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**ABLE COUNSELING & ASSOCIATES, INC.
CUYAHOGA COUNTY**

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

Abel O. Oriri, President
Able Counseling & Associates, Inc.
14100 Cedar Road, Suite 190
Cleveland Heights, Ohio 44121

RE: *Medicaid Provider Number 0191028*

Dear Mr. Oriri:

We examined your (the Provider's) compliance with specified Medicaid requirements for provider qualifications, service documentation, and treatment plans related to the provision of psychotherapy services 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 treatment plans were present 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 licensed professional clinical counselor (LPCC) who was not employed by or under contract with a physician or clinic during the examination period and did not perform services under the general supervision of a physician. In addition, all services were billed without a modifier to indicate a non-physician rendered them. Finally, in a material number of instances the Provider did not have required treatment plans or service documentation to support reimbursed services. When service documentation was present, it did not always document face to face time with the patient and none of the treatment plans were signed by a physician.

Adverse Opinion on Compliance

In our opinion, the Provider has not complied, in all material respects, with the aforementioned requirements pertaining to 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 \$33,364.59. This finding plus interest in the amount of \$2,002.33 totaling \$35,366.92 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

November 14, 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 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 EXAMINATION REPORT FOR ABLE COUNSELING & ASSOCIATES, INC.

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 57 Medicaid recipients and received reimbursement of \$33,364.59 for 557 services rendered on 378 dates of service. The services included psychiatric diagnostic interviews, interactive psychiatric diagnostic interviews using play and individual psychotherapy in an office setting – 45 to 50 minutes. The Provider operates two offices in Cuyahoga County and indicates he is currently the only employee. The Provider also reported providing supervision to student interns and counselor trainees (licensed professional counselors) during the examination period.

We noted a filing with the Ohio Secretary of State reporting that on October 14, 2014 the Provider's articles of incorporation were cancelled due to a failure to file the biennial report of Professional Corporation.

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, 40 to 50 minutes of face-to-face time with recipient (procedure code 90806) and psychiatric diagnostic interview examination (procedure code 90801), 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 and services paid at zero. From the remaining sub-population, we extracted six dates of service where both a psychiatric diagnostic interview examination and individual psychotherapy were reimbursed on the same day to review as an exception test. From the remaining sub-population, we extracted all individual psychotherapy services (procedure code 90806) and 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 on August 19, 2014 setting forth the purpose and scope of the examination. An entrance conference was held on September 9, 2014. During the entrance conference the Provider described its documentation practices and process for submitting billing to the Ohio Medicaid program. Our fieldwork was performed following the entrance conference.

Results

We found that the rendering provider was a licensed professional clinical counselor who was not employed by or under contract with a physician or clinic and did not perform services under the general supervision of a physician. As a result, we identified the total amount paid by Ohio Medicaid during our examination period as an overpayment. In addition, we examined a statistical sample of 100 services provided on 92 unique dates of service and identified 226 errors. We also examined an exception test of 12 services when a psychiatric diagnostic interview and a psychotherapy service were rendered to the same recipient on the same date of service and identified 18 errors. While certain services had more than one error, only one finding was made per service. The basis for our finding is described below in more detail.

A. Provider Qualifications

Services for the diagnosis and treatment of mental and emotional disorders are covered as physician services when the services are performed by a professional clinical counselor who is employed by or under contract with the physician or clinic as long as the services provided are within the professional clinical counselor's scope of practice. See Ohio Admin. Code § 5101:3-4-29(C)

Services performed by a professional clinical counselor must be provided under the general supervision of a physician and 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)

We verified through the Ohio e-License Center that Mr. Able Oriri was licensed as a professional clinical counselor through the Ohio Counselor, Social Worker and Marriage and Family Therapy Board and that his license was in active status during our examination period.

In our examination of those services with supporting documentation (62 services in the statistical sample and eight services in the exception test), we found that all were rendered by a non-physician who was not employed by, or under contract with, a physician. In addition, we found no evidence of general supervision by a physician for any service.

We inquired of the Provider and confirmed that all of the services billed to and paid by Ohio Medicaid during the examination period were rendered by a licensed professional clinical counselor who was not employed by, or under contract with, a physician. The Provider also confirmed that he did not work under the supervision of a physician or consult with a physician on any case during the examination period. The Provider further stated that he did not believe he required supervision by a physician since he has a training supervision designation on his LPCC license. All services were billed without any modifier to indicate a non-physician rendered the services. In addition, we contacted Edward N. Dutton, MD who was listed as the

rendering provider on all of the claims paid to Able Counseling & Associates, Inc. by Ohio Medicaid. Dr. Dutton provided us with a written assertion stating, "I have no business relationship with Mr. Oriri. No one has permission to use my Medicaid provider number. I am not a rendering provider."

Based on the documentation reviewed; the Provider's confirmation regarding service delivery; and the confirmation by Dr. Dutton, we identified all services provided during the examination period as non-compliant and identified an overpayment for the entire reimbursement amount of \$33,364.59.

Recommendation

The Provider should only render Medicaid services when employed by, or under contract with, a physician. In addition, the rendering professional clinical counselor should render services under the general supervision of a physician. The Provider should address the identified issues to ensure compliance with Medicaid rules and avoid future findings.

B. 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.

Statistical Sample

We reviewed 100 psychotherapy services and found 38 services with no documentation and 26 services in which the face-to-face time spent with the patient was not documented. These 64 errors are included in the finding amount of \$33,364.59.

Exception Test

We reviewed 12 services where both a psychiatric diagnostic interview examination and individual psychotherapy were billed on the same date. We found that four of the six diagnostic interviews had no supporting documentation. These four errors are included in the finding amount of \$33,364.59.

Recommendation:

The Provider should only bill for services rendered. The Provider should also develop and implement procedures to ensure all service documentation fully complies with requirements contained in Ohio Admin. Code § 5101:3-4-29(H). The Provider should address the identified issues to ensure the compliance with Medicaid rules and avoid future findings.

C. Treatment Plans

Ohio Admin. Code § 5101:3-4-29(H)(2) states that a 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

Our review of 100 psychotherapy services identified 54 services with no treatment plan and 46 services where the treatment plan was not signed by a physician. These 100 errors are included in the finding amount of \$33,364.59.

Exception Test

Our exception test included six individual psychotherapy services that were billed on the same date as a diagnostic interview. We found that for all six of the psychotherapy services, the treatment plan was not signed by a physician. These six errors are included in the finding amount of \$33,364.59

Recommendation:

The Provider should ensure treatment plan is present and signed and dated by a physician prior to rendering services. 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 in **Appendix I**. We did not examine the Provider's response and, accordingly, we express no opinion on it. Our response is presented in **Appendix II**.

APPENDIX I

Written Response to Audit Report for Medicaid Provider #0191028

Before Mr. Oriri ventured into private practice, he worked in a community mental health setting as a mental health counselor (LPCC-S) for the Murtis H. Taylor Community Center in Cleveland. Dr. Edward Dutton was the medical director of the center and assisted Mr. Oriri with starting his own private practice as an LPCC-S. In fact, Mr. Oriri and another doctor used Dr. Dutton's office space in Shaker Heights.

Upon becoming a Medicaid provider, Mr. Oriri contacted the Medicaid office in Columbus for guidance on reimbursement for clinical services. Mr. Oriri was informed that all he needed was a referring physician and a physician for consults in cases where patients needed services outside of his scope of practice. He was given no guidance on the use of modifiers. Mr. Oriri discussed the guidance provided by the Medicaid representative with Dr. Dutton. Mr. Oriri was under the impression that Dr. Dutton would be available for consults and that he too believed that Mr. Oriri did not need supervision as he an independently licensed professional clinical counselor who could diagnose and treat mental and emotional disorders within his scope of practice. Additionally, with regards to supervision, Mr. Oriri believed that he had the actual supervision responsibility for any masters or doctoral students/interns because he possessed the supervisory designation for his own licensure.

Able Counseling & Associates, Inc. is a very small practice with gross revenue of less than \$100,000 per year and Mr. Oriri's salary is less than \$50,000 per year for the full time work at the practice. Mr. Oriri has personal and business debt due to business' expenses despite the tremendous hours he dedicates to serving the practice's patients. The residents and interns work for free and his wife consistently urges him to close the practice. However, Mr. Oriri believes that counseling is his calling. The majority of the practice's patients are referred by county department of family and children services and other community agencies looking for African-American male therapists to provide counseling services to at-risk boys and families. In fact, Mr. Oriri has consequently provided a number of pro bono services because several claims have yet to be reimbursed by Medicaid.

As a result of this audit, Mr. Oriri is dedicated to ensuring that he improves and/or implements policies and procedures as well as actual practices that are in accordance with all applicable reimbursement rules. The audit has been a learning experience that has encouraged him to better organize his practice's documentation practices and filing system (he realizes that several files may be disorganized due to three relocations within the audit period). To better understand the audit findings, he requests that the audit specifically identify the finding amounts specifically attributed to Service Documentation and Treatment Plans as both sections of the report state that the errors "are included in the finding amount of \$33,364.39.

Based on the foregoing, Able Counseling and Associates, Inc./Mr. Oriri respectfully requests reconsideration and that the State not pursue recovery because he did indeed provide the services and to-date has no standard of care complaints. Moreover, he has not acted outside of his scope of practice. Here it is important to note that, as recent as June 2013, the State decided not to pursue collection for a provider whose audit found an overpayment over \$200,000 despite that provider's 125 documentary errors (no signatures on progress notes, no face-to-face time documentation) related to services that were rendered by non-licensed individuals. Here, Mr. Oriri provided the services within his scope of practice and the audit finds are significantly less than the aforementioned instance--\$33,000 vs \$200,000.

APPENDIX II

Auditor of State's response:

On December 18, 2014, we furnished the Provider with summaries of findings which identified each instance of non-compliance and the finding amount attributed to each service we examined.



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ABLE COUNSELING & ASSOCIATES, INC.

CUYAHOGA 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
JANUARY 29, 2015**