



Dear Ms. Hammer:

Thank you for the statement provided to the Colorado Speech Language Hearing Association (CSHA) via email from Zach Lynkiewicz, Legislative Liaison on July 8, 2016.

In 2013, Colorado adopted the NCCI edits which impacted how speech language pathologists could provide and bill for services through the Colorado Medicaid Outpatient Speech Benefit, including the Early Intervention Program. There was a great deal of confusion and many individual speech language pathologists and other Early Intervention Program officials sought guidance from the Department of Health Care Policy and Financing (HCPF) regarding how to appropriately bill for services provided. Only in the Spring of 2016 did it become clear that HCPF personnel may have provided speech language pathologists and Early Intervention Program officials with incorrect guidance. Correcting the billing practices going forward is not a problem. However, many providers are now being audited and are at risk of legal action from the Medicaid Fraud Control Unit (MFCU). The potential consequences now being faced by individual providers who relied on information provided by HCPF include:

- Paying for legal representation to defend against claims of fraud;
- Fines in the hundreds of thousands of dollars, which will cause businesses to be shut down and employees to lose their jobs;
- Personal financial ruin including loss of home and retirement savings; and
- Loss of professional credentials meaning individuals could no longer earn a living as a speech language pathologist.

We acknowledge that HCPF has no direct control over the actions of the MFCU. However, we believe that a factual statement from the Department acknowledging that it provided incorrect guidance is both appropriate and helpful.

In support of our claim that HCPF staff provided incorrect information, please consider the following.

- Email from Jeffrey Konrade-Helm, Provider Relations Specialist with HCPF, dated April 30, 2013 stating to use the -59 modifier and to list 92507 first and 97532 second and to share with other providers. (attached)
- Email from Alex Stephens, Rehabilitation Benefits Specialist with HCPF, dated April 30, 2013 indicating the need to fix the MMIS system to allow pairing of 92507, 92532 with the -59 modifier. (attached)
- Email from Alex Weichselbaum, Rehabilitation Benefits Policy Specialist, dated September 18, 2014 telling a provider that 92507 and 97532 are allowed and stating to use the -59 modifier to “bypass the claims edit.” (attached)

Additionally, we wonder why HCPF approved and paid claims submitted per this guidance between 2013 and 2016, if the Department did not believe that billing was submitted correctly. Please note that in naming individuals we are not attempting to inappropriately blame specific HCPF employees. We admire and respect the work that you and the entire Department staff do every day for vulnerable Colorado citizens. However, these individuals were acting within the scope of their duties as a HCPF employees. It is important that we provide you and others with the specific pieces of information that were given to providers by HCPF and upon which they relied in establishing their billing practices.

Colorado Speech-Language-Hearing Association

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Finally, we wanted to respond to some of the specific language in your statement from July 8. In the first paragraph, you write *“Billing for speech language pathology services is guided by the CMS National Correct Coding Initiative (NCCI), which promotes national correct coding methodologies and reduces improper coding which may result in inappropriate payments for Medicaid claims. The National Correct Coding Initiative is a federal mandate for Medicaid agencies. Neither the Department of Health Care Policy and Financing, nor any other state agency, can independently establish coding and billing policy for speech language pathology services. Colorado Medicaid providers are required to comply with the NCCI policies.”*

It is our understanding that CMS allows states to consider edits on an individual, state-by-state basis. If a state determines that an edit in the Medicaid NCCI methodologies conflicts with one or more state laws, regulations, administrative rules or payment policies, the state can request permission from CMS to deactivate the conflicting edit. See (<https://www.medicaid.gov/medicaid-chip-program-information/by-topics/data-and-systems/downloads/medicaid-ncci-faqs-update-11/14.pdf>). Several Colorado speech language pathologists contacted the American Speech Language Hearing Association (ASHA) during 2013 when the situation was so confusing. Because the states are allowed some flexibility, ASHA told providers that they need to seek clarity from the state Medicaid agency. When Colorado HCPF staff indicated that billing 92507 and 97532 using the -59 modifier to “bypass the edit” was acceptable, it was assumed that the State had received permission from CMS to diverge from the NCCI.

In the second paragraph of your statement, you write *“In response to concerns among the speech language pathology community about NCCI policy, the Department held a webinar for providers and interested stakeholders in early March to provide information about federal coding policy for speech language pathology services. During this webinar a number of questions about the Medicaid speech language pathology benefit were raised. The Department offered to hold a face-to-face stakeholder meeting to explore the issue further. This meeting was held in early May. Since that time, Medicaid program staff have continued to work with providers in the community to address questions.”*

We agree that the Department has worked with providers to inform and educate them about the Department’s current interpretation of the appropriate billing codes and we appreciate the Department’s efforts. The current communication is not the problem. Our concern lies with the guidance and communication provided by the Department and payment by the Department of claims in the 2013-2016 timeframe. The guidance and communication provided during that timeframe was different than the communication and the policy stated by the Department beginning in the Spring of 2016.

In your third paragraph, you state *“During this time, there has also been an active investigation of a small number of speech language providers by the Medicaid Fraud Control Unit (MFCU) at the Attorney General’s Office. This unit investigates fraud committed against the State by providers of Medicaid products and services. The MFCU works with but is completely independent of the Department of Health Care Policy and Financing.”*

These active investigations are exactly why CSHA has become actively involved in this issue. We acknowledge that HCPF does not control the actions of the Medicaid Fraud Control Unit, but we are asking that HCPF accept responsibility for the actions taken by its staff and publicly acknowledge the guidance given to providers in the 2013 - early 2016 timeframe. How the legal system chooses to assess this information is beyond our mutual control. We believe strongly, however, that it is incumbent on all parties to this situation to provide factual information.

We appreciate your statements about valuing the relationship with speech language pathologists and the efforts to collaborate with speech language pathologists on the Outpatient Speech Benefit. CSHA shares your sentiment and we value the role HCPF and its employees play in helping to serve families about whom we care deeply. We are happy to discuss any aspect of this situation. In the spirit of open communication, we feel it is important to tell you that we

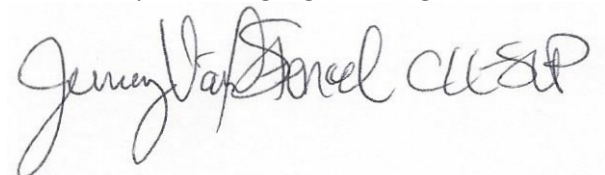
cannot rule out the possibility of discussing this issue with legislators, the Governor's Office or the media. If we take this step, we will continue to communicate honestly and factually with all parties with the sole intent of reaching a fair resolution. The consequences for providers are simply too great for the Association to abdicate its responsibility to serve our members.

Jennifer Mello with Brandeberry McKenna Public Affairs is CSHA's registered lobbyist. She can be reached at 720-301-6137 or mello@bbmk.com. Please consider her your first line of contact, and she will engage our leadership and membership as necessary.

In partnership,

Pamela Mayer
President
Colorado Speech Language Hearing Association
//signed electronically 7.29.2016//

Jenny Vail-Stencel
State Advocate for Reimbursement (STAR)
Colorado Speech-Language-Hearing Association

A handwritten signature in black ink that reads "Jenny Vail-Stencel" followed by a stylized set of initials, possibly "CCHS". The signature is written in a cursive, flowing style.