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April 28, 2023

Michael M. Morgese, Chief Auditor
Office of the State Comptroller
Medicaid Fraud Division
P.O. Box 0025
Trenton, New Jersey 08625-0025

Re: Draft Audit Report: Sokkyun Yi, LCSW, Medicaid Provider Number [REDACTED]

Dear Mr. Morgese:

This office represents Sokkyun Yi with respect to this matter. Please accept the following in response to the Draft Audit Report provided by your office on March 31, 2023.

INTRODUCTION

Mr. Yi has provided behavioral services to clients for several years through his company, Family First Counseling Services. Throughout the years, Mr. Yi has provided these services through behavioral assistants who have contracted with Mr. Yi. During the entirety of his practice, Mr. Yi has not received any complaints from his clients and has served and improved the lives of numerous struggling children. Mr. Yi hopes to resolve the issues identified here and continue providing the high quality of service to his clients as he has for several years.

RESPONSE

I. MR. YI OBJECTS TO THE METHODS BY WHICH EXTRAPOLATION WAS APPLIED IN THE DRAFT AUDIT REPORT

Mr. Yi objects to the sampling method and proposed extrapolation. As a preliminary matter, the Draft Audit Report does not explain the process used to identify the appropriate size of the sample, how the sample days were selected, nor the steps taken to ensure that the sample was representative of the universe as a whole. Without an explanation of those steps, it is impossible to determine the validity of the sample and whether it is appropriate for extrapolation.

There are, however, several issues that raise concerns about the validity of the sampling and the legitimacy of the extrapolations made from the sample. In order for extrapolation to be valid, the sample size must be reasonably representative of the universe of claims. Here, there are issues that call into question the validity of the sampling and the conclusions drawn

therefrom. In the sample there are 37 service dates with 963 claims, or 26 claims per day. In the entire universe there are 25,350 claims over 1,164 service dates or approximately 21 claims per day. This means that the average day in the universe has 20% fewer claims than the days in the sample. The average sample day is erroneously not representative of the average universe day. Looking at a sample with more claims than average raises many issues, including whether the existence of the high level of claims in any given day has erroneously led to a greater number of exceptions.

There is also a large variance between the observed errors as a percentage of claims related to a legitimate percentage of dollars received. While the observed claims errors of 518, or 54% of the claims may seem high, the actual dollar amount of error was only 37.5 percent of the sample. This suggests that the error rate itself was not representative of the actual errors, but that perhaps the errors were more likely to occur with smaller claims. There was no showing that the variance in claim size in the sample was similar to the universe as a whole and this raises questions as to the appropriateness of extrapolation.

As will also be discussed below, it appears that the providers in this sample were not distributed evenly among the claims. Rather, nearly forty percent of the providers accounted for only two percent of the claims in the sample. This suggests that the remaining sixty percent of providers are exerting an outsized influence on the sample. The Draft Audit Report does not explain whether any analysis was undertaken to determine if the providers in the sample appeared in the same proportion in the universe of claims. Nor does it appear that any analysis was done to determine if any error rates correlate with any particular provider, which might invalidate the sample and any extrapolation. Because the inconsistencies in the sample raise questions about its representativeness extrapolation of the data appears inappropriate.

Further, the relatively low financial error rate suggests that extrapolation is inappropriate because it does not evidence a continuing and high rate of error. While the Medicare system has propagated rules that only permit extrapolation when an error rate is above 50%, the OSC has proffered no similar standard for when extrapolation is inappropriate. Here, the financial error rate was substantially below 50%. Accordingly, absent explanation from OSC, it appears that extrapolation under such circumstances is statistically unsupported and inappropriate.

II. MR. YI OBJECTS TO DETERMINATIONS THAT SPECIFIC ERRORS ARE REASONABLE TO INCLUDE IN ANY EXTRAPOLATION.

A. Mr. Yi Maintained Inaccurate and Incomplete Records

In the sample set OSC identified 265 instances in the 963 claims where it asserts that Mr. Yi failed to maintain accurate and complete records. This relates specifically to the maintenance of a two-page SDED form. Nearly half of those exceptions resulted from Mr. Yi's inability to locate both pages of the two-page form. The majority of others resulted from service dates on the forms which were outside of the prior authorization date. There is no allegation, however, that the claim is otherwise improper or that the service was not performed. Mr. Yi believes that the claims are valid, even if the SDED form could not be located at the time of the audit and that only authorized services were performed. These claims should not form the basis for any extrapolated repayment amount.

B. Mr. Yi Billed for Unsubstantiated Services

In the sample of 963 claims, OSC determined that slightly less than one-third of those claims included billing errors in which the time billed did not match the hours of service on the SDED form. These were coding errors due to the high volume of claims. Mr. Yi does not dispute the accuracy of the finding, but that does not render the extrapolation appropriate. The idiosyncratic nature of the errors, and the relatively low percentage of errors compared to the sample size, contribute to the illegitimacy of the conclusions drawn from the data.

C. Mr. Yi Upcoded Services Provided

In the sample of 963 claims, OSC determined that in 18 instances, or 1.9% of claims services were upcoded to services with a higher reimbursement rate. These were inadvertent coding mistakes attributable to human error. Mr. Yi does not dispute their accuracy. However, Mr. Yi disputes that such a small error rate is suitable for extrapolation to the entire universe of claims.

D. Mr. Yi Billed for Services Provided to Different Beneficiaries at the Same or Overlapping Times

In the sample of 963 claims, OSC identified 9 instances where Mr. Yi billed for overlapping time for the work of the same servicing provider. These instances represent less than one percent of the claims in the sample. While the billed time overlaps with the information on the SDED forms, Mr. Yi disputes that any of the billed work was not provided. These errors almost certainly arose from incorrect dating on either the SDED form or on the claim itself. There is no suggestion that the billed services were not actually provided, and Mr. Yi maintains that they were in fact provided. Additionally, only nine instances is too few to support extrapolation to the entirety of claims.

E. Mr. Yi Improperly Billed for Travel Time

OSC identified 24 instances in the sample where it believes Mr. Yi billed for travel time for his providers. Mr. Yi disputes this determination. The OSC assumes travel time where a provider provided services to two different clients in two different locations, but in a time frame that does not permit for travel. This method is flawed. There are numerous typographic and practical issues that could result in an incorrect determination. As with Item D above, an incorrectly dated SDED form suggests the need for travel time that was not actually present if the encounters occurred on different days. Similarly, the encounter might have occurred in a public location where the provider might have met with clients one after the other without the need to travel, despite different locations inadvertently listed on the SDED form. Mr. Yi disputes that he billed for any travel time for his providers. Likewise, only 24 instances, less than 3% of the sample is insufficient to support an extrapolation.

F. Mr. Yi Failed to Document Services with Progress Notes

The OSC determined that for 37 claims out of the sample no progress note was recorded. Again, there is no suggestion that the services were not provided. Rather, Mr. Yi was unable to locate the progress notes for those instances. As previously discussed, the incorrect dating of such a note, or inadvertent mislabeling otherwise would render the note difficult to find and

identify, but the services in question still occurred. Mr. Yi disputes this purported error for that reason. Additionally, an error rate of 37 claims representing less than 4% of the sample is inappropriate for extrapolation.

G. Mr. Yi Failed to Maintain Behavioral Assistance Training Certification for Behavioral Assistants

The OSC identified 10 claims from four behavioral assistants where Mr. Yi failed to provide certifications of appropriate training for the assistants. This small number is not evidence of a trend, but an aberrant result. Despite identifying over one quarter of the providers in the sample as not having certification, these four providers only accounted for 1% of the claims in the sample. This shows that any improper provision of services by these providers was inadvertent and should not be the basis for any extrapolation to the greater set of claims. Additionally, there is no assertion or information that suggests that the assistants identified were insufficiently trained, nor that they provided any services that fell below the accepted standards for such assistants.

H. Mr. Yi Failed to Maintain Proof of Education for Behavioral Assistants

The OSC identified 19 claims from six behavioral assistants out of the sample where Mr. Yi failed provide proof of education. As with the objection to Item G, the small numbers here suggest an anomaly, not a trend. Here forty percent of the behavioral assistants in the sample account for only two percent of the claims. This again suggests a brief tenure and provides a reason that any such documentation may have been inadvertently lost. Further, the very low percentage in question suggests that extrapolation is not appropriate. In any event, Mr. Yi disputes that any of the assistants did not have the necessary education for the position, and that all assistants provided the appropriate levels of service to their clients.

I. Mr. Yi Failed to Maintain a Criminal Background Check for a Behavioral Assistant Prior to Rendering Services

J. Mr. Yi Failed to Maintain a Current and Valid Driver's License for a Behavioral Assistant

K. Mr. Yi Failed to Maintain Proof of Minimum Age Documentation for a Behavioral Assistants

Issues I, J, and K raised by the OSC all arise from one service provider accounting for one claim out of the entire sample. The behavioral assistant only briefly worked for Mr. Yi and left soon after. There is no indication that the behavioral assistant did not meet any of the standards required, and Mr. Yi contends that she did meet all necessary criteria. In any event, one instance is not a trend to extrapolate but an aberration. It is not likely that the one individual was anything but a one off occurrence with respect to a short lived employee. One such instance should not form the basis for extrapolation to a larger pool.

III. MR. YI'S CORRECTIVE ACTION PLAN

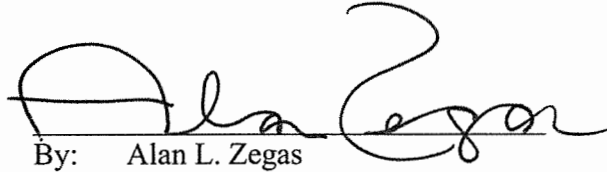
As the OSC has identified issues during the course of this audit, Mr. Yi has revised the policies and procedures for his business. These revised policies have been implemented to address the deficiencies identified by the Draft Audit Report. Mr. Yi's adoption of the revised policies in the corrective action plan are in no way an admission of wrong doing, or agreement

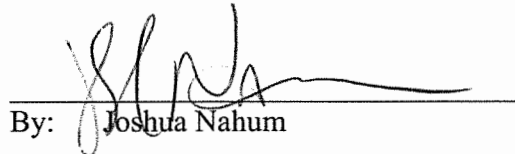
with the audit procedures or conclusions. The new policies adopted to address the concerns raised by the Draft Audit Report are attached hereto as Exhibit A.

CONCLUSION

Mr. Yi disputes the findings in the Draft Audit Report. That said, Mr. Yi does recognize that errors in any busy organization do occur. Mr. Yi would like to continue discussions with the OSC to resolve its concerns and continue providing health care services to communities desperately in need of them.

Respectfully submitted,
LAW OFFICES OF ALAN L. ZEGAS


By: Alan L. Zegas


By: Joshua Nahum

OSC Note - Exhibit A was omitted to maintain confidentiality