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# Medi-Cal Audit Appeals: Tales from the Front

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## Types of Medi-Cal Audits

- Cost Report Audits
- Electronic Health Record Audits
- Medicaid Integrity Program (MIP) Audits
- Overpayments or improperly submitted claims



## The Audit Process

- The auditors are on-site asking for and reviewing documents and data underlying the cost report and providers often will get a sense of the types of adjustments that might be made and can try to convince the auditors not to make the adjustments.
- Take it seriously because effort at the front can avoid an appeal.



## Audit Adjustments

- Traditionally the focus of the audit is on whether the claimed costs are allowable and whether the visit calculation is consistent with Medi-Cal's data.
- Auditors are not only looking at reported costs but they are verifying that providers have appropriate documentation to back up their numbers.
- Auditors are to be guided by the Medicare cost principles, but are increasingly aggressive in adjusting both costs and visits.



## The Exit Conference

- The purpose of the Exit Conference is to:
  - Inform the provider of the audit or examination findings and the supporting reasons and evidence;
  - Inform the provider of the specific instances in which no records were found to substantiate claims billed to the program; and
  - Allow the provider an opportunity to present relevant information.



## The Exit Conference (cont.)

- An Exit Conference is an informal meeting between the provider and the Department representatives responsible for the audit or examination, at which the preliminary findings of the audit or examination are discussed.
- This is the best and last opportunity for the provider to convince the auditors adjustments should not be made.



## Issuance of the Audit Report

- Following the exit conference, the provider has 15 days to provide any additional information.
- The Department will then issue an audit or examination report, which presents the final audit or examination findings.



## Timing of Audit Report – Check the Date

- The Department has three years from the date of submission of the original or amended report by the Provider.
- SAVE:
  - Proof of cost report mailing date
  - Proof of audit report postmark
- An untimely audit report = Automatic appeal issue
- If Provider wins, cost report numbers are considered true and correct and most audit adjustments should be reversed.





## What does the audit report contain?

- A complete copy of the report which identifies:
  - All items to which exception has been taken,
  - The monetary value of each, and
  - The reason for the exception, including citation to the appropriate statutory or regulatory authority.
- Notice of the provider's right to a hearing.



## Provider Audit Appeals

- The Director is required to establish an administrative appeal process to review complaints arising from the findings of an audit or examination.
- **An Institutional Provider has 60 days from receipt of the written notice of the audit or examination findings to request a hearing on any disputed audit or examination finding.**
- Late requests for a hearing *shall be denied* unless the provider establishes in writing good cause for late filing within 15 calendar days of being notified of the untimeliness of its request.
- The Request for Hearing is known as the “Statement of Disputed Issues.”



## Commencing an Appeal

- The provider commences an appeal/requests a hearing by submitting a Statement of Disputed Issues to the DHCS Office of Administrative Hearings & Appeals.
- The Statement of Disputed Issues
  - Shall be in writing.
  - **Shall be specific as to each issue that is in dispute, setting forth the provider's contentions as to those issues and the estimated amount each issue involves.**
  - The request shall specify whether the provider does or does not wish that an informal level of review be held, and why.



## Informal Level of Review

- If the provider requests an informal review and the hearing officer determines that an informal level of review is appropriate, an informal level of review will be ordered and scheduled as soon as reasonably possible.
- Written notice of the time and place of informal level of review shall be mailed to each party at least 30 calendar days before the date of informal review.
- Both sides usually submit more detailed position statements briefing prior to the informal hearing.



## Informal Level of Review (cont.)

- Proceeding is overseen by a Hearing Auditor, not an attorney or administrative law judge.
- The Department is not represented by an attorney at informal hearings. Typically the auditors appear at the informal hearings.
- Matters in dispute, raised in the provider's Statement of Disputed Issues, which are not discussed or raised at the informal level of review, shall not be deemed waived.
- **Considerations in deciding whether to request an informal level of review.**



## Results of an Informal Level of Review

- Hearing officer serves the decision on all parties “within a reasonable time” in the form of a written “Report of Findings” or Pretrial Order.
- For Institutional Providers, shall be considered final unless the provider submits written request for a formal hearing within 30 calendar days following receipt of the Report of Findings.
- Good cause required for acceptance of untimely filed request for formal hearing.



## Formal Hearing

- A Formal Hearing is an administrative hearing conducted by a hearing officer who is an administrative law judge.
- Requested by way of a second Statement of Disputed Issues.
- Written notice is mailed to each party at least 30 calendar days before the date of the hearing.



## Discovery

- Both sides can request discovery within 30 days after receipt of the Notice of Acceptance of the Statement of Disputed Issues.
- Consists of asking for names of witnesses and documents.
- Discovery prescribed by the regulations is limited.
- The hearing officer may order depositions.
- Consider using a Public Records Act request to obtain additional documents.





## Conduct of Formal Hearing

- Hearings can last several days.
- The ALJ usually requests that the parties submit pre-hearing briefs.
- Each party puts on witnesses and introduces exhibits as evidence.
- Parties can introduce affidavits in lieu of witnesses, but the other party can request opportunity to cross-examine.



## Conduct of Formal Hearing (cont.)

### Burden of Proof

- The Department usually has to establish by a preponderance of the evidence, that the audit findings were correctly made, so it puts on its case first.
  - Once the Department has presented its prima facie case, the burden of proof shifts to the provider to demonstrate, by a preponderance of the evidence, that the provider's position regarding disputed issues is correct.



## Conduct of Formal Hearing (cont.)

- The formal rules of evidence required in a court of law are not strictly followed, for example, hearsay shall be admitted.
- The hearing officer may take official notice of matters.
- The hearing officer may also question witnesses and they usually do.



## Post-Hearing Proceedings

- The hearing officer generally requests post-hearing briefs.
- The hearing officer may request additional proceedings.
- The hearing officer issues a proposed decision to the Director, and serves it on each party in the case and each party's representative.
- The Director may adopt the proposed decision, reject the proposed decision, or refer the matter to the hearing officer to take additional evidence.
- The decision is final upon adoption by the Director.



## Reconsideration

- The decision can be reconsidered upon order by the Department of its own motion or on petition of any party.
- The power to order a reconsideration shall expire 30 calendar days after delivery or mailing of a decision. The Department may grant a stay:
  - For up to 30 days for the purpose of enabling a party to file a petition for reconsideration; or
  - For up to 10 days when needed solely for the purpose of considering a petition filed prior to expiration of its power to order reconsideration.



## **An administrative appeal often takes at least a year**

- The impartial hearing shall be conducted no later than 300 days after the filing of the statement of issues.
- A final decision in an institutional provider appeal shall be adopted within 300 days after the closure of the record of the impartial hearing.



## The possibility of penalties against DHCS if the timelines aren't met

- “If the department fails to conduct the hearing or to adopt a final decision... within the time limitations provided..., the amount of any overpayment which is ultimately determined by the department to be due shall be reduced by 10 percent for each 30-day period, or portion thereof, that the hearing or decision, or both, are delayed beyond the time limitations...”



## The possibility of penalties against DHCS if the timelines aren't met (cont.)

- The time period shall be extended by any of the following:
  - Delay caused by the provider.
  - Extensions of time granted at the request of the provider.
  - Extensions of time made by joint request of the provider and the Department.





## Writ of Mandate

- Appeal from the final decision of the Department is to the Superior Court by way of a writ of mandate per Code of Civil Procedure §1094.5.
- Writ must be filed within six months of the issuance of the director's final decision.
- The court will consider whether the Department proceeded without or in excess of jurisdiction, whether there was a fair trial, or whether there was any prejudicial abuse of discretion.



## Writ of Mandate (cont.)

- Abuse of discretion can be established in one of the following ways:
  - If the Department has not proceeded in the manner required by law,
  - If the order or decision is not supported by the findings, or
  - If the findings are not supported by the evidence.



## Writ of Mandate - Burden of Proof

- Where it is claimed that the findings are not supported by the evidence, in cases in which the court is authorized by law to exercise its independent judgment on the evidence, abuse of discretion is established if the court determines that the findings are not supported by the weight of the evidence.
- In all other cases, abuse of discretion is established if the court determines that the findings are not supported by substantial evidence in the light of the whole record.



## Court's Options

- The court shall enter judgment either commanding the Department to set aside the order or decision, or denying the writ.
- Where the court orders that the order or decision be set aside, it may order the reconsideration of the case in light of the court's opinion and judgment and may order the Department to take such further action as is specially enjoined upon it by law. But the judgment shall not limit or control in any way the discretion legally vested in the Department.
- The judgment of the superior court can be further appealed.



## Ways to resolve the dispute

- Negotiated settlement – can occur at any time informally or via settlement conference
- Decision following the informal level of review
- Decision following the formal hearing
- Decision following a writ proceeding in superior court

**Questions?**