

STATE OF FLORIDA
DIVISION OF ADMINISTRATIVE HEARINGS

AGENCY FOR HEALTH CARE
ADMINISTRATION,

Petitioner,

vs.

Case No. 13-4642MPI

ALTERNATIVE CARE
STAFFING, INC.,

Respondent.

_____ /

RECOMMENDED ORDER

Administrative Law Judge John D. C. Newton, II, of the Division of Administrative Hearings conducted the final hearing in this case on February 19 and 20, 2014, in Tallahassee, Florida.

APPEARANCES

For Petitioner: Karen A. Brodeen, Esquire
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For Respondent: Frank P. Rainer, Esquire
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STATEMENT OF THE ISSUES

1. Are the Medicaid payment claims of Respondent Alternative Care Staffing, Inc. (Alternative), for companion care

services authorized by support plans and waiver support coordinators and provided in the community to recipients residing in group homes reimbursable services under the Home and Community-Based Waiver (HCB Waiver) program?

2. Are Alternative's Medicaid service claims for allegedly unauthorized activities reimbursable under the HCB Waiver program, or may the Agency for Health Care Administration (Agency) recoup payment for the claims?

3. Did Alternative receive payment for services provided by ineligible staff?

4. Are Alternative's allegedly overlapping Medicaid service claims actually overlapping?

5. Did the Agency meet: (1) its burden of proof for imposing fines, and (2) its statutory obligations before imposing fines?

6. Whether or how much, due to mitigating factors, the Agency can fine Alternative for the items identified as overpayments in Agency's Exhibit 6, Amended Final Audit Report dated May 25, 2011; subsequently, modified in Agency's Exhibit 7, Current Overpayment Calculations and Agency Work Papers; and finally modified during the hearing as shown in Exhibit A to the proposed recommended orders and this Recommended Order.

PRELIMINARY STATEMENT

The case was originally filed on July 6, 2011, and assigned DOAH Case No. 11-3343MPI. The parties filed an agreed motion to abate proceedings on August 18, 2011, to pursue settlement. The motion was granted. On November 26, 2013, the Agency moved to reopen the case. The motion was granted. The matter was reopened as DOAH Case No. 13-4642MPI and scheduled for hearing on February 19 and 20, 2014. The hearing was conducted as noticed.

The Agency called Kristen Koelle and Robi Olmstead as witnesses. The Agency Exhibits 1 through 13 were accepted into evidence.

Alternative offered the testimony of Joyce Rowe and Ron Rowe. Alternative's Exhibits A through D and G through J were accepted into evidence. Alternative's Exhibit K was admitted as a substitute for Alternative's Exhibits E and F.

Transcript, Volumes I through III, were filed on March 10, 2014. On April 2, 2014, Alternative filed an Unopposed Motion for Enlargement of Time to File the Proposed Recommended Orders. The motion was granted. The parties requested and were granted additional time for filing proposed recommended orders in excess of 40 pages.

The parties timely filed their proposed orders. The proposed orders have been considered in the preparation of this Recommended Order. During the hearing and in the course of this

matter, and in the preceding DOAH Case No. 11-3343MPI, the parties resolved many of the disputed claims for recoupment. This Recommended Order addresses only the remaining disputed claims. They are identified in the jointly prepared spreadsheet attached to each party's proposed recommended order.

The audit period for this matter is January 1, 2008, through June 30, 2009. During that time period, different versions of statutes, rules, and handbooks were in effect. For the most part, the relevant provisions of various versions do not materially differ. All citations are to the 2008 version of statutes, rules, and handbooks, unless otherwise indicated.

FINDINGS OF FACT

Background

1. The Medicaid program is a federal and state partnership that pays the costs of providing health care and related services to qualified individuals, including people with developmental disabilities. The Agency is the single state agency authorized to make payments for medical assistance and related services under Florida's Medicaid program. § 409.902, Fla. Stat. (2013).

2. The Legislature charged the Agency with overseeing the activities of Medicaid recipients and their providers and with recouping overpayments. §§ 409.913 and 409.913(1)(e), Fla. Stat. Florida law defines an "overpayment" as "any amount that is not authorized to be paid by the Medicaid program whether paid as a

result of inaccurate or improper cost reporting, improper claiming, unacceptable practice, fraud, abuse, or mistake.”

3. During the relevant time period, Florida law defined “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 medically unnecessary, upcoded, or fail to meet professionally recognized standard of health care.” § 401.913(1)(a), Fla. Stat. “Abuse may also include a violation of state or federal law, rule or regulation.” (Pet. Ex. 11, Provider General Handbook (Jan. 2007), p. 1083; Pet. Ex. 11, Provider General Handbook (July 2008), p. 1092). This definition is much broader than the everyday definition of abuse as a “corrupt practice or custom.”^{1/}

4. “Overpayment includes any amount that is not authorized to be paid by the Medicaid program whether paid as a result of inaccurate or improper cost reporting, improper claims, unacceptable practices, fraud, abuse or mistake.” (Pet. Ex. 11, Provider General Handbook (Jan. 2007), p. 1083; Pet. Ex. 11, Provider General Handbook (July 2008), p. 1092).

5. As part of the Agency’s fulfillment of the statutory directive to investigate overpayments, the Bureau of Medicaid Program Integrity (MPI) in the Office of the Inspector General routinely conducts audits.

6. A Medicaid provider is a person or entity that has voluntarily chosen to provide and be reimbursed for goods or services provided to eligible Medicaid recipients. A provider's participation requires an agreement with the Agency to provide services. Alternative has been a Medicaid provider since 2004.

7. Florida's Medicaid program includes a program for people with developmental disabilities. It uses the state and federal Medicaid funds for home and community-based services. The program is known as the Home and Community-Based Waiver or HCB Waiver.

8. Florida's Agency for Persons with Disabilities (APD) administers the HCB Waiver pursuant to statute. APD is responsible for the day-to-day operation of the HCB Waiver. APD is the primary point of contact and source of information for HCB Waiver providers, such as Alternative. The Interagency Agreement (Agreement) between the Agency and APD establishes the relationship between the two agencies and their obligations and roles in this mutual undertaking. Alternative and other providers are not parties to the Agreement

9. The Agreement's Delegation of Authority for Waiver Operation, Section B(2) (R. Ex. B), states:

Pursuant to the approved development disabilities home and community-based waivers, [the Agency] has authorized [APD] to operate the waivers on a day-to-day basis, in accordance with this agreement.

This agreement memorializes an arrangement under which APD will operate and make appropriate decisions based upon approved policy on behalf of and under the oversight of [the Agency].

10. The Agreement obligates both agencies to operate the waiver in accordance with laws, rules, regulations, and handbooks.

11. Section B(4)(c) of the Agreement requires the Agency to coordinate with APD "on all [waiver] administrative rules, amendments to rules, policies or regulations that pertain to the waiver." Section B(4)(g) places responsibility for recouping overpayments to HCB Waiver providers on the Agency.

12. Section B(4)(a) reserves to the Agency "final authority on all policies, procedures, rules, regulations, manuals, handbooks, and statewide quality assurance monitoring procedures pertaining to the development disabilities waivers."

13. Section B(5)(e) requires APD to advise the Agency in advance of any proposed regulations or manuals developed by APD. Section 5(g) obligates APD to assure payments to "providers are reconciled based upon individual cost plans in the DD [Developmental Disability] and F/SL [Family and Support Living] Waiver programs and are within the annual program budgets."

14. Under the HCB Waiver, recipients working with independent waiver service coordinators plan their services

according to the recipient's needs. The result is a detailed support or cost plan. The support plan articulates the services and the goals for each type of service needed. It is updated annually. A service authorization is developed from each support plan to specify the amount, by time and dollars, approved for each type of service. The service authorization documents also identify which Medicaid-contracted providers will provide each of the approved services. APD reviews and approves the support plans. The 2007 and 2008 versions of the Developmental Disabilities Services Coverage and Limitations Handbook (DD Handbook) specify in chapter 2-5 that in order for a recipient to receive a service, the service must be identified on the recipient's support plan approved by APD.

15. Providers, like Alternative, rely upon the support plans and service authorizations to determine what services to provide and if the services are authorized for payment.

16. At all times material to this case, Alternative has been a provider of HCB Waiver services to Medicaid recipients, pursuant to a Medicaid provider contract with the Agency and a Medicaid Waiver Services Agreement with APD. Alternative provides most services through independent contractors.

17. The complex requirements governing providers in the Medicaid program are explicated in rules of the Agency and in the Medicaid Provider General Handbook, adopted by rule.

18. More requirements for providers in the HCB Waiver are imposed by rules of APD and the DD Handbook, developed by APD and the Agency, and adopted by Agency rule.

19. For the time period in this case, the June 2007 and June 2008 versions of the Medicaid Provider General Handbook were in effect. For the time period of this case, the June 2007 and December 2008 versions of the DD Handbook were in effect.

The Chase

20. The Medicaid payment process differs from a typical commercial transaction. Robi Olmstead, administrator for the Agency's Office of the Inspector General, Medicaid Program Integrity, described the process as "pay and chase." The Agency accepts claims for payment at face value with very little review and promptly pays them. But the Agency has the authority to review claims long after payment and seek recoupment, "chase," if it determines the claim was not proper. The Agency's MPI office does the "chasing" by conducting provider audits.

21. In 2011, the Agency audited Alternative's claims for the period January 1, 2008, through June 30, 2009. Kristen Koelle, who conducted the audit, selected the time period to take into account the fact that Alternative was a relatively new provider and had a 12-month window of opportunity to submit new claims or void submitted claims. Typically, the Agency audits a

two-to-three year period of payments for providers with a longer history.

22. On November 4, 2010, the Agency sent a letter requesting records from Alternative and advising that it was conducting an audit. The letter sought records for 35 of Alternative's 85 Medicaid recipients to use as a cluster sample.

23. Alternative responded promptly and provided very organized records. The majority of issues identified in the audit involved documentation, not a failure to provide services.

24. The Agency uses a statistical formula to extrapolate overpayments from the records and claims of the samples.

25. The Agency issued a Preliminary Audit Report concluding that Alternative owed \$719,680.09 for overpayments for wrongly made and paid claims. After a typical process of communication, supplementation of records, and review of documents, the Agency issued a Final Audit Report reducing the amount to \$452,821.65.

26. By the time the hearing started, the Agency had reduced the amount in an Amended Final Audit Report to \$155,747.97 and had reduced the proposed fine from \$90,564.33 to \$31,149.59. By law, the Agency's audit report creates prima facie proof of overpayments, which a provider has a right to dispute. In this case, there is no dispute about the acceptability or application of the Agency's statistical formula for extrapolation. The

disputes are about which representative claims are properly input into the extrapolation formula.

27. During the hearing, Alternative agreed to several additional claims.

28. The parties jointly prepared an Appendix to their proposed recommended orders identifying the remaining disputed claims. It is attached as Exhibit A to this Recommended Order and adopted by reference. These are the claims the Agency maintains should be used in the formula to determine the full amount of the asserted overpayments. Alternative disagrees.

29. The remaining claims fall into four categories. They are: (1) companion services provided to recipients living in group homes; (2) unauthorized activities; (3) overlapping of support services; and (4) ineligible staff.

30. Services are measured in "units of service" of 15 minutes each.

Companion Services for Recipients Living In Group Homes

31. During the time period when the June 2007 DD Handbook was in effect, Alternative collectively provided and was paid for 640 units of service to four waiver recipients who resided in licensed residential facilities or group homes. The recipients are identified in this record as Recipients 7, 13, 14, and 25.

32. Companion services are non-medical care supervision and socialization activities provided to an adult individually. They

may be activities such as assistance with grocery shopping, housekeeping, or visiting the library. (DD Handbook, 2007, Chap. 2-27).

33. The June 2007 version of the DD Handbook states: "Recipient's [sic] living in licensed residential settings, excluding foster homes, are not eligible to receive these [companion] services." (DD Handbook, 2007, Chap. 2-28). The December 2008 version of the DD Handbook states that companion care services may be provided to residents of a licensed group or foster home.

34. APD approved the support plans for Recipients 7, 13, 14, and 25. The plans plainly stated that each recipient lived in a residential living facility (group home). The support plans also plainly identified companion services among the services to be provided. (Pet. Ex. 8, pp. 491-501; 591-604; 628-636; and 857-864.)

35. In addition, each recipient's waiver support coordinator provided a service authorization for the companion services.

36. Alternative provided companion services as indicated in the APD approved support plans and the service authorizations.

37. Alternative's consistent experience with providing companion services to residents in living facilities was that APD

approved and paid for providing those services under the June 2007 DD Handbook.

38. Because of the issues raised in the audit, in an e-mail dated May 19, 2011, Joyce Rowe, president of Alternative, wrote Denise Oetinger, regional program supervisor for APD, asking about authorized services during the period January 2008 to June 2009. Ms. Oetinger was an APD liaison to providers who Alternative relied upon to explain the many requirements and conditions of the DD Handbook. Ms. Rowe's e-mail said:

In our preliminary [Agency audit] review we had four individuals which Alt Care received services authorizations for that lived in a group home [stet]. We provided the services out in the community.

Kristen Koelle with AHCA Audit Recovery stated in the handbook of limitations up to 12/3/2008 we were not allowed to provide companion services to any individual living in a licensed facility. Of course they wanted to recoup thousands of dollars from our company. Do we have any special provisions or documentation why we were getting these service authorizations sent to us and getting paid for a service which was unauthorized?

I called one of the support coordinators because they are responsible in a sense for sending the authorizations. I was told to e-mail you in hope for some answers.

39. Ms. Oetinger replied^{2/}:

Ms. Rowe, Companion can be provided to an individual living in a licensed facility, but it must be delivered in the community. So they must leave the home they live in and

do something outside the home. This has not changed from handbook to handbook. I will ask that our inter-agency liaison communicate with Kristen Koelle. Thank you for bringing this to our attention and I will get back to you as I have more information.

40. In light of the Agreement, the way in which the Agency and APD held themselves out to providers, the relationship between APD and providers, the practice of relying upon APD for guidance about the HCB Waiver, the approval of the support plans, and the subsequent issuance of service authorizations, Alternative reasonably relied upon APD-approved support plans and the waiver support coordinator-provided service authorizations when providing and obtaining payment for companion services to Recipients 7, 13, 14, and 25.

41. In addition, the weight of the persuasive evidence establishes that Recipients 7, 13, 14, and 25 are the only recipients living in a licensed residential facility for which Alternative received payments for companion services provided during the audit period. Consequently, using those claims to extrapolate to a recipient-wide population is not factually supported.

Ineligible Staff

42. Alternative employee Ben Alvarez provided personal care assistance and companion services to Recipient 3. He also provided in-home support services to Recipient 15.

43. For the time period during which Mr. Alvarez provided personal care assistance services, the December 2008 DD Handbook was in effect. Chapter 1-25 required individuals providing the service to "have at least one year of experience working in a medical, psychiatric, nursing or childcare setting or working with recipients who have a developmental disability." It permitted substitution of specified educational achievements for the experience.

44. Alternative did not have documentation that Mr. Alvarez had the specified alternative educational achievements. It did not have documentation that Mr. Alvarez had worked in a medical, psychiatric, nursing, or childcare setting.

45. Alternative did have documentation that Mr. Alvarez had six years' experience caring for an adult with developmental disabilities, providing services, including personal care, hygiene, grooming, bathing, and feeding. This individual was a relative of Mr. Alvarez. Nothing in the documentation establishes that the relative Mr. Alvarez was caring for was a Medicaid recipient. Deposition testimony establishes that the individual was a waiver recipient at the time of the deposition, February 13, 2014. But it does not establish that he was a recipient at the time Mr. Alvarez provided services. The deposition is also not part of the documentation maintained by Alternative.

46. In sum, the weight of the persuasive evidence shows Alternative did not have documentation that Mr. Alvarez met the experience or substitute educational requirements of chapter 1-25.

47. For the time period during which Mr. Alvarez provided companion services, the December 2008 DD Handbook was in effect. Chapter 1-18 required individuals providing the service to "have at least one year of experience working in a medical, psychiatric, nursing or childcare setting or working with recipients who have a developmental disability." It also permitted substitution of specified educational achievements for the experience.

48. The weight of the persuasive evidence shows that Alternative did not document that Mr. Alvarez met the experience or substitute educational requirements of chapter 1-18.

49. Chapter 1-23 of the DD Handbook imposes the same experience and substitution education requirements for providers of in-home support services as required for companion and personal care services. As with them, the weight of the persuasive evidence shows that Mr. Alvarez did not meet the experience or substitute educational requirements.

50. An Alternative employee, known as Ora or Paul Richmond, provided 16 units of companion services to Recipient 11 on March 2, 2009. At that time, the December 2008 DD Handbook was

in effect. Chapter 1-18, above, established the experience and requirements for providers of the service.

51. Alternative's documentation establishes that Mr. Richmond lived with, and helped care for, his disabled father from 2006 to 2008. Among other things, he helped his father with cooking, cleaning, laundry, and bill paying. Alternative's documentation does not identify what disability Mr. Richmond's father had, and it does not indicate that Mr. Richmond's father was a Medicaid recipient.

52. The weight of the persuasive evidence shows Alternative did not document that Mr. Richmond met the experience or substitute educational requirements of chapter 1-18.

53. The Agency paid Alternative for companion services provided by Christopher Rose to Recipients 13 and 14. Mr. Rose provided the services during a period governed by the 2007 DD Handbook.

54. The companion provider requirements of chapter 1-18 of that DD Handbook are the same as those of chapter 1-18 of the 2008 version.

55. Alternative's documentation for Mr. Rose showed that he had worked as a private-duty companion for an individual with retardation for approximately three years. The documentation did not indicate who the individual was, whether the individual was a Medicaid recipient, or where the services were provided.

56. The weight of the persuasive evidence shows Alternative did not document that Mr. Rose met the experience or substitute educational requirements of chapter 1-18.

Documented Activity Support for Billing

57. The Agency paid Alternative for 16 units of service for companion services provided to Recipient 6 on March 27, 2008. The sole documented description for the activity involved was "enjoyed attending alternative office party." It does not document what the activities were or where the party was.

58. Ms. Rowe testified that the party was not accurately described and that the office social was held in Bradenton, Florida, at Bayshore Gardens. But that is not what the documentation shows.

59. The support plan for Recipient 6 provided that the companion provider "will help [the recipient] participate in activities outside of his home. [Recipient] will also explore volunteer opportunities available to him." This is in support of the larger goal of teaching him to interact in the community.

60. The documentation for the office party does not document a connection between the support plan and the activity.

61. The Agency paid Alternative for 14 units of companion services provided to Recipient 12 on April 16, 2008.

62. The support plan goals for Recipient 12 are to stay home, be active with his family, identify someone to care for

him, go out into the community, be involved in community activities, maintain a healthy weight, and maintain good dental health.

63. Alternative's documentation for the services on April 16 reports only "[a]ss. with indoor activities." It provides no other descriptions of the activities. The information is not sufficient to determine what relationship, if any, the activities had to the recipient's goals.

64. Ms. Rowe testified that the recipient had gone to his community clubhouse that day. But that is not what the entry says, in contrast to an April 17, 2008, entry which specified clubhouse activities. In addition, Ms. Rowe was not the service provider and did not provide information about how she knew what that individual did that day. Her testimony was not persuasive.

65. The Agency paid Alternative for 14 units of service for companion services provided to Recipient 12 on April 30, 2008.

66. Alternative's documentation for the services on April 30, 2008, reports only "[a]ss. with activities at home." It provides no other descriptions of the activities. The information is not sufficient to determine what relationship, if any, the activities had to the recipient's community-oriented goals.

67. The Agency paid Alternative for 20 units of service for companion services provided to Recipient 18 on January 7, 2008.

68. The recipient's support plan for companion services focuses on going out into the community to eat, visit parks, go to places of interest, and attend parties.

69. Alternative's documentation for the services describes the activities from 1:30 p.m. to 4:30 p.m., as "[p]repare lunch, ate 100%, change underwear, small walk, watch some TV by request, lie for a rest on sofa." Lunch preparation and changing clothes are not companion services. They are personal care assistance services. The Agency reasonably deducted two units of service for these claims.

70. Also on January 7, 2008, a different provider of companion services describes the activities from 4:30 p.m. to 6:30 p.m., as "watched t.v. [and] chilled out today." These activities are not activities related to the companion services of the support plan. There is no documentation supporting the claim for payment for the time between 4:30 p.m. and 6:30 p.m. The Agency reasonably denied payment for two units of service for this time period.

71. The Agency paid Alternative for 20 units of service for companion services provided to Recipient 18 on March 1, 2009.

72. The documentation for those services states only: "We stayed in due to weather." It provides no information about the weather, what activities the recipient engaged in while "in," or why the weather precluded all community activities. The

documentation does not support the claim for billing 20 units of service.

Unauthorized Activities

73. The Agency paid Alternative for 12 units of service for in-home support services provided to Recipient 15 on February 21, 2008.

74. The recipient's support plan described his goals to be advanced by in-home support services as "learn how to better take care of his apartment, cook for himself, clean his apartment, do his laundry, and learn to make independent life decision[s]."

75. Alternative's documentation describes the day's activities as "[Recipient] and I went to the library. Then watch [sic] a little TV. I left early because he said he was tired."

76. Watching television is not an activity within the authorized in-home support services. It is reasonable to reduce the claimed units of service by one to adjust for the time spent providing an unauthorized service.

77. The Agency paid Alternative for 20 units of service for in-home support services provided to Recipient 15 on April 2, 2008.

78. Alternative's documentation from the caregiver describing the services states: "[Recipient] and I went to the store to pick up several items. Then came back to his place and played dominos."

79. The weight of the persuasive evidence establishes that there is no connection between playing dominos and the services for which in-home support was authorized.

80. Deducting one unit of service from the services paid for to account for time spent playing dominos is reasonable.

81. The Agency paid Alternative for 20 units of service for in-home support services provided to Recipient 15 on June 25, 2009.

82. The caregiver provided multiple services that day. The documented activities included watching two movies, Bolt and the Spiderwick Chronicles.

83. The weight of the persuasive evidence establishes that there is no connection between watching the movies and the services for which in-home support was authorized. Deducting the claimed units of service to Recipient 15 by one, as the Agency recommends, is a reasonable accounting for the time spent watching the movies.

84. On February 20, 2008, Alternative billed for 32 units of service for companion services for Recipient 26.

85. The support plan for Recipient 26 identifies Alternative as providing the companion services for his goal to "want to do some volunteer work and learn how to socialize with others [sic] people that will not take advantage of me."

86. Alternative's documentation for the companion services on February 26, 2008, includes "doing laundry at home and babysitting nephew." These activities are not within the scope of the support plan for companion services or directed to a related goal.

87. Deducting a unit of service for Recipient 26 on February 20, 2008, by one to account for the laundry and babysitting is reasonable.

88. On January 22, 2008, Alternative billed for 24 units of service for companion services for Recipient 33.

89. The recipient's support plan lists the following goals that require companion services: "work on building practical skills, making choices, and verbally communicating opinions, wants and needs to others. I want to continue learning to be safe within [t]his community."

90. Alternative's documentation to support payment describes the day's activities as "[t]ook [Recipient] to the Library, [illegible] Target, Dollar, [illegible], watched a movie at his house."

91. Watching television at the recipient's house does not fall within the scope of the Recipient's companion services.

92. Deducting a unit of service for that day by one to account for the time spent watching a movie is reasonable.

Overlapping and Unsupported Claims

93. The Agency paid Alternative for respite care to Recipient 16 from noon to 6:00 p.m., 34 units of service, on March 3, 2009.

94. The narrative by Van Greenlaw for the respite care log entry on March 3, 2009, reports: "I arrived today got lunch ready, he went to the gym, came back, plays some of his games, after that he got ready to go to church with [illegible], day ends."

95. The work hours are changed by strike-throughs to 1:30 p.m. to 6:00 p.m. on another copy of the log. The log does not show the date of the change or who made the change.

96. The personal care assistance service log for March 3 shows Mr. Greenlaw as working from noon to 6:00 p.m.

97. Another copy of the personal care assistance log shows a struck-through revision indicating that personal care services were provided between noon and 1:30 p.m. The log does not show the date of the change or indicate who made the change.

98. The revised service logs and the invoice for the week's services by Mr. Greenlaw do not reconcile. The invoice shows a total of 2.5 hours (10 units of service) of companion services from 12:30 p.m. to 2:30 p.m. and 4.5 hours (18 units of service) respite care from 2:30 p.m. to 6:00 p.m. (Pet. Ex. 8, p. 752).

There are no logs documenting provision of companion care services.

99. Alternative billed for 18 units of respite service for March 3, 2009, and six units of service for companion services, not the personal care assistance services identified in the log. (Koelle, Tr. at 148-149, Pet. Ex. 752).

100. In addition to the reconciliation inconsistency, the invoice has a math error. The actual amount of time between 2:30 p.m. and 6:00 p.m. is only 3.5 hours (14 units of service) for respite care, not the invoiced 4.5 hours.

101. Alternative concedes one hour of overbilling. It offers no explanation for billing for companion services when the only record of services is for personal care and respite care.

102. The documentation only supports billing for 14 units of respite care service on March 3, 2009, for Recipient 16. Therefore, the billable units of service for Recipient 16 on March 3, 2009, should be reduced by 20, from 34 to 14, when applying the Agency's extrapolation formula.

Training of Ora Richmond

103. Alternative hired Ora (Paul) Richmond as a caregiver on February 7, 2009. The first date that there is a record of him providing recipient services is March 2, 2009.

104. Mr. Richmond received his zero tolerance training on March 10, 2009. He received his "Core Competency" training on January 10, 2010.

105. The Agency maintains that Mr. Richmond did not have the training required by the applicable DD Handbook when he provided services on March 2, 2009, and that the 16 units of service for that day should be disallowed.

106. The Agency refers to the December 3, 2008, DD Handbook. The handbook took effect on December 3, 2008. The provision, section 2.1(H), imposing the new zero tolerance training requirement, provided: "All direct service providers hired after 90 days from the effective date of this rule are required to complete the Agency for Persons with Disabilities developed Zero Tolerance Training course prior to rendering direct care services (as a pre-service training activity)." Mr. Richmond was hired less than 90 days from the effective date of the requirement.

107. Section 2.1(G) of the provision requiring "Core Competency" training stated: "All direct service providers are required to complete training in the APD's Direct Care Core Competencies Training, or an equivalent curriculum approved by APD within 90 days of employment or enrollment to provide the service." The 90th day after Mr. Richmond's employment was May 8, 2009. Therefore, he was not in violation of the core

competency requirement when he provided services to Recipient 11 on March 2, 2009. However, as determined in Findings of Fact 50 through 52, he did not have the experience required to serve as a caregiver.

CONCLUSIONS OF LAW

108. The Division of Administrative Hearings has jurisdiction over the parties and the subject matter of this proceeding. §§ 120.569 and 120.57(1), Fla. Stat. (2013).

109. The statutes and rules in effect during the period for which services were provided govern this dispute. Toma v. Ag. for Health Care Admin., Case No. 95-2419, RO at ¶ 213 (Fla. DOAH July 26, 1996; Fla. AHCA Sept. 24, 1996). This includes the provider handbooks pertinent to this case: the Medicaid Provider General Handbook, and the Developmental Disabilities Waiver Services Coverage and Limitations Handbook, which are promulgated as rules.

110. The Agency is empowered to "recover overpayments . . . as appropriate." § 409.913, Fla. Stat. An "overpayment" includes "any amount that is not authorized to be paid by the Medicaid program whether paid as a result of inaccurate or improper cost reporting, improper claiming, unacceptable practices, fraud, abuse, or mistake." § 409.913(1)(e), Fla. Stat.

111. Payments are not "authorized to be paid by the Medicaid program" when the provider has not complied with section 409.913(7), which at all times material to this case provided, in pertinent part, as follows:

When presenting a claim for payment under the Medicaid program, a provider has an affirmative duty to supervise the provision of, and be responsible for, goods and services claimed to have been provided, to supervise and be responsible for preparation and submission of the claim, and to present a claim that is true and accurate and that is for goods and services that:

* * *

(e) Are provided in accord with applicable provisions of all Medicaid rules, regulations, handbooks, and policies and in accordance with federal, state, and local law.

(f) Are documented by records made at the time the goods or services were provided, demonstrating the medical necessity for the goods or services rendered. Medicaid goods or services are excessive or not medically necessary unless both the medical basis and the specific need for them are fully and properly documented in the recipient's medical record.

The agency may deny payment or require repayment for goods or services that are not presented as required in this subsection.

112. Recoupment of overpayments is one remedy that the Agency is authorized to seek to remediate proven charges under what, in 2008, was section 409.913(15). Colonnade Med. Ctr., Inc. v. Ag. for Health Care Admin., 847 So. 2d 540 (Fla. 4th DCA

2003) (confirming the Agency's authority to recover overpayments to remediate proven charges under what was then section 409.913(14)). Section 409.913(15) provides, in pertinent part, as follows:

The agency may seek any remedy provided by law, including, but not limited to, the remedies provided in subsections (13) and (16) and s. 812.035, if:

* * *

(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.

113. The Agency bears the burden of establishing an alleged Medicaid overpayment by a preponderance of the evidence. S. Med. Servs., Inc. v. Ag. for Health Care Admin., 653 So. 2d 440, 441 (Fla. 3d DCA 1995); Southpointe Pharmacy v. Dep't of HRS, 596 So. 2d 106, 109 (Fla. 1st DCA 1992). The Agency's burden of proof with respect to the imposition of fines is clear and

convincing evidence. Dep't of Banking and Fin. v. Osborne Stern & Co., 670 So. 2d 932, 935 (Fla. 1996).

114. Although the Agency bears the ultimate burden of persuasion and must present a prima facie case, section 409.913(20) provides that "[i]n meeting its burden of proof . . . , the agency may introduce the results of [generally accepted] statistical methods as evidence of overpayment." In addition, section 409.913(22) provides that "[t]he audit report, supported by agency work papers, showing an overpayment to the provider constitutes evidence of the overpayment." Thus, the Agency can make a prima facie case by proffering a properly supported audit report, which must be received in evidence. See Full Health Care, Inc. v. Ag. for Health Care Admin., Case No. 00-4441 (Fla. DOAH June 25, 2001; Fla. AHCA Sept. 28, 2001).

115. If the Agency makes a prima facie case as outlined by the statute, then it is "incumbent upon the provider to rebut, impeach, or otherwise undermine AHCA's evidence." Ag. for Health Care Admin. v. Bagloo, Case No. 08-4921, RO at p. 33 (Fla. DOAH Sept. 10, 2009; Fla. AHCA Nov. 8, 2010).

116. The Agency presented a prima facie case by presenting its properly supported audit report, including work papers. Alternative did not dispute the Agency's sampling or extrapolation. It, however, disputed whether some of the sample

claims in the four categories identified in the Findings of Fact were properly used in the extrapolation.

117. The issues in this case come down to how the following sections of the DD Handbook, Statements of Policy and Application of the HCB Waiver program by APD, and Florida Statutes are appropriately interpreted and applied to the proven facts and whether, by law, the Agency is estopped from recouping payment for companion services provided in the community to residents of licensed facilities.

Developmental Disabilities Handbook and General Handbook Requirements

118. The DD Handbook in effect at the time the Agency paid Alternative for providing companion services to residents of licensed facilities did not allow payment for the services. This Alternative acknowledges. But it argues that the facts here present one of the exceptional cases in which estoppel may be applied against the state. The Agency does not dispute that estoppel may be applied in a proceeding before DOAH. But it argues that in this case the facts do not meet the standards for application of estoppel against the state.

119. In order to establish estoppel, the party must show a misrepresentation of a material fact contrary to a later claimed position, reliance on the misrepresentation, and a detrimental change in position because of the representation and reliance.

Council Bros., Inc. v. City of Tallahassee, 634 So. 2d 264, 266 (Fla. 1st DCA 1994). To establish estoppel against the state, a party must also show affirmative conduct by the government beyond negligence, that not applying estoppel will cause a serious injustice, and that applying estoppel will not unduly harm the public interest. Alachua Cnty. v. Cheshire, 603 So. 2d 1334, 1337 (Fla. 1st DCA 1992). The compelling facts here establish proper circumstances for the application of estoppel.

120. The state, through APD, which is a partner with the Agency in administration of the waiver program and the providers' primary contact, made a material, although not deceitful or deliberate, misrepresentation that companion services provided to waiver recipients residing in licensed residential facilities were permitted if provided outside the residence. This is shown by APD's affirmative approval of the support plans that clearly provided for companion services for recipients clearly living in licensed residential facilities. This practice is confirmed by Ms. Oetinger's e-mail and the fact that waiver support coordinators also understood that the services could be provided and authorized by them.

121. Alternative relied upon the representations of APD by its practice of approving support plans and by providing the services to the benefit of the recipients. Requiring Alternative to repay substantial sums, when it provided the services, would

be a serious injustice. Applying estoppel will not unduly harm the public interest since the recipients received the benefit of the companion services.

122. For this reason, the payments to Alternative for companion services provided to residents of licensed residential facilities should not be disallowed or included in the recoupment calculation. There is an additional reason that the payments should not be used in the Agency's extrapolation.

123. Section 409.913(22) makes the Agency's audit report prima facie evidence of overpayment. The law expressly permits use of samples and a statistical formula to extrapolate overpayments. § 409.913(20), Fla. Stat.

124. The opinion in Agency for Health Care Administration v. Custom Mobility, Inc., 995 So. 2d 984, 986-987 (Fla. 1st DCA 2008), accepted the Agency's cluster sampling method as a means to carry out the requirements of section 409.913(20). In general, also, statistical extrapolation is a recognized, valid audit technique. Michigan Dep't of Educ. v. U.S. Dep't of Educ., 875 F.2d 1196, 1205 (6th Cir. 1989). But extrapolation is not presumptively conclusive. Michigan Dep't of Educ., 875 F.2d at 1205. The weight attributed to statistical evidence must be considered in light of the difficulties of "obtaining a claim-by-claim review." Michigan Dep't of Educ., 875 F.2d at 1205.

125. In this case a claim-by-claim review proved that Alternative's only claims for companion services provided to residents of licensed residential services were the claims for Recipients 7, 13, 14, and 25. Consequently, even if the Agency were not estopped from seeking recoupment, it could not extrapolate from those claims to the complete patient universe. It could only recoup the payments made for the services to those four recipients.

126. The APD Procedure No. APD 18-002, Provider Recoupment and Overpayment for Services Funded by the HCB Waivers, also supports concluding that the Agency should not recoup the companion service payments. It recommends at page 19, that if a service is approved in a cost plan and authorized by the support coordinator, that funds should not be recouped from the provider. (R. Ex. C.)

127. Alternative also relies upon the prohibition in section 409.907(5)(b) against "demanding repayment from the provider in any instance in which the Medicaid overpayment is attributable to error of the department in the determination of eligibility of a recipient." The reliance is unfounded. The reference to "department" is to the Department of Children and Families, which is the agency that determines eligibility for Medicaid services. § 414.095, Fla. Stat. Also, the Agency is

not contending that the recipients are not eligible for the HCB Waiver services.

Adequate Documentation

128. Section 409.913(7)(f) requires providers to make sure that claims for services are documented by records created contemporaneously with the provision of the service. Alternative did not adequately document services provided to Recipients 6, 12, 15, 16, 18, 26, 30, and 33, as determined in the Findings of Fact.

129. One example from the definitions section of the 2008 DD Handbook exemplifies the inadequacy of the service descriptions. The Daily Progress Note definition provides:

Daily, on the days that service was rendered[,] notes of the recipient's progress towards achieving his support plan goals for the period being billed or the summary describing the treatment or training provided to the recipient or task accomplished. For example: August 11, 2007, John prepared macaroni and cheese in the microwave successfully for his housemates. This activity supports a goal on his support plan to learn how to cook.

130. None of the questioned documentation in this case comes near to the degree of specificity given in this example. The documentation does not describe the relation to a goal at all, and provides, at best, a rudimentary activity description.

131. Section 409.913(7)(f) also requires providers to ensure and document that caregivers meet all eligibility,

education, and training requirements. As determined in the Findings of Fact, Alternative did not fulfill this requirement for Ben Alvarez, Ora (Paul) Richmond, and Christopher Rose.

Recoupment and Costs

132. The record does not permit a determination of the amount to be recouped after the adjustments described above, because it does not contain the extrapolation formula in a form that it can be applied. Consequently, this Order recommends that the Agency recalculate the extrapolated amount for recoupment and provide a point of entry for Alternative to contest that calculation, if disputed.

133. Similarly, the Agency seeks costs and interests as provided by sections 409.913(23) and 409.913(25)(c). But the record does not permit a determination of either. As the parties agreed at the conclusion of the hearing, those issues are reserved for the Agency to determine with Alternative being given a point of entry, if it disputes the Agency's determination.

Sanctions

134. Section 409.913(15)(e) authorizes the Agency to impose sanctions set forth in section 409.913(13) and (16), if the provider fails to comply with the Medicaid provider handbooks adopted by rule or the provisions of state and federal laws, rules or regulations.

135. Florida Administrative Code Rule 59G-9.070(7)

provides:

SANCTIONS: In addition to the recoupment of the overpayment, if any, the Agency will impose sanctions as outlined in this subsection. Except when the Secretary of the Agency determines not to impose a sanction, pursuant to Section 409.913(16)(j), F.S., the following sanctions shall be imposed as follows:

* * *

(e) Failure to comply with the provisions of the Medicaid provider publications that have been adopted by reference by rules, Medicaid laws, the requirements and provisions in the provider's Medicaid provider agreement, or the certification found on claim forms or transmittal forms for electronically submitted claims by the provider or authorized representative.

136. Florida Administrative Code Rule 59G-9.070(7)(e) provides for fines for failure to comply with the Medicaid handbooks. The maximum permitted fine is 20 percent of the overpayment amount.

137. Section 409.913(17) imposes the following requirements on the Agency:

(17) In determining the appropriate administrative sanction to be applied, or the duration of any suspension or termination, the agency shall consider:

(a) The seriousness and extent of the violation or violations.

(b) Any prior history of violations by the provider relating to the delivery of health

care programs which resulted in either a criminal conviction or in administrative sanction or penalty.

(c) Evidence of continued violation within the provider's management control of Medicaid statutes, rules, regulations, or policies after written notification to the provider of improper practice or instance of violation.

(d) The effect, if any, on the quality of medical care provided to Medicaid recipients as a result of the acts of the provider.

(e) Any action by a licensing agency respecting the provider in any state in which the provider operates or has operated.

(f) The apparent impact on access by recipients to Medicaid services if the provider is suspended or terminated, in the best judgment of the agency.

The agency shall document the basis for all sanctioning actions and recommendations.
(emphasis added).

138. There is no evidence in the record that the Agency considered these requirements in deciding to impose the maximum sanction permitted by law on Alternative.

139. Chapter 2-57 of the Provider General Handbook informs all providers that if they are not in compliance with the Medicaid documentation requirements and records retention requirements, they may be subject to administrative sanctions, as well as overpayment recoupment. (Pet. Ex. 11, Provider General Handbook (Jan. 2007), p. 1082; Pet. Ex. 11, Provider General Handbook (July 2008), p. 1091). Chapter 5-4 of the Provider

General Handbook describes a list of sanctions, any of which the Agency may impose. (Pet. Ex. 11, Provider General Handbook (Jan. 2007), p. 1084; Pet. Ex. 11, Provider General Handbook (July 2008), p. 1093).

140. Rule 59G-9.070(7)(e) provides fines for failure to comply with the Medicaid handbooks. The rule establishes a maximum fine of 20 percent of the overpayment amount.

141. Weighing all the factors in section 409.913(17) mitigates the imposition of any fine upon Alternative. There is no evidence of previous administrative sanctions, no evidence that Alternative continued any of the errors after being advised of them, no evidence of any negative effect on patient care, no evidence of an impact upon access to services, and no evidence of action against Alternative by other jurisdictions.

RECOMMENDATION

Based on the foregoing Findings of Fact and Conclusions of Law, it is RECOMMENDED that the Agency for Health Care Administration recalculate the amounts to be recouped applying the Procedure Codes, units of service, and amount per unit of service, as shown in the Appendix, with the following adjustments:

1. The Agency will not include in recoupment calculations, for the reason that Alternative provided the services to

residents of a licensed residential facility, any payments made for companion services provided to Recipients 7, 13, 14, and 25.

2. The Agency will include in recoupment calculations the amounts and units of service paid to Alternative for Mr. Alvarez's companion and personal care assistance services to Recipient 3 and his in-home support services to Recipient 15, as shown in the Appendix.

3. The Agency will include in recoupment calculations the amounts and units of service paid to Alternative for Mr. Richmond's services to Recipients 11, as shown in the Appendix.

4. The Agency will include in recoupment calculations the amounts and units of service paid to Alternative for Mr. Rose's companion services to Recipients 13 and 14, as shown in the Appendix.

5. The Agency will include in recoupment calculations the amounts and units of service paid to Alternative for the 16 units of service shown in the Appendix, as provided to Recipient 6 on March 27, 2008.

6. The Agency will include in recoupment calculations the amounts and units of service paid to Alternative for 14 units of companion service provided to Recipient 12 on April 16, 2008, as shown in the Appendix.

7. The Agency will include in recoupment calculations the amounts and units of service paid to Alternative for 14 units of companion service provided to Recipient 12 on April 30, 2008, as shown in the Appendix.

8. The Agency will include in recoupment calculations the amounts and units of service paid to Alternative for four units of service on January 7, 2008, to Recipient 18.

9. The Agency will include in recoupment calculations the amounts and units of service paid to Alternative for 20 units of service on March 1, 2009, to Recipient 18, as shown in the Appendix.

10. The Agency will include in the recoupment calculations the amounts and units of service paid to Alternative for one unit of in-home support service provided on February 21, 2008, to Recipient 15.

11. The Agency will include in the recoupment calculations the amounts and units of service paid to Alternative for one unit of in-home support service provided on April 2, 2008, to Recipient 15.

12. The Agency will include in the recoupment calculations the amounts and units of service paid to Alternative for one unit of service of in-home support services provided on June 25, 2009, to Recipient 15. (This should not be cumulative to the inclusion

in the calculation of all 20 units of service that day due to an ineligible staff providing the services.)

13. The Agency will include in the recoupment calculations the amounts and units of service paid to Alternative for one unit of companion service provided on February 20, 2008, to Recipient 26.

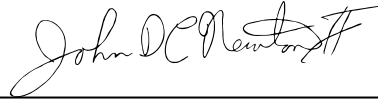
14. The Agency will include in the recoupment calculations the amounts and units of service paid to Alternative for one unit of companion service provided on January 22, 2008, to Recipient 33.

15. The Agency will include in the recoupment calculations the amounts and units of service paid to Alternative for 20 hours of service provided on March 3, 2009, for Recipient 16.

16. The Agency will not impose a sanction upon Alternative.

Jurisdiction is reserved to determine costs and interests, if the parties are not able to agree upon them and to consider a challenge, if any, to the extrapolation based upon the findings and conclusions of this Recommended Order.

DONE AND ENTERED this 28th day of July, 2014, in
Tallahassee, Leon County, Florida.



JOHN D. C. NEWTON, II
Administrative Law Judge
Division of Administrative Hearings
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Filed with the Clerk of the
Division of Administrative Hearings
this 28th day of July, 2014.

ENDNOTES

^{1/} Abuse definition, Meriam-Webster.com, <http://www.merriam-webster.com/dictionary/abuse>.

^{2/} This e-mail was accepted as direct evidence based upon the conclusion of the undersigned that the Agreement between the Agency and APD and Ms. Rowe's descriptions of her dealings with representatives of the two agencies establish that APD was an agent of the Agency and that the statement was, therefore, a party statement. See, Stone v. Palms W. Hosp., 941 So. 2d 514 (Fla. 4th DCA 2006). If the statement is treated as only hearsay, it corroborates the testimony of Ms. Rowe about her dealings with the Agency and APD and terms of the Agreement, which support the same finding.

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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.

Recip #	Line #	Date of Service	Proc Code	Procedure Code Description	UOS	Amount Per UOS	Payment Received	Dis-Allowed Amount	Agency Review Determination	Alternative Care Staffing, Inc. Response
3	6	1/17/2009	T1019	Personal Care Assistance	24	\$3.75	\$90.00	\$90.00	Ineligible Staff: Ben Alvarez - does not meet experience requirements	Response: Benjamin Alvarez met the experience requirements necessary to provide personal care assistance.
3	7	1/21/2009	S5135	Companion	4	\$3.37	\$13.48	\$13.48	Ineligible Staff: Ben Alvarez - does not meet experience requirements	Response: Benjamin Alvarez met the experience requirements necessary to provide companion services.
3	8	2/7/2009	T1019	Personal Care Assistance	24	\$3.75	\$90.00	\$90.00	Ineligible Staff: Ben Alvarez - does not meet experience requirements	Response: Benjamin Alvarez met the experience requirements necessary to provide personal care assistance.
3	9	2/18/2009	T1019	Personal Care Assistance	18	\$3.75	\$67.50	\$67.50	Ineligible Staff: Ben Alvarez - does not meet experience requirements	Response: Benjamin Alvarez met the experience requirements necessary to provide personal care assistance.
6	1	3/27/2008	S5135	Companion	16	\$3.63	\$58.08	\$58.08	Documented activity does not support billing, "Enjoyed attending Alternative office party."	Response: The services provided were appropriate pursuant to the support plan.
7	1	6/4/2008	S5135	Companion	24	\$3.63	\$87.12	\$87.12	Recipients living in licensed residential settings are not eligible to receive these services (Ch.	Response: The services provided were authorized by the support coordinator and a service authorization was

¹ Pursuant to the ALJ's instructions, the response provided is intended to be a brief response to the Agency's determinations, which will be fully explicated in the proposed recommended order. The response provided is not intended to encompass the entirety of Alternative Care's exceptions to the Agency's determinations and should not be construed as such.

7	2	6/11/2008	S5136	Companion	26	\$3.35	\$87.12	\$87.12	2-28).	issued.
7	3	7/9/2008	S5137	Companion	26	\$3.37	\$87.62	\$87.62	Recipients living in licensed residential settings are not eligible to receive these services (Ch. 2-28).	Response: The services provided were authorized by the support coordinator and a service authorization was issued.
7	4	7/16/2008	S5138	Companion	24	\$3.37	\$80.88	\$80.88	Recipients living in licensed residential settings are not eligible to receive these services (Ch. 2-28).	Response: The services provided were authorized by the support coordinator and a service authorization was issued.
7	5	7/31/2008	S5139	Companion	24	\$3.37	\$80.88	\$80.88	Recipients living in licensed residential settings are not eligible to receive these services (Ch. 2-28).	Response: The services provided were authorized by the support coordinator and a service authorization was issued.
7	6	8/4/2008	S5140	Companion	24	\$3.37	\$80.88	\$80.88	Recipients living in licensed residential settings are not eligible to receive these services (Ch. 2-28).	Response: The services provided were authorized by the support coordinator and a service authorization was issued.
7	7	8/12/2008	S5141	Companion	24	\$3.37	\$80.88	\$80.88	Recipients living in licensed residential settings are not eligible to receive these services (Ch. 2-28).	Response: The services provided were authorized by the support coordinator and a service authorization was issued.
7	8	9/11/2008	S5142	Companion	16	\$3.37	\$53.92	\$53.92	Recipients living in licensed residential settings are not eligible to receive these services (Ch. 2-28).	Response: The services provided were authorized by the support coordinator and a service authorization was issued.

11	10	3/2/2009	S5135	Companion	16	\$3.37	\$53.92	\$53.92	Ineligible Staff: Ora/Paul Richmond - does not meet experience requirements; Completed Core Competency Training 1/10 and Zero Tolerance 3/10	Response: Ora Richmond met the experience requirements necessary to provide companion services.
12	4	4/16/2008	S5135	Companion	14	\$3.63	\$50.82	\$50.82	Documentation does not support billing - Support Plan goal for companion is for community and social activities; no training towards goals	Response: The services provided were appropriate pursuant to the support plan.
12	5	4/30/2008	S5135	Companion	14	\$3.63	\$50.82	\$50.82	Documentation does not support billing - Support Plan goal for companion is for community and social activities; no training towards goals	Response: The services provided were appropriate pursuant to the support plan.
13	1	6/17/2008	S5136	Companion	24	\$2.43	\$58.32	\$58.32	1. Recipients living in licensed residential settings are not eligible to receive these services (Ch. 2-28); 2. Ineligible Staff (Christopher Rose)	Response 1: The services provided were authorized by the support coordinator and a service authorization was issued. Response 2: Christopher Rose met the experience requirements necessary to provide companion services.
13	2	6/18/2008	S5137	Companion	22	\$2.43	\$53.46	\$53.46	1. Recipients living in licensed residential settings are not eligible to receive these services (Ch. 2-28); 2. Ineligible Staff (Christopher Rose)	Response 1: The services provided were authorized by the support coordinator and a service authorization was issued. Response 2: Christopher Rose met the experience requirements necessary to provide companion services.

13	3	7/2/2008	S5138	Companion	24	\$2.25	\$54.00	\$54.00	1. Recipients living in licensed residential settings are not eligible to receive these services (Ch. 2-28); 2. Ineligible Staff (Christopher Rose)	Response 1: The services provided were authorized by the support coordinator and a service authorization was issued. Response 2: Christopher Rose met the experience requirements necessary to provide companion services.
13	4	7/7/2008	S5139	Companion	24	\$2.25	\$54.00	\$54.00	1. Recipients living in licensed residential settings are not eligible to receive these services (Ch. 2-28); 2. Ineligible Staff (Christopher Rose)	Response 1: The services provided were authorized by the support coordinator and a service authorization was issued. Response 2: Christopher Rose met the experience requirements necessary to provide companion services.
14	1	6/24/2008	S5133	Companion	22	\$2.25	\$49.50	\$49.50	1. Recipients living in licensed residential settings are not eligible to receive these services (Ch. 2-28); 2. Ineligible Staff (Christopher Rose)	Response 1: The services provided were authorized by the support coordinator and a service authorization was issued. Response 2: Christopher Rose met the experience requirements necessary to provide companion services.
14	2	6/27/2008	S5134	Companion	24	\$3.37	\$80.88	\$80.88	1. Recipients living in licensed residential settings are not eligible to receive these services (Ch. 2-28); 2. Ineligible Staff (Christopher Rose)	Response 1: The services provided were authorized by the support coordinator and a service authorization was issued. Response 2: Christopher Rose met the experience requirements necessary to provide companion services.

14	3	7/1/2008	S5135	Companion	28	\$1.87	\$52.36	\$52.36	1. Recipients living in licensed residential settings are not eligible to receive these services (Ch. 2-28); 2. Ineligible Staff (Christopher Rose)	Response 1: The services provided were authorized by the support coordinator and a service authorization was issued. Response 2: Christopher Rose met the experience requirements necessary to provide companion services.
14	4	7/23/2008	S5136	Companion	28	\$1.87	\$52.36	\$52.36	1. Recipients living in licensed residential settings are not eligible to receive these services (Ch. 2-28); 2. Ineligible Staff (Christopher Rose)	Response 1: The services provided were authorized by the support coordinator and a service authorization was issued. Response 2: Christopher Rose met the experience requirements necessary to provide companion services.
14	5	8/6/2008	S5137	Companion	26	\$1.87	\$48.62	\$48.62	Recipients living in licensed residential settings are not eligible to receive these services (Ch. 2-28)	Response: The services provided were authorized by the support coordinator and a service authorization was issued.
14	6	8/7/2008	S5138	Companion	34	\$1.87	\$63.58	\$63.58	Recipients living in licensed residential settings are not eligible to receive these services (Ch. 2-29)	Response: The services provided were authorized by the support coordinator and a service authorization was issued.
14	7	9/2/2008	S5139	Companion	34	\$1.87	\$63.58	\$63.58	Recipients living in licensed residential settings are not eligible to receive these services (Ch. 2-30)	Response: The services provided were authorized by the support coordinator and a service authorization was issued.
14	8	9/15/2008	S5140	Companion	29	\$1.87	\$54.23	\$54.23	Recipients living in licensed residential settings are not eligible to receive these services (Ch. 2-31)	Response: The services provided were authorized by the support coordinator and a service authorization was issued.

14	9	11/10/2008	S5141	Companion	31	\$1.87	\$57.97	\$57.97	Recipients living in licensed residential settings are not eligible to receive these services (Ch. 2-32)	Response: The services provided were authorized by the support coordinator and a service authorization was issued.
14	10	12/2/2008	S5142	Companion	30	\$1.87	\$56.10	\$56.10	Recipients living in licensed residential settings are not eligible to receive these services (Ch. 2-33)	Response: The services provided were authorized by the support coordinator and a service authorization was issued.
15	1	2/21/2008	97537	In-Home Support	12	\$3.94	\$47.28	\$3.94	Unauthorized activity - watching TV (-1uos)	Response: The services provided were appropriate pursuant to the support plan.
15	2	4/2/2008	97537	In-Home Support	20	\$3.94	\$78.80	\$3.94	Unauthorized activity - play dominos (-1uos)	Response: The services provided were appropriate pursuant to the support plan.
15	15	6/25/2009	97537	In-Home Support	20	\$3.66	\$73.20	\$73.20	1. Ineligible staff: Ben Alvarez - does not meet experience requirements; 2. Unauthorized activities - watching movies (-1uos)	Response 1: Benjamin Alvarez met the experience requirements necessary to provide in-home support services. Response 2: The services provided were appropriate pursuant to the support plan.
16	12	3/3/2009	S5151	Respite	34	\$1.60	\$54.36	\$54.36	Overlapping times of service: Respite 12p-6p and PCA 12p-6p	Response: The provided services were not overlapping in their entirety.

18	1	1/7/2008	S5135	Companion	20	\$3.63	\$72.60	\$36.30	Support Plan states "go out in community, out to eat, visit places of interest to stimulate." - Activities documented do not address goals see 1:30-4:30, unauthorized activities (lunch, change, TV) (-2uos) and 4:30-6:30 unauthorized activities and ineligible staff (-8uos) Deny total of 10uos.	Response: The services provided were authorized by the support coordinator and a service authorization was issued.
18	13	3/1/2009	S5135	Companion	20	\$3.37	\$67.40	\$67.40	Documented activity does not support billing. "We stayed in due to the weather," billed 5 hrs.	Response: The services provided were appropriate pursuant to the support plan.
25	1	11/7/2008	S5135	Companion	24	\$3.37	\$80.88	\$80.88	Recipients living in licensed residential settings are not eligible to receive these services (Ch. 2-28).	Response: The services provided were authorized by the support coordinator and a service authorization was issued.
25	2	11/10/2008	S5136	Companion	24	\$3.37	\$80.88	\$80.88	Recipients living in licensed residential settings are not eligible to receive these services (Ch. 2-28).	Response: The services provided were authorized by the support coordinator and a service authorization was issued.
25	3	11/25/2008	S5137	Companion	24	\$3.37	\$80.88	\$80.88	Recipients living in licensed residential settings are not eligible to receive these services (Ch. 2-28).	Response: The services provided were authorized by the support coordinator and a service authorization was issued.
26	3	2/20/2008	S5135	Companion	32	\$3.63	\$116.16	\$3.63	Unauthorized activity - laundry, babysitting (-1uos)	Response: The services provided were appropriate pursuant to the support plan.

33	4	1/22/2008	S5135	Companion	24	\$26.00	\$94.38	\$3.63	Unauthorized activity - "watched movie at his house," see Support Plan goals (-1uos).	Response: The services provided were appropriate pursuant to the support plan.
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