

# CODING CONTINUUM, INC.

**Preliminary Expert Report  
Prepared By  
Christina Melnykovich, RHIA**

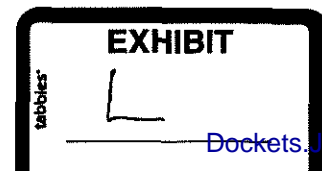
**Re: USA ex. Rel. Karyn D. Walker v. R&F Properties of Lake County, Inc.  
Case No: 5:02-cv-131-Oc-10GRJ**

## **I. Introduction**

This report provides details of my analysis in the aforementioned case. Documents considered in the formulation of my opinion include, but are not limited to transcripts of deposition testimony (Lorna Gail Mayer and Karyn D. Walker), stenographic note book annotations (Bates #000169 and #000170), Leesburg Family Medicine job descriptions (Business Manager, Office Manager, Insurance Clerk), Medifest Seminar literature, RCFA Healthcare Management Services literature, reports, and manuals, *Medicare B Update!* issuances, and other documentation provided to me by Relator's counsel.

My professional training is in the management of health information. I received a Bachelor of Science degree in Health Information Management from the University of Kansas in 1982 and passed the American Health Information Management Association's Registered Health Information Administrator examination (a.k.a. Registered Records Administrator) in 1982, resulting in the accordance of a Registered Health Information Administrator credential. I have maintained my credentialed status since 1982. During the course of my career, I have managed Health Information Management, Patient Financial Services, Quality Improvement, Case Management, Social Work, and Disease Management departments. As Vice President, Medicare Part B for the State of Washington, I administered the Medicare Part B contract, including processing of 8.6 million claims, directed activities of 250 employees, and provided oversight to nine subcontractor locations. My areas of responsibility included Claims Processing, Program Integrity (Fraud & Abuse), Appeals, Fair Hearings, Provider Relations, Medicare Secondary Payer, Adjustments, Medical/Utilization Review, Coverage, and Medicare IT operations.

In March 2000, I founded a consulting firm specializing in medical coding and billing. The firm, Coding Continuum, Inc. provides auditing, quality monitoring, education, and litigation support services to its clients. During the course of my career, I have been asked on numerous occasions to present information regarding



coding and billing compliance at national, regional, and local seminars. I have spoken at conferences sponsored by DecisionHealth, HcPro, American Healthcare Radiology Administrators, American Health Information Management Association, and the American Academy of Professional Coders. I have been interviewed by *Modern Healthcare*, *Briefings on APCs*, and *Radiology News*. I have provided technical expertise to the American Healthcare Radiology Administrators *Link Coding Q & A* and have served on the advisory boards of HcPro's *APC Answer Letter* and CCH's *Compliance Edge*. I have taught the Compliance and Documentation chapters of the American Academy of Professional Coders curriculum to local students for four years.

I have been asked to provide expert witness services on numerous occasions during the course of the last eleven years, both in the capacity as an administrator of health information as well as in matters involving coding and billing disputes. I have been retained by plaintiffs and defendants, and have testified in both deposition and trial regarding proper protocols associated with management of health information, coding, and billing. Due to the fact that many cases for which I have been retained have settled out of court or are currently in pretrial phase, during the course of the last four years, I have been deposed and testified on one occasion in the matter of *Crown Anesthesia Medical Group, Inc., et.al. vs. Andrew Hok-San Thio, MD.*

The rate charged for my consulting services is \$150 per hour. Expert testimony is billed at a rate of \$1600 per day for the first eight hours and \$200 per hour for every hour thereafter.

## **II. List of Opinions**

1. In my opinion, Leesburg Family Medicine knew about Incident To billing requirements during the time of Karyn D. Walker's employment with the practice.
2. In my opinion, Leesburg Family Medicine had a duty and an obligation to understand and comply with Incident To billing requirements in order to insure that it properly billed for services rendered by non-physician practitioners in its employ.
3. In my opinion, Leesburg Family Medicine improperly billed and collected Medicare payments for services provided to its patients by Karyn D. Walker and other non-physician practitioners in its employ.

## **III. Basis & Reasoning for Opinions**

1. In my opinion, Leesburg Family Medicine knew about Incident To billing requirements during the time of Karyn D. Walker's employment with the practice. My opinion is based on (1) my review of documents relating to this matter,

including information provided to the practice by Blue Cross/Blue Shield of Florida, the Medicare Part B Carrier for Florida providers; (2) information provided to the practice by a consultant, RCFA Healthcare Management Services; (3) the testimony of witnesses Lorna Gail Mayer and Karyn D. Walker, and (4) my professional experience working with providers who bill Medicare for services rendered to patients.

As has been widely publicized by Medicare Part B carriers throughout the United States, Medicare Part B allows coverage for services and supplies furnished by a physician's personnel when those services and/or supplies are furnished "incident to" the physician's professional services. To be covered, "incident to" the services of a physician and for purposes of addressing the Incident To provision in the context of issues relevant in the Leesburg Family Medicine matter, the services and supplies must meet the following requirements:

**The services/supplies are an integral, although incidental, part of the physician's professional services.** The services/supplies are furnished in the course of diagnosis or treatment of an illness or injury. It does not mean that the service of the physician's employee must be incident to the actual rendition of a personal service by the physician. Such a service/supply could be considered to be incident to when furnished during the course of treatment of an illness/injury where the physician performs an initial service and subsequent services of a frequency which reflects his/her active participation in and management of the course of treatment.

**The services/supplies are of a type that are commonly furnished in a physician's office or clinic.** Services and supplies commonly furnished in physicians' offices (Place of Service 11) are covered under the "incident to" provision. Where supplies are clearly of a type a physician is not expected to have on hand in the office or where services are of a type not considered medically appropriate to provide in an office setting, they would not be covered under the "incident to" provision.

**The services/supplies are furnished under the physician's direct supervision.** Coverage of services/supplies incident to the professional services of a physician is limited to situations in which there is direct personal physician supervision. This applies to services of auxiliary personnel employed by the physician and working under his/her supervision. Thus, where a physician employs auxiliary personnel to assist in rendering services, the services of such personnel are considered incident to the physician's services if there is a physician's service rendered to which the services of such personnel are an incidental part and there is direct personal supervision by the physician. Direct personal supervision in the office setting does not mean that the physician must be present in the same room; however, the physician must be present in the office suite and immediately available to provide assistance and direction throughout the time the service is being performed.

Prior to securing a position in 1993 with Leesburg Family Medicine, Ms. Mayer worked for a plastic surgeon, a proctologist, ophthalmologist, and a nephrologist. Her duties included filing of insurance claims. At the time of her employment with Leesburg Family Medicine, Ms. Mayer functioned in an Office Manager capacity until she was trained to assume the Business Administrator (referenced also as Business Manager) position. At the time of her deposition, Ms. Mayer was the Business Administrator (Manager) for the practice, with two Office Managers (Leesburg and Lady Lake offices) reporting directly to her. When Ms. Mayer assumed the Business Administrator (Manager) position, Patsy Cyrus was the Office Manager at the Leesburg office. At the time of her deposition, Ms. Cyrus was still at the Leesburg office, reporting directly to Ms. Mayer. The insurance/billing staff reports directly to the Office Manager (Ms. Cyrus), who reports to the Business Administrator (Manager).

According to Ms. Mayer's testimony, "I had the skills for the office manager part." According to Ms. Mayer's testimony, whenever Medicare seminars were offered "we would attend". When asked about her attendance at private seminars, Ms. Mayer responded by saying, "We had - we hired a firm to, RCFA, to come down and do a complete review of our entire office, billing practices, everything, coding." When asked if she continues to "send people from your office" to all the seminars, Ms. Mayer responded that she does, "absolutely". (See attached agendas of 1997 and 1998 Medifest Seminars distributed by Medicare A & B of Florida in its *Medicare B Update!* disclosed by Defendant - Marked as Exhibits A1 - A7: Bates #001544-001551; Exhibits B1-B8: Bates #002121-002128). According to the registration data disclosed by the Defendant (Exhibits C1-C5: Bates #000633-000637), both Shelly Scarbrough and Sheila Voss enrolled in the Primary Care session. According to the agenda, "special rules which may affect payment to a primary care provider (such as "incident-to provision") were covered by the course. Documentation disclosed by the Defendant further substantiates attendance at programs whose course content included information regarding Incident To provisions. A comprehensive manual provided in conjunction with Blue Cross/Blue Shield of Florida's seminar "Introduction to Medicare 101", page 103, specifically addresses the "Incident To" provision as well as Services By Nurse Practitioners And Physician Assistants (Exhibits D1-D3; Bates #000646-00647; 001383).

According to Ms. Mayer's testimony, in 1994 she contacted Medicare to inquire about billing for the services of a Physician Assistant hired by Leesburg Family Medicine:

Q: When Leesburg Family Medicine first hired a physician assistant, did anybody, to your knowledge, inquire about how to bill for a physician assistant services for insurance or Medicare or Medicaid?

A: Yes. I call it Medicare.

Q: And when was that?

A: Well, '94 when he started, before he started.  
Q: And who did you speak to, if you remember?  
A: Someone in Medicare.

Ms. Mayer goes on to state that she contacted a general information number "that all providers have". She states that she personally placed the call and when asked to recollect the conversation, she states:

A: I don't recall specifically, but I do know that we were told that you bill under the provider's number, under their direct supervision.

According to Ms. Mayer when asked about any conversations that may have occurred regarding the concept of Incident To billing:

A: We didn't know anything about incident to until the lawsuit. It was never discussed.

Q: I don't mean - -

A: Direct supervision has been discussed, but not incident to.

According to Ms. Mayer's testimony, Leesburg Family Medicine received regular publications from the Medicare Carrier, Blue Cross/Blue Shield of Florida.

Q: I want to go back for a second to the Medicare update that you said you received quarterly. Did you review those when they came in?

A: We had - - The office managers got one and the insurance girls got one. And then sometimes I got one depending on how many copies came in. But we tried to have meetings and go over them for anything that related to family practice.

Q: Okay.

A: Sometimes I wasn't always able to attend.

Q: Were the meetings held just like quarterly then after the manual was published?

A: After an update came out, yes.

Q: And those meetings would be attended then by you, the office manager, or the insurance people?

A: Yes, both office managers.

Q: For Lady Lake and Leesburg?

A: Yes.

Q: Were those kind of just open forum discussion about any questions about Medicare?

A: We just tried to go through it page by page.

A review of documentation disclosed by the Defendant includes numerous *Medicare B Updates!* representing bimonthly issuances during years 1997, 1998, and 1999. According to the Office Manager job description for the Leesburg office (see Exhibit E1-E2: Bates#000107-000108), one of the job duties entails

having a meeting with the Business Administrator (Manager), Insurance girls, Natalie who processes Medicare payments, Lady Lake Office Manager, and Leesburg Office Manager to go over any new issues. According to the job description, the meeting transpired "When Medicare updates come out".

As stated in each *Medicare B Update!* disclosed by the Defendant, and under the heading "General Information About the *Medicare B Update!*", "Articles included in each *Update!* represent formal notice that specific coverage policies either have or will take effect on the date given. Providers who receive each issue are expected to read, understand, and abide by the policies outlined in this document to ensure compliance with Medicare coverage and payment guidelines". (See Exhibit F1: Bates#001603).

A review of the March/April 1997 *Medicare B Update!* includes an announcement and registration form for the 1997 Medifest training program as well as an article on pages 20 and 21 (See Exhibit F2-F3: Bates#001619-001620) regarding Coverage Under the "Incident to" Guidelines. Direct personal supervision is addressed in detail as is the performance of the initial service by the physician and subsequent services of a frequency which reflects his/her active participation in and management of the course of treatment.

The March/April 1998 issue of the *Medicare B Update!* addresses Revised Coverage Guidelines for Nurse Practitioners and Physician Assistants. This article, on pages 21-23 (Exhibit F4-F6: Bates#002137-002139) details changes effective for services furnished on and after January 1, 1998, and outlines billing requirements, including usage of appropriate modifiers. The article includes information regarding expected reimbursement which is stated to be 85 percent of the physician fee schedule amount.

In the May/June 1998 issue of the *Medicare B Update!* Physician's Focus titled "Fraud and Abuse: If It Seems Too Good To Be True, It Probably Is", Sid Sewell, MD, FAAFP, Medicare Medical Director addresses Incident To services and supplies in the context of physicians being careful regarding part-time positions. As Dr. Sewell states, "Medicare requires that the physician must be present and immediately available for services or supplies to be covered as "incident to a physician's services" (Exhibit F7: Bates#002207).

In the September/October issue of the *Medicare B Update!* on page 25, Billing Guidelines for Non-Physician Practitioners are addressed (Exhibit F8: Bates#002381). The December 1998 *Medicare B Update!* contains information regarding "Incident to" Procedures (Exhibit F9: Bates#002520). The January/February 1999 *Medicare B Update!* contains Nurse Practitioner, Physician Assistant, and Clinical Nurse Specialist Guidelines (Exhibits F10-F11: Bates #002640-002641). The March/April *Medicare B Update!*, in addition to publishing a correction to the January/February 1999 article, contains an article

regarding "Incident To" Services (Exhibits F12-F14: Bates#002677-002678: #002724).

In 1997, Leesburg Family Medicine retained the services of RCFA Healthcare Management Services to perform a Practice Operations Review and a Coding and Revenue Enhancement Review (Exhibit F15: Bates#001205). According to Ms. Mayer's deposition testimony, Dr. Holland, with consensus of the other group members, hired RCFA Healthcare Management Services.

Q: Do you know what prompted him to do this?

A: I think he was concerned that we were not coding high enough levels of service.

Q: What would happen if you're not coding high enough levels; is it less revenue?

A: Yes.

Documents disclosed by the Defendant include Medicare procedures regarding "Incident-To" services (Exhibit F16: Bates#001108) provided to them by RCFA Healthcare Management Services.

On two occasions (April 28, 1998 and December 15, 1998), a Leesburg Family Medicine employee made two entries in a stenographic note book annotated "Medicare Compliance/Patsy". The entry reflects a conversation with Ray Howard of Ray Howard and Associates who, according to Ms. Mayer's deposition, is a consultant hired by Leesburg Family Medicine.

The entries contain the following information (Exhibits F17-F19: Bates#000168-000170):

4-28-98

Get a provider #

If doctor is always there you can bill under physician.

If they are ever alone you must have a provider number for PA & Nurse Pract. P/C

Gave Gail this information.

12-15-98 Called Ray Howard per Gail

Talked with Jeff Howard

Conc: UPIN for Ruth (PA) Karyn (NP)

As we are billing under physician

We do not need a UPIN# Patsy

In addition to the foregoing testimony, my opinion is based on my experience as a Medicare contractor, Director of Patient Financial Services, and consultant, the depositions of Ms. Mayer and Ms. Walker, and my review of documents referenced as Exhibits A1 through F19, which are attached hereto. The documents I reviewed show a consistent pattern of written and verbal

communication between the Medicare Carrier, external consultants, and Leesburg Family Medicine regarding the subject of Incident To services and billing for Non-Physician Practitioner (Nurse Practitioner and Physician Assistant) services. All of the foregoing caused me to opine that Leesburg Family Medicine knew about Incident To billing requirements during the time of Karyn D. Walker's employment.

2. In my opinion, Leesburg Family Medicine had a duty and an obligation to know about Incident To billing requirements in order to insure that it properly billed for services rendered by non-physician practitioners. My opinion is based on (1) my review of documents relating to this matter, including information provided to Leesburg Family Medicine by Blue Cross/Blue Shield of Florida, the Medicare Part B Carrier for Florida providers; (2) documents disclosed by the Defendant and disclosed to me by the Relator's counsel; (3) my professional experience as a Medicare contractor, Director of Health Information Management and Patient Financial Services, and consultant and, (4) documents published by the Office of Inspector General.

In its publication to Florida providers, the *Medicare B Update!* routinely informs providers of the expectation that they read, understand, and abide by the policies outlined in the *Medicare B Update!* During the period encompassing Ms. Walker's employment with Leesburg Family Medicine, there were at least five articles addressing Incident To coverage as well as coverage for Nurse Practitioners and Physician Assistants (Exhibits F2-F6; F8-F14).

In March/April 1999, Blue Cross/Blue Shield of Florida published an article regarding the Compliance Programs Guidance Issued by the Office of the Inspector General (Exhibits G1-G2: Bates#002720-002721). In its introduction, the Office of Inspector General states, "all health care providers have a duty to ensure that the claims submitted to Federal health care programs are true and accurate." (Exhibit G3) In addition, in its Fiscal Year 1998 Work Plan, the Department of Health and Human Services/Office of Inspector General identified Billing for Services Rendered By Physician Assistants as one of its areas of scrutiny:

"We will determine whether physicians are improperly billing for services rendered by physician assistants. Medicare allows physician assistants to render certain services as "incident to" services, which are billed by the employing physician as if the service was personally rendered by the physician. However, if the services do not fall under the "incident to" criteria, the employing physician must bill using a modifier which reduces the Medicare payment. Medicare is overpaying physicians who improperly bill physician assistant services as "incident to" rather than using the proper modifiers. (Exhibit G4)

Documentation disclosed by the Defendant includes the HCFA-1500 (now CMS-1500) claim form (Exhibit G5). In addition to the notice regarding knowingly



filing a statement of claim containing any misrepresentation or any false, incomplete or misleading information, the provider is expected to “certify that the services shown on this form were medically indicated and necessary for the health of the patient and were personally furnished by me or were furnished incident to my professional service by my employee under my immediate personal supervision, except as otherwise expressly permitted by Medicare or CHAMPUS regulations.”

As a Director of Health Information Management and Patient Financial Services, I was exposed to provider publications as well as information related to compliance activities. The implementation of Operation Restore Trust created a heightened level of awareness in the provider community regarding government programs and expectations regarding accurate claims submission, the duty by providers to submit accurate claims, and the attendant consequences of not doing so. The *Medicare B Update!* issuances disclosed by the Defendant regularly contain articles regarding fraud and abuse initiatives as well as publication of specific indictments and plea agreements in the State of Florida.

The Department of Health and Human Services/Office of Inspector General  
OIG Compliance Program for Individual and Small Group Physician Practices,  
addresses The False Claims Act and associated definitions (Exhibit G6):

*“Deliberate Ignorance* – To act in “deliberate ignorance” means that the provider has deliberately chosen to ignore the truth or falsity of the information on a claim submitted for payment, even though the provider knows, or has notice, that information may be false. An example of a provider who submits a false claim with deliberate ignorance would be a physician who ignores provider update bulletins and thus does not inform his/her staff of changes in the Medicare billing guidelines or update his/her billing system in accordance with changes to the Medicare billing practices”.

In consideration of the foregoing information, it is my opinion that Leesburg Family Medicine had a duty and an obligation to understand and comply with Incident To billing requirements in order to insure that it properly billed for services rendered by non-physician practitioners in its employ. Furthermore, physicians whose UPIN numbers are appended to claims for purposes of recouping Medicare payments are ultimately responsible for the accuracy and completeness of the information contained therein.

3. In my opinion, Leesburg Family Medicine improperly billed and collected Medicare payments for services provided to its patients by Karyn D. Walker and other non-physician practitioners in its employ. My opinion is based on my review of documents relating to this matter, including deposition testimony of Karyn D. Walker and Lorna Gail Mayer.

There is no evidence that Leesburg Family Medicine took steps to secure Unique

Provider Identification Numbers for its non-physician practitioners during the period of time encompassing January 1997 to May 1999. Ms. Mayer states that she had a conversation with Ms. Walker and informed her that it was not necessary for Ms. Walker to have her own UPIN number:

- Q: So can you describe that conversation for me where you talked to Ms. Walker about her services being billed under doctors' provider numbers?
- A: Well, it's my understanding that –
- MR. BITTMAN: Wait a minute. She's not asking for your understanding. She's saying what do you remember about that conversation.
- Q: Yes.
- A: Not a lot. But that she asked if she had to have a Medicare number, should have a Medicare number.
- Q: Do you remember when the conversation was?
- A: I have no idea.
- Q: Okay. And do you remember what you told her?
- A: That they didn't have to have a Medicare number as long as they were directly supervised by phone or beeper.

During the course of her testimony, Ms. Mayer identified and annotated specific periods of time during which there was no physician in either the Lady Lake or Leesburg office to directly supervise Ms. Walker or the other non-physician practitioner, Ruth Brower. This, along with Ms. Mayer's testimony regarding Ms. Walker being "directly supervised by phone or beeper" substantiates Ms. Walker's assertion that she and the Physician Assistant worked without direct supervision during weekends and evenings.

There is no evidence to support the fact that Leesburg Family Medicine did not bill for services provided to patients by non-physician practitioners during periods when they were not directly supervised by an M.D. To the contrary, during the course of her deposition testimony, Ms. Mayer described, in detail, the procedure for billing provider (including Ms. Walker's) services. Transaction Posting Journal entries provided to me by Relator's counsel and which, according to counsel represent billings generated by Ms. Walker, reflect services provided to both new and established patients, as well as payment posting information for those services. The provision of "new" or initial patient services by a non-physician practitioner is not a covered service, according to Medicare Incident To provisions.

In consideration of the foregoing information, it is my opinion that Leesburg Family Medicine improperly billed and collected Medicare payments for services provided to its patients by Karyn D. Walker and other non-physician practitioners in its employ.

It is my understanding that discovery is ongoing and may reveal other information relevant to my opinions, which might warrant modification or supplementation of my opinions.

Christina Melnykovich 7/14/04  
Christina Melnykovich, RHIA Date