we assessed accrued interest of $1,461.91 according to Ohio Admin. Code § 5101:3-1-25, for a total finding of $14,190.83, which is due and payable to ODJFS as of the release of this audit report. Additional interest of $2.79 per day will accrue after August 23, 2011, until repayment.

## *BACKGROUND*

Title XIX of the Social Security Act, known as Medicaid, provides federal cost-sharing for each state's Medicaid program. Medicaid provides health coverage to families with low incomes, children, pregnant women, and people who are aged, blind, or who have disabilities. In Ohio, the Medicaid program is administered by ODJFS.

Hospitals, long-term care facilities, managed care organizations, individual practitioners, laboratories, medical equipment suppliers, and others (all called "providers") render medical, dental, laboratory, and other services to Medicaid patients. The rules and regulations that providers must follow are specified by ODJFS in the Ohio Administrative Code and the Ohio Medicaid Provider Handbook. A 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 § 5101:3-1-01(A) and (A)(6).

The Auditor of State performs audits to assess Medicaid providers' compliance with reimbursement rules to ensure that services billed to Ohio Medicaid are properly documented and consistent with professional standards of care, medical necessity, and sound fiscal, business, or medical practices. According to Ohio Admin. Code § 5101:3-1-17.2(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. When the AOS identifies fraud, waste or abuse by a provider in its audits[1], "any amount in excess of that legitimately due to the provider

[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

will be recouped by ODJFS through its office of fiscal and monitoring services, the state auditor, or the office of the attorney general." Ohio Admin. Code § 5101:3-1-29 (B).

## *PURPOSE, SCOPE, AND METHODOLOGY*

The purpose of this audit was to determine whether the Provider's Medicaid claims for reimbursement of medical services were in compliance with regulations and to identify, if appropriate, any findings resulting from non-compliance.

An entrance conference was held on September 20, 2010, at the Provider's facility to discuss the purpose and scope of our audit. The scope of our audit was limited to claims for which the Provider rendered services to Ohio Medicaid patients and received payment during the period of November 1, 2007 through October 29, 2009 (excluding Medicaid co-payments for Medicare or third-party insurance claims; or claims containing services outside of the audit period). The Provider was reimbursed $457,484.92 for 2,185 volume ventilator and oxygen concentrator services during the audit period.

We reviewed the Provider's paid claims history from ODJFS' Medicaid Management Information System (MMIS), which contains electronic files of services billed to and paid by Ohio's Medicaid program. This claims data included: patient name, patient identification number, date of service, service rendered and reimbursement per service billed. Providers bill services to the Medicaid program using the Healthcare Common Procedural Coding System (HCPCS) codes issued by the federal government through the Centers for Medicare & Medicaid Services (CMS).

Our analysis determined that the Provider only billed two HCPCS service codes during the audit period: volume control ventilator with invasive intubation (HCPCS code E0450) which accounted for 72 percent of the Provider's reimbursement; and oxygen concentrator services (HCPCS code E1390) which made up the balance of services provided. To facilitate a timely and efficient review of the Providers' services billed to ODJFS, we performed a 100 percent review of all volume ventilator services to check for prior authorizations and a statistical random sample of oxygen concentrator services was selected as permitted by Ohio Admin. Code § 5101:3-1-27 (B)(1).

Additionally, we reviewed the Provider's nursing home, long-term care and hospice contracts for the audit period to determine whether the Provider charged Medicaid more than their usual and customary fee charged to their non-Medicaid commercial clients for the same oxygen concentrator services. We performed our fieldwork between September 2010 and February 2011.

medicaid covered services and result in an unnecessary cost to the Medicaid program." Ohio Admin. Code § 5101:3-1-29 (2)

## *RESULTS*

As a result of our audit, we identified findings amounting to $12,728.92 in improper Medicaid billings. Of this, we identified $12,663.40 for services reimbursed in excess of the Provider's usual and customary fee; and $65.52 from our sample of oxygen concentrator services. The bases for our total findings of $12,728.92 are discussed in more detail below.

### A. Charges Exceeded Usual and Customary Charges for Oxygen Concentrators

Providers of medical services such as Lincare must execute a 'provider agreement' with ODJFS in order to supply and bill medical services to Ohio Medicaid patients. According to the 'provider agreement' the provider agrees to furnish services that are medically necessary and to comply with the terms of the provider agreement, the Ohio Revised Code, the Ohio Administrative Code, and federal statutes and rules. The provider also agrees to bill ODJFS for no more than the provider's usual and customary fee charged other non-Medicaid patients for the same services. Ohio Admin. Code § 5101:3-1-17.2

In addition to these general requirements, Ohio Medicaid rules for oxygen providers of gaseous, liquid, and concentrator services specifically require that billed charges to Medicaid be "no more than the provider's usual and customary charge for these services in the same setting." Ohio Admin. Code § 5101:3-10-13.1(E)(3). Charges billed to Ohio Medicaid exceeding the provider's usual and customary charges for the same service shall not be reimbursed.

In order to determine whether the Provider complied with the usual and customary charge requirement, we requested copies of all the Provider's contracts with long term care facilities (LTCF) in effect during the audit period. The Provider identified 175 LTCF agreements satisfying our request, but only provided 122 agreements to us. Of the 122 contracts, 24 had unusable pricing information (22 did not include any pricing rates and 2 contained only maximum amounts payable.)

The Provider told us that all of the LTCF contracts provided to us were valid for the audit period even though some of the contracts apparently had been in effect for many years. The Provider offered insufficient explanation for the missing LTCF agreements and oxygen concentrator charge rates we requested. We found the Provider charged a wide range of rates to the LTCFs, the least of which was $0.60 per day-per patient-per concentrator (or $18.00 per month-per patient-per concentrator).

Based on the information supplied to us by the Provider, we determined the average rates charged by the Provider to the LTCFs for each year of the audit period (2007, 2008 and 2009) to be: $63.65, $64.30 and $65.52 respectively. We used these average yearly rates as the Provider's "usual and customary" charge for the services for the year. Since the average rates charged by the Provider for oxygen concentrator services to Ohio Medicaid patients in LTCFs were greater than the average amounts they charged non-Medicaid patients in the same setting, an overpayment occurred. The overpayment was calculated on the difference between what was paid to the Provider by Ohio Medicaid for each individual service and the average rate charged

by the Provider to the contracted LTCFs for the same year. For some individual services, a negative finding resulted when the amount charged by the Provider was less than their usual and customary charge. Our net findings for oxygen concentrator usual and customary overcharges totaled $12,663.40.

## B. Oxygen Services Lacked Required Documentation

We selected a statistical random sample of 50 oxygen concentrator services to audit. We then reviewed patient medical records for the audit period for the required documentation. Our review of the medical records identified an error with lack of documentation for one service as outlined below. The total reimbursement for this service was disallowed; however, in order to avoid duplicate findings, only the net reimbursement after subtracting any findings for usual and customary charges was taken as a finding for oxygen services. A projected finding was not calculated for this amount since it fell below the AOS' threshold criteria for projecting findings across the population universe. The net amount of finding taken for oxygen concentrator services was $65.52.

In one instance, there was no certificate of medical necessity (CMN) which covered the date of the sampled service as required by Ohio Medicaid rules. According to Ohio Admin. Code § 5101:3-10-13 (C)(2)(b), an oxygen provider must have a "fully completed form JFS 01909 (rev, 6/2005), 'Certificate of Medical Necessity'" (CMN) on file in order for oxygen services to be billed.

## C. Summary of Findings

We found the Provider was overpaid by Ohio Medicaid for oxygen services between November 1, 2007 and October 29, 2009 in the amount of $12,728.92. This finding is a sum of: $12,663.40 for oxygen concentrator charges in long-term care facilities to Ohio Medicaid patients greater than the Provider's usual and customary fee to non-Medicaid patients for such services; and $65.52 for missing documentation required for oxygen services. This finding is due and payable to ODJFS, plus interest in the amount of $1,461.91, totaling $14,190.83. After August 23, 2011, additional interest will accrue at the rate of $2.79 per day until the entire finding and interest is paid.

## D. Matters for Attention

Our review of Ohio Admin. Code § 5101:3-10-22(B)(4) and discussions with officials in Ohio Medicaid's Office of Medicaid Policy determined that ODJFS intended that all volume ventilator services with intubation beyond three months duration be prior authorized. Our 100 percent review of all of the Provider's volume ventilator services exceeding three months duration revealed that none had been prior authorized. However, the Medical Supply List (Ohio Admin. Code § 5101:3-10-3 Appendix A) states that volume ventilators do ***not*** need prior authorization. In addition, Ohio Admin. Code § 5101:3-10-22(B)(4) only states that prior authorization is not required for the first three months of continuous service. This code section does not specifically

state that prior authorization is required for months four and beyond, although it seems to imply it.

Because the Medical Supply List, which is incorporated as an appendix to the Ohio Administrative Code, did not require prior authorization for volume ventilators and Ohio Admin. Code § 5101:3-10-22(B)(4) did not explicitly require prior authorization for continuous months of service beyond three; no findings were made for lack of volume ventilator prior authorizations. We recommend that ODJFS revise this code section and the Medical Supply List to explicitly require prior authorization for volume ventilator services beyond three months duration. The Provider in this case was paid $247,500 for services without prior authorization for service months four and beyond.

## *PROVIDER'S RESPONSE*

A draft report along with detailed lists of services for which we took findings was mailed to the Provider on June 29, 2011. We discussed the report with the Provider on July 5, 2011. The Provider subsequently supplied documentation that was used to adjust our findings. A final determination of findings was made after receipt and review of the supplied documentation.

# Dave Yost • Auditor of State

**LINCARE INC, DBA AMERICA'S BEST MEDICAL EQUIPMENT**

**SUMMIT 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**
**AUGUST 23, 2011**

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