

## Pop Quiz!

*\*Answer in our next issue*

*Delta—Airlines that is—is the second largest airline in terms of passengers transported, as of 2019. Can you name four of Delta's U.S. based hubs?*

### Previous Issue Answer:

In his book, *Other People's Money: A Study in the Social Psychology of Embezzlement*, Donald Kressey explains that three factors need to be present for fraud to occur: pressure, opportunity, and rationalization (more on that in this issue).

## Junk Drawer

- ➔ Beginning September 2021, CBH Compliance will be conducting a probe audit of all the Family-Based Mental Health Service (FBMHS) providers in our network; both 800-8 and 800-1 Levels of Care. The Clinical Audit Team will audit the treatment record and all documentation that supports billing for services for selected claims.
- ➔ As a reminder, as we hopefully come to the end of the COVID tunnel, investigations into COVID related fraud will likely continue for some time. Investigators at every level continue to probe into schemes, from testing to treatment to financial fraud related to unemployment, grants, and financial statements. Early court cases and filings are largely based on testing and kickback schemes, some of which were summarized by the Department of Justice earlier this year.
- ➔ As we hopefully soon leave COVID behind us let's work to make the exit to something better than normal. In our fraud, waste, and abuse world, that can take the form of increased scrutiny from our provider partners in ferreting out fraud, waste, and abuse, including investigations and screening into COVID-related concerns.
- ➔ We are still working on plans for another virtual Compliance Forum this year! Now is the time to speak up if there are topics you would like covered! As a reminder, the presentations from 2020 are still available online.

## FAQs, Part II

***I get that the treatment plan is missing, but we still provided services, we can still get paid, right?***

Unfortunately, no. In our system, the treatment or recovery plan operates in many ways like a prescription. The plan is considered a vital component of care, outlining the needs, goals, and interventions to be utilized for each individual member. Plans that are incomplete, missing, unsigned, or not individualized fail to provide the foundation for care that is needed in our system. Plans that are signed late have the potential to leave services non-reimbursable while the plan is outdated.

***CBH Compliance, I thought we were friends, how are you going to show up at our door at 9:00 a.m. uninvited and ask for records?***

We certainly understand the challenge of dealing with unannounced guests. All CBH Compliance Analysts are also clinicians and understand the anxiety that can come with others looking over your work and in fitting in last-minute requests to an already busy schedule. Unfortunately, to do our job as effectively as possible, we need to take steps to ensure that, to the extent possible, we are viewing the record(s) without them having been changed or “fixed.” In the combined decades of our team doing this work, we have heard and seen examples of charts that were “fixed” in advance of an announced audit. As a result, **we issued a bulletin in 2018** alerting our providers that the practice of announced targeted audits would stop. Rest assured, we understand the anxiety and disruption our visits may cause, but we will work to be as unobtrusive and least disruptive to your operations as possible.

***What is the bizarre fascination you have with Sheetz?***

Well, it’s just better than WaWa. To be clear, only a select few have had the pleasure of sampling Sheetz on our team, so others may be late to that conclusion. Please don’t assume all Compliance staff are as enlightened as the Department Senior Director.

***Sure, the claim I submitted was not correct, but it had a \$0 rate. No harm, no foul, right?***

Not entirely. The False Claims Act (FCA) **starts with a required element** of knowingly presenting or causing to be presented a false or fraudulent claim for payment or approval. Pay particular attention to the “or approval” part. Simply submitting a claim that is misrepresented of the service or for a service that is unsubstantiated is violating the FCA. In Alternative Payment Arrangements (APA) or Value Based Payments (VBP), \$0 rate claims are often used to substantiate or trigger a payment. The simple answer, submit claims, regardless of rate, ONLY for services that are fully substantiated.

## Anti-Kickback and EKRA

As mentioned earlier, COVID-19 has brought with it new ways for kickbacks to be used in alleged fraud schemes. However, kickback schemes have been around for a significant time. A kickback in our fraud, waste, and abuse fighting world, refers to the use of inducements to drive members to a particular provider or providers for services. Unfortunately for members involved in these schemes, the services provided often are of little to no clinical value and, in many cases, rob the member of choice in seeking out the best possible care for their unique needs and goals. It is important to remember that inducements need not be cash. Providing anything of value can, and often is, viewed as an inducement. These can include trips, meals, “cash equivalents” such as gift cards, and equipment/supplies.

There are two important tools in combating kickbacks. First are the State and Federal government’s Anti-Kickback Statutes (AKS). These are laws that prohibit the use of kickbacks to drive Medicaid and Medicare members to specific providers. The specific law, defined in 42 U.S.C. § 1320a-7b(b), gives specific definitions for prohibited conduct. In Pennsylvania, the anti-kickback statute is grouped with our version of the False Claims Act **in the state statutes**. Violation of the AKS in Pennsylvania carries the potential for not only fines but a felony conviction. Both Federal and Pennsylvania AKS also carry the potential for significant fines and monetary penalties for convictions. In many cases, “services” provided through a kickback scheme also fail to meet medical necessity determinations and/or have concerns with specific claims related to the quality of the service provided that also increase the likelihood that False Claim Act cases may also be initiated.

Federal and state versions of AKS relate to publicly funded healthcare programs, most commonly Medicare and Medicaid. For a significant time, we lacked appropriate protections for commercially insured individuals. This was corrected with the passage of the Eliminating Kickbacks in Recovery Act (EKRA). EKRA, passed in 2018 by Congress and codified in 18 U.S.C. § 220, targets kickbacks and patient brokering schemes in treatment facilities, recovery homes, and laboratories. The law is designed to broaden the protection Medicaid and Medicare recipients have under AKS for those who have commercial or other coverage. Like its companion AKS laws, EKRA provides criminal and monetary penalties for those who violate it.

Recently, the Commonwealth **announced criminal charges** against two Philadelphia area providers based upon, at least in part, an investigation initiated by CBH Compliance . While these cases are still active, our providers and members need to know we will continue to investigate potential violations of AKS and refer to our State and Federal partners when evidence suggests violations may have occurred. Anyone with knowledge of “patient brokering” schemes are encouraged to contact CBH Compliance via email or phone using the contact information provided throughout this newsletter. Additionally, tips may be made directly to our Commonwealth and Federal partners (see below for contact information).

Recovery is difficult for anyone. For many, the journey is made all the more difficult by social disparities. Our members’ journey must not be made more difficult simply for profit.

- ➔ Commonwealth Fraud Hotline: 1-844-DHS-TIPS or [via email](#)
- ➔ **[Federal Health and Human Services Office of Inspector General:](#)**  
1-800-HHS-TIPS

## **CBH Compliance Department Request for Your IBHS Billing Questions**

In order to develop written guidance, the CBH Compliance Department is asking for CBH Providers to submit any billing-related questions regarding Intensive Behavioral Health Services (IBHS).

Questions may be regarding clarification of relevant regulations and billable vs. non-billable activities. Once all questions are compiled and answered, a Billing Guide will then be submitted to OMHSAS for approval and published to the CBH website.

Questions may be submitted **via email**. Please submit questions by Friday, September 24, 2021. Thank You!

## **All Things (well most) ASAM & Compliance**

*By Andrew Robertson and Ken Inness*

American Society of Addiction Medicine (ASAM) is upon us! The Commonwealth is continuing to march forward with the implementation of ASAM (referring to the organization's standards for services ranging from staffing to assessment to interventions) in place of the Pennsylvania Client Placement Criteria (PCPC) for substance use disorder providers (SUD). What does that mean for you? To some extent it depends on the services offered by your agency. For our mental health providers, it means nothing really has changed—you can skip to the puzzle! For our SUD providers, the type of SUD service that you provide plays a key role in what you are experiencing.

### **Ambulatory Services**

Significant attention has been paid to our outpatient providers as ASAM requirements and directives for ambulatory services offer several distinctions from PCPC. Specifically, our PCPC IOP providers have transitioned to outpatient under ASAM. CBH will be pursuing ASAM IOP through the RFP process with the hope to bring necessary IOP programs online in the future. For our discussion, it is important to understand the distinctions between PCPC IOP and ASAM Outpatient.

Our previous reviews and audits of PCPC IOP programs clearly demonstrated a reliance on group psychoeducation with therapy, be it individual or group, playing an ancillary role at best. In addition, previous reviews showed that several providers failed to adhere to maximum group size restrictions, even with higher maximums afforded for psychoeducational sessions. PCPC IOP was a distinct service that was governed largely by a supplemental service description rather than licensing requirements. ASAM outpatient providers must now meet all requirements in the **outpatient regulations**. This should place more focus on therapy and less on psychoeducational sessions. We encourage providers to thoroughly review both the outpatient regulations and CBH-issued guidance that was relayed in sessions leading up to the ASAM transition on program expectations of ASAM Outpatient providers. We do anticipate posting specific guidance and program standards to our website in the coming weeks,

# COMPLIANCE MATTERS NEWSLETTER

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Edition

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[Aadam Muhammad](#)

Make sure to check  
out the PA DHS  
[Coronavirus-Related  
Provider Guidance and  
Resources page](#)  
for the latest COVID-  
19-related rules and  
regulation changes.

so please also be sure to sign up for alerts from CBH if you have not already done so.

As has been stated in multiple venues, this transition is a process. CBH remains committed to helping our providers navigate this new territory successfully. To that end, we anticipate early implementation visits to be largely educational in nature to gauge how effective our providers are making the transition. We continue to encourage all providers to reach out to Compliance with any questions related to meeting applicable requirements.

## Per Diem Services

CBH's Compliance Department completed a series of probe audits of in-network Per Diem SUD programs in 2019. These audits were part of a system-wide clinical review of paid claims to gauge compliance with documentation guidelines issued in Provider Bulletin 18-05, and to review potential billing errors as related to sufficiency of services provided to members on weekends and holidays. The probe audits used random samples of paid claims with a limited scope (meaning the focus was on select audit codes). Of the claims and supporting documentation reviewed, over 60% either lacked clinical sufficiency to substantiate billing or did not have any documentation present. Additionally, programs appeared to have limited clinical staff on weekend and holidays. Programming on weekends and holidays largely appeared to be limited to a few groups and milieu staff who documented what was observed during their shifts. Providers received individualized audit reports reiterating documentation guidelines and the requirement for behavioral health services to be provided daily. A follow-up audit project was included in the 2020 Compliance Work Plan, but due to the COVID-19 emergency that project was postponed.

*Fast forward to 2021:* SUD programs, including per diem levels of care, are in an extended transitional period as Pennsylvania rolls out ASAM. As discussed earlier, ambulatory services have received significant attention, but changes in per diem program and staffing requirements are substantial. The move from PCPC to ASAM is a process, allowing providers time to develop more comprehensive clinical programming and ensure that staff meet more rigorous educational qualifications.

Looking ahead into early 2022, CBH's Compliance Department will be reviewing Per Diem programs once again. We will be reviewing providers on their adherence to the clinical standards identified in Provider Bulletin 18-05. Note that these guidelines predate ASAM; using the current guidelines allows for a more direct comparison to 2019 audit results. Providers will not be held to ASAM requirements for expanded clinical programming, however Compliance's Clinical Audit Team analysts will also evaluate each program's readiness for the new ASAM guidelines. This evaluation of readiness is a part of CBH's on-going support to providers.

Additionally, CBH will issue updated Per Diem Substance Abuse Documentation Guidelines which align with ASAM program and staff requirements. The updated guidelines will be announced in a forthcoming CBH Provider Bulletin.

Please submit any questions about documentation guidelines and/or the audit plan [via email](#).

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**Aadam Muhammad**

**Make sure to check  
out the PA DHS  
Coronavirus-Related  
Provider Guidance and  
Resources page  
for the latest COVID-  
19-related rules and  
regulation changes.**

**Puzzling**

Y S Z S S Z J V G G N C G T H W V O K Q  
K U X Z T D S W K A R N X B S I E N V L  
Q D A M S L Z P N G I E F T E G N X Q O  
G Z C V E V E O C N U I E A C T Q R N U  
U V Y S J A Q D G S R R S K R S A G M I  
S V S Z D U I I Q J X A T C O B G E M S  
R I V E R U S R W O M E N A F C R Q H I  
C W Y N I E R G L O N T A D E T G K P A  
B A T C D S O P O I V B I J U U D H J N  
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X K A N D O O Y L F I M S E U N B V P Y  
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L B T F Z R C Y L E W U E I Z M H D Z F  
P O E T W E C A E N T C C F T Z F R I D  
C Y I R T H H R T J T W W T C B C V G H  
F E G I J M J N T E C U A F I G M Q W L  
A K P B Y U W J E S I U S O M K B S J P  
C G I M W L I X R D A Q L Q Y O N M V J

**Word List:**

- |           |        |           |
|-----------|--------|-----------|
| Airlines  | Delts  | Dental    |
| Designing | Faucet | Force     |
| Greek     | Letter | Louisiana |
| NATO      | Ray    | River     |
| Rocket    | Space  | Tri       |
| Waves     | Wing   | Women     |