

Attachment J

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Corky Kyle
The Kyle Group

RE: Medicaid Audit

On 28 February 2007 I received in the mail a request from HWT, Inc, an auditing group contracted to the Colorado Department of Health Care Policy and Financing, for medical records on over 1000 visits on Medicaid individuals for the period of March 2001 through July 2006. These records were obtained and sent to HWT, Inc in a timely manner. HWT, Inc responded on November 11, 2007 with a demand letter for a claimed overpayment of \$20,285.96.

A settlement hearing was conducted September 17, 2008 in the Office of Administrative Courts. Present at the hearing were myself, June Baker-Laird, my attorney, Joan E. Smith, F.A.A.G., from the Medicaid and State Services Section Attorney General's office, a representative from the Medicaid services division, and the Administrative Law Judge, Edwin L Felter, Jr. Mr. David Forester, a representative from HWT, Inc. was available via conference telephone.

During the hearing, Ms. Smith from the Attorney General's office acknowledged that "this had never been a fraud investigation" meaning that I did indeed see the individuals on the dates documented and had indeed done the services listed. It was the feeling of the auditor contracted by the State that the documentation provided did not sufficiently state what was done. Their primary argument was that a treatment listed under "Plan of Care" was only an intention to treat and not a treatment. Any reasonable physician or nurse who reviews a medical record would determine that treatments listed under "plan of treatment" are indeed treatments rendered. A second argument was that some of the records were unsigned. The copies of the medical records provided to the State were not all photocopies of the original record placed in the nursing home files, but copies printed from electronic disc storage. Other instances of different treatments using different instruments for different diagnoses were erroneously determined to be the same and payment retracted. Curiously, a check sheet which consisted only of boxes checked was accepted as adequate medical record, while a detailed full page narrative was determined not sufficient.

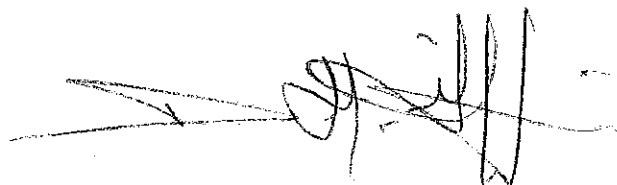
During the discussion, Judge Felter remarked that if this case went before a judge, I would likely prevail. Ms. Smith from the Attorney General's Office stated that if I "failed to settle this case today every claim Dr. Giffin has sent to Medicaid since he requested a provider number would be audited". This was clearly said in the presence of all individuals previously listed. I received my Medicaid provider number in 1982. Under this threat of endless auditing over a 26 year period, I settled not for the full amount, but a lesser amount of \$15,215.23. This was

accepted by Ms. Smith.

During the discussion, it was acknowledged by Mr. Forester, the HWT representative, that their fee was 18% of the total amount demanded. The total amount demanded was solely determined by HWT, Inc. and was payable by the State of Colorado to HWT prior to any hearing or review discussing the appropriateness or even accuracy of the amount demanded. Medicare pays one half of all Medicaid payments given to providers for services. Within 30 days of the State accepting the demand of HWT and the initial HWT review, Medicare demands their share back. In other words, the contract the State has with HWT and the mechanism currently in place for review means that the State is in debt for 68% of any overpayment amount before any determination of validity is even discussed or hearing held. HWT, Inc. is the only entity that determines the overpayment and thus its own fee. This is an obvious conflict of interest. Even if the total amount overpayment was later found to be wrong, HWT would have still received its payment as determined by itself.

The number of records requested (over 1000) and the amount of time covered by the audit (7 years) was excessive. A lesser number of records (50-100) over a shorter period of time (the previous 3 years) would be more than enough to provide the auditors with the information they need to perform their task diligently.

It is perfectly reasonable and appropriate for the State of Colorado to audit expenditures from the state treasury. It is reasonable and appropriate for the State to ask its providers for documentation that the monies sent to them are necessary and appropriate and to ask for reimbursement if those providers cannot provide documentation that the services were not provided. It, however, is not appropriate to use spurious arguments to disqualify the records provided. It is not appropriate to use the power of the State to demand more and more records from a time period beyond any statute of limitations to force a settlement at any price and discourage further appeal. It is not appropriate to hire an auditing agency that determines its own payment amount and payment "up front" before any hearings are held. I would suggest the contingency based auditing system begs corruption.

A handwritten signature in black ink, appearing to be "Corky Kyle", written over a horizontal line.