

STATE OF VERMONT

HUMAN SERVICES BOARD

In re) Fair Hearing No. 18,112
)
Appeal of)

INTRODUCTION

The petitioner appeals a decision by the Department of Prevention, Assistance, Transition, and Health Access (PATH) denying prior approval under Medicaid/Vermont Health Access Plan (VHAP) for surgery the petitioner's wife underwent in October 2002. The issue is whether the failure of the petitioner's doctor to have followed Medicaid/VHAP procedures results in the petitioner being held harmless from any attempt by the doctor to bill the petitioner for the service.

DISCUSSION

The following facts alleged by the Department are not in dispute. The petitioner's wife is a recipient of VHAP. On October 28, 2002 the petitioner's wife underwent a hysterectomy. The surgery was scheduled at least four days before it was performed.

The day after the surgery, on October 29, 2002, the surgeon faxed to the Department a request for prior approval for coverage of the surgery under VHAP. The Department had not received such a request before this time. The Department

denied the request for prior approval because it was not submitted prior to the surgery itself. There is no indication that the delay in filing the request for prior approval was due to anything other than oversight on the part of the surgeon.

The Department has provided the petitioner and the Board with the following written statement of its position in the matter:

According to Medicaid regulations and the Medicaid provider agreement, to which all Medicaid providers are bound, prior authorization is required **before the service is rendered.**¹ In this case, [doctor] requested prior authorization on October 29, 2002 one day after the surgery [petitioner] received. Also according to the Medicaid provider agreement:

"Once Medicaid has been billed, the provider may not bill patients for any reason except the following:

Medicaid co-payments and deductibles have not been paid; or

¹ There is an exception to this requirement if the service or item is rendered for urgently needed care and if the urgent care is required outside of normal OVHA business hours. To make sure this request did not meet that exception, a nurse at OVHA contacted [doctor's] office on October 30, 2002 and spoke with [name] who indicated that the procedure was elective and not emergent or urgent.

The four conditions described below: or

If the claim is denied for lack of eligibility and the date of service was greater than 60 days of the loss of eligibility; or

If the claim is denied because another insurer's rules were not followed."

The "four conditions described below" exception refers to situations in which a source other than OVHA, is the primary payer and OVHA (in this case VHAP) is the payer of last resort. That is not the case in this situation, so that exception does not apply.

Based on these facts and the Department's regulations and agreements, it is the Department's position that [doctor], nor (sic) other Medicaid providers, cannot now bill [petitioner] for the procedure that was performed without prior authorization without being in violation of the provider agreement. If [petitioner] is billed for charges related to the procedure in questions, she should contact the Office of Vermont Health Access. The Department can then follow-up with such provider to remedy the violation.

Given that [petitioner] cannot be billed, she has not and should not suffer any harm as a result of the Department's denial or prior authorization for the surgical procedure she received. Thus, she lacks standing to raise a claim at this time.

There is no dispute by the petitioner in this case that that under the Department's regulations his wife's surgeon was required to obtain prior approval of her surgery before it could be covered under VHAP. See Medicaid Manual §§ M106 et. seq. The Department has committed itself to the position that it will enforce its Provider Agreement that the petitioner be held harmless from the expense of her surgery. It should be

noted that under his Provider Agreement the surgeon has certain appeal rights regarding the Department's decision as it affects him. Nothing in this decision should be construed as a finding or legal conclusion regarding such an appeal.

ORDER

The Department's decision is affirmed.

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