

From: Alan Powell <[alan.powell@scdmh.org](mailto:alan.powell@scdmh.org)>

To: 'Ashley Ellis' [AEllis@longsrx.com](mailto:AEllis@longsrx.com)

CC: 'Christi Epps' [CEpps@longsrx.com](mailto:CEpps@longsrx.com)

'Rebecca Gillespie' [RGillespie@longsrx.com](mailto:RGillespie@longsrx.com)

Pisarik, Holly [HollyPisarik@gov.sc.gov](mailto:HollyPisarik@gov.sc.gov)

Maley, Patrick [PatrickMaley@oig.sc.gov](mailto:PatrickMaley@oig.sc.gov)

Smith, Austin [AustinSmith@gov.sc.gov](mailto:AustinSmith@gov.sc.gov)

Date: 1/6/2016 3:03:02 PM

Subject: SCDMH Medication and PAP Services Contract with Qualified Providers:  
Supplemental Reply to HHS OIG Attorney for Opinion

Attachments: [contractMedication&PAPOIGreplyrequestletter010616.pdf](#)

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Ashley

See attached mailed today.

Alan

R. Alan Powell, SCDMH General Counsel

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P.O. Box 485

Columbia, SC 29202

803.898.8557 Fax 803.898.8554

[rap24@scdmh.org](mailto:rap24@scdmh.org) S.C. Bar No.: 7948

**NOTE : December 29,2015, my email address will change to: [alan.powell@scdmh.org](mailto:alan.powell@scdmh.org)**

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From: Alan Powell

Sent: Wednesday, December 23, 2015 8:26 AM

To: 'Ashley Ellis'

Cc: 'Christi Epps'; 'Rebecca Gillespie'; 'Pisarik, Holly'; 'PatrickMaley@oig.sc.gov'; 'Smith, Austin'

Subject: RE: SCDMH Medication and PAP Services Contract with Qualified Providers

Ashley

Thank you for your reply. Happy Holidays.

Alan

R. Alan Powell, SCDMH General Counsel

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**NOTE : December 29,2015, my email address will change to: [alan.powell@scdmh.org](mailto:alan.powell@scdmh.org)**

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From: Ashley Ellis [<mailto:AEllis@longsrx.com>]

Sent: Tuesday, December 22, 2015 4:17 PM

To: Alan Powell

Cc: Christi Epps; Rebecca Gillespie; 'Pisarik, Holly'; 'PatrickMaley@oig.sc.gov'; 'Smith, Austin'

Alan,

In response to the points in your email dated December 17, please see below:

- 1) We do not agree with your characterization of PAP programs. Regardless, we know for a fact that patients who were known to have insurance coverage for their prescriptions and thus there should not have been a question of PAP eligibility were also moved to the onsite QP.
- 2) We believe your explanation of this point confirms exactly the issue we have been raising for 5 months: Both insured and uninsured patients are being referred to the on-site Qualified Provider in exchange for the free services the QP is providing to SCDMH.
- 3) With regard to our services for Columbia Area Mental Health, again we do not agree with your characterization. Regardless, we have been working with Columbia Area Mental Health for over 7 years and this has never been raised as a concern. We believe our service both meets what the staff at the center wants and is within the requirements of the law. We will reach out to our contacts at Columbia Area Mental Health to address the issues you raise, but we would appreciate you providing the contact information for the individual you are receiving information from so that we can address the concern directly. Excellent patient service and legal compliance have always been our top priorities.

Ashley

Ashley Long Ellis  
Corporate Counsel  
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From: Alan Powell [<mailto:RAP24@SCDMH.ORG>]

Sent: Thursday, December 17, 2015 4:43 PM

To: Ashley Ellis <[AEllis@longsrx.com](mailto:AEllis@longsrx.com)>

Cc: Christi Epps <[CEpps@longsrx.com](mailto:CEpps@longsrx.com)>; Rebecca Gillespie <[RGillespie@longsrx.com](mailto:RGillespie@longsrx.com)>; 'Pisarik, Holly' <[HollyPisarik@gov.sc.gov](mailto:HollyPisarik@gov.sc.gov)>; 'PatrickMaley@oig.sc.gov' <[PatrickMaley@oig.sc.gov](mailto:PatrickMaley@oig.sc.gov)>; 'Smith, Austin' <[AustinSmith@gov.sc.gov](mailto:AustinSmith@gov.sc.gov)>

Subject: RE: SCDMH Medication and PAP Services Contract with Qualified Providers

Ashley

Before I provide a supplemental reply to the Washington HHS OIG Senior Attorney request for additional information, I wanted to respond to your recent email about SCDMH Medication and PAP Services contract compliance.

I will address the individual issues contained in your last email as follows:

1) I stated that SCDMH Mental Health Center patients referred by the MHC to the onsite QP for PAP services may also choose the onsite QP to fill prescriptions through the QP mail order pharmacy, such that third party payers including Medicaid/Medicare may be billed by the QP for those patients.

In response, you stated:

This should not be true since most Patient Assistance Programs require that the patient attest they are not eligible for Medicaid, Medicare or other prescription drug coverage (see example here from Johnson & Johnson which covers the primary mental health injectables: <http://www.jjpaf.org/resources/jjpaf-application.pdf>).

While I am not an expert on all pharmaceutical companies' Patient Assistance Programs, after consultation with our Pharmacy Outlet Consultants and others, I understand that:

Each pharmaceutical company determines eligibility for its own Patient Assistance Program.

Of course, some PAPs such as Johnson and Johnson may limit eligibility if a patient has prescription drug insurance coverage (including Medicare, Medicaid) for the medications prescribed by the MHC physician.

However, other pharmaceutical company PAPs may not have such limitation, and will consider PAP eligibility if:

- a. The patient has been denied coverage for the prescribed medication and have a denial letter from the insurer, Medicaid or Medicare Part D.
- b. A Medicaid patient has exceeded the maximum number of prescriptions allowed.
- c. A Medicare patient has reached what is commonly referred to as the "doughnut hole", where patients have to pay out of pocket until they have reached a certain amount.
- d. Some PAPs may also still consider case by case exceptions for a patient who otherwise does not meet the application requirements, but still is unable to afford his or her medication.

2) Your further state in your email:

If the RFP were truly being followed, then only PAP-eligible patients would be referred to the QP, not all of the insured patients that we know have been moved because Long's was previously servicing and is no longer.

Front line DMH MHC staff are seldom able to immediately and absolutely determine if a specific patient does or does not meet all individual pharmaceutical company PAP criteria for receiving free medication from each pharmaceutical company PAP. They know that the patient has stated, or they otherwise believe, that the patient is unable to afford the medication prescribed by the MHC physician.

In such instances, the patient is referred to the onsite PAP QP for such determination, and as applicable, assistance in completing and submitting a PAP application on behalf of the patient to the applicable pharmaceutical PAP(s).

As part of our mission to support the recovery of people with mental illnesses, we try to exhaust all avenues to assist our patients with obtaining their medications. The reason why the PAP assistance is needed by the QP is to fully evaluate and determine if patients who are unable to afford their medication are PAP eligible for free medications prescribed by the MHC physician.

3) In addressing the issue of now prohibited autofill medication (which Long's first brought to our attention last summer and we promptly eliminated from the contract by change order), you state that:

. . .The [Columbia Area Mental Health Center nurse receiving the delivery [i.e. Medication already filled by Long's pharmacy] reviews the list while the Long's driver waits and the nurse accepts the medications [already auto filled by Long's] that are actually needed for patients coming in and sends any medications not needed back with the driver to the [Long's] pharmacy.

It is my understanding, in talking with our Pharmacy Consultant and Columbia Area Mental Health Center, that Long's employee delivering medications to Columbia Area simply brings the auto filled medication from Long's to Columbia Area and just drops the bag and leaves.

It is my understanding that the Long's delivery employee does NOT wait for a Columbia Area Mental Health Center nurse or other medical staff to inventory or otherwise receive all the medication which Long's has already filled and delivered. Then a Columbia nurse is required to go through the dropped off bag and determine which individual medications, which have already been filled by Long's, are not needed by each patient. The nurse then is required to call Long's to come back and pick up the excess auto filled medications.

Thank you.

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From: Ashley Ellis [<mailto:AEllis@longsrx.com>]  
Sent: Tuesday, December 01, 2015 11:44 AM  
To: Alan Powell  
Cc: Christi Epps; Rebecca Gillespie; 'Pisarik, Holly'; 'PatrickMaley@oig.sc.gov'; 'Smith, Austin'  
Subject: RE: SCDMH Medication and PAP Services Contract with Qualified Providers

Alan,

Thank you for sending over the OIG correspondence. In your response to the OIG, it appears that uninsured patients are being confused with insured patients. You state that some patients referred to the onsite QP for PAP services may also choose the onsite QP to fill prescriptions through the QP mail order pharmacy, such that third party payers including Medicaid/Medicare may be billed by the QP for those patients. This should not be true since most Patient Assistance Programs require that the patient attest they are not eligible for Medicaid, Medicare or other prescription drug coverage (see example here from Johnson & Johnson which covers the primary mental health injectables: <http://www.jjpaf.org/resources/jjpaf-application.pdf>). That is the purpose behind the PAPs in the first place.

More importantly though, your response says nothing about how insured patients (those not eligible for PAP) are also being referred to the onsite QP (in contravention of the RFP). If the RFP were truly being followed, then only PAP-eligible patients would be referred to the QP, not all of the insured patients that we know have been moved because Long's was previously servicing and is no longer. The OIG is not being informed of the true basis of our complaint - that the QP is providing a free on-site employee to the MHCs in exchange for referrals of insured (non-PAP related) transactions. Based on the correspondence we have seen to date, the OIG is not getting a full picture of what is really happening at the MHCs and thus will likely be unable to provide a meaningful ruling on the situation.

I did some research on your question about auto-refills for Columbia Area Mental Health patients. What I found is that Long's has long-standing arrangements with nurses at various Columbia Area clinics to fill and deliver certain patients' injectable medications by sending the injectable medications to the clinic in a bag with a list stapled to the outside of the bag of each patient's name/medication included in bag. This bag is brought to the clinic by an employee of Long's Drugs. The nurse receiving the delivery reviews the list while the Long's driver waits and the nurse accepts the medications that are actually needed for patients coming in and sends any medications not needed back with the driver to the pharmacy.

Even though it creates more work for Long's employees, this has been done at the request of the nurses as part of our long-standing commitment to excellent patient care as it has been found to be the best way to ensure patient adherence by making sure that the medications the patients (most of whom have access to transportation issues) need are there when the patient arrives at the clinic for their injection, while also ensuring that Long's is only filling medications the patient actually needs and will receive at the clinic. This is quite different from an auto-refill program where a mail-order pharmacy simply ships a medication to a patient's house monthly without calling the patient first to make sure they want the medication or even still live at that address. Long's does not ever send oral medications to a clinic or send any medications to patient homes without calling first.

I hope that through our continued correspondence you have come to see that Long's takes legal compliance as well as patient service and adherence very seriously, which is why we have not been able to participate in the QP list as there is not a way for a pharmacy to do so compliantly while fiscally supporting a free employee for SCDMH. We look forward to receiving any future correspondence with the OIG and hearing any updates on your re-evaluation of the RFP. In the meantime, we will continue to pursue our concerns via other channels.

Regards,

Ashley  
Ashley Long Ellis  
Corporate Counsel  
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From: Alan Powell [<mailto:RAP24@SCDMH.ORG>]  
Sent: Wednesday, November 25, 2015 4:39 PM  
To: Ashley Ellis <[AEllis@longsrx.com](mailto:AEllis@longsrx.com)>  
Cc: Christi Epps <[CEpps@longsrx.com](mailto:CEpps@longsrx.com)>; Rebecca Gillespie <[RGillespie@longsrx.com](mailto:RGillespie@longsrx.com)>; 'Pisarik, Holly' <[HollyPisarik@gov.sc.gov](mailto:HollyPisarik@gov.sc.gov)>; 'PatrickMaley@oig.sc.gov' <[PatrickMaley@oig.sc.gov](mailto:PatrickMaley@oig.sc.gov)>; 'Smith, Austin'

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<[AustinSmith@gov.sc.gov](mailto:AustinSmith@gov.sc.gov)>

Subject: SCDMH Medication and PAP Services Contract with Qualified Providers

Ashley

Please see attached which I will take to downtown post office after work today to mail to the HHS OIG Senior Counsel in Washington. Some of the additional information requested by Senior Counsel Williams should also help as an update on this matter to Long's and those copied.

Since our last correspondence in late September, I have informally monitored and surveyed MHCs and specifically the three MHCs that Long's was concerned about in August. The complaints that I have received recently have been minor (short term late shipments, delay in ending auto refills, etc.) I continue to value your input related to the operation of this contract by Qualified Provider contractors as well as SCDMH MHCs.

Of course, I will continue to copy you and those copied here on any correspondence with the OIG in Washington. SCDMH continues to reevaluate the efficacy of the existing contract. Our main concern continues to be the benefit to our patients.

Thank you.

Alan

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From: Alan Powell  
Sent: Wednesday, November 25, 2015 10:08 AM  
To: 'Ashley Ellis'  
Cc: 'Christi Epps ([CEpps@longsrx.com](mailto:CEpps@longsrx.com))'; 'Rebecca Gillespie'; 'Pisarik, Holly'; 'PatrickMaley@oig.sc.gov'; Smith, Austin  
Subject: SCDMH Medication and PAP Services Contract with Qualified Providers

Ashley,

Later this afternoon, I will provide you and others copied here, my reply to the HHS OIG Senior Counsel request for additional information about this matter and my request for an Advisory Opinion from both federal and state OIGs.

I will also provide a very general update on SCDMH ongoing general monitoring of this matter, and specifically the Mental Health Centers (Pee Dee, Catawba and Anderson-Oconee-Pickens) which Long's identified as a primary concern when we first met in August.

In August, one of the primary matters that Long's brought to our attention about the contract was that it allowed auto refills. I understood from Long's, and we agreed, that clause was potentially in conflict with some payer and other standards. So, SCDMH changed the contract to remove that section. However, I have been told that in at least one MHC, Long's still provides automatic refills.

Help me understand this.

Thanks.

Alan



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From: Alan Powell  
Sent: Friday, September 25, 2015 11:37 AM  
To: 'Ashley Ellis'  
Cc: Christi Epps ([CEpps@longsrx.com](mailto:CEpps@longsrx.com)); 'Rebecca Gillespie'  
Subject: FW: Medication and PAP Services Contract

I understand your position. Just to continue to keep you folks in the loop, see attached and email below. DMH is also reviewing the continued need for this service and the RFP, need for Qualified Providers and contract, including available options and procedures and timing that would not be disruptive to our clients.

Alan

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