


**STATE OF NEW YORK
DEPARTMENT OF HEALTH**

In the Matter of the Appeal of :
: **Decision**
: **After**
Richard Saline, D.M.D., : **Hearing**
Provider No.: 00989964 :
: #17-1514
Appellant, :
:
from a determination by the NYS Office of the :
Medicaid Inspector General to recover Medicaid :
Program overpayments. :
:

Before: John Harris Terepka
Administrative Law Judge

Held at: New York State Department of Health
90 Church Street
New York, New York 10007
May 30, 2018
Transcript received June 25, 2018

Parties: NYS Office of the Medicaid Inspector General
217 Broadway, 8th floor
New York, New York 10007
By: Kathleen Dix, Esq.

Richard Saline, D.M.D.


JURISDICTION

The Department of Health acts as the single state agency to supervise the administration of the Medicaid Program in New York. Social Services Law 363-a. Pursuant to Public Health Law 30, 31 and 32, the New York State Office of the Medicaid Inspector General (OMIG), an independent office within the Department, has the authority to pursue administrative enforcement actions against any individual or entity that engages in fraud, abuse or unacceptable practices in the Medicaid Program, and to recover improperly expended Medicaid funds.

The OMIG determined to seek restitution of a payment made under the Medicaid Electronic Health Records (EHR) Technology Incentive Program to Richard Saline, D.M.D. (Appellant.) The Appellant requested a hearing pursuant to Social Services Law 22 and former Department of Social Services (DSS) regulations at 18 NYCRR 519.4 to review the determination.

HEARING RECORD

OMIG witness: Kelly McCarville
OMIG exhibits: 1-25
Appellant witness: Richard Saline, D.M.D.
Appellant exhibits: A, C, E

A transcript of the hearing was made. (Transcript, pages 1-134.)

SUMMARY OF FACTS

1. The Appellant is enrolled as a provider in the New York State Medicaid Program. On February 5, 2014, he submitted an application for payment under the

Medicaid EHR Technology Incentive Program for a first payment year of 2013. (Exhibits 1, 2.)

2. The Appellant's attestation certified that he would adopt a particular EHR system on the approved list of systems eligible for the EHR payment. (Exhibits 1, 2.)

3. The Appellant's attestation certified that during the 90-day period September 1 through November 29, 2012, he had a patient volume in excess of 30 percent attributable to individuals receiving Medicaid. (Exhibit 1.)

4. The Appellant received a first year EHR incentive payment for the year 2013 in the amount of \$21,250. (Transcript, pages 128-29.)

5. By draft audit report dated May 11, 2017, the OMIG notified the Appellant that it had determined to seek restitution of the Medicaid EHR incentive payment. (Exhibit 4.) Pursuant to 18 NYCRR 517.5(b)&(c), the draft audit report advised the Appellant that he was entitled to object to the proposed determination and to submit documents in response to it. The Appellant submitted a response in July 2017. (Exhibit 5.)

6. By final audit report dated November 30, 2017, the OMIG notified the Appellant that its determination remained unchanged and that it continued to seek restitution of a Medicaid Program overpayment in the total amount of \$21,250. (Exhibit 6.)

7. The OMIG's determination was based upon its findings that the Appellant failed to demonstrate that during the year 2013 he had adopted, implemented or upgraded certified EHR technology as defined in 42 CFR Part 495; and failed to demonstrate that

during a representative 90-day period during the preceding calendar year, he had a patient volume in excess of 30 percent attributable to individuals receiving Medicaid.

8. The Appellant did not adopt, implement or upgrade the EHR system specified on his attestation. (Transcript, pages 51, 131.) The Appellant failed to document that during a representative 90-day period during the preceding calendar year he had a patient volume in excess of 30 percent attributable to individuals receiving Medicaid.

9. During the year 2013 the Appellant practiced in an office with another provider. The dentist with whom he shared the office implemented a different EHR system than the one reported on the Appellant's attestation, and received an incentive payment for the year 2012. The Appellant failed to document that he used or had access to this system in 2013. (Transcript, pages 61-62, 72-73.)

ISSUE

Has the Appellant met his burden of proving entitlement to an EHR Incentive Program payment for the year 2013?

APPLICABLE LAW

Medicaid providers are required, as a condition of their enrollment in the program, to prepare, maintain and furnish to the Department upon request, contemporaneous records demonstrating their right to receive payment from the Medicaid Program and fully disclosing the nature and extent of the care, services and supplies they provide. The information provided in relation to any claim must be true, accurate and complete. The provider must also comply with the rules, regulations and official

directives of the Department. All information regarding claims for payment is subject to audit for six years. 18 NYCRR 504.3(a),(h)&(i).

When the Department has determined that claims for medical services have been submitted for which payment should not have been made, it may require repayment of the amount determined to have been overpaid. 18 NYCRR 518.1(b). A person is entitled to a hearing to have the Department's determination reviewed if the Department requires repayment of an overpayment. 18 NYCRR 519.4. At the hearing, the Appellant has the burden of showing that the determination of the Department was incorrect and that all claims submitted and denied were due and payable under the Medicaid Program. 18 NYCRR 519.18(d).

The EHR Technology Incentive Program was authorized by the American Reinvestment and Recovery Act of 2009 and implemented by Federal regulations at 42 CFR Part 495. The program authorizes states to provide incentive payments for Medicaid Providers for adopting, implementing or upgrading certified EHR technology, or for meaningful use of such technology. 42 CFR 495.300. (Exhibit 15.)

In order to be eligible for the incentive, a Medicaid eligible professional (EP) must "acquire, purchase or secure access to certified EHR technology." 42 CFR 495.302. A list of certified EHR technology products eligible for the incentive payment is available to providers. (Transcript, pages 22-24, 26; Exhibits 16, 17.) The first year of payment is intended to offset the costs associated with initial adoption, implementation or upgrade of the technology. 42 CFR 495.308. The maximum first year payment for Medicaid EPs is \$21,250, while subsequent year payments for meaningful use are significantly lower. 42 CFR 495.310. (Transcript, page 26.)

The Medicaid EP must also have, for each year for which the EP seeks an EHR incentive payment, a minimum of 30 percent patient volume attributable to individuals receiving Medicaid. 42 CFR 495.304(c)(1). To calculate Medicaid patient volume the EP selects a representative 90-day period during the preceding calendar year, and divides total Medicaid patient encounters by the total patient encounters in that period. 42 CFR 495.306(c)(1). (Transcript, page 31.)

DISCUSSION

The EHR Incentive Program is designed as an incentive to providers to adopt or upgrade to an electronic health records (EHR) system. (Transcript, page 18.) The Appellant applied for and received the first year of such an incentive payment for the year 2013. The purpose of the OMIG audit was to determine whether he had complied with two of its requirements: 1) that he adopt, implement or upgrade certified EHR technology in the payment year; and 2) that he have a patient volume in excess of 30 percent attributable to individuals receiving Medicaid. (Transcript, pages 17, 20-21, 29.)

The Appellant concedes he never adopted, implemented or upgraded the system he reported on his attestation. (Transcript, page 131.) The office he worked in had an uncertified version of the system he reported. (Transcript, pages 50-51, 56, 59-60.) He did claim, however, that another approved system had been adopted by the office in which he practiced in 2012, and for which an incentive was paid for the year 2012 to another dentist in the office. He was unable, however, to document that the system was in use by him in 2013. (Transcript, pages 61-62, 72-73, 115-17.)

The Appellant was also unable to document his Medicaid patient volume during the 90-day period he selected and reported on his application for the incentive payment.

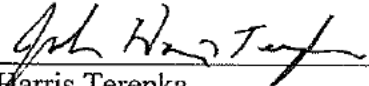
(Transcript, pages 31-32, 37-39.) The Appellant's application represented that his patient volume was based on solely his own billing. (Transcript, pages 31-33.) His evidence consisted of a utilization report from the office in which he worked in 2012, which listed a substantial number of patients with Medicaid identification numbers. These records, however, failed to establish the volume of his patient encounters or even what dentist in the office treated which patients. (Transcript, pages 65-69, 103-105, 109; Exhibit 22; Exhibits C, E.) He offered arguments for the plausibility of his patient volume, but did not document it. (Transcript, pages 75-78, 95-97.)

The Appellant has failed to meet his burden of proving entitlement to the EHR incentive payment he received.

DECISION: The OMIG's determination to recover an EHR Technology Incentive Program payment for the year 2013 is affirmed.

This decision is made by John Harris Terepka, Bureau of Adjudication, who has been designated to make such decisions.

DATED: Rochester, New York
July 6, 2018



John Harris Terepka
Administrative Law Judge