

**COMPANIONS & HOMEMAKERS, INC.
LAW DEPARTMENT
J. MARTIN ACEVEDO, GENERAL COUNSEL**

MARCH 11, 2008

**TESTIMONY TO THE SELECT COMMITTEE ON HUMAN SERVICES REGARDING RAISED BILL NO. 662
*AN ACT CONCERNING MEDICAID ELIGIBILITY AND REIMBURSEMENT***

My name is Martin Acevedo and I am the General Counsel for Companions & Homemakers, Inc., a homemaker-companion agency licensed by the Department of Consumer Protection. We are a Connecticut company founded in 1990. Presently, we have 11 offices in various towns and cities throughout the State of Connecticut. We care for approximately 2500 older adults and employ over 1500 people. Our company provides services to private pay clients and to clients of the Connecticut Home Care Program for the Elderly. As the Committee is aware, the Program is administered by the Department of Social Services and carried out by the several "access agencies" with whom DSS contracts for these purposes. Access agencies, in turn, contract with providers like our agency to provide client care.

We are offering this testimony in support of **Raised Bill No. 662, "An Act Concerning Medicaid Eligibility and Reimbursement" and in particular, Section 11 of the Bill amending the provisions governing service provider audits conducted by the Department of Social Services.**

This bill proposes much needed changes to the original audit statute passed in 2005. By way of background, the original statute codified the infamous "extrapolation" practice, pursuant to which the percentage of errors found in a sample of claims during an audit is "extrapolated" to the entire universe of claims paid to the provider. Under this model, small billing discrepancies can and will translate to thousands of dollars in extrapolated fines.

It is important to stress that this proposed section of the bill does not eliminate extrapolation. It merely incorporates reasonable parameters within which to implement the practice of extrapolation in accordance with basic notions of fundamental fairness, notice to the providers, and due process rights.

First, the bill eliminates the portion of the current statute which appears to exempt from extrapolation those agencies that do less than \$150,000 in business with the State. Presently, these small agencies, of which there are hundreds in the home care field, have no incentive to implement appropriate financial controls because, under a worst case scenario, they only have to pay the amount of the discrepancies found in an audit, rather than the extrapolated projection. As revised, the statute will now apply to all providers regardless of how much business they do instead of giving those agencies a "free pass."

Also, by removing that language, the law will be in line with most other extrapolation state statutes and the federal Medicare Act of 2003. These laws establish a universal standard for extrapolation. Under this standard, the Department of Social Services can extrapolated provider there is either a "high level of payment error involving the provider," or evidence that despite documented educational intervention, the provider has failed to correct the level of payment error.

Second, the bill finally grants providers a right to judicial review of the results of the audit. Presently, other than a "vague" right of internal review of the audit by an individual appointed by the Commissioner of the Department of Social Services, the statute does not provide a mechanism for unbiased judicial review of the results of the audit. The bill also provides for a period within which the Commissioner's deputy must issue a decision on the provider's request for review (which does not exist in the present statute).

Back in 2005, when the initial law was debated and approved, this Committee heard multiple tales of anxiety, frustration, and uncertainty regarding the specific lack of standards by which the Department of Social Services conducts its audits and determines whether or not an offense or discrepancy in the provider's records will be used as the basis of extrapolation or not. These concerns have not been alleviated and remain today. This Bill addresses this issue by requiring the Department to finally issue regulations, enact standards, and provide notice of those standards to the providers prior to the audit.

I want to emphasize that this bill merely regulates the unfettered powers the Department of Consumer Protection possesses in adjudicating all matters concerning audits of providers and applicability of the draconian extrapolation model. The bill does not take away extrapolation, nor does it apply to audits conducted by the Medicaid Control Unit established by the State Attorney's Office. This section of the bill must pass not only for reasons of transparency in government, but also to bring the statute in check with well-settled national audit practices (see attached article) and minimum due process protections.

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Use of extrapolation in OK Medicaid audits subject of proposed

Janice Francis-Smith

Though legislation to change the way Oklahoma's Medicaid administrator conducts its audits has been withdrawn, some say the subject is still worth looking at.

We still need to do something about it, even if it's not done in this bill, said state Sen. Constance Johnson, D-Oklahoma City. Nobody can do businesses under these circumstances.

Johnson said she has withdrawn an amendment she had proposed to House Bill 2842, by state Rep. Kris Steele, R-Shawnee, when it became apparent the measure was headed for further discussion in a conference committee. HB 2842 contains a number of provisions designed to make Oklahoma's Medicaid program more efficient. But Johnson's amendment would have addressed the way the Oklahoma Health Care Authority, the state agency which administrates the Medicaid program, handles its audits.

In October 2004, the authority implemented new rules that allowed for extrapolation of audit findings. That is, the authority would be able to audit a portion of a health care provider's Medicaid payments and then apply the percentage of errors found in the audit to 100 percent of the provider's business. For example, if 20 percent of the provider's business was audited and errors found in the audit totaled \$300, the authority could extrapolate the audit findings to charge the provider for \$1,500 in errors.

The authority only uses extrapolation in cases where the audit finds an error rate exceeding 10 percent, said Nico Gomez, director of communication services for the authority. Providers with an error rate of less than 10 percent are charged only for the errors found in the audit. The approach is commonly used among Medicaid programs for other states and the federal government, and is in line with accepted accounting practices, said Gomez.

Of 98 audits that have been closed between October 2004, when the rule went into effect, and April 2006, extrapolation was used in 23 cases, and none of those providers appealed. However, the authority currently has an additional 14 cases on appeal.

The percentage of a provider's business that gets audited varies based on the size of the business and other factors, said Gomez, though he could not venture an estimate of how much of a provider's business gets sampled on average. But the sample is determined based on a computer program that provides 95-percent certainty that the sample is representative of the provider's overall business and objectively selected, he said.

Without extrapolation, the authority would have recovered \$37,056 from those cases it has closed during the past 18 months; using extrapolation, the agency recovered \$523,713, Gomez said.

The federal government still would have been looking for that money from us, Gomez said. On both the state and the federal level, there has been a lot of pressure on agencies to reduce waste, fraud and abuse. The federal government contributes 70 percent of the money spent on Medicaid, and they would be asking for that money back from us regardless of whether we recovered that money from the providers.

The extrapolation rule went into effect long before leadership in the Oklahoma House of Representatives announced they were

looking for \$100 million in fraud, abuse and waste in July 2005, Gomez said. The rule went through all the proper channels, and it was not challenged by the governor or the Legislature, he said. Furthermore, the authority consulted with a number of providers on the subject who also did not object to the practice.

We rely heavily upon provider participation in our program, Gomez said. We wouldn't do anything that would upset that apple cart. But of course, with a \$3.4 billion program, you're going to have some people who don't like their audit. In case of disputes, the authority has an effective appeal system in place, Gomez said.

Bill Piatt, an Oklahoma City health care consultant, said he represents a group of providers who oppose the authority's use of extrapolation. Piatt represents the Professional Healthcare Providers Association of Oklahoma, a group that includes about 20 providers who all want to remain anonymous due to fear of retribution from the authority, Piatt said.

Piatt has also worked with Alfred Milton Evans, founder of Texoma Mental Health Services, who has been involved in litigation against the authority since 2001. Evans charged in a lawsuit that the authority terminated Texoma's Medicaid contract in retaliation for things Evans said while lobbying the Legislature for Medicaid reform, in violation of Evans' First Amendment rights. The authority maintains the contract was terminated due to billing irregularities.

Piatt said a \$3,000 audit could turn into a \$700,000 audit by means of extrapolation.

If there's this one area of their business where they keep making the same mistake, it might not represent their business as a whole, Piatt said.

Some providers would like to see the rule changed so that extrapolation would only be applied to cases where the Oklahoma attorney general has determined fraud was involved.

This could be setting the state up to get sued again, Johnson said. This could put a number of providers out of business. If there is fraud involved, fine, then extrapolate. But let the attorney general find there is fraud first.

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