



Client Alert

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Finding Comfort with the Georgia Medicaid Hearing Process When Denied/Terminated from Enrollment – A Case Example Involving a CCSP Provider

The Georgia Medicaid Manual explicitly states that administrative review is not applicable when a provider has been denied enrollment or terminated from the Medicaid program by the Georgia Department of Community Health (“DCH”). Rather, the provider must pursue adjudication before a hearing officer specifically designated by the DCH Commissioner. Thus, unlike Medicaid reimbursement disputes where administrative review is available before the Office of State Administrative Hearings (an impartial tribunal tasked with resolving disputes between the public and state agencies), a denied or terminated provider is presented with the daunting task of pleading its case before someone handpicked by the DCH Commissioner.

Providers may immediately jump to the conclusion that it is impossible to obtain a fair hearing under such circumstances and consider not pursuing an appeal altogether, thinking it is best to cut losses and avoid protracted litigation and the associated legal fees for a case that seemingly will end as a loss. Although foregoing litigation may not be an option considering what is at stake, such knee-jerk reaction does not necessarily hold up as providers have had notable success in this setting.

For example, in a recent case, we represented a provider that had been denied enrollment in the Community Care Services Program (“CCSP”) following a change of ownership (“CHOW”), effectively resulting in the provider’s termination from the program. The provider became the owner and operator of three personal care homes all located on the same campus, but each having different licenses and provider numbers. Following the CHOW, the provider submitted enrollment information and worked with the Georgia Department of Human Resources, Division of Aging Services (“DAS”) throughout the enrollment process to effectuate the change.

Following a site visit by DAS representatives that resulted in certain citations and points of correction, the provider submitted a plan of correction which was accepted as appropriate. DAS was poised to recommend approval of enrollment into the CCSP program until it became aware of: 1) a Utilization Audit Review seeking recoupment of Medicaid reimbursement; 2) past licensure survey deficiencies; and 3) a report regarding alleged improper patient care and safety that involved a patient who returned to the personal care home from a local dialysis center with the dialysis port needle still inserted. DAS also found important that the provider had not obtained a Clinical Laboratory Improvement Amendment of 1988 (“CLIA”) waiver at the time.

Based on this information DAS recommended to DCH that the provider’s enrollment be denied. DCH agreed with DAS and accepted the recommendation without any additional review or independent investigation. Following



Client Alert

a day long hearing and various post-hearing submissions, the hearing officer, however, found in favor of the provider and reversed DCH's decision to deny enrollment.

The hearing officer held that material information (which was available) was not properly considered and that DCH's decision was partially based upon incomplete information as to certain facts. The hearing officer specifically found that: 1) the provider handled the patient care incident appropriately and there was no affirmative showing that patient safety was compromised; 2) the audit was under appeal and certain facts relevant to the recoupment had not been considered; and 3) the CLIA waiver had been provided prior to DCH's decision. Put simply, the various concerns raised were held to be either moot or insufficient to support a denial of enrollment. The hearing officer concluded that the provider was in substantial compliance with the CCSP conditions of participation and that DCH failed to meet its burden of proof.

This case example at the very least should offer some comfort for those providers that are faced with denial or termination from the Medicaid program. While the hearing process on its face may seem suspect, providers have had success in pursuing these claims.

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