

Provider Improper Payments for Personal Care Services and Home and Community-Based Services

The Big Picture

Payments for personal care services (PCS) were improper because the services were not provided in compliance with State requirements, were unsupported by documentation, were provided during periods in which the beneficiaries were institutionalized, and were provided by attendants who did not meet State qualifications.

—John Hagg, HHS-OIG Congressional Testimony [1]

Existing program safeguards intended to prevent improper payments and ensure medical necessity, patient safety and quality have often been ineffective.

**—John Hagg,
Director of Medicaid Audits**

Contributing Factor: Policy Violations

Policy violations occur when billing or payment for services provided is not consistent with documented policy.

| Solutions | Resources & Authorities |
|---|---|
| Use Quality Review Tools Perform a brief quality check of each claim on the elements required for the claim. | Quality Checklist for HCBS Billing [2] |
| Appoint a Compliance Officer A compliance officer or compliance committee can help ensure existing policies are current with State and Federal regulations. This would include compliance training. | Understanding Role as HCBS Provider [3] Common Errors for PCS Improper Payments [4] Preventing PCS Improper Payments [5] Title XIX (Medicaid) [6] 42 Code of Federal Regulations (CFR) Chapter IV Federal Regulations [7] State Medicaid agency (SMA) Policies [8] |



| Solutions | Resources & Authorities |
|---|--|
| <p>Fraud, Waste, and Abuse Training</p> <p>All staff should learn to recognize practices that may be fraudulent, abusive, or wasteful.</p> | <p>Preventing FWA in Home Health/DME [9]</p> |

Contributing Factor: No Care Plan

Required care plans were not approved or kept up to date.

| Solutions | Resources & Authorities |
|--|---|
| <p>Follow an Updated, Approved Care Plan</p> <p>A care plan is required, so services are provided in accordance with the approved plan.</p> | <p>42 CFR § 441.540 Person-Centered Plans [10]</p> <p>SMA Policies [11]</p> |

Contributing Factor: Insufficient Documentation

The documentation submitted with the claim does not fully support the procedure code billed. This contributing factor can overlap with other areas; for example, failure to submit a care plan can be considered insufficient documentation.

| Solutions | Resources & Authorities |
|---|---|
| <p>Personal Care Attendants (PCAs) Trained on Documentation Requirements</p> <p>Employers and SMAs have specific documentation requirements to ensure proper payment.</p> | <p>Preventing PCS Improper Payments [12]</p> <p>Common Errors for PCS Improper Payments [13]</p> <p>Common Errors for Waiver Programs [14]</p> <p>OIG Report: Inappropriate Claims for PCS [15]</p> |
| <p>Plans of Care</p> <p>Plans of Care must be written, approved, up to date, and in compliance with State and Federal regulations. Services must be provided in accordance with the approved plan.</p> | <p>HCBS Person-Centered Plans [16]</p> <p>Understanding Role as HCBS Provider [17]</p> <p>OIG Report: Inappropriate Claims [18]</p> |

| Solutions | Resources & Authorities |
|---|--|
| <p>Use Quality Review Tools</p> <p>Perform quality review checks relevant to the type of services provided to ensure all documentation requirements are met.</p> | <p>Quality Review for HCBS Documentation [19]</p> <p>HCBS Internal Records Review [20]</p> |

Contributing Factor: Number of Units Error

Time sheets and other documentation do not support the number of units represented by the procedure codes claimed.

| Solutions | Resources & Authorities |
|--|---|
| <p>Quality Check of Service Logs</p> <p>Ensure that units billed do not exceed hours worked by service providers, that units represented by the codes match, and follow the rule of eights.</p> | <p>Common Errors for PCS Improper Payments [21]</p> <p>Common Errors for Waiver Programs [22]</p> |

Contributing Factor: Ineligible Services

The services provided are not allowed by State Medicaid programs, demonstrations, or waivers or did not have required prior authorization. NOTE: May be some overlap with policy violations.

| Solutions | Resources & Authorities |
|--|---|
| <p>Appoint a Compliance Officer</p> <p>A compliance officer or compliance committee can help ensure existing policies are current with State and Federal regulations. This would include compliance training.</p> | <p>Understanding Role as HCBS Provider [23]</p> <p>OIG Compliance Guidance [24]</p> |

Contributing Factor: No Supervision or Unqualified PCA

Individuals who need supervision to perform certain services are not supervised or not supervised by the appropriate authority. PCAs do not have the appropriate credentials to demonstrate their qualifications.

| Solutions | Resources & Authorities |
|--|---|
| <p>PCAs Trained on Supervision Requirements</p> <p>PCAs must understand when they can work independently and when they need to be supervised by another provider or State Medicaid personnel. This should be part of compliance training.</p> | <p>Preventing PCS Improper Payments [25]</p> <p>OIG Report: Inappropriate Claims [26]</p> |
| <p>Check for PCA Qualifications</p> <p>Perform all necessary background checks and validations of qualifications before hiring or contracting with a PCA. All qualification documents must be on hand.</p> | <p>Check SMA PCA Qualifications [27]</p> <p>Quality Checklist for HCBS Billing [28]</p> <p>Quality Review for HCBS Documentation [29]</p> |

Contributing Factor: PCS Payments Made for Services Provided During Institutional Stay

PCS payments may not be made to service providers while a beneficiary is institutionalized except for certain “retainer” payments.

| Solutions | Resources & Authorities |
|--|---|
| <p>Train on Date-Range Billing</p> <p>Service providers must understand they can only bill for services provided on actual days of service and only for units consistent with billing codes and care plan limits.</p> | <p>Payment Errors During Institutional Stays [30]</p> <p>Social Security Act § 1905(a)(24) [31]</p> |
| <p>Know Exceptions for “Retainer” Payments</p> <p>States allow certain exceptions for a beneficiary to retain a PCA while institutionalized to ensure continuity of care</p> | <p>Olmstead Update Attachment 3-c [32]</p> <p>42 CFR § 447.40 Bed Retainer Payments [33]</p> |

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References

- 1 <https://oig.hhs.gov/testimony/docs/2015/hagg9-11-15.pdf>
- 2 <https://www.cms.gov/Medicare-Medicaid-Coordination/Fraud-Prevention/Medicaid-Integrity-Education/Downloads/hcbs-tk1-qual-check-billing-factsheet.pdf>
- 3 <https://www.cms.gov/Medicare-Medicaid-Coordination/Fraud-Prevention/Medicaid-Integrity-Education/Downloads/hcbs-provider-newsletter.pdf>
- 4 <https://www.cms.gov/Medicare-Medicaid-Coordination/Fraud-Prevention/Medicaid-Integrity-Education/Downloads/hcbs-tk1-common-errors-PersSupServ-factsheet.pdf>
- 5 <https://www.cms.gov/Medicare-Medicaid-Coordination/Fraud-Prevention/Medicaid-Integrity-Education/Downloads/pcs-booklet.pdf>
- 6 https://www.ssa.gov/OP_Home/ssact/title19/1900.htm
- 7 <http://www.ecfr.gov/cgi-bin/text-idx?SID=3db264e3ebba7337fb114e6602805542&mc=true&tpl=/ecfrbrowse/Title42/42chapterIV.tpl>
- 8 https://www.cms.gov/Medicare-Medicaid-Coordination/Fraud-Prevention/FraudAbuseforConsumers/Report_Fraud_and_Suspected_Fraud.html
- 9 <https://www.cms.gov/Medicare-Medicaid-Coordination/Fraud-Prevention/Medicaid-Integrity-Education/Downloads/hcbs-durablemed-booklet.pdf>
- 10 http://www.ecfr.gov/cgi-bin/text-idx?SID=eb910059b758fc3b3a82254a2e6a43cf&mc=true&node=se42.4.441_1540&rgn=div8
- 11 <https://www.medicaid.gov/medicaid-chip-program-information/by-state/by-state.html>
- 12 <https://www.cms.gov/Medicare-Medicaid-Coordination/Fraud-Prevention/Medicaid-Integrity-Education/Downloads/pcs-booklet.pdf>
- 13 <https://www.cms.gov/Medicare-Medicaid-Coordination/Fraud-Prevention/Medicaid-Integrity-Education/Downloads/hcbs-tk1-common-errors-PersSupServ-factsheet.pdf>
- 14 <https://www.cms.gov/Medicare-Medicaid-Coordination/Fraud-Prevention/Medicaid-Integrity-Education/Downloads/hcbs-tk1-common-errors-Hab-Waivers-factsheet.pdf>
- 15 <https://oig.hhs.gov/oei/reports/oei-07-08-00430.pdf>
- 16 <https://www.cms.gov/Medicare-Medicaid-Coordination/Fraud-Prevention/Medicaid-Integrity-Education/Downloads/hcbs-tk2-care-plan-requirements-booklet.pdf>
- 17 <https://www.cms.gov/Medicare-Medicaid-Coordination/Fraud-Prevention/Medicaid-Integrity-Education/Downloads/hcbs-provider-newsletter.pdf>
- 18 <https://oig.hhs.gov/oei/reports/oei-07-08-00430.pdf>
- 19 <https://www.cms.gov/Medicare-Medicaid-Coordination/Fraud-Prevention/Medicaid-Integrity-Education/Downloads/hcbs-tk1-qual-review-doc-errors-factsheet.pdf>
- 20 <https://www.cms.gov/Medicare-Medicaid-Coordination/Fraud-Prevention/Medicaid-Integrity-Education/Downloads/hcbs-tk1-internal-records-rev-factsheet.pdf>
- 21 <https://www.cms.gov/Medicare-Medicaid-Coordination/Fraud-Prevention/Medicaid-Integrity-Education/Downloads/hcbs-tk1-common-errors-PersSupServ-factsheet.pdf>
- 22 <https://www.cms.gov/Medicare-Medicaid-Coordination/Fraud-Prevention/Medicaid-Integrity-Education/Downloads/hcbs-tk1-common-errors-Hab-Waivers-factsheet.pdf>
- 23 <https://www.cms.gov/Medicare-Medicaid-Coordination/Fraud-Prevention/Medicaid-Integrity-Education/Downloads/hcbs-provider-newsletter.pdf>
- 24 <https://www.oig.hhs.gov/compliance/compliance-guidance/index.asp>
- 25 <https://www.cms.gov/Medicare-Medicaid-Coordination/Fraud-Prevention/Medicaid-Integrity-Education/Downloads/pcs-booklet.pdf>

- 26 <https://oig.hhs.gov/oei/reports/oei-07-08-00430.pdf>
- 27 <https://www.medicaid.gov/medicaid-chip-program-information/by-state/by-state.html>
- 28 <https://www.cms.gov/Medicare-Medicaid-Coordination/Fraud-Prevention/Medicaid-Integrity-Education/Downloads/hcbs-tk1-qual-check-billing-factsheet.pdf>
- 29 <https://www.cms.gov/Medicare-Medicaid-Coordination/Fraud-Prevention/Medicaid-Integrity-Education/Downloads/hcbs-tk1-qual-review-doc-errors-factsheet.pdf>
- 30 <https://oig.hhs.gov/oei/reports/oei-07-06-00620.pdf>
- 31 https://www.ssa.gov/OP_Home/ssact/title19/1905.htm
- 32 <https://downloads.cms.gov/cmsgov/archived-downloads/SMDL/downloads/smd072500b.pdf>
- 33 http://www.ecfr.gov/cgi-bin/text-idx?SID=3adec5fb4603f65086dceaf79bf26c15&mc=true&node=se42.4.447_140&rgn=div8

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