DEPARTMENT OF HEALTH AND HUMAN SERVICES
OFFICE OF DIRECTOR

ACTION REFERRAL

TO	DATE
Grise	6-5-12

DIRECTOR'S USE ONLY	ACTION REQUESTED
1. LOG NUMBER 10-453	[ ] Prepare reply for the Director's signature DATE DUE _____
2. DATE SIGNED BY DIRECTOR Cleared 7/9/12, letter attached.	[X] Prepare reply for appropriate signature DATE DUE 6-18-12 [ ] FOIA DATE DUE _____ [ ] Necessary Action

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

DaVita

Log to Val
BZ
6/4/12

May 29, 2012

Ms. Melanie (BZ) Giese
Deputy Director, Medical & Managed Care Services
South Carolina Department of Health & Human Services
Medicaid Administrative Offices
P.O. Box 8206
Columbia, SC 29202

Dear Ms. Giese:

DaVita Inc. ("DaVita") furnishes dialysis services to patients diagnosed with chronic kidney disease, including eligible South Carolina Medicaid ("SC Medicaid") patients. Due to changes in the SC Medicaid claims processing system, there has been some confusion with respect to billing for dialysis and dialysis-related services and ensuring appropriate payment by SC Medicaid. In particular, DaVita has experienced difficulty: (a) determining the fee schedule currently employed by SC Medicaid to pay for dialysis-related drugs; and (b) identifying SC Medicaid's methodology for paying claims submitted to SC Medicaid as the secondary payer and for processing any associated overpayments. We seek clarification regarding both of these issues, as described in greater detail below.

I. SC Medicaid Fee Schedule for Injectable Drugs for Primary Claims

First, through communication with Zenovia Vaughn and Ervin Yarnell at SC Medicaid, we have attempted to confirm whether SC Medicaid intends to pay for dialysis-related injectable drugs in accordance with the Injectable Drug Fee Schedule or the ESRD Fee Schedule for primary claims. In some instances, these fee schedules reflect different payment amounts for the same drug. This has an impact on payments made by SC Medicaid and greatly complicates DaVita's attempts to determine whether overpayments or underpayments exist. Based on the payment amounts that DaVita facilities have been receiving, it appears that SC Medicaid intends to pay for dialysis-related drugs in accordance with the Injectable Drug Fee Schedule.

Please confirm that SC Medicaid intends to pay for such drugs in accordance with the Injectable Drug Fee Schedule. In the meantime, DaVita will use that fee schedule as its benchmark for proper payment, and facilities will hold any potential overpayments and suspend any attempts to recoup underpayments until the fee schedule issue is resolved.

II. SC Medicaid Payment of Secondary Claims

A. *Background*

Since late 2009, SC Medicaid has occasionally paid in excess of its obligation as a secondary payer. DaVita processes claims for reimbursement, including those to secondary payers, in accordance with the federal Health Insurance Portability and Accountability Act ("HIPAA") standard transaction rules and regulations. *See*, 45 C.F.R. § 162, *et seq*. When DaVita furnishes services to a beneficiary who is dually eligible for Medicare and Medicaid, DaVita bills Medicare as the primary payer and SC Medicaid as the secondary payer. In such circumstances, by statute, Medicare is responsible for 80 percent of its established allowable charge and the patient is responsible for the remaining 20 percent. 42 U.S.C. § 1395l(a). Because the patient is dually eligible, SC Medicaid pays the patient's 20 percent Medicare copayment. As a Medicare supplier, DaVita may not charge the beneficiary or any other source (*e.g.*, SC Medicaid) any amount other than the Medicare deductible or coinsurance amount, and it may not accept any amounts above the total Medicare allowable charge. *See*, 42 C.F.R. § 424.55(b)(2)(ii); 42 C.F.R. § 413.172(b) (ESRD facilities must accept the prospective payment rates established by CMS as payment in full).

DaVita considers claims to have been paid appropriately when paid in accordance with the above statutes and regulations. As mentioned above, for certain claims dating back to the fourth quarter of 2009, SC Medicaid has processed claims with varying payment outcomes. For example, when DaVita billed SC Medicaid using the Medicare allowed amount as DaVita's charge, DaVita facilities received the correct secondary reimbursement. Other claims were partially paid or paid in unsystematic amounts, but when DaVita reprocessed the claims (meaning that they were retracted and re-billed in full) at DaVita's full billed charge and using the "contract obligation" field as instructed by SC Medicaid, the claims were properly paid. However, for a final subset of claims, DaVita billed at its full billed charge (with or without the contract obligation field), and SC Medicaid paid in excess of its secondary payer obligation.

B. *Repayment Obligations*

Currently, to the extent DaVita has identified repayment obligations, we have been and will continue to process and refund such excess payments in batches. In accordance with SC Medicaid policy, DaVita has processed the refunds using Form 205 (Form for Medicaid Refunds). In most cases, this has been a successful mechanism to return excess payments, but DaVita has increasingly encountered a significant processing problem. Specifically, after the Form 205 is processed and the refund check is cashed, SC Medicaid subsequently retracts either the excess payment or the full secondary amount. Not only does this cause a tremendous administrative burden for both DaVita and SC Medicaid, but it also makes it difficult for DaVita to engage in a meaningful refund process without knowing whether the amounts will subsequently be retracted by SC Medicaid, resulting in duplicate refunds.

Given this confusion, DaVita proposes to develop a "Notice of Retraction" process (through the Form 205 or otherwise) to inform SC Medicaid of the excess payment. In such instances, DaVita would not include a check with the notice (as is customary with the Form 205), but would instead submit the Notice of Retraction with an explanation of the need for a retraction. DaVita would then monitor the claim(s) and expect SC Medicaid to retract the appropriate amount. If, after 45 days, SC Medicaid has not retracted the appropriate amount, DaVita would submit a check in order to ensure compliance with the federal requirements for reporting and returning overpayments. *See*, 42 U.S.C. § 1320a-7k(d). Please provide your feedback within the next 30 days on this proposed method of processing refunds. DaVita is eager to resolve this on-going issue and, if we do not hear from you, a DaVita representative will contact you to engage in a productive discussion regarding this proposal.

Please contact Bragg Hemme at 303.405.2335 if you have any questions or to discuss the issues outlined above in further detail. Thank you for your prompt attention to these matters.

Sincerely,

Bragg Hemme
Senior Compliance Counsel

cc: Zenovia Vaughn
Ervin Yarnell

DEPARTMENT OF HEALTH AND HUMAN SERVICES
OFFICE OF DIRECTOR

ACTION REFERRAL

TO	DATE
Gise/Val	6-5-12

DIRECTOR'S USE ONLY	ACTION REQUESTED
1. LOG NUMBER 10-453	[ ] Prepare reply for the Director's signature DATE DUE _____
2. DATE SIGNED BY DIRECTOR _____ ✓	[X] Prepare reply for appropriate signature DATE DUE 6-18-12 [ ] FOIA DATE DUE _____ [ ] Necessary Action

APPROVALS (Only when prepared for director's signature)	APPROVE	* DISAPPROVE (Note reason for disapproval and return to preparer.)	COMMENT
1. Val Williams	7-18-12 ~~7-17-12~~ ~~7-9-12~~		
2. BG Gise	7/19/12		
3.			
4.			

DaVita.

RECEIVED
MAY 31 2012
Department of Health & Human Services
OFFICE OF THE DIRECTOR

Log to Val
BZ
6/4/12

May 29, 2012

Ms. Melanie (BZ) Giese
Deputy Director, Medical & Managed Care Services
South Carolina Department of Health & Human Services
Medicaid Administrative Offices
P.O. Box 8206
Columbia, SC 29202

Dear Ms. Giese:

DaVita Inc. ("DaVita") furnishes dialysis services to patients diagnosed with chronic kidney disease, including eligible South Carolina Medicaid ("SC Medicaid") patients. Due to changes in the SC Medicaid claims processing system, there has been some confusion with respect to billing for dialysis and dialysis-related services and ensuring appropriate payment by SC Medicaid. In particular, DaVita has experienced difficulty: (a) determining the fee schedule currently employed by SC Medicaid to pay for dialysis-related drugs; and (b) identifying SC Medicaid's methodology for paying claims submitted to SC Medicaid as the secondary payer and for processing any associated overpayments. We seek clarification regarding both of these issues, as described in greater detail below.

I. SC Medicaid Fee Schedule for Injectable Drugs for Primary Claims

First, through communication with Zenovia Vaughn and Ervin Yarnell at SC Medicaid, we have attempted to confirm whether SC Medicaid intends to pay for dialysis-related injectable drugs in accordance with the Injectable Drug Fee Schedule or the ESRD Fee Schedule for primary claims. In some instances, these fee schedules reflect different payment amounts for the same drug. This has an impact on payments made by SC Medicaid and greatly complicates DaVita's attempts to determine whether overpayments or underpayments exist. Based on the payment amounts that DaVita facilities have been receiving, it appears that SC Medicaid intends to pay for dialysis-related drugs in accordance with the Injectable Drug Fee Schedule.

Please confirm that SC Medicaid intends to pay for such drugs in accordance with the Injectable Drug Fee Schedule. In the meantime, DaVita will use that fee schedule as its benchmark for proper payment, and facilities will hold any potential overpayments and suspend any attempts to recoup underpayments until the fee schedule issue is resolved.

II. SC Medicaid Payment of Secondary Claims

A. *Background*

Since late 2009, SC Medicaid has occasionally paid in excess of its obligation as a secondary payer. DaVita processes claims for reimbursement, including those to secondary payers, in accordance with the federal Health Insurance Portability and Accountability Act ("HIPAA") standard transaction rules and regulations. *See*, 45 C.F.R. § 162, *et seq*. When DaVita furnishes services to a beneficiary who is dually eligible for Medicare and Medicaid, DaVita bills Medicare as the primary payer and SC Medicaid as the secondary payer. In such circumstances, by statute, Medicare is responsible for 80 percent of its established allowable charge and the patient is responsible for the remaining 20 percent. 42 U.S.C. § 1395l(a). Because the patient is dually eligible, SC Medicaid pays the patient's 20 percent Medicare copayment. As a Medicare supplier, DaVita may not charge the beneficiary or any other source (*e.g.*, SC Medicaid) any amount other than the Medicare deductible or coinsurance amount, and it may not accept any amounts above the total Medicare allowable charge. *See*, 42 C.F.R. § 424.55(b)(2)(ii); 42 C.F.R. § 413.172(b) (ESRD facilities must accept the prospective payment rates established by CMS as payment in full).

DaVita considers claims to have been paid appropriately when paid in accordance with the above statutes and regulations. As mentioned above, for certain claims dating back to the fourth quarter of 2009, SC Medicaid has processed claims with varying payment outcomes. For example, when DaVita billed SC Medicaid using the Medicare allowed amount as DaVita's charge, DaVita facilities received the correct secondary reimbursement. Other claims were partially paid or paid in unsystematic amounts, but when DaVita reprocessed the claims (meaning that they were retracted and re-billed in full) at DaVita's full billed charge and using the "contract obligation" field as instructed by SC Medicaid, the claims were properly paid. However, for a final subset of claims, DaVita billed at its full billed charge (with or without the contract obligation field), and SC Medicaid paid in excess of its secondary payer obligation.

B. *Repayment Obligations*

Currently, to the extent DaVita has identified repayment obligations, we have been and will continue to process and refund such excess payments in batches. In accordance with SC Medicaid policy, DaVita has processed the refunds using Form 205 (Form for Medicaid Refunds). In most cases, this has been a successful mechanism to return excess payments, but DaVita has increasingly encountered a significant processing problem. Specifically, after the Form 205 is processed and the refund check is cashed, SC Medicaid subsequently retracts either the excess payment or the full secondary amount. Not only does this cause a tremendous administrative burden for both DaVita and SC Medicaid, but it also makes it difficult for DaVita to engage in a meaningful refund process without knowing whether the amounts will subsequently be retracted by SC Medicaid, resulting in duplicate refunds.

Given this confusion, DaVita proposes to develop a "Notice of Retraction" process (through the Form 205 or otherwise) to inform SC Medicaid of the excess payment. In such instances, DaVita would not include a check with the notice (as is customary with the Form 205), but would instead submit the Notice of Retraction with an explanation of the need for a retraction. DaVita would then monitor the claim(s) and expect SC Medicaid to retract the appropriate amount. If, after 45 days, SC Medicaid has not retracted the appropriate amount, DaVita would submit a check in order to ensure compliance with the federal requirements for reporting and returning overpayments. *See*, 42 U.S.C. § 1320a-7k(d). Please provide your feedback within the next 30 days on this proposed method of processing refunds. DaVita is eager to resolve this on-going issue and, if we do not hear from you, a DaVita representative will contact you to engage in a productive discussion regarding this proposal.

Please contact Bragg Hemme at 303.405.2335 if you have any questions or to discuss the issues outlined above in further detail. Thank you for your prompt attention to these matters.

Sincerely,

Bragg Hemme
Senior Compliance Counsel

cc: Zenovia Vaughn
Ervin Yarnell

1551 Wewatta St.
Denver CO 80202

South Carolina Department of Health & Human Services

Anthony E. Keck, Director
Nikki R. Haley, Governor

July 19, 2012

Bragg Hemme
Senior Compliance Counsel
1551 Wewatta Street
Denver, Colorado 80202

Dear Mr. Hemme:

Thank you for your letter requesting clarification on South Carolina Medicaid's fee schedule for dialysis-related drugs and payment for claims when South Carolina Medicaid is secondary payer. We will address the answers to your questions as presented.

South Carolina fee schedule for Injectable drugs for primary claims

Question 1: Does South Carolina Medicaid intend to pay for dialysis-related injectable drugs in accordance with the Injectable Drug fee Schedule or the ESRD Fee Schedule for primary claims?

SCDHHS Response: DaVita should use the Injectable Drug Fee Schedule when determining reimbursement for physician administered drugs. We are currently in the process of moving all fee schedules to a centralized location for continuity when posting revisions.

South Carolina payment for secondary claims

Question 2: What is the appropriate action that should be taken to forward refunds to South Carolina Medicaid as it relates to overpayments of services?

SCDHHS Response: The South Carolina Department of Health and Human Services (SCDHHS) policy on Third Party Liability (TPL) changed as of January 10, 2011. Prior to January 2011 our TPL policy, as approved by Centers for Medicare and Medicaid Services (CMS), was not a true coordination of benefits policy, but a "carve out". Carve out methodology is when a provider reports what the insurance company paid and it is subtracted from Medicaid's allowable rate. The same methodology held true for all claim types including injectable drug reimbursement.

Currently, the TPL policy requires providers to report the patient liability (co-insurance and deductible). Medicaid payment will not exceed the amount of the "patient responsibility". Please refer to the Bulletin titled "Reporting Patient Liability on Claims" dated December 10, 2010. A link to the bulletin is appended at the end of this letter.

Your letter referenced claims that occurred in 2009 and three different billing scenarios. After our review, you are correct that DaVita could be reimbursed different amounts depending on how the claim was billed. However, our TPL Supplement located in each manual, provides instruction on the proper methodology that should be utilized when submitting claims.

DaVita should audit all claims during the 2009/2010 benefit period and identify claims that were not submitted correctly and therefore, received overpayments. Once the audit is complete DaVita should contact Rebecca Clark, Department Head, TPL Health Development and Recovery at (803) 898-1043 for direction and assistance on the appropriate recovery and reimbursement procedures.

The issue that you have raised in II.B., "Repayment Obligations," may be a result of Retro Medicare; however, we would like to take a closer look at this. Would you please provide examples of instances in which DaVita has processed a refund using the Form 205 and Medicaid subsequently retracts either the excess payment or the full secondary amount? Those examples should be provided to Rebecca Clark at the number listed previously for her review.

We appreciate your continued support of the South Carolina Medicaid program. If you have any additional questions please feel free to contact William Feagin, Director, Office of State and Federal Policy (803) 898-3079.

Sincerely

Melanie "BZ" Giese, RN
Deputy Director

MG/wr

Bulletin Link:
http://www.dhhs.state.sc.us/Internet/pdf/ReportingPatientLiabilityonClaims.pdf