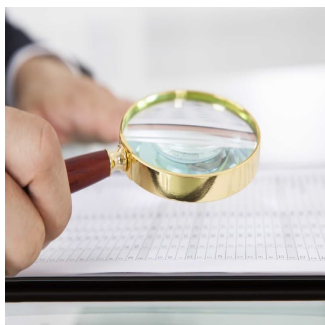


Medicaid After-Hours Claims Audits (CPT 99050 & CPT 99051) by State Medicaid Regulators are Continuing. Are Your Medicaid After-Hours Claims Compliant?



(June 3, 2020): By 2027, national health spending is expected to exceed \$6 trillion. Notably, health spending will rise from a share of approximately 17.9% of the Gross National Product (GNP) to 19.4% during this time period.^[1] Understandably, Medicare and Medicaid program officials have ramped up their efforts to reign-in the costs of these government payor programs. One of the continuing areas of concern that has contributed to the high cost of Medicaid services is the use of hospital emergency room services by Medicaid recipients for the care of non-urgent medical issues. In response, many State Medicaid plans (especially Medicaid Advantage plans) have taken steps to make it easier for plan beneficiaries to obtain care by their primary care provider after normal business hours rather than be forced have to seek significantly more expensive hospital emergency room assistance during evenings, weekends and holidays, when their primary caregiver's offices would normally be closed. This article reviews the billing of Medicaid after-hours claims (CPT 99050, CPT 99051) in more detail and discusses the types of deficiencies that have been noted by regulators when auditing these services.

I. Background of the Medicaid After-Hours Claims Issue:

The non-emergency use of hospital emergency room services by Medicaid participants has been a long-standing problem of almost four decades. As early as 1983, the Department of Health and Human Services (HHS), Office of Inspector General (OIG) noted that there was a high rate of hospital emergency room misuse by Medicaid recipients who would utilize high-cost emergency rooms for the care and treatment of non-emergency medical issues. At that time, it was estimated that ***“over one-half to two-thirds of Medicaid emergency room visits” were non-emergent.***^[2] As the OIG's 1983 report further noted, Medicaid recipients were found to be visiting hospital emergency rooms for non-urgent care ***“largely because other sources of care [were] either unavailable or inaccessible to the them.”*** The OIG concluded that at least half of Medicaid beneficiary emergency room visits could have been more appropriately treated in community care settings. Notably, the root cause of the problem was clearly understood by the government long ago:

“The use of emergency rooms for non-urgent care results primarily from the recipient’s lack of access to primary care during or after office hours. Often the Medicaid recipient does not have a doctor that they see on a regular basis. Recipients may not live near a participating physician or may lack transportation to get to the physician’s office. A recipient may not be able to go to the physician’s office during normal office hours, and may have difficulty reaching the physician after hours.”^[3]
(emphasis added).

II. State Medicaid Coverage Issues of CPT Code 99050 and CPT Code 99051:

If a participating provider treats a Medicaid recipient after normal business hours, a number of State Medicaid plans now permit a participating provider to bill an appropriate Evaluation and Management (E/M) code **AND** bill CPT 99050 or CPT 99051 as an additional charge to reflect the fact that after-hours care was provided. As the 2019 American Medical Association Current Procedural Terminology manual reflects, CPT 99050 and CPT 99051 are defined as follows:

- **CPT 99050** – *Service(s) provided in the office at times other than regularly scheduled office hours, or days when the office is normally closed (i.e., holidays, Saturday or Sunday), in addition to basic service.*
- **CPT 99051** -- *Service(s) provided in the office during regularly scheduled evening, weekend, or holiday office hours, in addition to basic service.*

The Office of Inspector General provided the following example to demonstrate proper billing of CPT 99050:

“[A] physician’s office may be open from 9 a.m. to 5 p.m., Monday through Friday. A physician treating a beneficiary in that office at 7 p.m. on a Thursday may bill for CPT code 99050 in addition to the evaluation and management code for the visit.”^[4]

With the incorporation of these codes into their payment schemes, State Medicaid plans have effectively encouraged primary care providers to make themselves, and / or members of their staff, available beyond regularly scheduled office hours, and weekends, to care for Medicaid patients. The expanded availability of these Medicaid providers has therefore made it less likely that Medicaid patients would seek care for non-emergent medical conditions from hospital emergency rooms. Unfortunately, the coding and billing requirements applied by State Medicaid regulators often unwritten and / or in direct contradiction of what a Medicaid provider has been told by one or

more Medicaid Advantage payor plans. As a result, the billing of CPT 99050 and CPT 99051 has led to a number of State investigations and audits of these codes.

III. Overview of CPT 99050 and CPT 99051 Medicaid After Hours Claims Audit Enforcement Efforts:

A number of State Medicaid regulatory authorities have been actively auditing the claims practices of physicians and other providers who have been billing for after-hours services using CPT 99050 and CPT 99051. While the audit findings have varied from one state to another, the government has generally argued that providers have incorrectly billed for after-hours services when such services did not qualify for coverage and payment. Examples of state Medicaid after-hours claims audit initiatives include the following:

Texas

- Despite the fact that Texas physicians and practices have seen dramatic drops in revenues since March 2020 due to the COVID-19 crisis, the Texas Health and Human Services Commission, Office of Inspector General (HHSC-OIG) have continued to aggressively audit CPT 99050 claims billed by Medicaid providers. Notably, many of these audits have focused on physician practices in the Rio Grande Valley. As of May 2020, Medicaid after-hours claims audits remain ongoing throughout Texas.
- Last year, HHSC-OIG reached a settlement with a physician in Pharr, Texas for **\$297,549** for the alleged improperly billing of Medicaid after-hours claims. Government investigators claimed that the provider was improperly reimbursed for Medicaid after-hours services, in contravention to the billing requirements set out in the provider's Medicaid managed care contract and HHSC program policy.[\[5\]](#)
- That same month, the government regulators reached a similar settlement with a physician practice in Mission, Texas in the amount of **\$61,310**. [\[6\]](#)
- Notably, Texas has recently upped-the-ante, so to speak, by issuing a "**Clarification Statement**" meant to further explain its coverage of Medicaid after-hours claims. Effective February 1, 2020, Texas Medicaid & Healthcare Partnership (TMHP)[\[7\]](#) now takes the position that: "**After-hours procedures are limited to one per day, same provider.**" [\[8\]](#)

What is meant by this "*Clarification Statement*"? Great question. At this time, TMHP has not issued any additional guidance setting out the parameters of this new rule.

New Jersey

- In this case, the New Jersey Office of the Comptroller, Medicaid Fraud Division,

(New Jersey Comptroller) alleged that one of its Medicaid providers had improperly billed 99050 for services which it provided during “**regular office hours.**”^[9] In its decision, the New Jersey Comptroller argued that because CPT 99050 was an add-on code, it should not be utilized and billed frequently, and that the provider’s frequent use of the code indicated improper usage.

- To determine the practice’s regular business hours, the New Jersey Comptroller reviewed the hours of operation that were listed in the credentialing documents which the provider submitted to enroll in the payor’s managed care network, and the hours of operation listed on the payor’s online provider portal. The New Jersey Comptroller then compared these times against the times and dates of service which were listed in the claims submitted by the provider to determine whether the provider regularly treated patients on weekends and federal holidays (July 4th, Labor Day, Thanksgiving, Christmas, New Year’s Day, Easter, and Memorial Day). After completing this analysis, the New Jersey Comptroller argued that dates and times which were submitted with the Medicaid provider’s claims showed that the Medicaid provider regularly operated during weekends and federal holidays, and that these times were considered regular office hours for purposes of the after-hours code.
- The New Jersey Comptroller concluded that the Medicaid provider had improperly used CPT 99050 despite the fact that the Medicaid payor had reassured the provider that it was properly billing the code, and had awarded the Medicaid provider a \$100,000 bonus for saving the payor over \$600,000 in emergency room visits. Although the New Jersey Comptroller acknowledged the provider’s receipt of this award, it concluded that the practice’s receipt of this award did not overcome the practice’s allegedly improper use of CPT 99050.

Alabama

- Although not as recent as the cases currently being pursued in Texas and New Jersey, it is worth noting that a Federal case out of the Northern District of Alabama held that a healthcare provider had improperly used the after-hours billing code for weekend visits when the clinic’s normal business hours, as advertised on the clinic’s website and written to all insurance companies, were 7 days a week from 8:00 am to 6:00 pm.^[10]

South Carolina

- The South Carolina Department of Health & Human Services advised that providers with regular scheduled evening and weekend office hours should not use CPT 99050 for services provided during those times or for treating patients whose visits lasted longer than the facility's posted hours.[\[11\]](#)

Connecticut

- A Connecticut Medicaid pediatric practice, agreed to pay \$65,378 to settle allegations that it violated the False Claims Act by improperly billing after-hours billing code CPT 99050.[\[12\]](#) The U.S. Attorney's Office for the District of Connecticut alleged that the practice had improperly billed the after-hours code when the practice was open for business and regularly scheduling patients for same-day sick visits.

IV. Responding to an Audit of Your Medicaid After-Hours Claims:

While the basic rules for the billing of after-hours codes are well established, the way that coverage and payment requirements are being interpreted by State Medicaid regulators widely vary from one jurisdiction to another. Some of the problems we are seeing include, but are not limited to the following:

- **State Regulators Don't Always Go By Your Agreements with the Medicaid Advantage Plans.** Medicaid providers typically negotiate what constitutes after-hours with each Medicaid Advantage payor plan. The negotiated understanding of what constitutes after-hours is often expressly defined in the provider's contract. It is not uncommon for the definition of after-hours to differ from one Medicaid Advantage plan to another. Despite the fact that a provider may have reached an agreement with a provider, State Medicaid regulators conducting audits of CPT 99050 and CPT 99051 have often disregarded the definition set out in the contract and denied payment of these claims, citing a number of reasons why the claims don't qualify for coverage and payment.
- **Incomplete Documentation.** A number of the cases we have reviewed have involved health care practices who have failed to keep and / or maintain records of when a patient arrived and left their offices. The failure to keep proper records will inevitably lead to denials of CPT 99050 and CPT 99051.

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- **Failure to Maintain a Patient Signature Sheet.** Even if your practice electronically checks in a patient when they arrive at your office, it is important to also obtain a patient signature which reflects when the patient arrived.
- **Inconsistent Posting of Office Hours.** Regardless of what your Medicaid Advantage provider contract may state with respect to what constitutes after-hours, you may find that signage, online posts, and / or a practice's "Google Your Business" listing indicates that a practice is supposedly open at a time that is consider after-hours by a Medicaid Advantage plan. In the event of Medicaid claims audit, the government may try to argue that since an online listing indicated that a time was within your regular business hours, the practice cannot be paid for CPT 99050 and CPT 99051.

Ultimately, the way these cases are being handled appears to vary from state to state. How should you respond if your Medicaid after-hours claims are audited? We recommend you immediately contact experienced health law counsel to assist with the defense of these claims. **For a free consultation, call: 1 (800) 475-1906.**



Robert W. Liles serves as Managing Partner at the health law firm, Liles Parker, Attorneys and Counselors at Law. Liles Parker attorneys represent health care providers and suppliers around the country in connection with claims audits and investigation. Are your "After-Hours" claims being audited by State Medicaid Regulators? Give us a call. *For a free initial consultation regarding your situation, call Robert at: 1 (800) 475-1906.*

[1] CMS Office of the Actuary Releases 2018-2027 Projections of National Health Expenditures, February 20, 2019.

<https://www.cms.gov/Research-Statistics-Data-and-Systems/Statistics-Trends-and-Reports/NationalHealthExpendData/Downloads/ForecastSummary.pdf>

[2] Testimony of Michael Mangano, Deputy Inspector General, before the Subcommittee on Oversight and Investigations of the Committee on Energy and Commerce, House of Representatives, on February 28 and March 26, 1992. (See page 422). During his testimony, Mr. Mangano cited OIG's September 1983 report entitled "**Non-Emergency Use of Hospital Emergency Departments by Medicaid and Medicare Beneficiaries.**"

https://archive.org/stream/medicaidprogrami00unit/medicaidprogrami00unit_djvu.txt

[3] Ibid, page 424.

[4] Id.

[5] See **OIG Medicaid Program Integrity recovers \$14 million in third quarter**, OIG HHSC (July 12, 2019), <https://oig.hhsc.texas.gov/latest-news/oig-medicaid-program-integrity-recovers-14-million-third-quarter>

[6] Id.

[7] The Texas Medicaid & Healthcare Partnership (TMHP) is the claims administrator for Texas Medicaid under contract with the Texas Health and Human Services Commission.

[8] TMHP is still in the process of adding this language to **Texas Medicaid Provider Procedures Manual, Medical and Nursing Specialists, Physicians, and Physician Assistants Handbook, and the Children with Special Health Care Needs (CSHCN) Services Program Provider Manual.**

[9] **Final Audit Report - Ocean County Internal Med. Assoc., P.C.'s Use of AMA's CPT Code 99050**, N.J. Office of Comptroller (July 11, 2018), at 11-12, https://www.nj.gov/comptroller/news/docs/ocima_far.pdf.

[10] No. CV 5:10-cv-2843-IPJ, 2014 U.S. Dist. LEXIS 195885, at *6 (N.D. Ala. July 29, 2014), *aff'd*, *United States ex rel. Salters v. Family Care, Inc.*, No. 5:10-cv-2843-LSC, 2016 U.S. Dist. LEXIS 173433 (N.D. Ala. Dec. 15, 2016).

[11] See *Provider Perspective*, 1 S.C. Dep't of Health and Hum. Serv., at 1 (2008), at <https://www.scdhhs.gov/internet/pdf/provider%20newsletterfinal.pdf>.

[12] See *Pediatric Practice Pays \$65,378 to Settle Allegations Under the False Claims Act*, FBI

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<https://archives.fbi.gov/archives/newhaven/press-releases/2010/nh052710.htm>.