



CHANGES TO MEDICAID AUDIT APPEAL PROCESS

This second part of a two part newsletter on changes in the Medicaid audit statute covers changes to the Medicaid audit appeals process.

As discussed in our last Medicaid Audit Newsletter, during the last legislative session there were major changes made to the statute that governs the Medicaid audit process. One of the most important changes concerns the Medicaid provider's audit appeal rights and the appeal process.

Prior to the revised statute providers were only allowed to submit a detailed written request to the Department of Social Services (DSS) Commissioner for a review of the audit if they were aggrieved by the decisions contained in the final audit report. These items of aggrievement were then reviewed by a DSS staff member, usually an attorney that worked for DSS, and that staff member would render a decision based only on the provider's written submission concerning the merits of the provider's issues with the final audit. A hearing allowing the provider to argue its case was never offered or held.

This review was not a formal appeal per Connecticut General Statutes, but rather an informal paper appeal that was reviewed and decided on by staff at DSS. Once the final decision was reached by the DSS staff, the only recourse for the provider, per the audit statute, was to appeal the final decision to the Connecticut Superior Court. Over the years providers complained that this process did not afford them an opportunity to contest the results of the audit in a fair and equitable way and was inconsistent with the appeal rights available in the Connecticut General Statutes. In response to those complaints, the provider's appeal rights have been significantly changed in the revised audit statute to address these concerns.



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SPECIAL POINTS OF INTEREST:

- Changes to Medicaid Audit Appeal Process
- Contested Case Hearing
- TCORS Hires New Legal Assistant

Contested Case Hearing

The revised statute now allows providers aggrieved by final audit decision to request in writing to DSS for "a contested case hearing in accordance with chapter 54." The reference to Chapter 54 refers to Chapter 54 in the Connecticut General Statutes, entitled the "Uniform Administrative Procedures Act". Among other things, this chapter lays out the process and procedures for the conduct of a contested case hearing. The contested case hearing is a much more formal legal process for appealing the final audit report than what was afforded providers under the prior audit statute. Among other things, the contested case hearing allows for a formal hearing in front of a hearing officer appointed by the Commissioner, the presentation of evidence, subpoenaing of witnesses and records, testimony under oath, cross examining witnesses, presentation of briefs and oral arguments and the filing of reconsiderations of the final decision. It also allows for either party to appeal any decision to the Superior Court.

While the hearing officer presiding over the contested case hearing in most instances will still be a DSS employee appointed by the DSS Commissioner, the rules governing the contested case hearing provide a better level of protection to providers for a fair and level playing field. However, this change in appeal rights also adds a level of legal complexity to the appeal process. As noted above, the contested case hearing in many ways resembles a court case with the presentation of evidence, witnesses testifying under oath and the filing of legal briefs. In addition, in most contested case hearings, the state (DSS) will be represented by Office of the Attorney General whose attorneys will argue the case for DSS. With these considerations in mind, providers should review any possible appeal with those in the legal profession familiar with such hearings. In fact it would be prudent to discuss your audit situation with an attorney early in the audit resolution process, since it is at this juncture where the bases of any possible appeal are formulated. Having legal counsel involved early can help assure that the foundation of any legal appeal is properly established and mistakes are not made that could jeopardize any future potential appeal.

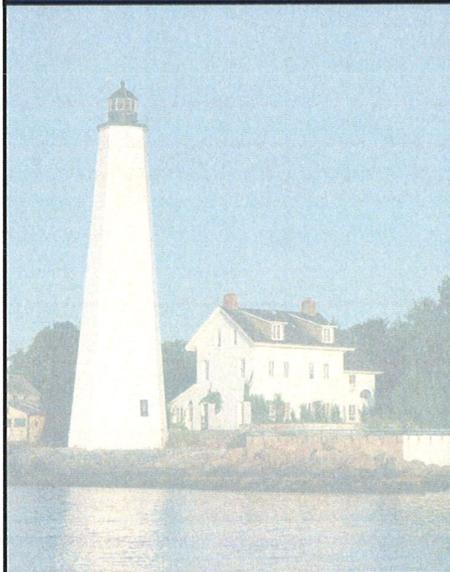
The revised statute also prevents DSS from recouping any overpayments identified in the final audit report until a final decision is issued following the contested case hearing. Previously it was at the discretion of DSS whether to recoup overpayments while the appeal was in process.

The changes to the audit appeal process enacted in the last legislative session have added a significant tool to the provider's arsenal as it works its way through the Medicaid audit process and audit resolution. It is important that providers know what their new appeal rights are and how best to effectively use these rights to reduce any potential financial audit exposure.

As always, we at Tobin, Carberry, O'Malley, Riley & Selinger, P.C. are available to assist providers as they maneuver their way through the DSS audit process. Please do not hesitate to give our Medicaid Audit Team a call.

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TCORS Hires New Legal Assistant

TCORS is pleased to announce that Denise Smith, CPC (Certified Professional Coder), CPMA (Certified Professional Medical Auditor), CEMC (Certified Evaluation and Management Coder) has joined its Medicaid Audit Group, which continues to be supervised and directed by Jim Wietrak. Denise is coming to TCORS from L&M Medical Group, where she was the Coding and Compliance Coordinator. While at L&M Medical Group, Denise was responsible for reviewing and monitoring bills generated by the coding staff and auditing provider medical records for compliance and coding accuracy. She also has been trained to provide education to coders and providers for ICD-10.

About the TCORS Medicaid Group

Our Medicaid Audit Department is comprised of Attorney Robert D. Tobin, partner; Attorney Joseph J. Selinger, partner; James Wietrak, former DSS Director of Quality Assurance; and Denise Smith, Certified Professional Coder and Medical Auditor. They are prepared to conduct Medicaid compliance reviews or “mock audits” of a number of Medicaid providers to identify areas of potential weakness and recommended corrective actions. Both Jim and Denise have extensive knowledge of the requirements governing various types of healthcare providers and continuously keep informed as to the ongoing audits and proposed rules affecting Connecticut’s providers.

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