

FRAUD IN PERSONAL CARE PROGRAMS

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LEARNING OBJECTIVES

- Identifying personal care services.
- Identifying interests and potential fraud and abuse risks from each type of participant in personal care.
- Identifying reimbursement requirements for personal care.
- Identifying current OIG audit issues in personal care requiring significant state paybacks.
- Results of current personal care cases.

PERSONAL CARE-WHAT IS?

- Assistance with ADLs (Activities of Daily Living).
- Cooking: meal preparation, food preparation, meal prep, meals, needs meals prepared.
- Meal cleanup: dishwashing.
- Respiration: assist/care/oxygen equipment, administration of oxygen.
- Bowel, bladder: toileting, toilet use.
- Feeding: eating, assistance in eating.
- Bed baths: sponge bath.

PERSONAL CARE-WHAT IS?

- Dressing: dressing and undressing.
- Ambulation: mobility, locomotion.
- Transferring: transfer, transfers.
- Bathing: bath, bath/shower, full-body bath.
- Grooming: hygiene, personal hygiene, grooming/skincare.
- Repositioning: positioning, position in chair or bed, bed mobility.

INTERESTS AND RISKS IN PERSONAL CARE

The Client:

- Not home alone.
- Personal relationship with caregiver.
- Obtain needed services.
- Obtain desired services which may not be within plan of care.
- Obtain other services from personal care worker/exploitation of worker.
- Fee splitting.

INTERESTS AND RISKS IN PERSONAL CARE

The Caregiver:

- Personal relationship with client- "I don't think even the family knew the things we shared and what I learned from him. There's no day that passes that I don't think about Sam." On Home Aides and Hidden Grief NYT- 11/16/10 .
- Opportunity to help dependent person/provide needed services.
- Full work day and week/minimum transfer time and transportation problems.
- Opportunities for sleep-in/split shifts.
- Easier, more appreciative clients/assignments.

INTERESTS AND RISKS IN PERSONAL CARE

The Caregiver:

- Opportunities for fraud or exploitation of program
 - Two places at once.
 - No shows.
 - Subcontracting to undocumented person, or person not otherwise qualified.
 - Falsification of time recording systems.
 - False records of services.

INTERESTS AND RISKS IN PERSONAL CARE

The Caregiver:

- Opportunities for fraud or exploitation of client
 - Theft of personal items.
 - Theft/misappropriation of SNAP (food stamp) benefits.
 - Representative payee fraud for benefits and bank accounts.
 - Physical or sexual abuse.
 - Neglect.

INTERESTS AND RISKS IN PERSONAL CARE

The Caregiver:

- Risk factors from patients:
 - Cognitive impairments.
 - Dually diagnosed with mental illness and a substance abuse disorder, and
 - Those with a history of past violence (NIOSH, 2002).

INTERESTS AND RISKS IN PERSONAL CARE

The Caregiver :

- Nearly 5% of workers reported experiencing some form of violence while working in home care, with 40 workers (3.3%) in the past six months.
- “Abuse and Violence During Home Care Work as Predictor of Worker Depression” (CDC study).

INTERESTS AND RISKS IN PERSONAL CARE

The Caregiver:

- Observes abuse or neglect of the consumer by family member.
- Receives demands for additional services to family.
- Deals with consumer who is angry and verbally abusive to caregiver.
- Illegal drugs or guns in household.

INTERESTS AND RISKS IN PERSONAL CARE

Ordering/treating physicians

- Actual signature.
- Treating physician? Medical records of treatment?
- When last seen by patient?
- Relationship with personal care services entity
- Does chart match order?
- What are state's expectations on physician follow up to personal care services.
- Who pays for services related to evaluation and order?

KEYS TO PERSONAL CARE CASES- AUDIT

- Data Match audits-billing for inpatient or nursing home services at same time as home visits.
- Example: NYS Medicaid IG audit #2012Z07-009W (Concepts of Independence) \$19,362.
- Match: in-patient hospital and in-patient snf billing (excluding date of admission and date of discharge) against home care.
- www.OMIG.ny.gov-click on audit reports.

KEYS TO PERSONAL CARE CASES-AUDIT

Comparison of paid claims to agency timesheets.

- For 23 percent of recipients whose files examined, there was at least one day during the week we reviewed for which timesheets and claims did not reconcile. Examples:
- (One) more hours claimed by the agency than the personal care assistant reported on the timesheet.
- (Two) a claim submitted on behalf of a different personal care assistant than the one who completed the timesheet, or
- (Three) the absence of valid timesheets for the date(s) in question.
- (Four) timesheets for individual recipients covering extended periods were photocopied, with changes in only the dates of service.
- (5) timesheets with apparently forged recipient signatures (as indicated by misspellings of the recipients' names).
- Minnesota Office of the Legislative Auditor: EVALUATION REPORT- Personal Care Assistance (January 2009).
(www.auditor.leg.state.mn.us)

INTERESTS AND RISKS IN PERSONAL CARE - OIG AUDIT

- We estimated that the State improperly claimed \$145.4 million in Federal Medicaid reimbursement for personal care services during our 2004 through 2007 audit period. Of the 100 claims in our random sample, 36 did not comply with Federal and State requirements. Some claims contained more than one deficiency. Deficiencies included no prior authorization, no in-service education for the personal care assistant, no nursing supervision, no documentation of services, no nursing assessment, no certification of the personal care assistant by the Board of Nursing, no plan of care, and no physician's authorization. **OIG AUDIT A-02-09-01002.**

INTERESTS AND RISKS IN PERSONAL CARE-OIG AUDIT

- Services Not Supported By Documentation **10**
- Services Not In Accordance with Plan of Care **7**
- No Plan of Care **1**
- Personal Care Aide Not Qualified **1**
- Beneficiary Not Eligible **1**
- Beneficiary in a Nursing Home **1**
- **A-03-11-00204**

INTERESTS AND RISKS IN PERSONAL CARE-OIG AUDIT

- For the period October 1, 2008, through June 30, 2009, the State agency claimed Federal reimbursement for personal care services that did not comply with all Federal and State requirements. Of the 100 grouped line items in our sample, 50 complied with Federal and State requirements, but 50 others did not.
- We recommend that the State agency:
 - Refund \$26,953,855 to the Federal Government,
 - A-07-11-03171 (September 2012).

INTERESTS AND RISKS IN PERSONAL CARE-OIG

- Of the 50 grouped line items that did not comply, 7 contained more than 1 deficiency:
- For 29 of the grouped line items, an assessment or reassessment was either not performed or was not performed within required timeframes.
- For 11 of the grouped line items, plans of care were missing or not approved.
- For six of the grouped line items, service workers did not meet any of the requirements specified in State regulations and were therefore not qualified to perform personal care services.
- For four of the grouped line items, timesheets were either unsigned or uncertified.
- A-07-11-03171

KEYS TO PERSONAL CARE CASES AUTOMATED ATTENDANCE SYSTEMS

- New York.
- Texas Department of Aging and Disability EVV (electronic visit verification) (2012).
- SanData/Santrax.
- CellTrak.

KEYS TO PERSONAL CARE CASES BACKGROUND CHECKS/EXCLUDED PERSONS

- Lindquist LA, Cameron KA “Hiring and screening practices of agencies supplying paid caregivers to older adults” J Am Geriatric Society July 2012, (1253-1259) review of agencies in seven major states.
- 55% of agencies did criminal background checks in their own state-none did other states .
- 32% did drug testing.
- 15% did “some type of training”.
- “Using an agency . . .may give older adults . . .a false sense of security”.

KEYS TO PERSONAL CARE CASES OIG WORK PLAN AND AUDITS

- States offering HCBS waiver programs must provide adequate planning for services and provide those services through qualified providers, as well as ensure the health and welfare of beneficiaries. Prior OIG work found vulnerabilities in State systems to ensure the quality of care provided to HCBS beneficiaries. (Social Security Act, §§ 1915 (c)(1) and 1902(a)(23).) *(OEI; 02-11-00700; expected issue date: FY 2013; work in progress).*

KEYS TO PERSONAL CARE CASES MANDATED REPORTING OF ABUSE OR NEGLECT

- http://www.ncea.aoa.gov/ncearoot/Main_Site/Resources/Online_Links/Elder_Abuse.aspx

A STORY OF A 2011 MEDICAID CASE

- Maxim Health, a Medicaid home health agency doing business in multiple states.
- No or minimal records supported billings for services.
- Evidence of obstruction (destruction of records, discouraging testimony).

RICHARD WEST- PATIENT MAXIM WHISTLEBLOWER

- "I'm on oxygen, I wasn't getting the nursing care I needed and services were being cut back because of me being over the so-called spending limit. There were times I thought I would die."
- After checking his own medical records, he discovered the company providing him with nursing care appeared to have overbilled Medicaid for hundreds of hours for people who were never there.

MAXIM HOME HEALTH 2011

THE NEW MODEL HEALTH CASE

- Maxim Healthcare Services, company with 360 offices nationwide offering home health care services, agrees to pay about \$150 million to settle civil and criminal charges -false billings to Medicaid and the Department of Veterans Affairs (no Medicare).
- Nine current and former Maxim employees have pleaded guilty since 2009 to felony charges.

MAXIM CONSPIRACY TO DEFRAUD CRIMINAL INFORMATION

- “Maxim emphasized sales goals at the expense of clinical and compliance responsibilities”.
- During the relevant time period, Maxim did not have in place “appropriate training and compliance programs to prevent and identify fraudulent conduct”.
- “Relevant time period” before ACA.

MAXIM PROSECUTION

Criminal Information

- False documents re training.
- False documents re evaluations by supervisors.
- Billing through licensed offices other than the unlicensed office where care was actually supervised.
- Documents certified that mandated training had been received when it had not been.
- Conditions of participation violations as basis for criminal prosecution.

MAXIM CIVIL FALSE CLAIMS RELEASE

- “Submitting or causing to be submitted false claims to state Medicaid programs and the VA, for services not reimbursable by state Medicaid programs or the VA because Maxim lacked adequate documentation to support the services purported to have been performed”.

MAXIM CIVIL FALSE CLAIMS RELEASE

- “For the following offices, during the following periods, submitting or causing to be submitted false or fraudulent claims to state Medicaid programs for services not reimbursable by state Medicaid programs because the offices were unlicensed”.

MAXIM DEFERRED PROSECUTION AGREEMENT

- “The company has identified and disclosed to law enforcement the misconduct of former Maxim employees, including providing information which has been critical in obtaining the convictions of some of the individuals who have pleaded guilty to date. The company has also significantly increased the resources allocated to its compliance program”. DOJ press release 9/12/2011.

MAXIM DEFERRED PROSECUTION AGREEMENT

- “Reforms and remedial actions the company has taken - beginning in May 2009 -establishing and filling of positions of chief executive officer, chief compliance officer, chief operations officer/chief clinical officer, chief quality officer/chief medical officer, chief culture officer, chief financial and strategy officer, and vice president of human resources; hiring a new general counsel”.

MAXIM RESOLUTION

- Eight former Maxim employees, including three senior managers, have pleaded guilty to felony charges in federal court in Trenton, N.J.
- Deferred prosecution agreement including admissions of charges in information.
- Corporate agreement.
- \$150 million in FCA damages and criminal penalties.
- Monitor.

MAXIM

- No Medicare but federal prosecution.
- Cooperation against senior executives.
- Medicaid home health, traditionally considered difficult investigative subject area.
- Patient as whistleblower.
- This is a 2004 case, if filed now, states would be required by CMS to suspend payment during “an investigation of credible allegation of fraud”.

OIG 2012 WORKPLAN

THREE MAJOR AREAS

- Pharmacy
- Home, Community, and Personal Care Services
- Other