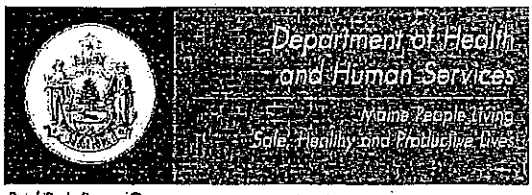

Paul R. LePage, Governor Ricker Hamilton, Acting Commissioner

Department of Health and Human Services
Commissioner's Office
221 State Street
11 State House Station
Augusta, Maine 04333-0011
Tel.: (207) 287-3707; Fax: (207) 287-3005
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IN THE MATTER OF:

Noble HealthCare, Inc.	)	
Mohamed Hassan	)	**FINAL DECISION**
94 Auburn Street	)	
Portland, ME 04103	)	

This is the Department of Health and Human Services' Final Decision.

The Recommended Decision of Hearing Officer Benedict, mailed August 25, 2017 has been reviewed.

I hereby adopt the findings of fact and I accept the Recommendation of the Hearing Officer that the Department was correct when it determined that there exists a credible allegation of fraud for which an investigation is pending, absent a good cause exception, against Noble Home HealthCare, Inc., thus justifying the suspension of payments to the agency.

DATED: 10.12.17 SIGNED: _____

RICKER HAMILTON, ACTING COMMISSIONER
DEPARTMENT OF HEALTH & HUMAN SERVICES

YOU HAVE THE RIGHT TO JUDICIAL REVIEW UNDER THE MAINE RULES OF CIVIL PROCEDURE, RULE 80C. TO TAKE ADVANTAGE OF THIS RIGHT, A PETITION FOR REVIEW MUST BE FILED WITH THE APPROPRIATE SUPERIOR COURT WITHIN 30 DAYS OF THE RECEIPT OF THIS DECISION.

WITH SOME EXCEPTIONS, THE PARTY FILING AN APPEAL (80B OR 80C) OF A DECISION SHALL BE REQUIRED TO PAY THE COSTS TO THE DIVISION OF ADMINISTRATIVE HEARINGS FOR PROVIDING THE COURT WITH A CERTIFIED HEARING RECORD. THIS INCLUDES COSTS RELATED TO THE PROVISION OF A TRANSCRIPT OF THE HEARING RECORDING.

cc: Michael Vaillancourt, Esq., Ainsworth, Thelin & Raftice, 7 Ocean Street, South Portland, ME 04106
William Logan, Esq., DHHS/OMS
Beth Ketch, DHHS/OMS

Department of Health and Human Services
Maine People Living Safe, Healthy and Productive Lives
Paul R. LePage, Governor Ricker Hamilton, Acting Commissioner

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Date Mailed: AUG 25 2017

Ricker Hamilton, Acting Commissioner
Department of Health and Human Services
11 State House Station • 221 State Street
Augusta, ME 04333

In the Matter of: Noble Health Care , Inc. Suspension of Medicaid Payments

ADMINISTRATIVE HEARING RECOMMENDED DECISION

An administrative hearing in the above-captioned matter was held on July 18, 2017, before Hearing Officer Miranda Benedict, Esq., at South Portland, Maine. The Hearing Officer's jurisdiction was conferred by special appointment from the Commissioner of the Maine Department of Health and Human Services. The hearing was originally scheduled to be held on May 16, 2017. However, the parties jointly requested that the hearing be rescheduled. Noble HealthCare ('Noble') was also appealing the Department's Notice of Termination as a MaineCare Provider. The parties argued that it would be more efficient to hold them on the same day as both proceedings would be based upon much of the same evidence. The request was granted. The hearing record was left open through August 4, 2017, to allow submission of written closing arguments.

Note: The hearing on the Department's suspension of Medicaid Payments was held on the same day as a hearing in regards to the Department's termination of Noble's MaineCare Provider Agreement. The parties agreed that the records created in each hearing are incorporated by reference into the other. In fact, Noble's closing argument in this case references its closing argument in the case of the termination of Noble's MaineCare Provider agreement. See, Noble-17. In addition, DHHS exhibits presented in the case of the termination of the MaineCare Provider Agreement is referenced in this Recommended Decision. The hearing officer has issued separate Recommended Decisions in each case.

Pursuant to an Order of Reference dated February 24, 2015, the issue presented *de novo* for hearing,

> ***Was the department correct when it determined that there exists a credible allegation of fraud for which an investigation is pending, absent a good case[1] (sic), exception, against Noble Home Health Care Inc., thus justifying the suspension of payments to the agency? See, HO-2.***

[1] Should have read 'absent a good cause'

APPEARING ON BEHALF OF THE APPELLANT
Mohamed Hassan, Administrator
Michael Vaillancourt, Esq.

APPEARING ON BEHALF OF THE DEPARTMENT
William Logan, Esq.
Cathy Register, Resource Coordinator, OCFS
Valerie Hooper, Acting Supervising Auditor, DHHS

ITEMS INTRODUCED INTO EVIDENCE

Hearing Officer Exhibits
HO-1 Scheduling Notice dated May 24, 2017 with Notice of Hearing and correspondence attached
HO-2 Order of Reference dated March 7, 20176
HO-3 Fair Hearing Report Form dated February 16, 2017
HO-4 Letter to Parties dated July 19, 20176

Department Exhibits

DHHS #1 Order of Reference
DHHS #2 Fair Hearing Report Form dated February 16, 2017
DHHS #3 Suspension of Medicaid Payments Letter dated January 13, 2017
DHHS #4 Request for Informal Review of Payment Suspension dated January 19, 2017
DHHS #5 Final Informal Review Decision dated January 30, 2017
DHHS #6 Request for Expedited Administrative Hearing dated February 6, 2017
DHHS #7 MaineCare Benefits Manual Chapter I, Section 1 effective April 16, 2016
DHHS #8 42 CFR Section 455.1 et seq.
DHHS #9 MaineCare Benefits Manual Chapter II, Section 13 effective March 20, 2014
DHHS #10 MaineCare Benefits Manual Chapter II, Section 19 effective August 3, 2013
DHHS #11 MaineCare Benefits Manual Chapter II, Section 96 effective June 7, 2010
DHHS #12 MaineCare Provider Agreement for Noble Elder Care LLC signed by provider on May 14, 2014
DHHS #13 MaineCare Provider Agreement for Noble Home Health Care, Inc. signed by provider on March 26, 2015
DHHS #14A Denial of Mental Health Agency Application dated November 17, 2016
DHHS #14B Letter from the Office of Child and Family Services to Noble Home Health Care dated September 30, 2016
DHHS #14C Claims data for Targeted Case Management services provided from [redacted]– [redacted]r 2016 to children with mental health diagnoses
DHHS #15 Timesheet for [redacted] for Personal Care Services that lacks documentation of what services were provided
DHHS #16 Timesheet for [redacted] for Personal Care Services that lacks documentation of what services were provided
DHHS #17A Plan of Care for [redacted] for Personal Care Services that was signed after the date of service
DHHS #17B Claims data for [redacted] for Personal Care Services

DHHS #18A Plan of Care for . for Personal Care Services that was signed after the date of service
DHHS #18B Claims data for for Personal Care Services
DHHS #19A EIM Complaint Report regarding consumer . dated [redacted] 2016
DHHS #19B Claims data for for Personal Care Services
DHHS #20A EIM Complaint Report regarding consumer . dated [redacted] 2016
DHHS #20B Claims data for . for Personal Care Service
DHHS-21 Pre-hearing Memorandum
DHHS-22 Closing Argument

Department's Termination Hearing Exhibits

DHHS-Termination-1. Order of Reference
DHHS-Termination-2. Fair Hearing Report Form
DHHS-Termination-3. Request for Administrative Hearing dated May 8, 2017
DHHS-Termination-4. Final informal Review Decision dated April 18, 2017
DHHS-Termination-5. Request for Informal Review dated January 19, 2017
DHHS-Termination-6. Notice of Termination dated January 12, 2017
DHHS-Termination-7. Notice of Violation dated November 29, 2016
DHHS-Termination-8. Request for Informal Review (NOV) dated December 12, 2016
DHHS-Termination-9. Final Informal Review Decision (NOV) dated January 30, 2017
DHHS-Termination-10. Timesheets for . with overbillings of units
DHHS-Termination-11. Plan of Care for . without employee name
DHHS-Termination-12. Timesheet for without Plan of Care
DHHS-Termination-13. Plan of Care and Timesheets for
DHHS-Termination-14. Plan of Care and Timesheets for – Poc dated after dates of service
DHHS-Termination-15. Complaint from Member . dated [redacted] 2015
DHHS-Termination-16. Complaint from Member . dated [redacted] 2016
DHHS-Termination-17. Complaint from Member . dated [redacted] 2016
DHHS-Termination-18. Complaint from Member . dated [redacted] 2016
DHHS-Termination-19. Complaint from Member dated [redacted] 2016
DHHS-Termination-20. Complaint from Member dated [redacted] 2016
DHHS-Termination-21. Complaint from Portland . dated [redacted] 2016
DHHS-Termination-22. Complaint from . dated [redacted] 2016
DHHS-Termination-23. Complaint from Member . dated [redacted] 2016
DHHS-Termination-24. Complaint from . dated [redacted] 2016
DHHS-Termination-25. Complaint re: Member . dated [redacted] 2016
DHHS-Termination-26. Complaint re: Member . dated [redacted] 2016
DHHS-Termination-27. Complaint re: Member . dated [redacted] 2016
DHHS-Termination-28. Complaint re: Member dated [redacted] 2016
DHHS-Termination-29. Complaint from Member . dated [redacted] 2016
DHHS-Termination-30. Complaint from Member dated [redacted] 2016
DHHS-Termination-31. Complaint re: Member . dated [redacted] 2016
DHHS-Termination-32. Email dated October 14, 2016 from Julie Daniels to Beth Ketch

Appellant Exhibits

Noble-1 DHHS Survey dated 03/11/2015

Noble-2	DHHS Letter re Statewide Approval Letter: Section 13, Targeted Case Management, dated 02/29/2016
Noble-3	Message from Julie Daniels to Mohamed Hassan re Resolved 2015 and 2016 complaints, dated 08/12/2016
Noble-4	Email from Shannon Burns to Cathy Register re Section 28, dated 09/01/2016
Noble-5	Email from Cathy Register to Mohamed Hassan re Section 28, dated 09/02/2016
Noble-6	Noble Home Health Care Letter to Parents and Clients, dated 09/14/2016
Noble-7	Cathy Register email to Carissa-Noble and Hannah Osborne re TCM Program, dated 09/16/2016
Noble-8	Hannah Osborne email to Carissa-Noble re TCM Program, dated 09/19/2016
Noble-9	Mohamed Hassan email to Cathy Register re Targeted Case Management Services, dated 10/06/2016
Noble-10	Cathy Register email to Mohamed Hassan re Section 28 Referrals, dated 10/06/2016
Noble-11	Shannon Burns email to Cathy Register re Provider Meeting, November 2nd, dated 10/20/2016
Noble-12	Shannon Burns email to Mohamed Hassan re BHP Supervisor, dated 12/22/2016
Noble-13	Cathy Register email to Jordyn Pomerleau re transition, dated 01/26/2017
Noble-14	Jordyn Pomerleau email to Cathy Register re Info, dated 01/27/2017
Noble-15	Cathy Register email to Jordyn Pomerleau re Info, dated 01/27/2017
Noble-16	Jordyn Pomerleau email to Mohamed Hassan re Last Day, dated 01/27/2017
Noble-17	Closing Argument for Suspension of Medicaid Payments
Noble-18	Closing Argument for Termination of Provider Contract

RECOMMENDED DECISION:

The hearing officer recommends that the Commissioner determine that the Department was correct when it determined that there exists a credible allegation of fraud for which an investigation is pending, absent a good cause exception, against Noble Home Health Care Inc., thus justifying the suspension of payments to the agency.

RECOMMENDED FINDINGS OF FACT:

1. Mohamed Hassan began operating Noble Healthcare on July 1, 2014.
2. Noble Healthcare was licensed both as a home health agency as well as licensed to provide Personal Support Specialist services.
3. Cathy Register, OCFS Resource Coordinator, met with Mr. Hassan to assist him in becoming licensed to provide MaineCare Services.
4. Noble Healthcare provided MaineCare Services under §19, Home and Community Based Benefits for the Elderly and for Adults with Disabilities. §96, Private Duty Nursing and Personal Care Services and §28, Rehabilitative and Community Support Services for Children with Cognitive Impairments, and §13, Targeted Case Management Services.
5. On February 29, 2016, the Department provided written notice that Noble Healthcare was approved to provide Targeted Case Management Services, §13.

6. Ms. Register had told Mr. Hassan that Noble Healthcare was approved to provide §13 services, but that it needed a specific license to provide §13 services to children with mental health diagnoses.
7. Noble HealthCare did not have such a license.
8. Noble Health Care provided §13 services to children with mental health diagnoses.
9. Noble Health Care did not have the proper licensure to provide §13 services to children with mental health diagnoses.
10. Mr. Hassan signed a MaineCare/Medicaid Provider agreement on May 14, 2014.
11. Mr. Hassan renewed the Provider Agreement on March 26, 2015.
12. On or about August of 2016, Ms. Register found out that Noble HealthCare was providing §13 services to children with mental health diagnoses.
13. Pursuant to a letter from Ms. Register to Mr. Hassan, Noble HealthCare was directed to cease providing such services and to discharge any existing clients in this category.
14. Noble HealthCare complied with that directive.
15. On or about September 12, 2016, Noble HealthCare applied for the license that would enable Noble HealthCare to provide §13 services to children with mental health diagnoses.
16. On November 17, 2016, the Department denied the application on the basis that Noble HealthCare had been providing §13 services, without proper licensure, to children and an adult with mental health diagnoses.
17. Noble HealthCare did not appeal that denial.
18. On January 13, 2017, the Department informed Mr. Hassan that the Department was immediately suspending Medicaid payments to Noble HealthCare because there existed a 'credible allegation of fraud' for which an investigation was pending.
19. Mr. Hassan requested an informal review.
20. The Final Informal Review dated January 30, 2017 upheld the suspension of Medicaid payments.

REASONS FOR RECOMMENDATION:

On January 13, 2017, the Department informed Mr. Hassan that the Department would be suspending all Medicaid payments to his agency, Noble Home HealthCare ('Noble'). See, DHHS-3. Noble contested this determination. See, DHHS-4. On January 30, 2017, the Department issued a Final Informal Decision in which it affirmed the suspension of Medicaid payments. See, DHHS-5. According to the Department, it had the authority to suspend payments because there existed a 'credible allegation of fraud' against Noble. According to the Department, pursuant to Chapter I, §1 of the MaineCare Benefits Manual, the Department was obligated to suspend Medicaid payments. According to that provision,

> ***Suspension of Payment Upon Credible Allegation of Fraud***
>
> ***The Department shall suspend payments to a provider upon a Credible Allegation of Fraud for which an investigation is pending under the MaineCare program or any Medicaid Program. A suspension of payments under this subsection is not a sanction under subsection 1.20. A Credible Allegation of Fraud is an allegation that the department has verified, from any source, which has one or more indicia of reliability and which allegation, facts and evidence have been carefully***

reviewed by the Department, on a case-by-case basis. The source of an allegation may be, but is not limited to, fraud hotline complaints, claims data mining or patterns identified through provider audits, civil false claims cases and law enforcement investigations. See 1.22-3(A) (was 1.20-3(A).[2]

According to a Prehearing Memorandum submitted by the Department, the suspension of Medicaid payments to a provider is required by federal regulation upon the Department's receipt of a credible allegation of fraud when an investigation is pending. See, 42 CFR §455.23. According to the Department,

"The federal regulation reflects a policy decision that payments should be held back when there exists a credible basis for an investigation of fraud by a Medicaid provider, as opposed to chasing taxpayer dollars after payments have been made and the money dissipated. 'By specifically encouraging States to withhold payments on a timely basis when there is a reliable evidence of fraud or willful misrepresentation, we are attempting to stop the payment of Medicaid funds at an early point so that more costly efforts of recouping monies already paid will not be necessary'. Citing 52 Fed. Reg. 48814 (December 28, 1987)." See, DHHS-21.

The Department points out that a suspension is, by its nature, temporary, lasting until either a determination is made that there is insufficient evidence or legal proceedings are completed. See, 42 CFS §455.23(c); Chapter I, §1.20-3(D), MaineCare Benefits Manual. It is neither a recoupment nor a final refusal to pay.

The Department further explained that the suspension of Medicaid payments does not require a determination that fraud has actually occurred.

Rather,

"What is required is an allegation of fraud that has one or more "indicia of reliability." 42 C.F.R. § 455.2; MBM Chapter I, §1.20-3(A). Any reliable evidence suffices. "Reliable evidence" is any evidence that is trustworthy or worthy of confidence. In Interest of D.E.D., 304 N.W.2d 133, 137 (Wisc. Ct. App. 1981) (citing Black's Law Dictionary 1160 (5th Ed. 1979)). Unlike other legal standards such as "beyond a reasonable doubt," or the "preponderance of the evidence," "reliable evidence" refers to the quality of the evidence only – and not to the weight of the evidence. Reliable evidence does not require a showing that fraud occurred or even that it probably occurred. Indeed, reliable evidence – evidence that is trustworthy or worthy of confidence – can lead to false conclusions, which is justification itself for further investigation." See, DHHS-21.

[2] The current MaineCare rules were issued subsequent to the action taken by the Department. Where possible, the hearing officer has not only provided the cite for the rules current at the time, but also the current citation.

Pursuant to the Letter of Suspension dated January 13, 2017, the Department presented four general allegations of possible fraud,

- ***"Targeted Case Management services provided to individuals with a mental health diagnosis, without proper licensure***
- ***Documentation not supporting the services that were billed and paid***
- ***Services provided without a plan of care***
- ***Seventeen (17) complaints related to your personal Care Agency services" See, DHHS-3.***

The Department recognizes that the rule permits the Department to find good cause to suspend Medicaid payment only in part if one of five circumstances exists. However, the Department argued that there was no evidence that any of them existed in this case. According to the Department, Noble failed to provide any evidence or legal argument that any of the five circumstances existed. The Department argued that, under the MaineCare Benefits Manual good cause exists only under the following circumstances,

> ***"Ch. I, Sec. 1.20-3(H)(1) applies when member access to services would be jeopardized because the provider is the sole community physician, or sole source of essential services, or services a large number of members in a HRSA-designated medically underserved area. There was no evidence introduced or argument that this circumstance applied. Noble is not a sole community physician – it is a personal care agency. Additionally, there was no evidence that Noble serves a large number of members in a HRSA-designated medically underserved area. Therefore, the Department did not err in finding that this circumstance did not apply.***
>
> ***Ch. I, Sec. 1.20-3(H)(2) applies when written evidence supplied by the provider convinces the Department to only apply a partial payment suspension. Noble provided no written evidence to the Department. Therefore, the Department did not err in finding that this circumstance did not apply.***
>
> ***Ch. I, Sec. 1.20-3(H)(3) applies when the allegation of fraud focuses solely and definitively on a specific type of claim or a specific business unit of the provider and where the Department can determine in writing that a payment suspension in part only would effectively ensure that fraudulent claims were not continuing to be paid. As detailed above, the credible allegations of fraud were not confined to one unit or one type of claim, but were across every type of services provided by Noble. Therefore, the Department did not err in finding that this circumstance did not apply.***
>
> ***Ch. I, Sec. 1.20-3(H)(4) applies when the relevant law enforcement entity declines to certify that a matter continues to be under investigation. There was no evidence or argument that this circumstance existed or applied to Noble. Therefore, the Department did not err in finding that this circumstance did not apply.***

Ch. I, Sec. 1.20-3(H)(5) applies when the Department determines that a payment suspension only in part is in the best interests of the MaineCare program. Valerie Hooper from the Program Integrity Unit testified that the Department determined, in light of all of the credible allegations of fraud that the Department could not make this finding. Noble produced no evidence to compel a contrary finding nor did it present any argument that it would be in the best interests of the Medicaid program to impose a partial payment suspension. Therefore, the Department did not err in finding that this circumstance did not apply. See, DHHS-22.

Noble argues that the Department's decision to suspend Medicaid payments was incorrect from the start. Noble writes,

"Simply put, the Department shouldn't have made its initial determination of a credible allegation of fraud, and certainly shouldn't have affirmed that upon informal review...

For the Department to make a determination of fraud so as to suspend payments, it must then find that the provider was engaged in intentional deception or misrepresentation. To meet this standard, the Department must show that the misrepresentation was made "knowingly or with a reckless disregard for the truth." See id[3]. In this case, there was simply no evidence, at any time, of the requisite intent." See, Noble-17.

Noble argues that the Department's findings are not evidence of even a credible allegation of fraud, but rather a case of a misunderstanding on the part of Noble. Noble concedes the misunderstanding and argues it sought to mitigate the consequences to the best of its ability. According to Noble, the primary allegation is that it provided TCM services to children with mental health diagnoses without the proper licensure. According to Noble, evidence shows that Mr. Hassan had a reasonable belief that his agency was authorized to provide the TCM services. When Mr. Hassan was informed by the Department, he promptly ceased providing those services, and diligently and professionally discharged his clients to another provider. See, Noble-17.

Noble also rejects the Department's other bases for the suspension of Medicaid payments. In essence, Noble argues that there were temporary errors and outside circumstances that led to the lapses. Noble more thoroughly discusses these allegations in its closing argument in the matter of the Contract Termination Hearing. See, Noble-18. Finally, Noble argues that good cause does apply in this case because the Credible Allegation of Fraud 'focuses solely and definitively on a specific type of claim or a specific business unit of the provider and where the Department can determine in writing that a payment suspension in part only would effectively ensure that fraudulent claims were not continuing to be paid.' Noble argues that all of the Department's allegations are related to the provision of TCM services.

[3] Chapter 1, §1.20-1(A), MaineCare Benefits Manual.

Targeted Case Management Services

According to the Department, the evidence shows that Noble provided TCM services to children with mental health diagnoses without the proper licensure. The Department argues that Mr. Hassan was informed, more than once, by Department personnel that such licensure was required. The Department claims that the basis for this allegation came from many sources including claims data, and electronic communications between Noble and the Department. In addition, this information was confirmed by the testimony of Cathy Register, OCFS, at hearing. According to the Department,

> ***"Cathy Register from the Office of Child and Family Services (OCFS) testified that she and another Department employee met with employees of Noble, including Mohamed Hassan as part of the approval process for providing TCM services. She testified that they met in February of 2016 and again in April of 2016. She testified that on both occasions she expressly informed Noble that it could not provide TCM to children with MH diagnoses without being licensed. Ms. Register additionally testified that as a part of her "standard spiel" she encourages non-licensed agencies to apply for and receive a MH license. Additionally, these discussions were explicitly referenced and relied upon by the Division of Licensing and Certification (DLC) in denying Noble a Mental Health Agency license in November 2016. (DHHS #14A). Tellingly, Noble did not appeal that decision or otherwise object to the facts set forth therein.***
>
> ***Notwithstanding these instructions, Noble provided TCM services to children. The Department became aware of this based upon claims data. (DHHS #14C). Additionally, Noble employees, for example Carissa Pushard, confirmed this as well. (DHHS #14B). The Department thus had independent and corroborating sources of information on this issue. The Department had its claims data. (DHHS #14C). The Department had reports from different offices within DHHS, specifically DLC and OCFS. (DHHS #14A and 14B). Finally, the Department had confirmation from Noble itself. (DHHS #14B). In short, there were multiple sources of verification, each of which alone had indicia of reliability, and when taken together reinforced or "reconfirmed" one another. Therefore, the Department submits that this evidence of record compels the Hearing Officer to conclude that the Department was correct in determining that a credible allegation of fraud existed, to wit: that Noble was billing for services that it was not authorized to provide." See, DHHS-22.***

Noble concedes that it did provide TCM services to children with mental health diagnoses without the proper licensure. However, it argues that it misunderstood a DHHS letter authorizing Noble to provide TCM services. According to Noble, Mr. Hassan made an unfortunate mistake, but it was reasonable under the circumstances,

> ***"Noble provided those services after filing an application for so-called Section 13 (Targeted Case Management) licensure, and then, only after receiving a February 29, 2016 letter from the Department captioned: "RE: Statewide Approval Letter:***

Section 13, Targeted Case Management". See Noble Exhibit 2 (the Approval Letter).

The Approval Letter included a list of a number of steps that Noble needed to take to move forward with the acceptance of Section 13 patients. Noble's president, Mohamed Hassan, testified at hearing that he complied with the conditions outlined within the Approval Letter, and therefore believed that Noble was free to accept Section 13 patients and, correspondingly, bill for those services. Mr. Hassan also testified that Noble ensured that all staff involved in providing the related services maintained the appropriate professional licensure. There was no evidence presented that Mr. Hassan or employees at Noble ever attempted to mislead Department staff about the services Noble was providing, nor about the resultant billing." See, Noble-17.

Noble argues that the Department's testimony regarding the directive to Mr. Hassan to obtain proper licensure was not entirely correct. According to Ms. Register's testimony, she informed Mr. Hassan on more than one occasion that he needed to obtain a license for his agency to provide TCM services to children with mental health diagnoses. Specifically she testified that she told him during a meeting on February 11, 2016 and April 15, 2016. However, Mr. Hassan disagreed and testified that these conversations were about other programs. Mr. Hassan also testified that he had 'inherited' the §13 clients, who were children with mental health diagnoses, from another agency. Because of that, he testified that he did not fully understand that §13 served different populations. According to Noble, it was Mr. Hassan who decided to cease providing TCM services because it was not financially viable. Further, Noble argues that once Mr. Hassan understood that his agency was not licensed to provide those services, he ceased providing them and provided notice to the clients of the need to arrange for a different provider. See, Noble-17.

The hearing officer has determined that the failure to obtain the proper licensure to provide TCM services to children with mental health diagnoses is properly presented by the Department as an allegation of fraud that has one or more "indicia of reliability." The evidence shows that Mr. Hassan represented to both clients and his own staff that the agency had obtained the proper licensure. An email from Carissa Pushard, LSW-C, Noble's Children's TCM Program Supervisor, to Hanna Osborne, Social Services Program Specialist I, expresses concern about the situation, after she subsequently initiated an application for the proper licensure,

"I am concerned, however, that the Noble TCM program has been serving mental health clients for the last few months with the understanding that we did have a license. As when I asked Mohamed (Mr. Hassan) he told myself and others that we did, and then provided us with a copy of a letter from OCFS stating that we were approved. However he never provided a copy of the actual license. I have had many conversations with Mohamed regarding the difference always to come back to him assuring us that we were licensed. Last Wednesday during a meeting with OCFS Resource Coordinator and Kelly Pelletier and Cathy Register it was verified that we do not." See, Noble-7.

The failure of an administrator, albeit a new one, to not recognize that the agency did not have the proper licensure to deliver specific services is difficult to discount as a mere misunderstanding. Noble received authorization to provide §13 services, Targeted Case Management. Under this section both adults and children may receive TCM services if they meet specific eligibility requirements. Under §13, children may receive these services if they have Behavioral Health Disorders, Developmental Disabilities or Chronic Medical Conditions. See, §13.03-2, MaineCare Benefits Manual. It is only for those clients that have mental health diagnoses, where a special license is required. It would appear that Ms. Pushard, herself, recognizes that TCM services, under the rules are also provided to children with other than behavioral disorders, as she tried to explain the 'difference' to Mr. Hassan. As the administrator of a company that provides these specialized services, it is not credible that such a person would not understand the basic licensure requirements.

Documentation Not Supporting Services Billed

According to the Department, another basis for suspending Medicaid Payments was the failure to adequately document services being rendered. According to the MaineCare Benefits Manual, providers are expected to maintain thorough documentation of the services he provides including financial and professional records,

> ***"MaineCare providers are required to 'maintain and retain contemporaneous financial, provider, and professional records sufficient to fully and accurately document the nature, scope and details of the health care and/or related services or products provided to each individual MaineCare member.' MBM Ch. I, Sec. 1.03-3(M). "Records must include, but are not limited to all required signatures, treatment plans, progress notes, discharge summaries, date and nature of services, duration of services, titles of persons providing the services, all service/product orders, verification of delivery of service/product quantity, and applicable acquisition cost invoices." Id." See, DHHS-22.***

According to the Department, through an audit of Noble's documentation, there were multiple instances where the sole documentation provided by Noble to support its billing was a timesheet. The Department cited two of its exhibits in support of this allegation. DHHS-15 is a time sheet for employee Waleed Alahmod for client . The time sheet lists only the dates and hours worked by Waleed Alahmod. There is no documentation of the services rendered to DHHS-16 is another time sheet for employee, Waleed Alahmod for client . Again, there are only dates and the times worked on the particular dates. According to the Department,

> ***"These 'records' do not provide any information about what services were supplied or how much time was expended on services. The records are comprised of nothing more than in and out times for the PSS worker. Without documenting what, if any, services were actually provided obviously creates an opportunity for fraud. The indicia of reliability here is that the documents were created by Noble itself and subsequently produced in response to a Department audit. Therefore, the Department submits that the evidence of record compels the Hearing Officer to conclude that the Department was correct in determining that a***

credible allegation of fraud existed, to wit: that there was a credible allegation that Noble could be billing for services it did not provide." See, DHHS-22.

According to Noble, the allegation in regards to its documentation was based upon a period of time when Noble had just started doing business: July 6, 2014 through September 13, 2014. According to Noble, as a new business, there were initial mistakes that were corrected.

> ***"Mohamed Hassan, Noble's president, testified that Noble commenced operations in early July, 2014. Mr. Hassan further testified that some errors during the first few months of Noble doing business were anticipated, given all that is involved in starting a new business. Mr. Hassan expressed a willingness to work with the Department to correct errors, and Noble's history shows that both Noble and Mr. Hassan worked closely with the Department to correct errors. It is noteworthy that the erroneous timesheets produced by the Department were limited in number." See, Noble-18.***

The hearing officer has determined that Noble's failure to have documentation to support services billed is properly presented by the Department as an allegation of fraud that has one or more "indicia of reliability." The hearing officer agrees that the failure to provide more than the in and out times of a provider, without documenting, what, if any services were actually provided, provides an excellent opportunity for fraud. The Manual is explicit about the responsibility of a provider to maintain records in regards to services provided. In addition, the MaineCare Provider Contract contains the exact same requirement in regards to record keeping. See, DHHS-12 and DHHS-13. Again, Noble's argument that the failure to do so was part of Noble's growing pains is without merit.

Services Provided Without a Plan of Care

According to the Department, there was credible evidence that Noble was providing services without a plan of care. This particular allegation, according to the Department, is particularly important because under the rules, providing PSS services that are not part of an authorized plan of care is a non-covered service. See, Chapter II, §19.05(A), MaineCare Benefits Manual. Billing for non-covered services is one of the examples of conduct that could constitute fraud enumerated at Chapter I §1.20-1(B)(4), MaineCare Benefits Manual.

The Department cited several of its exhibits, explaining that the evidence shows that services were rendered to an individual on dates prior to the date of the individual's plan of care,

> ***"In the present case, the Department discovered through an audit that Noble was billing for PSS services without an authorized plan of care. A review of Noble's claims reveals that Noble submitted claims to MaineCare for services provided to an individual between [redacted]14 and [redacted]14. (DHHS #17B). Noble's documentation for that individual showed that there was no plan of care dated prior to 8/4/15. Similarly, a review of another individual's records revealed a plan of care dated [redacted]/14. (DHHS #18A). However, again, a review of Noble's claims submitted to MaineCare showed claims dating back to [redacted]/14, approximately six weeks prior to the plan of care. (DHHS #18B). All claims submitted for services provided prior***

to the creation of a plan of care for these individuals are non-covered services." See, DHHS-22.

Noble argues, as in the case of the missing documentation, that the audit of Noble's records came at a time when Noble had just begun operation, and the absence of the plan of care was an oversight,

> ***"Again, this is attributable to the fact that given the newness of Noble's business, there was some ongoing on-the-job learning. Mr. Hassan testified that when Noble received a referral, it included a Plan of Care as submitted to Noble by EIM. Mr. Hassan and his team at first assumed that no additional Plan of Care was necessary, given that the referral came with a pre-established Plan of Care. Once Mr. Hassan learned that Noble had to prepare and submit a separate Plan of Care for each referral, Noble began to do so. The Department noted that in some cases, those Plans of Care were insufficient, as were some of Noble's billing records. Noble and Mr. Hassan then took immediate steps, upon the advice and under the guidance of Department staff, to prepare Plan of Care and Timesheet forms that met Department requirements. Mr. Hassan also testified that Noble developed forms in different languages, given the fact that many of Noble's former employees were from many different ethnicities, and spoke various languages. In short, Noble and Mr. Hassan worked diligently to ensure that Department requirements were met, particularly where and when the Department pointed out errors." See, Noble-18***

The hearing officer has determined that Noble's provision of services without an authorized care plan is properly presented by the Department as an allegation of fraud that has one or more "indicia of reliability." As the Department points out, failure to do so in the case of PSS services is listed in the MaineCare Manual as an example of fraud. Noble's argument that this issue was an example of 'growing pains' is not credible.

<u>Consumer Complaints</u>

Lastly, the Department argued that Noble had received 17 separate consumer complaints. In its closing, the Department cited two specific instances where two separate clients complaints in which Noble billed for hours of service it did not provide,

> ***"The Department received a complaint from a consumer that she was not receiving from Noble the full hours that she was authorized to get Personal Support Services (PSS). (DHHS #19A) This complaint was initiated by the consumer, who reported it to EIM (the intermediary between providers and DHHS) which then referred the complaint to the Office of MaineCare Services (OMS). The Department looked at the submitted claims from Noble and determined that Noble had been billing for the full 13 hours of PSS services for which the member was authorized to receive. (DHHS #19B).***
>
> ***Several months later, the Department received a second complaint, from a different member who also submitted an unsolicited complaint to EIM alleging***

that she was not receiving the full 18.5 hours of PSS services for which she was approved. (DHHS #20A). Again, when the Department reviewed the claims submitted by Noble, it discovered that Noble was billing the Department for the full hours for this member.

The Department had two separate, unsolicited complaints from members complaining about the same problem. In reviewing claims submitted by Noble, the Department determined that there was a discrepancy between the lack of services being reportedly received by the members and the billings submitted by Noble. The unsolicited nature of the complaints, and the fact that two unrelated members were complaining about the same issue with Noble constitute sufficient indicia of reliability to justify the Department determining that a credible allegation of fraud existed. Therefore, the Department submits that the evidence of record compels the Hearing Officer to conclude that the Department was correct in determining that a credible allegation of fraud existed, to wit: billing for services not provided." See, DHHS-22.

At hearing, Mr. Hassan conceded that some of the complaints were legitimate. However, he explained that the majority were due, either to family disputes or to incompetent staff who were eventually fired. According to Mr. Hassan, in some instances, family members are providing the services to the client under the auspices of Noble,

"Mr. Hassan testified that some of the complaints related to what amounted to family disputes: Because family members sometimes provide services to other family members, there are some situations where intra-family squabbles result in complaints. Mr. Hassan testified that some of the complaints arise from the fact that patients were dissatisfied with the number of hours that the Department determined were necessary for provision of care, and believed that the Department should have authorized more hours: These situations sometimes resulted in complaints. Admittedly, Mr. Hassan testified that some of the complaints were indeed legitimate, resulting in reshuffling and/or terminating certain Noble staff member's employment positions." See, Noble-18.

The majority of evidence in regards to consumer complaints was presented at the hearing in regards to the termination of the MaineCare Provider Agreement. Noble received 17 complaints from consumers between the dated of December 31, 2015 through September 20, 2016. See, DHHS-Termination-15-31.

At hearing, Mr. Hassan was provided the opportunity by his attorney, to comment on several of the complaints. In each and every instance, Mr. Hassan had an explanation as to why each complaint was not legitimate.

According to DHHS-Termination-15, Elder Independence of Maine (EIM) an agent of the Department of Health and Human Services in the State of Maine which serves as the service coordination agency for several MaineCare in-home services, received a complaint from client, about Noble,

> ***" attempted to contact Noble Home Health regarding statement from consumers (sic) daughter who is paid pss for the agency for her mother and father, that she is not being paid. states daughter/pss is being paid but her paycheck goes to him. also states that his son is the one helping him with ADL tasks as opposed to his daughter. left several messages with Noble Home Health regarding these concerns of possible fraud and to require timesheets and get clarification on who is providing services and where payment is going. attempted several calls over a period of one week with no return contact."***

According to Ms. Hassan this is not a complaint. Rather, the daughter is the paid caregiver and she signs her checks over to her father.

According to another complaint, a consumer, whose relatives were care providers, was reported to Adult Protective Services. According to the complaint,

> ***"...there are many issues with , he walks to r, makes statements allegations that cause ppl to call policy, APS, hospital etc...Scott (APS investigator) states two weeks ago, police returned ome and found eggs on floor, rotting food, used syringes, flies everywhere. The report to APS and said they wanted to know what agency was staffing . Scott went in 4 weeks ago- clutter and dirty at this time as well." See, DHHS-Termination -21.***

According to Mr. Hassan, this consumer intentionally created the "mess" because he wanted to return to .

There were two complaints against one worker, both in regards to the worker taking money from the consumer, According to one of the complaints,

> ***' received call from ' dtr to notify that told her PSS Angela Daigle owes her $50 that provided because PSS reported she needed money for food for her children and gas money. search bank records and noted a withdrawal from band on [redacted] for $20.00. does not have access to debit car and was provided transportation by PSS to the bank. This is 2nd incident in which PSS transported to bank to withdraw money for PSS that is aware of." See, DHHS Termination-20 and 22.***

Mr. Hassan responded that he terminated the worker, but also argued that it was the consumer who wanted to borrow or take money from the PSS.

The hearing officer has determined that the 17 client complaints in regards to Noble's provision of services are properly presented by the Department as an allegation of fraud that has one or more "indicia of reliability." The complaints included Noble billing for services consumers claimed they did not receive. Some complaints regarded the inconsistency of coverage. Certainly complaints in regards to billing for services that the consumer disputed were provided does evidence one or more 'indicia of reliability' for an allegation of fraud.

Good Cause Exemption

The Department argues that no good cause exemption applies to this case that would lead the Department to not suspend all MaineCare payments. Noble disagrees, arguing that a good cause exemption is in evidence under Chapter I, §1.20(H)(3)

"Ch. I, Sec. 1.20-3(H)(3) applies when the allegation of fraud focuses solely and definitively on a specific type of claim or a specific business unit of the provider and where the Department can determine in writing that a payment suspension in part only would effectively ensure that fraudulent claims were not continuing to be paid." See, DHHS-7.

According to Noble, the allegations only related to Noble's TCM division. Noble provides no evidentiary basis for this assertion, and the hearing officer fails to find support for such an assertion. The Department's basis for the suspension of Medicaid payments wasbased on four distinct factors, some of which overlapped programs. According to the evidence, Noble was cited for providing TCM services to children with mental health diagnoses without the proper licensure. The consumer complaints came from adults being served by the agency under §19, Home and Community Based Benefits for the Elderly and for Adults with Disabilities. In addition, Noble was also providing MaineCare §96, Private Duty Nursing and Personal Care Services and §28, Rehabilitative and Community Support Services for Children with Cognitive Impairments. Therefore, the hearing officer agrees that a good cause exemption does not apply in the case of Noble.

In conclusion, the hearing officer respectfully recommends that the Commissioner determine that the Department was correct when it determined that there exists a credible allegation of fraud for which an investigation is pending, absent a good cause exception, against Noble Home Health Care Inc., thus justifying the suspension of payments to the agency.

MANUAL CITATIONS

- MaineCare Benefits Manual, 10-144 C.M.R. Ch. 101 (2014).

RIGHT TO FILE RESPONSES AND EXCEPTIONS

THE PARTIES MAY FILE WRITTEN RESPONSES AND EXCEPTIONS TO THE ABOVE RECOMMENDATIONS. ANY WRITTEN RESPONSES AND EXCEPTIONS MUST BE RECEIVED BY THE DIVISION OF ADMINISTRATIVE HEARINGS WITHIN FIFTEEN (15) CALENDAR DAYS OF THE DATE OF MAILING OF THIS RECOMMENDED DECISION.

A REASONABLE EXTENSION OF TIME TO FILE EXCEPTIONS AND RESPONSES MAY BE GRANTED BY THE CHIEF ADMINISTRATIVE HEARING OFFICER FOR GOOD CAUSE SHOWN OR IF ALL PARTIES ARE IN AGREEMENT. RESPONSES AND EXCEPTIONS SHOULD BE FILED WITH THE DIVISION OF ADMINISTRATIVE HEARINGS, 11 STATE HOUSE STATION, AUGUSTA, ME 04333-0011. COPIES OF WRITTEN RESPONSES AND EXCEPTIONS MUST BE PROVIDED TO ALL PARTIES. THE COMMISSIONER WILL MAKE THE FINAL DECISION IN THIS MATTER.

CONFIDENTIALITY

THE INFORMATION CONTAINED IN THIS DECISION IS CONFIDENTIAL. *See* 42 U.S.C. § 1396a (a)(7); 22 M.R.S. § 42 (2); 22 M.R.S. § 1828 (1)(A); 42 C.F.R. § 431.304; 10-144 C.M.R. Ch. 101 (I), § 1.03-5. ANY UNAUTHORIZED DISCLOSURE OR DISTRIBUTION IS PROHIBITED.

Dated: Aug 24, 2017

Miranda Benedict, Esq.
Administrative Hearing Officer

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