

STATE OF FLORIDA
DIVISION OF ADMINISTRATIVE HEARINGS

AGENCY FOR HEALTH CARE)
ADMINISTRATION,)
)
Petitioner,)
)
vs.) Case No. 12-1168MPI
)
MATANZAS GROUP HOME,)
)
Respondent.)
_____)

RECOMMENDED ORDER

Pursuant to notice, a hearing was conducted in this case pursuant to sections 120.569 and 120.57(1), Florida Statutes (2012)^{1/}, before Cathy M. Sellers, an Administrative Law Judge of the Division of Administrative Hearings, on September 24, 2012, by video teleconference at sites in Lauderdale Lakes and Tallahassee, Florida.

APPEARANCES

For Petitioner: Rachic A. Wilson, Esquire
Agency for Health Care Administration
Office of the General Counsel
2727 Mahan Drive, Mail Station 3
Tallahassee, Florida 32399

For Respondent: Laura Quirantes
Matanzas Group Home, Inc.
4801 Southwest 201st Terrace
Southwest Ranches, Florida 33332

STATEMENT OF THE ISSUES

The issues in this case are: (1) Whether Respondent violated section 409.913, Florida Statutes, by failing to have documentation evidencing the receipt of current Zero Tolerance training in three employees' files; failing to have documentation showing that one employee has a high school diploma or equivalent; failing to have documentation of an implementation plan in one consumer's file; failing to have documentation of quarterly summaries in one consumer's file; and failing to have written policies and procedures addressing the staff training plan and specifying how pre-service and in-service activities will be carried out, including HIV/AIDS training, cardiopulmonary resuscitation training, and all other training mandated pursuant to section 381.0035; and (2) if so, the penalty that should be imposed.

PRELIMINARY STATEMENT

On February 22, 2011, Petitioner issued a Sanction Letter charging Respondent with violating section 409.913 by failing to have certain required documentation in its employee and consumer files, and seeking to impose a fine pursuant to Florida Administrative Code Rule 59G-9.070. Respondent timely requested an administrative hearing, and Petitioner referred the proceeding to the Division of Administrative Hearings for

assignment of an Administrative Law Judge and conduct of a hearing pursuant to sections 120.569 and 120.57(1) to dispute the allegations in the Sanction Letter.

The final hearing initially was set for June 18 and 19, 2012, but pursuant to Respondent's request, the final hearing was continued until September 10, 2012. Due to a scheduling conflict, the final hearing was rescheduled until September 24, 2012.

At the final hearing, Petitioner presented the testimony of Ms. Gina Selwitz and offered Petitioner's Exhibits 1 through 13, which were admitted into evidence without objection. Respondent presented the testimony of Amarilys Gomez and Laura Quirantes and offered Respondent's Exhibits 1 through 4, which were admitted into evidence over objection.

The one-volume Transcript was filed on October 11, 2012. Petitioner timely filed its Proposed Recommended Order on October 22, 2012, and Respondent filed its Proposed Recommended Order on October 23, 2012; both were duly considered in preparing this Recommended Order.

FINDINGS OF FACT

I. The Parties and Medicaid Provider Agreement

1. Petitioner is the state agency responsible for administering the Florida Medicaid Program^{2/} pursuant to chapter 409. Petitioner's duties include operating a program to oversee

the activities of Medicaid recipients, providers, and their representatives to ensure that fraudulent and abusive behavior and neglect of recipients occur to the minimum extent possible, and to recover overpayments and impose sanctions as appropriate. § 409.913(1), Fla. Stat. To that end, Petitioner is authorized to conduct investigations of Medicaid providers to determine compliance with the Medicaid program. § 409.913(2), Fla. Stat.

2. At all times relevant to this proceeding, Respondent was an enrolled Medicaid provider^{3/} providing residential rehabilitation and companion care services to the developmentally disabled pursuant to a valid Medicaid Provider Agreement ("MPA") with Petitioner.^{4/}

3. The MPA establishes the terms and conditions of an enrolled provider's participation in the Medicaid program. A key condition is that the provider agrees to comply with all federal, state, and local laws, including rules, regulations, and statements of policy applicable to the Medicaid program, including the Medicaid Handbooks. The Florida Medicaid Developmental Disabilities Waiver Services Coverage and Limitations Handbook, dated November 2010 ("Disabilities Handbook"), and the Florida Medicaid Provider General Handbook, dated July 2008 ("General Handbook"), are among the laws and policies applicable to this proceeding.

II. Petitioner's Inspection of Respondent's Facility

4. On September 27, 2011, Ms. Gina Selwitz, an Inspector Specialist with Petitioner's Bureau of Medicaid Program Integrity ("MPI"),^{5/} along with another employee of Respondent's Bureau of MPI and a representative from the United States Department of Health and Human Services Centers for Medicare and Medicaid Services, conducted a site inspection at Respondent's facility, to determine Respondent's compliance with applicable Medicaid Program requirements. In the course of the inspection, Ms. Selwitz and the other inspection team members reviewed Respondent's employee records and recipient files for compliance with applicable Medicaid program requirements. They contemporaneously documented their findings on checklists.

5. While at the facility, Ms. Selwitz hand-delivered a demand letter with an attached provider questionnaire form and a Certification of Completeness form to Respondent. The letter stated in pertinent part:

Pursuant to Section 409.913, Florida Statutes ("F.S."), this is official notice that the Agency requests that documentation for services paid by the Florida Medicaid program to the above provider number. The Medicaid-related records to substantiate billing for the recipients identified on the enclosed printout are due within fifteen (15) calendar days of our receipt of this notification. In addition, please complete the attached questionnaire and submit it

along with the copies of the Medicaid-related records. Please submit the documentation and the attached Certification of Completeness of Records to the Agency within this timeframe....

6. Respondent signed a form acknowledging receipt of the demand letter. Respondent completed and signed the provider questionnaire and the Certification of Completeness form and submitted them, along with the requested records, to Petitioner. By signing the Certification of Completeness form, Respondent verified that the records it provided were true and correct copies of all requested information. Petitioner received the records and completed forms on October 4, 2011.

7. After the inspection was completed, Ms. Selwitz reviewed the checklists prepared during the inspection and determined that the following was missing from Respondent's files: (1) Documentation showing current Zero Tolerance training missing from employee files of Respondent's employees L.Q., A.G., and A.H.; (2) Documentation showing receipt of a high school diploma missing from the file of L.Q.; (3) Documentation of an implementation plan in the consumer file for A.G.-A.; (4) Documentation of quarterly summaries in the consumer file for L.G.; and (5) Written policies and procedures addressing the staff training plan and specifying how pre-service and in-service activities will be carried out, including

HIV/AIDS training, C.P.R. training, and all other training mandated pursuant to section 381.0035.

8. On February 22, 2011, Petitioner sent Respondent a Sanction Letter specifically identifying these deficiencies, stating that the deficiencies constitute violations of federal and state Medicaid laws, and imposing a total fine of \$7,000.00.

III. Findings Regarding Alleged Violations

A. Zero Tolerance Training

9. Ms. Selwitz testified that the inspection of Respondent's facility revealed that documentation evidencing the receipt of current Zero Tolerance training was missing from the employee files for A.G., A.H., and L.Q. Her testimony was supported by the inspection checklist prepared at the time of the inspection, indicating that L.Q.'s and A.H.'s employee files did not contain documentation showing that they had received Zero Tolerance training, and that the A.G.'s Zero Tolerance training had expired.^{6/}

10. At hearing, Respondent conceded that A.G.'s Zero Tolerance training had expired.

11. With respect to A.H., at hearing Respondent provided a document purporting to be an unofficial transcript from Tallahassee Community College showing that Respondent had completed Zero Tolerance in 2010, so that her training was current. However, Respondent acknowledged that this

documentation was not in A.H.'s employee file at the time of Petitioner's inspection.

12. With respect to L.Q., Respondent claims that documentation showing her current Zero Tolerance training was, in fact, present in her employee file, and that Petitioner's inspection team overlooked the documentation. Respondent noted that Delmarva^{7/} had inspected the facility approximately 15 days before Petitioner's inspection, and claimed that Delmarva's report did not show Zero Tolerance documentation deficiencies for L.Q.'s file. Respondent argues that this shows that that the Zero Tolerance documentation was present in L.Q.'s file when Petitioner inspected the facility and Petitioner's inspection team simply overlooked it. In support, Respondent provided a document purported to be the Delmarva inspection report.

13. The persuasive evidence establishes that Respondent violated the requirement to maintain documentation of current Zero Tolerance Training in the employee files of A.G., A.H., and L.Q. At hearing, Respondent conceded that A.G.'s Zero Tolerance training had expired and that A.H.'s employee file did not contain the required Zero Tolerance Training documentation at the time Petitioner conducted its inspection. Further, Ms. Selwitz credibly testified that L.Q.'s employee file did not contain the required Zero Tolerance training information, and her testimony was buttressed by the contemporaneously-prepared

inspection checklists. Respondent did not provide persuasive evidence to the contrary.^{8/} Accordingly, it is determined that Respondent violate Medicaid laws, rules, regulations, and policies by failing to have Zero Tolerance training documentation in the employee files for A.G., A.H., and L.Q.

B. Educational Level Documentation for L.Q.

14. Ms. Selwitz testified that during the inspection, the team determined that documentation was missing from L.Q.'s employee file showing that she possessed the required level educational training—i.e., a high school diploma or equivalent^{9/}—to serve as direct care staff providing residential rehabilitation services. Ms. Selwitz's testimony was supported by the inspection checklist, which expressly noted the lack of high school diploma or general educational development ("G.E.D.") in L.Q.'s file and that a copy of L.Q.'s application for employment with Respondent stated that she had not graduated from high school.

15. At hearing, L.Q., a director and employee of Respondent, testified on behalf of Respondent, and Respondent offered for admission into evidence a document purported to be L.Q.'s application for employment with Respondent. The application stated that Respondent had graduated from high school. L.Q testified that this application was completed in 2006 when she started working with Respondent, but subsequently

testified that she graduated from high school in 2008. Her testimony was inconsistent with, and undercut the veracity of, the document Respondent offered to show that L.Q. met the educational training level requirement. Furthermore, even if L.Q. satisfied the applicable educational training requirements, Respondent did not provide credible evidence to overcome Petitioner's showing that the required documentation showing that training was not in L.Q.'s file when Petitioner inspected Respondent's facility. Accordingly, the credible, persuasive evidence establishes that Respondent violated Medicaid laws, rules, regulations, and policies by failing to have documentation of L.Q.'s educational status in her employee file.

C. Inclusion of Implementation Plan in Consumer File

16. Ms. Selwitz testified that the inspection also showed that a current Implementation Plan was not included in A.G.-A.'s consumer file, and her testimony was supported by the Residential Rehabilitation Services checklist that Petitioner's team completed at the time of the inspection. Respondent did not offer any testimony or other evidence to the contrary. Accordingly, Petitioner established that Respondent violated applicable Medicaid laws, rules, regulations, and policies by failing to have in its files a copy of the current Implementation Plan for consumer A.G.-A.

D. Quarterly Summary Documentation in Consumer File

17. Ms. Selwitz testified that Petitioner's inspection also revealed that Respondent failed to include a quarterly summary in L.G.'s consumer file documenting her progress, and this testimony was supported by the inspection checklists. At hearing, Respondent conceded this violation. Accordingly, Petitioner demonstrated that Respondent violated applicable Medicaid laws, rules, regulations, and policies by failing to have a quarterly summary in L.G.'s consumer file.

E. Written Policies and Procedures Addressing Staff Training

18. At hearing, Respondent conceded that at the time of the inspection, it failed to have written policies and procedures addressing the staff training plan and specifying how pre-service and in-service activities will be carried out, including HIV/AIDS training, C.P.R. training, and all other training mandated pursuant to section 381.0035. Accordingly, it is determined that Respondent violated applicable Medicaid laws, rules, regulations, and policies by failing to maintain this required documentation.

CONCLUSIONS OF LAW

19. The Division of Administrative Hearings has jurisdiction over the parties to, and subject matter of, this proceeding pursuant to sections 120.569, 120.57(1), and 409.913(31).

20. In this proceeding, Petitioner alleges that Respondent, by failing to have specified documentation in its employee and consumer files, violated federal and state Medicaid laws, rules, and policies. Petitioner seeks to impose administrative fines for these violations. To prevail, Petitioner must prove the alleged violations by clear and convincing evidence. Dep't of Banking & Fin., Div. of Secs. & Investor Prot. v. Osborne Stern, Inc., 670 So. 2d 932, 935 (Fla. 1996); Ferris v. Turlington, 510 So. 2d 292, 294 (Fla. 1987). Clear and convincing evidence requires that:

the evidence must be found to be credible; the facts to which the witnesses testify must be distinctly remembered; the testimony must be precise and explicit and the witnesses must be lacking in confusion as to the facts in issue. The evidence must be of such weight that it produces in the mind of the trier of fact a firm belief or conviction, without hesitancy, as to the truth of the allegations sought to be established.

Slomowitz v. Walker, 429 So. 2d 797, 800 (Fla. 4th DCA 1983).

21. Section 409.913(9) provides in pertinent part:

A Medicaid provider shall retain medical, professional, financial, and business records pertaining to services and goods furnished to a Medicaid recipient and billed to Medicaid for a period of 5 years after the date of furnishing such services or goods. The agency may investigate, review, or analyze such records, which must be made available during normal business hours The provider is responsible for furnishing to the agency, and keeping the

agency informed of the location of, the provider's Medicaid-related records.

22. Section 409.913(15), in pertinent part, authorizes Petitioner to seek remedies provided by law if:

(b) The provider has failed to make available or has refused access to Medicaid-related records to an auditor, investigator, or other authorized employee or agent of the agency, the Attorney General, a state attorney, or the Federal Government;

(c) The provider has not furnished or has failed to make available such Medicaid-related records as the agency has found necessary to determine whether Medicaid payments are or were due and the amounts thereof;

* * *

(e) The provider is not in compliance with provisions of Medicaid provider publications that have been adopted by reference as rules in the Florida Administrative Code; with provisions of state or federal laws, rules, or regulations; with provisions of the provider agreement between the agency and the provider; or with certifications found on claim forms or on transmittal forms for electronically submitted claims that are submitted by the provider or authorized representative, as such provisions apply to the Medicaid program.

23. Section 409.913(16)(c) authorizes Petitioner to impose a fine of up to \$5,000.00 for each violation described in section 409.913(15).

24. Florida Administrative Code Rule 59G-9.070(3)(q) defines a "violation" as any "omission or act" contrary to the Medicaid laws. Rule 59G-9.070(3)(h) defines an "[o]ffense" as

the violations contained in an audit report. Rule 59G-9.070(7)(e) provides for a fine of \$1000.00 per violation, if a first offense, for a failure to comply with Medicaid laws.

25. Florida Administrative Code Rule 59G-5.020(1) incorporates the General Handbook's record keeping requirements. The General Handbook provides in pertinent part:

Medicaid requires that the provider retain all business records as defined in 59G-1.010(3), F.A.C., medical-related records as defined in 59G-1.010(154), F.A.C., and medical records as defined in 59G-1.010(160), F.A.C., on all services provided to a Medicaid recipient.

* * *

Right to Review Records

Authorized state and federal agencies and their authorized representatives may audit or examine a provider's or facility's records. This examination includes all records the agency finds necessary to determine whether Medicaid payments amounts were or are due. This requirement applies to the provider's records for which the provider is the custodian. The provider must give authorized state and federal agencies and their authorized representatives access to all Medicaid patient records and to other information that cannot be separated from Medicaid-related records.

* * *

At the time of the request, all records must be provided regardless of the media format on which the original records are retained by the provider. All Medicaid records must be reproduced onto paper copies.

* * *

Incomplete Records

Providers who are not in compliance with the Medicaid documentation and record retention policies described in this chapter may be subject to administrative sanctions and recoupment of Medicaid payments. Medicaid payments for services that lack required documentation or appropriate signatures will be recouped.

General Handbook, Record Keeping Requirements, 2-55 - 2-57 (emphasis added).

26. Rule 59G-1.010(30) defines "business records" in pertinent part as:

documents related to the administrative or commercial activities of a provider, as contrasted with medical or professional activities. Business records made available to Medicaid must be dated and legible. Business records include, as applicable . . . personnel . . . documents, all administrative or commercial records that are customarily prepared or acquired and are customarily retained by the provider, and administrative or commercial records that are required by statute or rule to be prepared or acquired and retained by the provider. Records may be on paper, magnetic material, film or other media.

27. Florida Administrative Code Rule 59G-1.010(154) defines "Medicaid-related records" as:

records that relate to the provider's business or profession and to a Medicaid recipient. Medicaid-related records include records related to non-Medicaid customers, clients, or patients, to the extent that the documentation is shown by the department to be necessary to determine a provider's entitlement to payments under the Medicaid program.

28. The DD Waiver Handbook, Appendix A, page A-1, requires Petitioner and APD to establish performance standards for all contracted recipient services and service provision quality in the delivery of contracted Medicaid waiver services. The terms and conditions by which developmentally disabled services providers are bound are based, in part, on the Core Assurances. The DD Waiver Handbook, Appendix A, page A-10, requires providers and their employees to receive training in Core Assurances topics, including Zero Tolerance and HIV/AIDS; to document this training; and to keep proof of training on file and accessible so that it is available for compliance monitoring and review.

29. The DD Waiver Handbook, Appendix A, page A-10, section 2.1(H), requires Medicaid direct service providers to complete the APD-developed Zero Tolerance Training course before providing direct care services, and to complete further training at least once every three years. Providers and their employees must receive training in Zero Tolerance, document this training, and keep proof of training on file and accessible so that it is available for compliance monitoring and review.

30. The DD Waiver Handbook addresses qualifications required for residential rehabilitation providers, stating in pertinent part:

Direct care staff providing residential rehabilitation services must be at least 18 years of age and have a high school diploma or equivalent and one year of experience working in a medical, psychiatric, nursing or child care setting or in working with persons who have a developmental disability. College, vocational, or technical training equal to 30 semester hours, 45 quarter hours, or 720 classroom hours can substitute for the required experience.

31. The DD Waiver Handbook, as part of its reimbursement and monitoring documentation requirements, mandates that providers maintain copies of individual implementation plans for consumers and maintain quarterly summaries documenting consumer progress.

32. The DD Waiver Handbook, Appendix A, also requires providers to train staff in, among other things, cardiopulmonary resuscitation, infection control techniques, and prevention and management of HIV/AIDS, and other areas set forth in section 381.0035, and to develop and maintain written procedures and policies that address staff training and specify how staff training will be carried out. The DD Handbook specifies that proof of annual or required updated training must be maintained on file for review.

33. The MPA states in section (5), "Provider Responsibilities," that the Medicaid provider must: "(b) Keep, maintain, and make available in a systematic and orderly manner all medical and Medicaid-related records as AHCA requires for a

period of at least five (5) years." Additionally, section (3) of the MPA, entitled "Compliance," requires Medicaid providers to comply with local, state, and federal laws, rules, regulations, and policy statements applicable to the Medicaid program, including the Medicaid Provider handbooks issued by Petitioner.

34. For the reasons set forth in the Findings of Fact, Petitioner demonstrated, by clear and convincing evidence, that Respondent violated the foregoing statutes, rules, regulations, Medicaid Handbook provisions, and MPA provisions. Accordingly, Petitioner demonstrated, by clear and convincing evidence, that Respondent violated federal and state Medicaid laws as charged in the Sanction Letter dated February 22, 2012.

RECOMMENDATION

Based upon the foregoing Findings of Fact and Conclusions of Law, it is hereby RECOMMENDED that the Agency for Health Care Administration enter a Final Order determining that Respondent violated federal and state Medicaid laws as charged in the February 22, 2012 Sanction Letter, and imposing a fine of \$7,000.00.

DONE AND ENTERED this 3rd day of December, 2012, in
Tallahassee, Leon County, Florida.



CATHY M. SELLERS
Administrative Law Judge
Division of Administrative Hearings
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Filed with the Clerk of the
Division of Administrative Hearings
this 3rd day of December, 2012.

ENDNOTES

- ^{1/} All references are to 2012 Florida Statutes.
- ^{2/} The Medicaid Program is the federal-state medical assistance program authorized by Title XIX of the Federal Social Security Act, pursuant to which the State of Florida provides medical goods and services to eligible indigent recipients. See 42 U.S.C. §1396(a) and 42 C.F.R. Parts 400, 430-455; see also §§ 409.901(13)-(14), Fla. Stat.
- ^{3/} Respondent operates its group home under AHCA Provider License No. 230977 and APD Provider License No. 10-2619.
- ^{4/} To become enrolled as a Medicaid provider for the developmentally disabled in Florida, a provider applies with Petitioner and the Agency for Persons with Disabilities ("APD"). Upon approval for enrollment in the Medicaid program, the provider enters into the MPA with Petitioner.
- ^{5/} MPI is the entity charged with ensuring the integrity of Florida's Medicaid Program. Among other statutory duties, MPI oversees the activities of Medicaid providers; conducts reviews,

investigations, and audits of Medicaid providers; and imposes sanctions on Medicaid providers for Medicaid program violations.

^{6/} Zero Tolerance training is required to be completed at least once every three years. See Florida Medicaid Developmental Disabilities Waiver Services Coverage and Limitations Handbook, November 2010, Appendix A, section 2.1.

^{7/} Delmarva is an organization under contract with APD to review providers that render services to the developmentally disabled through the Development Disabilities Waiver Program.

^{8/} The document purported to be the Delmarva inspection report was unauthenticated and therefore could not be verified as being a true and accurate copy of that report. Moreover, it is not relevant to this proceeding because it would only address documentation in Respondent's files on the date Delmarva conducted its inspection—not on the date Petitioner conducted its inspection.

^{9/} See Florida Medicaid Developmental Disabilities Waiver Services Coverage and Limitations Handbook, November 2010, page 1-24.

COPIES FURNISHED:

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NOTICE OF RIGHT TO SUBMIT EXCEPTIONS

All parties have the right to submit written exceptions within 15 days from the date of this Recommended Order. Any exceptions to this Recommended Order should be filed with the agency that will issue the Final Order in this case.