



**Substitute House Bill No. 5500**

**Public Act No. 14-162**

**AN ACT CONCERNING PROVIDER AUDITS UNDER THE  
MEDICAID PROGRAM.**

Be it enacted by the Senate and House of Representatives in General Assembly convened:

Section 1. Subsection (d) of section 17b-99 of the general statutes is repealed and the following is substituted in lieu thereof (*Effective July 1, 2014*):

(d) The Commissioner of Social Services, or any entity with which the commissioner contracts, for the purpose of conducting an audit of a service provider that participates as a provider of services in a program operated or administered by the department pursuant to this chapter or chapter 319t, 319v, 319y or 319ff, except a service provider for which rates are established pursuant to section 17b-340, shall conduct any such audit in accordance with the provisions of this subsection. For purposes of this subsection "extrapolation" means the determination of an unknown value by projecting the results of the review of a sample to the universe from which the sample was drawn; "provider" means a person, public agency, private agency or proprietary agency that is licensed, certified or otherwise approved by the commissioner to supply services authorized by the programs set forth in said chapters; and "universe" means a defined population of claims submitted by a provider during a specific time period.

**Substitute House Bill No. 5500**

(1) Not less than thirty days prior to the commencement of any such audit, the commissioner, or any entity with which the commissioner contracts to conduct an audit of a participating provider, shall provide written notification of the audit to such provider, unless the commissioner, or any entity with which the commissioner contracts to conduct an audit of a participating provider makes a good faith determination that (A) the health or safety of a recipient of services is at risk; or (B) the provider is engaging in vendor fraud. A copy of the regulations established pursuant to subdivision (11) of this subsection shall be appended to such notification.

(2) Any clerical error, including, but not limited to, recordkeeping, typographical, scrivener's or computer error, discovered in a record or document produced for any such audit shall not of itself constitute a wilful violation of program rules unless proof of intent to commit fraud or otherwise violate program rules is established. In determining which providers shall be subject to audits, the Commissioner of Social Services may give consideration to the history of a provider's compliance in addition to other criteria used to select a provider for an audit.

(3) A finding of overpayment or underpayment to a provider in a program operated or administered by the department pursuant to this chapter or chapter 319t, 319v, 319y or 319ff, except a provider for which rates are established pursuant to section 17b-340, shall not be based on [extrapolated projections] extrapolation unless (A) there is a determination of sustained or high level of payment error involving the provider, (B) documented educational intervention has failed to correct the level of payment error, or (C) the value of the claims in aggregate exceeds [one hundred fifty] two hundred thousand dollars on an annual basis.

(4) A provider, in complying with the requirements of any such audit, shall be allowed not less than thirty days to provide

**Substitute House Bill No. 5500**

documentation in connection with any discrepancy discovered and brought to the attention of such provider in the course of any such audit.

(5) The commissioner, or any entity with which the commissioner contracts, for the purpose of conducting an audit of a provider of any of the programs operated or administered by the department pursuant to this chapter or chapter 319t, 319v, 319y or 319ff, except a service provider for which rates are established pursuant to section 17b-340, shall produce a preliminary written report concerning any audit conducted pursuant to this subsection, and such preliminary report shall be provided to the provider that was the subject of the audit not later than sixty days after the conclusion of such audit.

(6) The commissioner, or any entity with which the commissioner contracts, for the purpose of conducting an audit of a provider of any of the programs operated or administered by the department pursuant to this chapter or chapter 319t, 319v, 319y or 319ff, except a service provider for which rates are established pursuant to section 17b-340, shall, following the issuance of the preliminary report pursuant to subdivision (5) of this subsection, hold an exit conference with any provider that was the subject of any audit pursuant to this subsection for the purpose of discussing the preliminary report. Such provider may present evidence at such exit conference refuting findings in the preliminary report.

(7) The commissioner, or any entity with which the commissioner contracts, for the purpose of conducting an audit of a service provider, shall produce a final written report concerning any audit conducted pursuant to this subsection. Such final written report shall be provided to the provider that was the subject of the audit not later than sixty days after the date of the exit conference conducted pursuant to subdivision (6) of this subsection, unless the commissioner, or any entity with which the commissioner contracts, for the purpose of

**Substitute House Bill No. 5500**

conducting an audit of a service provider, agrees to a later date or there are other referrals or investigations pending concerning the provider.

(8) Any provider aggrieved by a decision contained in a final written report issued pursuant to subdivision (7) of this subsection may, not later than thirty days after the receipt of the final report, request, in writing, a review on all items of aggrievement. Such request shall contain a detailed written description of each specific item of aggrievement. The designee of the commissioner who presides over the review shall be impartial and shall not be an employee of the Department of Social Services Office of Quality Assurance or an employee of an entity with which the commissioner contracts for the purpose of conducting an audit of a service provider. Following review on all items of aggrievement, the designee of the commissioner who presides over the review shall issue a final decision.

(9) A provider may appeal a final decision issued pursuant to subdivision (8) of this subsection to the Superior Court in accordance with the provisions of chapter 54.

(10) The provisions of this subsection shall not apply to any audit conducted by the Medicaid Fraud Control Unit established within the Office of the Chief State's Attorney.

(11) The commissioner shall adopt regulations, in accordance with the provisions of chapter 54, to carry out the provisions of this subsection and to ensure the fairness of the audit process, including, but not limited to, the sampling methodologies associated with the process. The commissioner shall provide free training to providers on how to enter claims to avoid clerical errors and shall post information on the department's Internet web site concerning the auditing process and methods to avoid clerical errors. Not later than February 1, 2015, the commissioner shall establish and publish on the department's

**Substitute House Bill No. 5500**

Internet web site audit protocols to assist the Medicaid provider community in developing programs to improve compliance with Medicaid requirements under state and federal laws and regulations, provided audit protocols may not be relied upon to create a substantive or procedural right or benefit enforceable at law or in equity by any person, including a corporation. The commissioner shall establish audit protocols for specific providers or categories of service, including, but not limited to: (A) Licensed home health agencies, (B) drug and alcohol treatment centers, (C) durable medical equipment, (D) hospital outpatient services, (E) physician and nursing services, (F) dental services, (G) behavioral health services, (H) pharmaceutical services, and (I) emergency and nonemergency medical transportation services. The commissioner shall ensure that the Department of Social Services, or any entity with which the commissioner contracts to conduct an audit pursuant to this subsection, has on staff or consults with, as needed, a medical or dental professional who is experienced in the treatment, billing and coding procedures used by the provider being audited.

Sec. 2. Section 17b-99a of the 2014 supplement to the general statutes is repealed and the following is substituted in lieu thereof (*Effective July 1, 2014*):

(a) (1) For purposes of this section, (A) "extrapolation" means the determination of an unknown value by projecting the results of the review of a sample to the universe from which the sample was drawn, (B) "facility" means any facility described in this subsection and for which rates are established pursuant to section 17b-340, and (C) "universe" means a defined population of claims submitted by a facility during a specific time period.

(2) The Commissioner of Social Services shall conduct any audit of a licensed chronic and convalescent nursing home, chronic disease hospital associated with a chronic and convalescent nursing home, a

**Substitute House Bill No. 5500**

rest home with nursing supervision, a licensed residential care home, as defined in section 19a-490, and a residential facility for persons with intellectual disability which is licensed pursuant to section 17a-227 and certified to participate in the [Title XIX] Medicaid program as an intermediate care facility for individuals with intellectual disabilities in accordance with the provisions of this section.

(b) Not less than thirty days prior to the commencement of any such audit, the commissioner shall provide written notification of the audit to such facility, unless the commissioner makes a good-faith determination that (1) the health or safety of a recipient of services is at risk; or (2) the facility is engaging in vendor fraud under sections 53a-290 to 53a-296, inclusive.

(c) Any clerical error, including, but not limited to, recordkeeping, typographical, scrivener's or computer error, discovered in a record or document produced for any such audit, shall not of itself constitute a wilful violation of the rules of a medical assistance program administered by the Department of Social Services unless proof of intent to commit fraud or otherwise violate program rules is established. In determining which facilities shall be subject to audits, the Commissioner of Social Services may give consideration to the history of a facility's compliance in addition to other criteria used to select a facility for an audit.

(d) A finding of overpayment or underpayment to such facility shall not be based on [extrapolated projections] extrapolation unless (1) there is a determination of sustained or high level of payment error involving the facility, (2) documented educational intervention has failed to correct the level of payment error, or (3) the value of the claims in aggregate exceeds [one hundred fifty] two hundred thousand dollars on an annual basis.

(e) A facility, in complying with the requirements of any such audit,

**Substitute House Bill No. 5500**

shall be allowed not less than thirty days to provide documentation in connection with any discrepancy discovered and brought to the attention of such facility in the course of any such audit.

(f) The commissioner shall produce a preliminary written report concerning any audit conducted pursuant to this section and such preliminary report shall be provided to the facility that was the subject of the audit not later than sixty days after the conclusion of such audit.

(g) The commissioner shall, following the issuance of the preliminary report pursuant to subsection (f) of this section, hold an exit conference with any facility that was the subject of any audit pursuant to this subsection for the purpose of discussing the preliminary report. Such facility may present evidence at such exit conference refuting findings in the preliminary report.

(h) The commissioner shall produce a final written report concerning any audit conducted pursuant to this subsection. Such final written report shall be provided to the facility that was the subject of the audit not later than sixty days after the date of the exit conference conducted pursuant to subsection (g) of this section, unless the commissioner and the facility agree to a later date or there are other referrals or investigations pending concerning the facility.

(i) Any facility aggrieved by a final report issued pursuant to subsection (h) of this section may request a rehearing. A rehearing shall be held by the commissioner or the commissioner's designee, provided a detailed written description of all items of aggrievement in the final report is filed by the facility not later than ninety days following the date of written notice of the commissioner's decision. The rehearing shall be held not later than thirty days following the date of filing of the detailed written description of each specific item of aggrievement. The commissioner shall issue a final decision not later than sixty days following the close of evidence or the date on which

***Substitute House Bill No. 5500***

final briefs are filed, whichever occurs later. Any items not resolved at such rehearing to the satisfaction of the facility or the commissioner shall be submitted to binding arbitration by an arbitration board consisting of one member appointed by the facility, one member appointed by the commissioner and one member appointed by the Chief Court Administrator from among the retired judges of the Superior Court, which retired judge shall be compensated for his services on such board in the same manner as a state referee is compensated for his services under section 52-434. The proceedings of the arbitration board and any decisions rendered by such board shall be conducted in accordance with the provisions of the Social Security Act, 42 USC 1396, as amended from time to time, and chapter 54.

(j) The submission of any false or misleading fiscal information or data to the commissioner shall be grounds for suspension of payments by the state under sections 17b-239 to 17b-246, inclusive, and sections 17b-340 and 17b-343, in accordance with regulations adopted by the commissioner. In addition, any person, including any corporation, who knowingly makes or causes to be made any false or misleading statement or who knowingly submits false or misleading fiscal information or data on the forms approved by the commissioner shall be guilty of a class D felony.

(k) The commissioner, or any agent authorized by the commissioner to conduct any inquiry, investigation or hearing under the provisions of this section, shall have power to administer oaths and take testimony under oath relative to the matter of inquiry or investigation. At any hearing ordered by the commissioner, the commissioner or such agent having authority by law to issue such process may subpoena witnesses and require the production of records, papers and documents pertinent to such inquiry. If any person disobeys such process or, having appeared in obedience thereto, refuses to answer any pertinent question put to the person by the commissioner or the

***Substitute House Bill No. 5500***

commissioner's authorized agent or to produce any records and papers pursuant thereto, the commissioner or the commissioner's agent may apply to the superior court for the judicial district of Hartford or for the judicial district wherein the person resides or wherein the business has been conducted, or to any judge of such court if the same is not in session, setting forth such disobedience to process or refusal to answer, and such court or judge shall cite such person to appear before such court or judge to answer such question or to produce such records and papers.

(l) The commissioner shall adopt regulations, in accordance with the provisions of chapter 54, to carry out the provisions of this section and to ensure the fairness of the audit process, including, but not limited to, the sampling methodologies associated with the process. The commissioner shall provide free training to facilities on the preparation of cost reports to avoid clerical errors and shall post information on the department's Internet web site concerning the auditing process and methods to avoid clerical errors. Not later than April 1, 2015, the commissioner shall establish audit protocols to assist facilities subject to audit pursuant to this section in developing programs to improve compliance with Medicaid requirements under state and federal laws and regulations, provided audit protocols may not be relied upon to create a substantive or procedural right or benefit enforceable at law or in equity by any person, including a corporation. The commissioner shall establish and publish on the department's Internet web site audit protocols for: (1) Licensed chronic and convalescent nursing homes, (2) chronic disease hospitals associated with chronic and convalescent nursing homes, (3) rest homes with nursing supervision, (4) licensed residential care homes, as defined in section 19a-490, and (5) residential facilities for persons with intellectual disabilities that are licensed pursuant to section 17a-227 and certified to participate in the Medicaid program as intermediate care facilities for individuals with intellectual disabilities. The commissioner shall ensure that the

***Substitute House Bill No. 5500***

Department of Social Services, or any entity with which the commissioner contracts to conduct an audit pursuant to this section, has on staff or consults with, as needed, licensed health professionals with experience in treatment, billing and coding procedures used by the facilities being audited pursuant to this section.

Sec. 3. (NEW) (*Effective July 1, 2014*) Not later than February 15, 2015, the Commissioner of Social Services shall submit a report, in accordance with the provisions of section 11-4a of the general statutes, to the joint standing committee of the General Assembly having cognizance of matters relating to human services on the audit protocols and procedures established pursuant to section 17b-99 of the general statutes, as amended by this act, and progress concerning the audit protocols and procedures to be established pursuant to section 17b-99a of the general statutes, as amended by this act. Not later than February 15, 2016, the commissioner shall submit a report, in accordance with the provisions of section 11-4a of the general statutes, to the joint standing committee of the General Assembly having cognizance of matters relating to human services on the implementation of the audit protocols and procedures established pursuant to sections 17b-99 of the general statutes, as amended by this act, and 17b-99a of the general statutes, as amended by this act.

Approved June 11, 2014