

**DEPARTMENT OF HEALTH AND HUMAN SERVICES  
OFFICE OF DIRECTOR**

**ACTION REFERRAL**

TO <i>Singleton</i>	DATE <i>11-7-11</i>
------------------------	------------------------

<b>DIRECTOR'S USE ONLY</b>	<b>ACTION REQUESTED</b>
1. LOG NUMBER <i>101194</i>	<input type="checkbox"/> Prepare reply for the Director's signature DATE DUE _____
2. DATE SIGNED BY DIRECTOR <i>Claudia 12/2/11; letter attached.</i> 	<input checked="" type="checkbox"/> Prepare reply for appropriate signature DATE DUE <i>11-17-11</i> DATE DUE _____
	<input type="checkbox"/> FOIA DATE DUE _____
	<input type="checkbox"/> Necessary Action

APPROVALS <small>(Only when prepared for director's signature)</small>	APPROVE	* DISAPPROVE <small>(Note reason for disapproval and return to preparer.)</small>	COMMENT
1.			
2.			
3.			
4.			

PV KENT & ASSOCIATES

**RECEIVED**

NOV 02 2011

SCDHHS  
Office of General Counsel

AT  
cc: B2

VIA CERTIFIED MAIL  
RETURN RECEIPT REQUESTED  
GC NO.: 91 7108 2133 3934 3816 2871

October 24, 2011

91 7108 2133 3934 3816 2871

**RECEIVED**

Deirdra T. Singleton, Esquire  
Deputy Director / General Counsel  
South Carolina Department of Health & Human Services  
Post Office Box 8206  
Columbia, South Carolina 29202-8206

NOV 07 2011

RE: South Carolina Medicaid's failure / refusal to comply with federal law

Department of Health & Human Services  
OFFICE OF THE DIRECTOR

Our Client: Cape Cod Hospital  
Patient: Elaine Gunderway  
ATC ID No.: 5781081894  
DOS: 08/23/2010 – 08/28/2010  
Billed Charges: \$24,872.90  
PVK&A File No.: P-156454-11

Dear Deputy Director Singleton:

Kindly be advised that the Cape Cod Hospital (CCH) has retained my firm to assist it in securing the proper payment on the above-referenced emergency service claim. Payment on this claim has been repeatedly improperly denied by South Carolina Medicaid's (SCM) contractor / agent Absolute Total Care (ATC). Demand was previously made on ATC, together with a detailed explanation and related documentation, via letter sent on July 7, 2011. Despite several follow-up conversations with ATC representative Ms. Keisha Price, it now appears evident that ATC believes it is not bound by the federal rules and regulations applicable to Medicaid programs, specifically as they relate to payment for emergency service provisions. Where ATC is acting as agent for SCM, and given that it is therefore obligated to comply with the same rules and regulations by which SCM is bound, we intend to seek our client's authorization to pursue this matter directly against SCM and ATC, jointly and severally. I am also in the process of securing the information needed to evaluate the matter for possible referral to the Centers for Medicare and Medicaid Services (CMS).

CCH / SCM-ATC / EG  
Deputy Director Singleton  
PVK&A No.: 156454  
October 24, 2011

I will not reiterate all of the relevant facts here as this information is readily available through your chosen contractor ATC. Suffice it to say, Ms. Gunderway presented at CCH in need of emergency care. Said care was professionally, competently, and in good faith provided to this SCM insured. After a long and convoluted dance through ATC's out-of-state claims processing and appeal procedures, ATC ultimately refused to make payment on the claim because CCH allegedly "failed to prior authorize the services provided".

While I highly doubt that I need to provide you with a lesson in basic federal Medicaid law, it appears ATC and Ms. Price may need some direction in this regard. It is well settled under Section 1932 (b)(2)(A)(i) of the Social Security Act that Medicaid agencies and their contracted managed care organizations (MCOs) must provide and pay for emergency care "without regard to prior authorization . . .". ATC representative Price wants to simply ignore the fact that, as an agent for SCM, ATC cannot do that which its principal (SMC) cannot. ATC is precluded from requiring, whether by fiat or contract, pre-stabilization or post-stabilization notification requirements where emergency services are involved. Contrary to what I was told by Ms. Price at ATC, this federal law applies to all Medicaid programs and their MCOs – including SCM and ATC. Indeed, where it is clear that federal anti-dumping laws require provision of emergency medical services without regard to whether an individual can pay or whether prior authorization has been obtained, it follows logically that the federal government could not have meant that hospitals were not to be compensated for those mandated service provisions by state Medicaid programs and/or their agents. ATC's emergency services prior authorization / notification requirement, as described by Ms. Price, can thus serve only one purpose – it is an artificial mechanism aimed at payment avoidance on an otherwise valid claim.

As you perhaps know, CMS has previously addressed this concern and issued several notices to providers and insurers alike over the years on this issue. In a series of State Medicaid Directors Letters (SMDLs) CMS has made clear that such prior authorization requirements, when emergency services are implicated, may not act as a bar to the provision of or payment for emergency services. The new federal health care reform law has since made this requirement crystal clear. I have made diligent efforts to address this matter informally with Ms. Price and other ATC representatives. Despite provision of the applicable sections of federal law with prior correspondence and direction to the SMDL series, this information has apparently been ignored. ATC maintains that prior authorization is required, notwithstanding the fact that this claim involved emergent care needs and emergent service provisions. Moreover, Ms. Price's cursory review of the involved facts simply ignores that CCH did contact ATC, after Ms. Gunderway was stabilized, in regard to the needed inpatient admission. ATC never responded to these contacts.

Interestingly enough, on August 25, 2011 the undersigned received a voicemail from ATC representative Price advising that, after reviewing the submitted documentation as to the emergency services requirements, ATC intended to reverse and pay the claim. Since that date, however, several voicemail messages to Ms. Price have been ignored. I personally

Page 2 of 3

19 Locust Street • P.O.Box 2164 • Danvers, MA 01923 • Phone 978.777.9998 • Facsimile 978.777.2233 • www.PVKent.com

PV Kent & Associates – Attorneys at Law  
*A Professional Corporation*

Peter V.Kent, Charlene E. Kent\*, Dennis S.Scott\* (\*Also Admitted in New Hampshire)

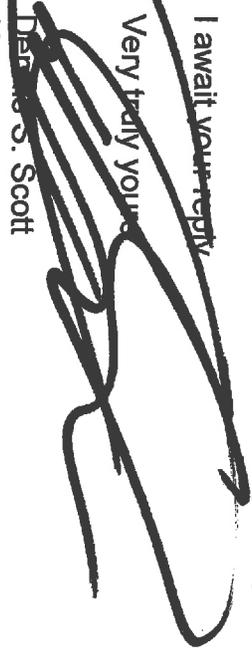
CCH / SCM-ATC / EG  
Deputy Director Singleton  
PVK&A No.: 156454  
October 24, 2011

checked on the status of the promised payment on this claim on Thursday (10/20/11) and learned that no payment had been issued. I suspect Ms. Price has simply been giving me the "runaround", perhaps in the hope that I will go away. On this score she and ATC may do well to review related "unfair and deceptive" claims settlement practices laws and regulations. In any event, I am writing to you in one last effort to ascertain if the foregoing (i.e., the belief that out-of-state providers must prior authorize emergency services) is, in fact, SCM's interpretation of its obligations for payment of out-of-state Medicaid claims when emergency services are involved. If it is, I would appreciate a copy of the superseding authority supporting this view. Absent receipt of the same we intend to investigate for how long SCM / ATC has maintained this stance and how many of our several hospital provider clients' claims here in Massachusetts may have been impacted thereby. Should this appear to be a pattern we intend to thereafter seek authorization to pursue this and similar claims further with any impacted providers we locate. If this creative "interpretation" of federal law is not intended by SCM, I anticipate that you will instruct ATC and Ms. Price to bring their actions in line with federal law and to further instruct them to process CCH's claim without additional delay. You may wish to note that should legal action become necessary we intend to recommend pursuit of related interest, attorneys' fees and costs under the Equal Access to Justice Act, and as otherwise allowed by law.

Thank you for your time and anticipated prompt attention to this matter.

~~I await your reply~~

Very truly yours,

  
Dennis S. Scott  
/dss

cc: Ms. Keisha Price, ATC (copy via secure e-mail)

ABSOLUTE TOTAL CARE

**TOTAL**

South Carolina  
Healthy  connections  
1-877-552-4642

*dog #000194*



1441 Main Street, Columbia, South Carolina 29201 • Toll Free 1-866-433-6041 • [www.absolutetotalcare.com](http://www.absolutetotalcare.com)

December 2, 2011

Dennis Scott  
PV Kent & Associates  
19 Locust Street  
P.O. Box 2164  
Danvers, MA 01923

Dear Mr. Scott:

In response to your letter dated 10/24/11, Absolute Total Care has since processed the emergency service claim of Cape Cod Hospital. The claim J309SC001576 for member Elaine Gunderway for date of service 8/23/10 has been processed.

The bill charge of \$24,872.90 has been paid \$4,312.65 on check number #216497. This check was mailed on Monday, November 21st, 2011 to Cape Cod Hospital at 27 Park Street, Hyannis, MA 02601-5203.

Should you require further assistance, please contact me or another member of our staff at 1-866-433-6041.

Sincerely,

Paul T. Accardi  
Chief Operating Officer  
Absolute Total Care