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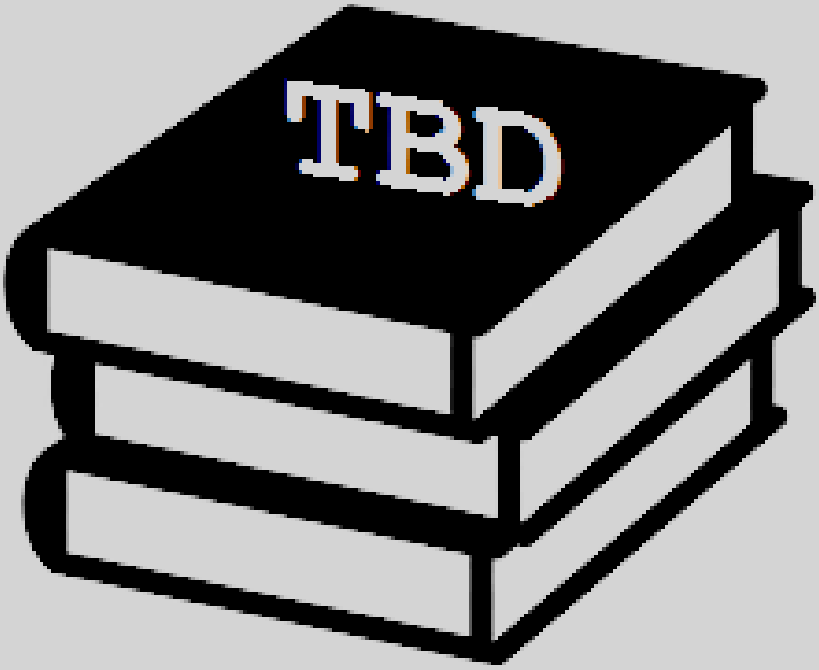

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STATE OF FLORIDA
DIVISION OF ADMINISTRATIVE HEARINGS

AGENCY FOR HEALTH
CARE ADMINISTRATION,

Petitioner,

vs.

DOAH CASE NO.: 2014-000876MPI

PROVIDER NO.: 037162900
AHCA C.I. NO.: 13-0343-000

JAMES J. BYRNE, D.O.

Respondent.
_____/

MOTION TO UNSEAL CASE

Respondent, James J. Byrne, D.O. (hereafter "Dr. Byrne"), by and through his undersigned counsel, hereby files this Motion to unseal the above case and as grounds for such motion states:

1. On January 7, 2014, the Agency for Health Care Administration issued a Final Audit Report in Case C.I. 13-0343-000.

2. The Respondent received notice of the Final Audit Report on January 15, 2014.

3. The Respondent filed a Petition seeking a formal administrative hearing of the Final Audit Report on February 5, 2014.

5. On or about, February 24, 2014, the Agency for Health Care Administration began recouping the amount identified in the Final Audit Report from the Respondent.

6. On February 19, 2014, the Agency for Health Care Administration, Medicaid Program Integrity, requested the Chief Judge of the Division of Administrative Hearings to seal the Respondent's claiming the Agency for Health Care Administration had not:

> (a) taken final agency action with respect to the provider which requires repayment of any overpayment, or imposes any administrative sanction; (b) referred the case for criminal prosecution; or (c) determined that allegations of Fraud or Abuse are without merit. Consequently, the FAR, and all information obtained by the Agency pursuant to the complaint or the investigation resulting in the FAR, are confidential pursuant to Section 409.913(12), Florida Statutes, and therefore exempted from the provisions of Section 119.07(1), Florida Statutes.

7. A copy of the Agency for Health Care Administration's request to seal the case is attached as Exhibit "A."

8. The Final Audit Report of the Agency for Health Care Administration, dated January 7, 2014, is final agency action.

9. The Final Audit Report imposes a fine of $ 5,427.94, which is the imposition of a sanction.

10. The Agency for Health Care Administration began recoupment of the overpayment identified in the Final Audit Report on February 24, 2014, and has continued recoupment of the overpayment.

11. Since the Agency for Health Care Administration has take final agency action, has imposed sanctions, and has instituted repayment of the overpayment identified in the Final Audit Report in Case 13-0343-000, there is not basis for the Agency for Health Care Administration to request the sealing of this case from the Division of Administrative Hearings.

WHEREFORE, the Respondent respectfully requests that the Division of Administrative Hearings unseal the above case.

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing has been furnished by E-Mail this 9th day of April, 2014, to the following:

Donald C. Freeman, Esquire
Assistant General Counsel
Agency for Health Care Administration
2727 Mahan Drive, MS #3
Tallahassee, Florida 32308
Telephone (850) 412-3943
Facsimile (850) 922-6484
Donald.Freeman@ahca.myflorida.com
Counsel for Agency for Health Care Administration

s//Michael L. Smith
GEORGE F. INDEST III, ESQUIRE
Board Certified in Health Law
Florida Bar No.: 382426
MICHAEL L. SMITH, ESQUIRE
Florida Bar No.: 0144487
THE HEALTH LAW FIRM
1101 Douglas Avenue
Altamonte Springs, Florida 32714
Telephone: (407) 331-6620
Facsimile: (407) 331-3030
ATTORNEYS FOR PETITIONER, JAMES J. BYRNE, D.O.

Attachments:

EXHIBIT "A" - AHCA Request to Seal Case dated February 19, 2014

MLS/sc
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FLORIDA AGENCY FOR HEALTH CARE ADMINISTRATION

RICK SCOTT
GOVERNOR

ELIZABETH DUDEK
SECRETARY

February 19, 2014

Robert S. Cohen, Director and Chief Judge
Division of Administrative Hearings
The DeSoto Building
Tallahassee, Florida 32399-3060

Re: Public Record Exemption: James J. Byrne, D.O., C.I. No.: 13-0343-000

The Agency for Health Care Administration, Medicaid Program Integrity Division, conducted an investigation of James J. Byrne, D.O. in order to determine whether there was reasonable suspicion of Fraud or Abuse as those terms are defined in Section 409.913, Florida Statutes.* That investigation resulted in issuance of a Final Audit Report (FAR) on January 7, 2014, related to program abuse. As a result of a pending administrative petition seeking a hearing before the Department of Administrative Hearings contesting the Agency's sanction, as of this date the Agency has not yet: (a) taken final agency action with respect to the provider which requires repayment of any overpayment, or imposes any administrative sanction; (b) referred the case for criminal prosecution; or (c) determined that allegations of Fraud or Abuse are without merit. Consequently, the FAR, and all information obtained by the Agency pursuant to the complaint or the investigation resulting in the FAR, are confidential pursuant to Section 409.913(12), Florida Statutes, and therefore exempted from the provisions of Section 119.07(1), Florida Statutes.

Thus, the Agency requests that DOAH seal this case.

*Section 409.913, Florida Statutes defines *abuse* as, "Provider practices that are inconsistent with generally accepted business or medical practices and that result in an unnecessary cost to the Medicaid program or in reimbursement for goods or services that are not medically necessary or that fail to meet professionally recognized standards for health care, or recipient practices that result in unnecessary cost to the Medicaid program. *Fraud* means, "an intentional deception or misrepresentation made by a person with the knowledge that the deception results in unauthorized benefit to herself or himself or another person. The term includes any act that constitutes fraud under applicable federal or state law."

Sincerely,

Kris Creel
Medicaid Program Integrity
Office of the Inspector General

KC/kc

cc: Richard Shoop, Senior Attorney, Office of General Counsel

STATE OF FLORIDA
AGENCY FOR HEALTH CARE ADMINISTRATION

STATE OF FLORIDA, AGENCY FOR HEALTH CARE ADMINISTRATION,

Petitioner,

Provider No. 037162900
C. I. No. 13-0343-000

vs.

JAMES J. BYRNE, D.O.,

Respondent.
_____/

NOTICE

TO: Robert Cohen, Director
Division of Administrative Hearings
The DeSoto Building
1230 Apalachee Parkway
Tallahassee, Florida 32399-3060

Please be advised that the Agency for Health Care Administration (AHCA) has received a request for a formal administrative hearing from the above-designated party. AHCA requests the Division of Administrative Hearings (DOAH) to assign this matter to an Administrative Law Judge, to conduct all necessary proceedings required under the law, and to submit a Recommended Order to this agency. A copy of the hearing request and the notice of agency action are attached to this Notice.

APPEARANCES

FOR THE AGENCY:

Donald Freeman, Esquire
Florida Bar No. 736171
State of Florida, Agency for
Health Care Administration
2727 Mahan Drive, MS 3
Tallahassee, Florida 32308
(850) 412-3943

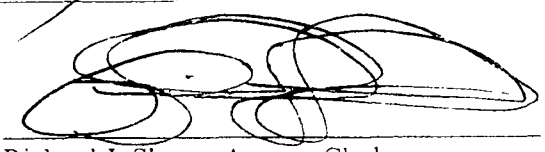
FOR PARTY REQUESTING HEARING:

George F. Indest III, Esquire
Florida Bar No. 382426
Michael L. Smith, Esquire
Florida Bar No. 0144487
The Health Law Firm
1101 Douglas Avenue
Altamonte Springs, Florida 32714
(407) 331-6620

As part of this referral, AHCA reserves the right to file any and all appropriate motions. No waiver is made of any rights or entitlements arising out of or during the course of this proceeding. No determination is made in respect to any procedural or substantive matter as a result of this referral.

Henceforth, any communication between the parties should be through their respective legal counsel or qualified/authorized representative.

DONE this 20th day of February, 2014, in Tallahassee, Florida.



Richard J. Shoop, Agency Clerk
State of Florida, Agency for
Health Care Administration
2727 Mahan Drive, MS 3
Tallahassee, Florida 32308-5403
(850) 412-3689

COPIES FURNISHED TO:

Donald Freeman, Esquire
State of Florida, Agency for
Health Care Administration
2727 Mahan Drive, MS 3
Tallahassee, Florida 32308

George F. Indest III, Esquire
Michael L. Smith, Esquire
The Health Law Firm
1101 Douglas Avenue
Altamonte Springs, Florida 32714

Medicaid Program Integrity
State of Florida, Agency for
Health Care Administration
2727 Mahan Drive, MS 6
Tallahassee, Florida 32308

BY APPOINTMENT:
37 N. ORANGE AVENUE, SUITE 500
ORLANDO, FLORIDA 32801

BY APPOINTMENT:
201 E. GOVERNMENT STREET
PENSACOLA, FLORIDA 32502
TELEPHONE: (850) 439-1001

BY APPOINTMENT:
155 E. BOARDWALK DRIVE, SUITE 424
FORT COLLINS, COLORADO 80525
TELEPHONE: (970) 416-7458
TELEFAX: (866) 203-1464

THE HEALTH LAW FIRM®
"THE PHYSICIAN'S ADVOCATES"
RESPOND ONLY TO MAIN OFFICE:
1101 DOUGLAS AVENUE
ALTAMONTE SPRINGS, FLORIDA 32714
TELEPHONE: (407) 331-6620
TELEFAX: (407) 331-3030
WWW.THEHEALTHLAWFIRM.COM

GEORGE F. INDEST III, J.D., M.P.A., LL.M.
FLA., LA. AND D.C.
BOARD CERTIFIED BY THE FLORIDA BAR IN HEALTH LAW

MICHAEL L. SMITH, J.D.
FLA.
REGISTERED RESPIRATORY THERAPIST
BOARD CERTIFIED BY THE FLORIDA BAR IN HEALTH LAW

JOANNE KENNA, R.N., J.D.
FLA.
REGISTERED NURSE (ILL.)

CAROLE C. SCHRIEFER, R.N., J.D.
FLA. AND COLO.
REGISTERED NURSE (COLO.)

CHRISTOPHER E. BROWN, J.D.
FLA.

LANCE O. LEIDER, J.D.
FLA.

MATTHEW R. GROSS, J.D., P.A.
FLA.
(OF COUNSEL)

February 5, 2014

VIA EXPRESS MAIL - RETURN RECEIPT REQUESTED

EM479369250US

Richard J. Shoop, Esquire
Agency Clerk
Agency for Health Care Administration
2727 Mahan Drive, Mail Stop #3
Tallahassee, Florida 32308

FILED
AHCA
AGENCY CLERK
2014 FEB -5 P 4:27

Re: AHCA v. James J. Byrne, D.O.
Provider No.: 037162900
AHCA C.I. No.: 13-0343-000
Our File No.: 1752/001
FORWARDING OF PETITION FOR FORMAL ADMINISTRATIVE HEARING FOR FILING

Dear Mr. Shoop:

The Health Law Firm represents James J. Byrne, D.O., in the above referenced matter.

I have enclosed the Petition for Formal Administrative Hearing dated February 5, 2014, for filing.

If you have any questions, please feel free to contact me at the numbers listed above. If I am not available, you may speak with my legal assistant, Shelly Estes.

Sincerely,

THE HEALTH LAW FIRM, by:

MICHAEL L. SMITH
Board Certified by The Florida Bar
in the Specialty of Health Law

encl: Petition for Formal Hearing

MLS/se
S:\1711-1799\1752\001\310-Letters-Drafts\AHCA-Shoop-1.wpd

STATE OF FLORIDA
DIVISION OF ADMINISTRATIVE HEARINGS

JAMES J. BYRNE, D.O.

Petitioner,

vs.

AGENCY FOR HEALTH CARE ADMINISTRATION,

Respondent.
_____/

DOAH CASE NO.:

PROVIDER NO.: 037162900
AHCA C.I. NO.: 13-0343-000

PETITION FOR FORMAL ADMINISTRATIVE HEARING

Petitioner, James J. Byrne, D.O. (hereafter "Dr. Byrne"), by and through his undersigned counsel, hereby petitions for a formal administrative hearing, pursuant to Section 120.569, Florida Statutes, and Rule 28-106.201, Florida Administrative Code, to challenge the Final Audit Report C.I. No. 13-0343-000 of the Agency for Health Care Administration (referred to as the "Agency" or "AHCA" herein), dated January 7, 2014, and received by Petitioner on January 15, 2014, which is attached as Exhibit "1." As grounds for this Petition, Petitioner states:

1. Petitioner contests all findings in Exhibit "1," including but not limited to the amount the Agency alleges Petitioner owes.

2. **The affected agency is:**

Agency for Health Care Administration
Office of Medicaid Program Integrity
2727 Mahan Drive, Mail Stop 6
Tallahassee, Florida 32308
File No.: C.I. No. 13-0343-000

3. **The Petitioner is:**

James J. Byrne, D.O.

185 North US Highway 1
Oak Hill, Florida 32759-5454
Telephone: (386) 345-0003
Provider No.: 037162900

4. **The agency action that is the subject of this Petition is:** The Final Audit Report C.I. No. 13-0343-000 dated January 7, 2014, attached as Exhibit "1."

5. **The Petitioner received notice** of the Final Audit Report by Certified U.S. Mail on January 15, 2014.

6. **The Petitioner is represented by:**

George F. Indest III, Esquire, and
Michael L. Smith, Esquire
The Health Law Firm
1101 Douglas Avenue
Altamonte Springs, Florida 32714
Telephone: (407) 331-6620
Telefax: (407) 331-3030

7. **Petitioner's substantial interests that will be affected by the decision of the Agency are as follow:**

a. The Respondent Agency has demanded the refund of $27,139.71 that was paid to Petitioner, plus a fine of $5,427.94, and costs of $3,177.39 for a total amount claimed by the Agency of $35,745.04. This amount alone constitutes a substantial interest of Petitioner that will be affected.

b. The Petitioner has a substantial interest in receiving compensation from the Respondent for medically necessary covered services provided to Medicaid beneficiaries, and not being deprived of his labor without appropriate payment therefor.

c. Additionally, Respondent seeks to impose a fine of $5,427.94 which is a substantial interest of the Petitioner affected the Agency's decision.

8. **The disputed issues of material fact include, but are not limited to, the following:**

a. Whether the Petitioner owes the Agency the amount of $35,745.04.

b. Whether the Petitioner is entitled to reimbursement for services provided by the Petitioner to Medicaid recipients.

c. Whether the Petitioner submitted documentation to the Agency in support of the services provided to Medicaid patients.

d. Whether the Petitioner documented the medical necessity to support the services provided to Medicaid patients.

e. Whether the Petitioner documented the required elements to support the services provided to Medicaid patients.

f. Whether the statistical formula used by the Agency, by which it took an actual alleged overpayment of $4,306.92 and reached the conclusion that the Petitioner was overpaid $27,139.71, is accurate, valid, and reliable.

g. Whether the Respondent Agency used a generally accepted statistical formula and generally accepted statistical principles to calculate its overpayment demand.

h. Whether the assumptions and variables used by the Agency in its calculations using the statistical formula were correct.

i. Whether the Respondent Agency used a statistically valid sample of claims for review.

9. **Additional facts relevant to this dispute are:**

a. The Agency has disallowed certain payments and charges made by the Petitioner for medical services he provided to Medicaid recipients.

b. The Agency reduced the level of the evaluation and management service codes billed by the Petitioner.

c. The Respondent Agency also disallowed numerous charges claiming there was a lack of medical necessity. However, the records of the Petitioner demonstrate that there was medical necessity for the services provided by Petitioner.

10. **The Legal basis upon which this request is made and which supports a reversal or an adjustment to the amount owed and of the Agency's action, are as set forth above and include, but are not limited to, the following:**

a. Chapter 120, Florida Statutes; Chapter 409, Florida Statutes; Chapter 59G, Florida Administrative Code (F.A.C.); The Florida Medicaid Provider General Handbook; The Florida Medicaid Provider Reimbursement Handbook; the United States Code (U.S.C.) sections which establish and govern the Medicaid Program; and the Code of Federal Regulations (C.F.R.) sections which govern the Medicaid Program. Additionally, Petitioner states the following:

b. Respondent is the state agency responsible for payment of Medicaid Services. Section 409.902, Florida Statutes.

c. James J. Byrne, D.O. is a doctor of osteopathic medicine who is licensed in Florida pursuant to Chapter 459. Dr. Byrne is enrolled in the Florida Medicaid program as a Medicaid provider.

d. Dr. Byrne provided medically-necessary services and procedures to Medicaid recipients.

e. Florida law requires that the Respondent Agency "shall pay for covered services and procedures rendered to a recipient by, or under the personal supervision of a person licensed under state law to practice medicine or osteopathic medicine." Section 409.905(9), Florida Statutes.

f. Under Florida law the Respondent may agree to an Administrative Hearing concerning this Petition outside Leon County, Florida. Section 409.913(27), Florida Statutes. Petitioner requests that the hearing of this cause be held in Volusia County, Florida where hhe resides, where the medical records and witnesses are located, or, alternatively in Orlando, Florida.

11. **Mediation requested:** Petitioner requests mediation of this case and will participate in mediation.

12. **Petitioner requests the following relief:**

a. A formal hearing before an administrative law judge (ALJ) appointed by the Division of Administrative Hearings.

b. Petitioner requests that the hearing of this cause be held in Volusia County, Florida, or, alternatively, Orlando, Florida.

c. In the event that Petitioner is the prevailing party, he claims his attorney's fees and costs.

d. Petitioner specifically requests that the Administrative Law Judge issue an Order (or Recommended Order) that finds:

1) Petitioner does not owe and is not liable to repay to the Agency the amount claimed by the Agency.

2) Petitioner is entitled to reimbursement for all medically necessary services provided to the Medicaid beneficiaries.

3) Respondent used an inaccurate statistical formula to calculate the claimed overpayment and said statistical formula was not "generally accepted" as alleged by Respondent.

4) It would be unfair and improper for the Respondent Agency to fine the Petitioner for his conduct.

5) Petitioner requests his attorney's fees and costs.

6) Petitioner requests any other relief to which he may be entitled in law or in equity.

CERTIFICATE OF SERVICE/FILING

I HEREBY CERTIFY that a copy of the foregoing was filed as follows:

Original filed via telefax, followed by Express Mail, overnight delivery, to:

Richard J. Shoop, Esquire
Agency Clerk
Agency for Health Care Administration
2727 Mahan Drive, Mail Stop #3
Tallahassee, Florida 32308
Telephone: (850) 412-3630
Telefax: (850) 921-0158

with a copy also provided via Express Mail, overnight delivery, to:

Ms. Robi Olmstead
AHCA Administrator
Office of Inspector General
Medicaid Program Integrity
Agency for Health Care Administration
2727 Mahan Drive, Mail Stop #6
Tallahassee, Florida 32308

this 5th day of February, 2014.

GEORGE F. INDEST III, ESQUIRE
Board Certified in Health Law
Florida Bar No.: 382426
MICHAEL L. SMITH, ESQUIRE
Florida Bar No.: 0144487
THE HEALTH LAW FIRM
1101 Douglas Avenue
Altamonte Springs, Florida 32714
Telephone: (407) 331-6620
Facsimile: (407) 331-3030
ATTORNEYS FOR PETITIONER, JAMES J. BYRNE, D.O.

Attachments:

EXHIBIT "1" - AHCA Final Audit Report C.I. No. 13-0343-000

MLS/se
S:\1711-1799\1752\001\410-Pleadings-Drafts\Petition Formal Hearing 01.wpd

RICK SCOTT
GOVERNOR

ELIZABETH DUDEK
SECRETARY

CERTIFIED MAIL No.: 7009 2820 0001 5675 2143

January 7, 2014

Provider No: 037162900
NPI No: 1972675825
License No.: OS3901

James J. Byrne
P.O. Box 373
Oak Hill, FL 32759

In Reply Refer to
FINAL AUDIT REPORT
C.I.: No. 13-0343-000

Dear Provider:

The Agency for Health Care Administration (Agency), Office of the Inspector General/Medicaid Program Integrity, has completed a review of claims for Medicaid reimbursement for dates of service during the period April 1, 2009, through September 30, 2011. A preliminary audit report dated July 9, 2013 was sent to you indicating that we had determined you were overpaid $31,773.47. Based upon a review of all documentation submitted, we have determined that you were overpaid $27,139.71 for services that in whole or in part are not covered by Medicaid. A fine of $5,427.94 has been applied. The cost assessed for this audit is $3,177.39. The total amount due is $35,745.04.

Be advised of the following:

(1) In accordance with Sections 409.913(15), (16), and (17), Florida Statutes (F.S.), and Rule 59G-9.070, Florida Administrative Code (F.A.C.), the Agency shall apply sanctions for violations of federal and state laws, including Medicaid policy. This letter shall serve as notice of the following sanction(s):

- A fine of $5,427.94 for violation(s) of Rule Section 59G-9.070(7) (e), F.A.C.

(2) Pursuant to Section 409.913(23) (a), F.S., the Agency is entitled to recover all investigative, legal, and expert witness costs.

This review and the determination of overpayment were made in accordance with the provisions of Section 409.913, F.S. In determining the appropriateness of Medicaid payment pursuant to Medicaid policy, the Medicaid program utilizes procedure codes, descriptions, policies, limitations and requirements found in the Medicaid provider handbooks and Section 409.913, F.S. In applying for

EXHIBIT
Date
1

Medicaid reimbursement, providers are required to follow the guidelines set forth in the applicable rules and Medicaid fee schedules, as promulgated in the Medicaid policy handbooks, billing bulletins, and the Medicaid provider agreement. Medicaid cannot pay for services that do not meet these guidelines.

Below is a discussion of the particular guidelines related to the review of your claims, and an explanation of why these claims do not meet Medicaid requirements. The audit work papers are attached, listing the claims that are affected by this determination.

REVIEW DETERMINATION(S)

1. The Florida Medicaid Provider General Handbook defines incomplete records as records that lack documentation that all requirements or conditions for service provision have been met. A review of your medical records revealed that some services for which you billed and received payment were incomplete or the documentation was not provided. Payments made to you for these services are considered an overpayment. (No Doc.)

2. The Physician Services Coverage and Limitations Handbook specifies that Medicaid reimburses for services that are individualized, specific, consistent with symptoms or confirmed diagnosis of the illness or injury under treatment, not in excess of the recipient's needs, and reflect the level of services that can be safely furnished. A review of your medical records by a peer consultant in accordance with Sections 409.913 and 409.9131, F.S revealed that the level of service for some claims submitted were not supported by the documentation. The appropriate code was applied and the payment adjusted. Payments made to you for these services, in excess of the adjusted amount, are considered an overpayment. (LOS)

3. The Florida Medicaid Provider General Handbook states that when presenting a claim for payment under the Medicaid program, a provider has an affirmative duty to present a claim for goods and services that are medically necessary. A review of your medical records by a peer consultant in accordance with Sections 409.913 and 409.9131, F.S revealed that the medical necessity for some claims submitted was not supported by the documentation. Payments made to you for these services are considered an overpayment. (NMN)

4. The Physician Services Coverage and Limitations Handbook describes an established patient as one who has received services from a physician or provider in the same specialty within a group, within the past three years. A review of your medical records revealed that some services rendered to established patients were billed and paid as new patient visits. The appropriate code was applied and the payment adjusted. Payments made to you for these services, in excess of the adjusted amount, are considered an overpayment.

OVERPAYMENT CALCULATION

A random sample of 35 recipients respecting whom you submitted 268 claims was reviewed. For those claims in the sample, which have dates of service from April 1, 2009, through September 30, 2011, an overpayment of $4,306.92 or $16.07059701 per claim, was found. Since you were paid for a total (population) of 2,613 claims for that period, the point estimate of the total overpayment is 2,613 x $16.07059701 = $41,992.47. There is a 50 percent probability that the overpayment to you is that amount or more.

We used the following statistical formula for cluster sampling to calculate the amount due the Agency:

$$E - t\sqrt{\frac{U(U-N)}{N(N-1)}\sum_{i=1}^{N}(A_i - YB_i)^2}$$

Where:

E = point estimate of overpayment = $F\left[\sum_{i=1}^{N} A_i \Big/ \sum_{i=1}^{N} B_i\right]$

F = number of claims in the population = $\sum_{i=1}^{U} B_i$

A_i = total overpayment in sample cluster

B_i = number of claims in sample cluster

U = number of clusters in the population

N = number of clusters in the random sample

Y = mean overpayment per claim = $\sum_{i=1}^{N} A_i \Big/ \sum_{i=1}^{N} B_i$

t = t value from the Distribution of t Table

All of the claims relating to a recipient represent a cluster. The values of overpayment and number of claims for each recipient in the sample are shown on the attachment entitled "Overpayment Calculation Using Cluster Sampling." From this statistical formula, which is generally accepted for this purpose, we have calculated that the overpayment to you is $27,139.71 with a ninety-five percent (95%) probability that it is that amount or more.

If you are currently involved in a bankruptcy, you should notify your attorney immediately and provide a copy of this letter for them. Please advise your attorney that we need the following information immediately: (1) the date of filing of the bankruptcy petition; (2) the case number; (3) the court name and the division in which the petition was filed (e.g., Northern District of Florida, Tallahassee Division); and, (4) the name, address, and telephone number of your attorney.

If you are not in bankruptcy and you concur with our findings, remit by certified check in the amount of $35,745.04, which includes the overpayment amount as well as any fines imposed and assessed costs. The check must be payable to the **Florida Agency for Health Care Administration**. Questions regarding procedures for submitting payment should be directed to Medicaid Accounts Receivable, (850) 412-3901. To ensure proper credit, be certain you legibly record on your check your Medicaid provider number and the C.I. number listed on the first page of this audit report. Please mail payment to:

Medicaid Accounts Receivable - MS # 14
Agency for Health Care Administration
2727 Mahan Drive Bldg. 2, Ste. 200
Tallahassee, FL 32308

Pursuant to section 409.913(25)(d), F.S., the Agency may collect money owed by all means allowable by law, including, but not limited to, exercising the option to collect money from Medicare that is payable to the provider. Pursuant to section 409.913(27), F.S., if within 30 days following this notice you have not either repaid the alleged overpayment amount or entered into a satisfactory repayment agreement with the Agency, your Medicaid reimbursements will be withheld; they will continue to be withheld, even during the pendency of an administrative hearing, until such time as the overpayment amount is satisfied. Pursuant to section 409.913(30), F.S., the Agency shall terminate your participation in the Medicaid program if you fail to repay an overpayment or enter into a satisfactory repayment agreement with the Agency, within 35 days after the date of a final order which is no longer subject to further appeal. Pursuant to seotions 409.913(15)(q) and 409.913(25)(c), F.S., a provider that does not adhere to the terms of a repayment agreement is subject to termination from the Medicaid program. Finally, failure to comply with all sanctions applied or due dates may result in additional sanctions being imposed.

You have the right to request a formal or informal hearing pursuant to Section 120.569, F.S. If a request for a formal hearing is made, the petition must be made in compliance with Section 28-106.201, F.A.C. and mediation may be available. If a request for an informal hearing is made, the petition must be made in compliance with rule Section 28-106.301, F.A.C. Additionally, you are hereby informed that if a request for a hearing is made, the petition must be **received by the Agency** within twenty-one (**21**) days of receipt of this letter. **For more information regarding your hearing and mediation rights, please see the attached Notice of Administrative Hearing and Mediation Rights.**

Section 409.913(12), F.S., provides exemptions from the provisions of Section 119.07(1), F.S. All information obtained pursuant to this review is confidential and exempt from the provisions of Section 119.07(1), F.S., until the Agency takes final agency action with respect to the provider and requires repayment of any overpayment or imposes an administrative sanction by Final Order.

Any questions you may have about this matter should be directed to: **Kris Creel, Investigator, Agency for Health Care Administration, Medicaid Program Integrity, 2727 Mahan Drive, Mail Stop #6, Tallahassee, Florida 32308-5403, telephone (850) 412-4600, facsimile (850) 410-1972.**

Sincerely,

Robi Olmstead
AHCA Administrator
Office of the Inspector General
Medicaid Program Integrity

RO/KC/jc

Enclosure(s)

Copies furnished to:

Finance & Accounting
(Interoffice mail)

Health Quality Assurance
(E-mail)

Department of Health
(E-mail)

NOTICE OF ADMINISTRATIVE HEARING AND MEDIATION RIGHTS

You have the right to request an administrative hearing pursuant to Sections 120.569 and 120.57, Florida Statutes. If you disagree with the facts stated in the foregoing Final Audit Report (hereinafter FAR), you may request a formal administrative hearing pursuant to Section 120.57(1), Florida Statutes. If you do not dispute the facts stated in the FAR, but believe there are additional reasons to grant the relief you seek, you may request an informal administrative hearing pursuant to Section 120.57(2), Florida Statutes. Additionally, pursuant to Section 120.573, Florida Statutes, mediation may be available if you have chosen a formal administrative hearing, as discussed more fully below.

The written request for an administrative hearing must conform to the requirements of either Rule 28-106.201(2) or Rule 28-106.301(2), Florida Administrative Code, and must be received by the Agency for Health Care Administration, by 5:00 P.M. no later than 21 days after you received the FAR. The address for filing the written request for an administrative hearing is:

Richard J. Shoop, Esquire
Agency Clerk
Agency for Health Care Administration
2727 Mahan Drive, Mail Stop # 3
Tallahassee, Florida 32308
Fax: (850) 921-0158
Phone: (850) 412-3630

The request must be legible, on 8 ½ by 11-inch white paper, and contain:

1. Your name, address, telephone number, any Agency identifying number on the FAR, if known, and name, address, and telephone number of your representative, if any;
2. An explanation of how your substantial interests will be affected by the action described in the FAR;
3. A statement of when and how you received the FAR;
4. For a request for formal hearing, a statement of all disputed issues of material fact;
5. For a request for formal hearing, a concise statement of the ultimate facts alleged, as well as the rules and statutes which entitle you to relief;
6. For a request for formal hearing, whether you request mediation, if it is available;
7. For a request for informal hearing, what bases support an adjustment to the amount owed to the Agency; and
8. A demand for relief.

A formal hearing will be held if there are disputed issues of material fact. Additionally, mediation may be available in conjunction with a formal hearing. Mediation is a way to use a neutral third party to assist the parties in a legal or administrative proceeding to reach a settlement of their case. If you and the Agency agree to mediation, it does not mean that you give up the right to a hearing. Rather, you and the Agency will try to settle your case first with mediation.

If you request mediation, and the Agency agrees to it, you will be contacted by the Agency to set up a time for the mediation and to enter into a mediation agreement. If a mediation agreement is not reached within 10 days following the request for mediation, the matter will proceed without mediation. The mediation must be concluded within 60 days of having entered into the agreement, unless you and the Agency agree to a different time period. The mediation agreement between you and the Agency will include provisions for selecting the mediator, the allocation of costs and fees associated with the mediation, and the confidentiality of discussions and documents involved in the mediation. Mediators charge hourly fees that must be shared equally by you and the Agency.

If a written request for an administrative hearing is not timely received you will have waived your right to have the intended action reviewed pursuant to Chapter 120, Florida Statutes, and the action set forth in the FAR shall be conclusive and final.

FLORIDA AGENCY FOR HEALTH CARE ADMINISTRATION

Provider: 037162900 - JAMES J BYRNE **NPI: 1972675825**

Overpayment Calculation Using Cluster Sampling by Recip Name

Dates Of Service: 4/1/2009 through 9/30/2011

Number of recipients in population:	297	Case ID:	13-0343-000
Number of recipients in sample:	35	Confidence level:	95 %
Total payments in population:	$89,960.90	t value:	1.690924
No. of claims in population:	2,613		

	1	5	$195.84	$46.52
	2	5	$236.47	$81.35
	3	1	$46.68	$46.68
	4	20	$684.37	$184.45
	5	19	$583.84	$167.94
	6	10	$283.02	$65.29
	7	35	$1,093.25	$285.59
	8	1	$46.68	$0.00
	9	7	$254.48	$100.83
	10	12	$349.09	$117.61
	11	1	$46.68	$15.48
	12	24	$656.04	$111.26
	13	1	$66.84	$20.16
	14	6	$188.58	$87.09
	15	1	$46.58	$0.00
	16	5	$193.67	$82.64
	17	1	$46.68	$13.98
	18	1	$46.68	$17.48
	19	1	$46.58	$15.48
	20	9	$268.04	$70.70
	21	1	$66.84	$35.64
	22	1	$46.58	$20.07
	23	1	$24.61	$0.00
	24	4	$100.44	$4.77
	25	2	$71.29	$15.48
	26	27	$1,066.53	$791.00
	27	18	$453.90	$177.54
	28	5	$621.13	$466.01
	29	5	$174.82	$41.18
	30	1	$46.68	$17.48
	31	1	$46.68	$17.48
	32	7	$270.59	$108.35
	33	3	$75.83	$32.15
	34	21	$811.06	$144.87
	35	6	$882.34	$882.34
Totals:	35	268	$9,957.62	$4,306.92

Using Overpayment per claim method

Overpayment per sample claim:	$16.07059701
Point estimate of the overpayment:	$41,992.47
Variance of the overpayment:	$77,155,371.22
Standard error of the overpayment:	$8,783.81
Half confidence interval:	$14,852.76
Overpayment at the 95 % Confidence level:	$27,139.71

If you **choose to make payment**, please return this page along with your check to:

Agency for Health Care Administration
Medicaid Accounts Receivable
2727 Mahan Drive, Mail Stop #14
Tallahassee, Florida 32308

The check must be made payable to:

Florida Agency for Health Care Administration

Provider Name:	James J. Byrne
Provider ID:	037162900
MPI Case #:	13-0343-000
Overpayment Amount:	$27,139.71
Fine Amount:	$5,427.94
Costs:	$3,177.39
Grand Total:	$35,745.04
Check Number:	#_____

Any questions you may have about this matter should be directed to: Kris Creel, telephone (850) 412-4600, facsimile (850) 410-1972.

Payment for Medicaid Program Integrity Audit

SENDER: COMPLETE THIS SECTION

- Complete items 1, 2, and 3. Also complete item 4 if Restricted Delivery is desired.
- Print your name and address on the reverse so that we can return the card to you.
- Attach this card to the back of the mailpiece

COMPLETE THIS SECTION ON DELIVERY

A. Signature
X [signature] ☐ Agent ☒ Addressee

B. Received by (Printed Name) [Julia Baxter] C. Date of Delivery 1-15-14

address different from item 1? ☐ Yes
[illegible] ☐ No
address different from item 1? ☐ Yes
er delivery address below: ☐ No

James J. Byrne
P.O. Box 373
Oak Hill, FL 32759
C.I.# 13-0343-000

3. Service Type
☒ Certified Mail ☐ Express Mail
☐ Registered ☐ Return Receipt for Merchandise
☐ Insured Mail ☐ C.O.D.

4. Restricted Delivery? (Extra Fee) ☐ Yes

2. Article Number (Transfer from service label) 7009 2820 0001 5675 2143

PS Form 3811, February 2004 Domestic Return Receipt 102595-02-M-1540

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AHCA
Agency for Health Care Administration
Office of Inspector General
Bureau of MEDICAID PROGRAM INTEGRITY
2727 MAHAN DRIVE, MAIL STOP 6
TALLAHASSEE, FLORIDA 32308

RECEIVED
JAN 17 2014
Program Integrity

Janet [signature]
Unit

KC.

AHCA
FLORIDA AGENCY FOR HEALTH CARE ADMINISTRATION

Office of the General Counsel
2727 Mahan Drive, MS #3
Tallahassee, Florida 32308-5407

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Michael L. Smith, Esquire
The Health Law Firm
1101 Douglas Avenue
Altamonte Springs, Florida 32714

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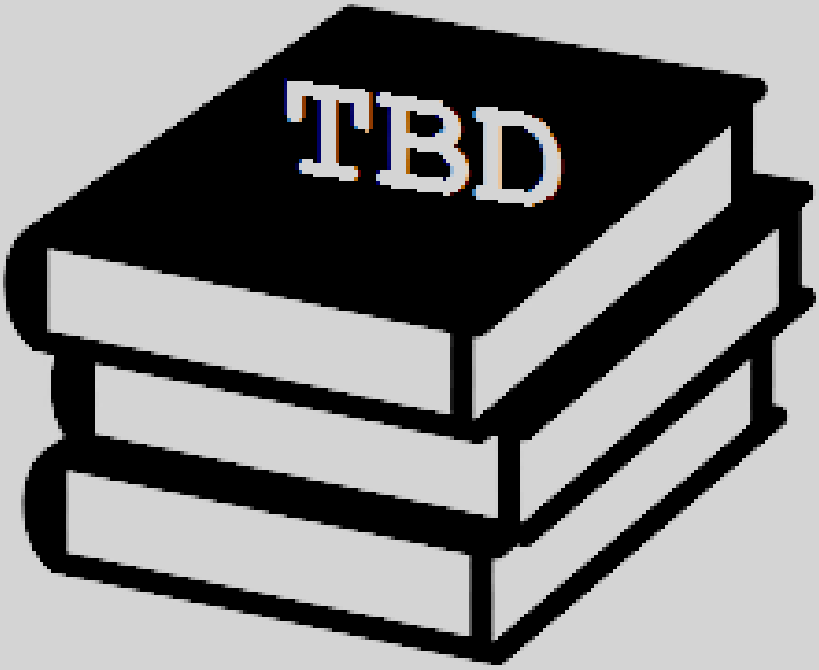

SELL YOUR OWN SAMPLES

(help others get the justice that they deserve)

BUY™	SELL™	SHOP™