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OMIG AUDIT PROTOCOL PERSONAL CARE AIDES (PCA)

12/05/2018

Audit protocols assist the Medicaid provider community in developing programs to evaluate compliance with Medicaid requirements under federal and state statutory and regulatory law. Audit protocols are intended solely as guidance in this effort. This guidance does not constitute rulemaking by the New York State Office of the Medicaid Inspector General (OMIG) and may not be relied on to create a substantive or procedural right or benefit enforceable, at law or in equity, by any person. Furthermore, nothing in the audit protocols alters any statutory or regulatory requirement and the absence of any statutory or regulatory requirement from a protocol does not preclude OMIG from enforcing the requirement. In the event of a conflict between statements in the protocols and either statutory or regulatory requirements, the requirements of the statutes and regulations govern.

A Medicaid provider's legal obligations are determined by the applicable federal and state statutory and regulatory law. Audit protocols do not encompass all the current requirements for payment of Medicaid claims for a particular category of service or provider type and, therefore, are not a substitute for a review of the statutory and regulatory law. OMIG cannot provide individual advice or counseling, whether medical, legal, or otherwise. If you are seeking specific advice or counseling, you should contact an attorney, a licensed practitioner or professional, a social services agency representative, or an organization in your local community.

Audit protocols are applied to a specific provider type or category of service in the course of an audit and involve OMIG's application of articulated Medicaid agency policy and the exercise of agency discretion. Audit protocols are used as a guide in the course of an audit to evaluate a provider's compliance with Medicaid requirements and to determine the propriety of Medicaid expended funds. In this effort, OMIG will review and consider any relevant contemporaneous documentation maintained and available in the provider's records to substantiate a claim.

OMIG, consistent with state and federal law, can pursue civil and administrative enforcement actions against any individual or entity that engages in fraud, abuse, or illegal or improper acts or unacceptable practices perpetrated within the medical assistance program. Furthermore, audit protocols do not limit or diminish OMIG's authority to recover improperly expended Medicaid funds and OMIG may amend audit protocols as necessary to address identified issues of non-compliance. Additional reasons for amending protocols include, but are not limited to, responding to a hearing decision, litigation decision, or statutory or regulatory change.

OMIG AUDIT PROTOCOL

PERSONAL CARE AIDES (PCA)

12/05/2018

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| 1. | Missing Documentation of Hours Billed |
| OMIG Audit Criteria | If the aide failed to document hours of service billed, that portion of the claim that was not documented will be disallowed. The nature of the facts surrounding the claims for services not documented should be evaluated for additional action. |
| Regulatory References | 18 NYCRR § 504.3(a) 18 NYCRR § 540.7(a)(8) 18 NYCRR § 505.14(h)(1) 10 NYCRR § 766.2(a)(2) |

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| 2. | Missing Patient Record |
| OMIG Audit Criteria | If a patient record is not made available for review, the claim for the sampled date of service associated with the patient record will be disallowed. |
| Regulatory References | 18 NYCRR § 504.3(a) 18 NYCRR § 540.7(a)(8) 10 NYCRR § 766.6(a) and (b) |

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| 3. | Missing Plan of Care |
| OMIG Audit Criteria | Regulations require that a plan of care is established for each patient and that documentation is maintained in the case record, substantiating that the plan of care was reviewed (and/or revised as necessary), at least every six months. In counties where the provider is responsible for the plan of care and the plan covering the sampled date of service is not made available, the claim will be disallowed. |
| Regulatory References | 10 NYCRR § 766.6(a)(4) 10 NYCRR § 766.3(b) and (d) |

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| 4. | Billed More Units than Authorized |
| OMIG Audit Criteria | Services billed in excess of those authorized by the local social services district will be disallowed. This includes services/units billed in excess of the daily frequency and/or weekly frequency. Only the excess units billed are to be disallowed. |
| Regulatory References | 18 NYCRR § 505.14(b)(5)(v) and (vi) NYS Medicaid Program Personal Care Services Program Manual Policy Guidelines, Version 2005-1, Section II |

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**OMIG AUDIT PROTOCOL
PERSONAL CARE AIDES (PCA)
12/05/2018**

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| 5. | Billed Services Not Consistent with Authorization |
| OMIG Audit Criteria | Personal Care Aide (PCA) services that are provided at a frequency or duration inconsistent with the local social services district authorization will be disallowed. |
| Regulatory References | 18 NYCRR § 505.14(b)(5)(v) and (vi) NYS Medicaid Program Personal Care Services Program Manual Policy Guidelines, Version 2005-1, Section II |

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| 6. | Billed More Units than Documented |
| OMIG Audit Criteria | Services/units billed in excess of those documented will be disallowed. If the patient record does not support the total units billed, the difference between units billed and the documented units will be disallowed. |
| Regulatory References | 18 NYCRR § 540.7(a)(8) 18 NYCRR § 517.3 10 NYCRR § 766.2(a)(2) 18 NYCRR § 505.14(h)(1) NYS Medicaid Program Personal Care Services Program Manual Policy Guidelines, Version 2005-1, Section III |

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| 7. | Missing Documentation of Nursing Supervision Visit |
| OMIG Audit Criteria | Nursing supervision visits are required every 90 days. A written report must be prepared following each nursing supervision visit. The claim will be disallowed if there is no documentation of a nursing supervision visit occurring within 120 days prior to the sampled date of service. This only applies in counties where the provider is responsible for conducting the nursing supervision visit and the visit documentation covering the sampled date of service is not available. NOTE: In certain counties, nursing supervision visits may only be required every six months, particularly for PCA level I services. The required frequency of nursing supervision visits should be stated on the plan of care or in the agency's contract with the local social services district. |
| Regulatory References | 18 NYCRR § 505.14(f)(1) 18 NYCRR § 505.14(f)(3)(vi) 18 NYCRR § 505.14(f)(3)(vi)(b)(2) 18 NYCRR § 505.14(f)(3)(vii)(a) |

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OMIG AUDIT PROTOCOL PERSONAL CARE AIDES (PCA) 12/05/2018

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| 8. | PCA Worker Not Present at Nursing Supervision Visit |
| OMIG Audit Criteria | The PCA worker is required to be present during the nursing supervision visit. If the documentation does not indicate that the PCA worker was present during the nursing supervision visit, the PCA claim will be disallowed. Any exception to the requirement that a PCA worker be present during the nursing supervision visit must be documented. |
| Regulatory References | 18 NYCRR § 505.14(f)(3) 18 NYCRR § 505.14(f)(3)(iv)(b)(2)(ii)(iii) 18 NYCRR § 505.14(f)(3)(iv)(b)(1) NYS Medicaid Program Personal Care Services Program Manual Policy Guidelines, Version 2005-1, Section II |
| 9. | Nursing Supervision Visit Not Provided by a Registered Professional Nurse |
| OMIG Audit Criteria | Nursing supervision must be provided by a registered professional nurse. If the nursing supervision visit is not conducted by a registered professional nurse, it will not be deemed an acceptable supervision visit and the claim will be disallowed. |
| Regulatory References | 18 NYCRR § 505.14(f)(3)(iii)(a) NYS Medicaid Program Personal Care Services Program Manual Policy Guidelines, Version 2005-1, Section IV |
| 10. | Failure to Complete Required Orientation Visit |
| OMIG Audit Criteria | A supervising nurse must conduct an orientation visit in the patient's home with the aide present for the initial authorization of personal care services. The orientation visit must be conducted within seven calendar days of the aide being assigned to the case. In counties where the provider is responsible for conducting the orientation visit and the visit documentation covering the sampled date of service is not made available, the claim will be disallowed. This finding will only be applicable when the sampled claim/service is within the first certification period. |
| Regulatory References | 18 NYCRR § 505.14(f)(3)(iv)(a)(1)(i) 10 NYCRR § 766.5(d) 18 NYCRR § 505.14(f)(3)(vii)(a) NYS Medicaid Program Personal Care Services Program Manual Policy Guidelines, Version 2005-1, Section II |

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| 11. | Services Performed by an Excluded Relative |
| OMIG Audit Criteria | If payment was made for services performed by the patient's spouse, parent, son, son-in-law, daughter or daughter-in-law, the claim will be disallowed. |
| Regulatory References | 18 NYCRR § 505.14(h)(2) NYS Medicaid Program Personal Care Services Program Manual Policy Guidelines, Version 2005-1, Section III |

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| 12. | Patient Excess Income ("Spenddown") Not Applied Prior to Billing Medicaid |
| OMIG Audit Criteria | If the provider did not apply a client spend-down to a sampled claim, the difference between the paid claim and the correct claim amount (had the spend-down been properly applied) will be disallowed. Note: This finding only applies where the relevant county has assigned responsibility for the spend-down to the provider and the sampled claim must be impacted by the spend-down. |
| Regulatory References | 18 NYCRR § 518.1(c) 18 NYCRR § 360-4.8(c)(1) and (c)(2)(ii) 18 NYCRR § 504.3(e) |

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| 13. | Failure to Document Tasks |
| OMIG Audit Criteria | Documentation must reflect time spent in the provision of services for each patient. If the documentation does not reflect any activity or services performed by the PCA worker, the claim will be disallowed. |
| Regulatory References | 18 NYCRR § 504.3(a) 18 NYCRR § 540.7(a)(8) 18 NYCRR § 517.3 18 NYCRR § 505.14(h)(1) 10 NYCRR § 766.2(a)(2) |

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PERSONNEL FINDINGS

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| 14. | Minimum Training Standards Not Met for the Personal Care Aide |
| OMIG Audit Criteria | PCAs are required to complete 40 hours of basic training. PCAs trained by another agency require a certificate, reference check, and competency evaluation. The claim will be disallowed if the service was provided by a PCA who did not complete the required training. Basic training can be waived if documentation of a satisfactory competency evaluation is provided. |
| Regulatory References | 18 NYCRR § 505.14(e)(9) 10 NYCRR § 700.2(b)(14)(iii) 18 NYCRR § 505.14(e), (2)(i)(b) 18 NYCRR § 505.14(e)(7) |
| 15. | Failure to Conduct Required Criminal History Check |
| OMIG Audit Criteria | A criminal history record check is required for all PCAs hired after 9/1/2006. If the provider fails to complete a required criminal history check for the PCA worker on a sampled claim, the claim will be disallowed. |
| Regulatory References | 18 NYCRR § 505.14(d)(4)(v) 10 NYCRR § 766.11(f) 10 NYCRR § 402.9(a)(1) & (2) 10 NYCRR § 402.1(a) 10 NYCRR § 402.6(a) |
| 16. | Failure to Complete Required Health Assessment |
| OMIG Audit Criteria | PCAs are required to complete an annual health assessment. If the provider does not provide documentation of an annual health assessment for the PCA worker, the claim will be disallowed. |
| Regulatory References | 10 NYCRR § 766.11(c) and (d)(5) |
| 17. | Missing Certificate of Immunization |
| OMIG Audit Criteria | The record will be reviewed to determine if the required certification of immunizations was documented for the PCA. If the provider does not provide documentation of the required certification of immunizations, the claim will be disallowed. |
| Regulatory References | 10 NYCRR § 766.11(d) |

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| 18. | Missing Documentation of Tuberculosis Test or Follow-Up |
| OMIG Audit Criteria | If documentation of a yearly tuberculosis test, or the required follow-up, is not in the personnel file of the individual who has direct patient contact, the claim will be disallowed |
| Regulatory References | 10 NYCRR § 766.11(d)(4) |

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| 19. | Failure to Complete Required In-Service Training |
| OMIG Audit Criteria | PCA workers must have six hours of in-service education per year. The criteria for the one-year period for completion of the in-service training that is used by the provider will be considered the base year for each aide under review. An additional 120 days will be allowed beyond the 12 months preceding the date of service before a disallowance will be taken. The required number of hours will be pro-rated for personnel that were absent for any length of time when calculating in-service hours. If there is no documentation of the required in-service training for the PCA worker, the claim will be disallowed. |
| Regulatory References | 18 NYCRR § 505.14(e)(9) 18 NYCRR § 505.14(e)(7)(iv) 18 NYCRR § 505.14(e)(2)(ii) 10 NYCRR § 766.11(i)(2) |

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| 20. | Failure to Complete Annual Performance Assessment |
| OMIG Audit Criteria | PCAs are required to have a documented annual assessment. If the provider did not provide documentation of the completion of an annual performance assessment, the claim will be disallowed. |
| Regulatory References | 18 NYCRR § 505.14(f)(1) 10 NYCRR § 766.11(k) 18 NYCRR § 505.14(f)(2)(ii)(j) |

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| 21. | Failure to Complete Annual In-Home Visit |
| OMIG Audit Criteria | Sampled services provided by PCAs who did not have an annual in-home visit will be disallowed. |
| Regulatory References | 10 NYCRR § 766.11(k) |

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| 22. | Missing Personnel Record(s) |
| OMIG Audit Criteria | If the personnel record for the PCA providing sampled services is missing, the claim will be disallowed. |
| Regulatory References | 10 NYCRR § 766.11(g) |

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