

**Proposed Substitute  
Bill No. 6550**

LCO No. 5703

**AN ACT CONCERNING MEDICAID PROVIDER AUDITS.**

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

1 Section 1. Subsection (d) of section 17b-99 of the general statutes is  
2 repealed and the following is substituted in lieu thereof (*Effective July*  
3 *1, 2015*):

4 (d) The Commissioner of Social Services, or any entity with which  
5 the commissioner contracts, for the purpose of conducting an audit of  
6 a service provider that participates as a provider of services in a  
7 program operated or administered by the department pursuant to this  
8 chapter or chapter 319t, 319v, 319y or 319ff, except a service provider  
9 for which rates are established pursuant to section 17b-340, shall  
10 conduct any such audit in accordance with the provisions of this  
11 subsection. For purposes of this subsection "audit look-back period"  
12 means a period of time not to exceed thirty-six months from the date of  
13 an audit to the date of payment of a provider's claim; "extrapolation"  
14 means the determination of an unknown value by projecting the  
15 results of the review of a sample to the universe from which the  
16 sample was drawn; "provider" means a person, public agency, private  
17 agency or proprietary agency that is licensed, certified or otherwise  
18 approved by the commissioner to supply services authorized by the  
19 programs set forth in said chapters; "statistically valid sampling"

20 methodology" means a methodology that is validated by a statistician  
21 or person with equivalent experience as having a confidence level of  
22 ninety-five per cent or greater; and "universe" means a defined  
23 population of claims submitted by a provider during a specific time  
24 period.

25 (1) Not less than thirty days prior to the commencement of any such  
26 audit, the commissioner, or any entity with which the commissioner  
27 contracts to conduct an audit of a participating provider, shall provide  
28 written notification of the audit and the statistically valid sampling  
29 methodology to be used to such provider, unless the commissioner, or  
30 any entity with which the commissioner contracts to conduct an audit  
31 of a participating provider makes a good faith determination that (A)  
32 the health or safety of a recipient of services is at risk; or (B) the  
33 provider is engaging in vendor fraud. A copy of the regulations  
34 established pursuant to subdivision (11) of this subsection shall be  
35 appended to such notification.

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

45 (3) A finding of overpayment or underpayment to a provider in a  
46 program operated or administered by the department pursuant to this  
47 chapter or chapter 319t, 319v, 319y or 319ff, except a provider for  
48 which rates are established pursuant to section 17b-340, shall not be  
49 based on extrapolation of a clerical error as described in subdivision (2)  
50 of this subsection unless (A) there is a determination of sustained or  
51 high level of payment error involving the provider, (B) documented

52 educational intervention has failed to correct the level of payment  
53 error, or (C) the [value of the claims in aggregate exceeds two hundred  
54 thousand dollars on an annual basis] provider's error rate exceeds ten  
55 per cent in an audit performed with a statistically valid sampling  
56 methodology and the provider has a history of at least one previous  
57 overpayment error identified in an audit. An overpayment assessment  
58 based on extrapolation of a clerical error shall not exceed three times  
59 the dollar amount of the clerical error unless there is a determination  
60 of a sustained or high level of provider payment error or if a  
61 documented educational intervention offered to the provider has  
62 failed to correct the level of payment error. Such determination may be  
63 made by means that include, but are not limited to: (i) Audit history of  
64 a provider, (ii) analysis of additional samples using a statistically valid  
65 sampling methodology, (iii) information from law enforcement  
66 investigations, and (iv) allegations of wrongdoing by current or former  
67 employees of a provider.

68 (4) A provider, in complying with the requirements of any such  
69 audit, shall be allowed not less than thirty days to provide  
70 documentation in connection with any discrepancy discovered and  
71 brought to the attention of such provider in the course of any such  
72 audit. Such documentation may include evidence that clerical errors  
73 concerning payment and billing resulted from a provider's transition  
74 to a new payment or billing service. The commissioner may permit a  
75 provider to correct minor clerical errors prior to a final audit  
76 determination. The commissioner shall not calculate an overpayment  
77 based on extrapolation or attempt to recover such extrapolated  
78 overpayment when the provider presents credible evidence that an  
79 error by the department caused the overpayment, provided the  
80 commissioner may recover the amount of the original overpayment.

81 (5) The commissioner, or any entity with which the commissioner  
82 contracts, for the purpose of conducting an audit of a provider of any  
83 of the programs operated or administered by the department pursuant  
84 to this chapter or chapter 319t, 319v, 319y or 319ff, except a service

85 provider for which rates are established pursuant to section 17b-340,  
86 shall produce a preliminary written report concerning any audit  
87 conducted pursuant to this subsection, and such preliminary report  
88 shall be provided to the provider that was the subject of the audit not  
89 later than sixty days after the conclusion of such audit. If a preliminary  
90 finding of an overpayment based on extrapolation of a clerical error  
91 exceeds two hundred thousand dollars, the commissioner shall  
92 schedule a conference with the provider not later than thirty days after  
93 the conclusion of such audit. Not later than thirty days after such  
94 conference, a provider may conduct an independent audit at the  
95 provider's expense of (A) all of the claims included in the universe  
96 subject to findings based on extrapolation, or (B) a second sample  
97 twice the size of the original identified by the department using the  
98 same statistically valid sampling methodology. The department may  
99 reject any audit not based on statistically valid sampling methodology  
100 or not in compliance with state or federal law. The commissioner shall  
101 amend the preliminary report in accordance with any verified  
102 evidence that initial findings were incorrect.

103 (6) The commissioner, or any entity with which the commissioner  
104 contracts, for the purpose of conducting an audit of a provider of any  
105 of the programs operated or administered by the department pursuant  
106 to this chapter or chapter 319t, 319v, 319y or 319ff, except a service  
107 provider for which rates are established pursuant to section 17b-340,  
108 shall, following the issuance of the preliminary report pursuant to  
109 subdivision (5) of this subsection, hold an exit conference with any  
110 provider that was the subject of any audit pursuant to this subsection  
111 for the purpose of discussing the preliminary report. Such provider  
112 may present evidence at such exit conference refuting findings in the  
113 preliminary report if such provider has not already done so pursuant  
114 to subdivision (5) of this subsection.

115 (7) The commissioner, or any entity with which the commissioner  
116 contracts, for the purpose of conducting an audit of a service provider,  
117 shall produce a final written report concerning any audit conducted

118 pursuant to this subsection. Such final written report shall be provided  
119 to the provider that was the subject of the audit not later than sixty  
120 days after the date of the exit conference conducted pursuant to  
121 subdivision (6) of this subsection, unless the commissioner, or any  
122 entity with which the commissioner contracts, for the purpose of  
123 conducting an audit of a service provider, agrees to a later date or  
124 there are other referrals or investigations pending concerning the  
125 provider.

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

138 (9) A provider may appeal a final decision issued pursuant to  
139 subdivision (8) of this subsection [to the Superior Court] in accordance  
140 with the provisions of chapter 54. In any appeal involving an  
141 extrapolated clerical error, the department shall not subject the  
142 provider to an overpayment assessment or recoupment order that  
143 exceeds the amount of the original error until all administrative  
144 appeals have been exhausted pursuant to chapter 54.

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

148 (11) The commissioner shall adopt regulations, in accordance with  
149 the provisions of chapter 54, to carry out the provisions of this

150 subsection. [and to ensure the fairness of the audit process, including,  
151 but not limited to, the sampling methodologies associated with the  
152 process.] The regulations shall include but not be limited to: (A) A  
153 listing of the statistically valid sampling methodologies to be used, (B)  
154 the minimum qualifications of the statistician or person with  
155 equivalent experience who shall validate such methodologies, (C)  
156 limitations on audits to cover only paid claims and, whenever possible,  
157 the isolation of unique or rare claims from others in any sample subject  
158 to extrapolation, (D) the application of a median rather than an  
159 average in any extrapolation involving claims with multiple services,  
160 (E) an audit look-back period in accordance with this subsection, and  
161 (F) administrative appeal procedures set forth in a manner that is  
162 consistent with the provisions of chapter 54.

163 (12) The commissioner shall provide free training to providers on  
164 how to enter claims to avoid clerical errors and shall post information  
165 on the department's Internet web site concerning the auditing process  
166 and methods to avoid clerical errors. Not later than February 1, 2015,  
167 the commissioner shall establish and publish on the department's  
168 Internet web site audit protocols to assist the Medicaid provider  
169 community in developing programs to improve compliance with  
170 Medicaid requirements under state and federal laws and regulations,  
171 provided audit protocols may not be relied upon to create a  
172 substantive or procedural right or benefit enforceable at law or in  
173 equity by any person, including a corporation. The commissioner shall  
174 establish audit protocols for specific providers or categories of service,  
175 including, but not limited to: [(A)] (i) Licensed home health agencies,  
176 [(B)] (ii) drug and alcohol treatment centers, [(C)] (iii) durable medical  
177 equipment, [(D)] (iv) hospital outpatient services, [(E)] (v) physician  
178 and nursing services, [(F)] (vi) dental services, [(G)] (vii) behavioral  
179 health services, [(H)] (viii) pharmaceutical services, and [(I)] (ix)  
180 emergency and nonemergency medical transportation services. The  
181 commissioner shall ensure that the Department of Social Services, or  
182 any entity with which the commissioner contracts to conduct an audit  
183 pursuant to this subsection, has on staff or consults with, as needed, a

184 medical or dental professional who is experienced in the treatment,  
185 billing and coding procedures used by the provider being audited.

186 Sec. 2. Section 17b-99a of the general statutes is repealed and the  
187 following is substituted in lieu thereof (*Effective July 1, 2015*):

188 **Sec. 17b-99a. Audits of long-term care facilities.** (a)(1) For purposes  
189 of this section, (A) "audit look-back period" means a period of time not  
190 to exceed thirty-six months from the date of an audit to the date of  
191 payment of a provider's claim; (B) "extrapolation" means the  
192 determination of an unknown value by projecting the results of the  
193 review of a sample to the universe from which the sample was drawn,  
194 [(B)] (C) "facility" means any facility described in this subsection and  
195 for which rates are established pursuant to section 17b-340, (D)  
196 "statistically valid sampling methodology" means a methodology that  
197 is validated by a statistician or person with equivalent experience as  
198 having a confidence level of ninety-five per cent or greater, and [(C)]  
199 (E) "universe" means a defined population of claims submitted by a  
200 facility during a specific time period.

201 (2) The Commissioner of Social Services shall conduct any audit of a  
202 licensed chronic and convalescent nursing home, chronic disease  
203 hospital associated with a chronic and convalescent nursing home, a  
204 rest home with nursing supervision, a licensed residential care home,  
205 as defined in section 19a-490, and a residential facility for persons with  
206 intellectual disability which is licensed pursuant to section 17a-227 and  
207 certified to participate in the Medicaid program as an intermediate  
208 care facility for individuals with intellectual disabilities in accordance  
209 with the provisions of this section.

210 (b) Not less than thirty days prior to the commencement of any such  
211 audit, the commissioner shall provide written notification of the audit  
212 to such facility and the statistically valid sampling methodology to be  
213 used, unless the commissioner makes a good-faith determination that  
214 (1) the health or safety of a recipient of services is at risk; or (2) the  
215 facility is engaging in vendor fraud under sections 53a-290 to 53a-296,

216 inclusive.

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

227 (d) A finding of overpayment or underpayment to such facility shall  
228 not be based on extrapolation of a clerical error as described in  
229 subsection (c) of this section unless (1) there is a determination of  
230 sustained or high level of payment error involving the facility, (2)  
231 documented educational intervention has failed to correct the level of  
232 payment error, or (3) [the value of the claims in aggregate exceeds two  
233 hundred thousand dollars on an annual basis] the facility's error rate  
234 exceeds ten per cent in an audit performed with a statistically valid  
235 sampling methodology and the facility has a history of at least one  
236 previous overpayment error identified in an audit. An overpayment  
237 assessment based on extrapolation of a clerical error shall not exceed  
238 three times the dollar amount of the clerical error unless there is a  
239 determination of a sustained or high level of payment error or if a  
240 documented educational intervention offered to the facility has failed  
241 to correct the level of payment error. Such determination may be made  
242 by means that include, but are not limited to: (i) Audit history of a  
243 facility, (ii) analysis of additional samples using a statistically valid  
244 sampling methodology, (iii) information from law enforcement  
245 investigations, and (iv) allegations of wrongdoing by current or former  
246 employees of a facility.

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

248 shall be allowed not less than thirty days to provide documentation in  
249 connection with any discrepancy discovered and brought to the  
250 attention of such facility in the course of any such audit. Such  
251 documentation may include evidence that clerical errors concerning  
252 payment and billing resulted from a facility's transition to a new  
253 payment or billing service. The commissioner may permit a facility to  
254 correct minor clerical errors prior to a final audit determination. The  
255 commissioner shall not calculate an overpayment based on  
256 extrapolation or attempt to recover such extrapolated overpayment  
257 when the facility presents credible evidence that an error by the  
258 department caused the overpayment, provided the commissioner may  
259 recover the amount of the original overpayment.

260 (f) The commissioner shall produce a preliminary written report  
261 concerning any audit conducted pursuant to this section and such  
262 preliminary report shall be provided to the facility that was the subject  
263 of the audit not later than sixty days after the conclusion of such audit.  
264 If a preliminary finding of an overpayment based on extrapolation of a  
265 clerical error exceeds two hundred thousand dollars, the commissioner  
266 shall schedule a conference with the facility's representatives not later  
267 than thirty days after the conclusion of such audit. Not later than thirty  
268 days after such conference, a facility may conduct an independent  
269 audit at the facility's expense of (A) all of the claims included in the  
270 universe subject to findings based on extrapolation, or (B) a second  
271 sample twice the size of the original identified by the department  
272 using the same statistically valid sampling methodology. The  
273 department may reject any audit not based on statistically valid  
274 sampling methodology or not in compliance with state or federal law.  
275 The commissioner shall amend the preliminary report in accordance  
276 with any verified evidence that initial findings were incorrect.

277 (g) The commissioner shall, following the issuance of the  
278 preliminary report pursuant to subsection (f) of this section, hold an  
279 exit conference with any facility that was the subject of any audit  
280 pursuant to this subsection for the purpose of discussing the

281 preliminary report. Such facility may present evidence at such exit  
282 conference refuting findings in the preliminary report if such facility  
283 has not already done so pursuant to subsection (f) of this subsection.

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

291 (i) Any facility aggrieved by a final report issued pursuant to  
292 subsection (h) of this section may request a rehearing. A rehearing  
293 shall be held by the commissioner or the commissioner's designee,  
294 provided a detailed written description of all items of aggrievement in  
295 the final report is filed by the facility not later than ninety days  
296 following the date of written notice of the commissioner's decision.  
297 The rehearing shall be held not later than thirty days following the  
298 date of filing of the detailed written description of each specific item of  
299 aggrievement. The commissioner shall issue a final decision not later  
300 than sixty days following the close of evidence or the date on which  
301 final briefs are filed, whichever occurs later. Any items not resolved at  
302 such rehearing to the satisfaction of the facility or the commissioner  
303 shall be submitted to binding arbitration by an arbitration board  
304 consisting of one member appointed by the facility, one member  
305 appointed by the commissioner and one member appointed by the  
306 Chief Court Administrator from among the retired judges of the  
307 Superior Court, which retired judge shall be compensated for his  
308 services on such board in the same manner as a state referee is  
309 compensated for his services under section 52-434. The proceedings of  
310 the arbitration board and any decisions rendered by such board shall  
311 be conducted in accordance with the provisions of the Social Security  
312 Act, 42 USC 1396, as amended from time to time, and chapter 54. In  
313 any case involving an extrapolated clerical error, the department shall

314 not subject the facility to an overpayment assessment or recoupment  
315 order that exceeds the amount of the original error until the facility  
316 exhausts any rights pursuant to this section.

317 (j) The submission of any false or misleading fiscal information or  
318 data to the commissioner shall be grounds for suspension of payments  
319 by the state under sections 17b-239 to 17b-246, inclusive, and sections  
320 17b-340 and 17b-343, in accordance with regulations adopted by the  
321 commissioner. In addition, any person, including any corporation,  
322 who knowingly makes or causes to be made any false or misleading  
323 statement or who knowingly submits false or misleading fiscal  
324 information or data on the forms approved by the commissioner shall  
325 be guilty of a class D felony.

326 (k) The commissioner, or any agent authorized by the commissioner  
327 to conduct any inquiry, investigation or hearing under the provisions  
328 of this section, shall have power to administer oaths and take  
329 testimony under oath relative to the matter of inquiry or investigation.  
330 At any hearing ordered by the commissioner, the commissioner or  
331 such agent having authority by law to issue such process may  
332 subpoena witnesses and require the production of records, papers and  
333 documents pertinent to such inquiry. If any person disobeys such  
334 process or, having appeared in obedience thereto, refuses to answer  
335 any pertinent question put to the person by the commissioner or the  
336 commissioner's authorized agent or to produce any records and papers  
337 pursuant thereto, the commissioner or the commissioner's agent may  
338 apply to the superior court for the judicial district of Hartford or for  
339 the judicial district wherein the person resides or wherein the business  
340 has been conducted, or to any judge of such court if the same is not in  
341 session, setting forth such disobedience to process or refusal to answer,  
342 and such court or judge shall cite such person to appear before such  
343 court or judge to answer such question or to produce such records and  
344 papers.

345 (l) The commissioner shall adopt regulations, in accordance with the

346 provisions of chapter 54, to carry out the provisions of this section [and  
347 to ensure the fairness of the audit process, including, but not limited  
348 to, the sampling methodologies associated with the process]. The  
349 regulations shall include but not be limited to: (1) A listing of the  
350 statistically valid sampling methodologies to be used, (2) the minimum  
351 qualifications of the statistician or person with equivalent experience  
352 who shall validate such methodologies, (3) limitations on audits to  
353 cover only paid claims and, whenever possible, the isolation of unique  
354 or rare claims from others in any sample subject to extrapolation, (4)  
355 the application of a median rather than an average in any extrapolation  
356 involving claims with multiple services, (5) an audit look-back period  
357 in accordance with this section, and (6) administrative appeal  
358 procedures set forth in a manner that is consistent with the provisions  
359 of this section. The commissioner shall provide free training to  
360 facilities on the preparation of cost reports to avoid clerical errors and  
361 shall post information on the department's Internet web site  
362 concerning the auditing process and methods to avoid clerical errors.  
363 Not later than April 1, 2015, the commissioner shall establish audit  
364 protocols to assist facilities subject to audit pursuant to this section in  
365 developing programs to improve compliance with Medicaid  
366 requirements under state and federal laws and regulations, provided  
367 audit protocols may not be relied upon to create a substantive or  
368 procedural right or benefit enforceable at law or in equity by any  
369 person, including a corporation. The commissioner shall establish and  
370 publish on the department's Internet web site audit protocols for: [(1)]  
371 (A) Licensed chronic and convalescent nursing homes, [(2)] (B) chronic  
372 disease hospitals associated with chronic and convalescent nursing  
373 homes, [(3)] (C) rest homes with nursing supervision, [(4)] (D) licensed  
374 residential care homes, as defined in section 19a-490, and [(5)] (E)  
375 residential facilities for persons with intellectual disabilities that are  
376 licensed pursuant to section 17a-227 and certified to participate in the  
377 Medicaid program as intermediate care facilities for individuals with  
378 intellectual disabilities. The commissioner shall ensure that the  
379 Department of Social Services, or any entity with which the

380 commissioner contracts to conduct an audit pursuant to this section,  
381 has on staff or consults with, as needed, licensed health professionals  
382 with experience in treatment, billing and coding procedures used by  
383 the facilities being audited pursuant to this section.

This act shall take effect as follows and shall amend the following sections:		
Section 1	<i>July 1, 2015</i>	17b-99(d)
Sec. 2	<i>July 1, 2015</i>	17b-99a

*[Proposed deletions are enclosed in brackets. Proposed additions are indicated by underline, except that when the entire text of a bill or resolution or a section of a bill or resolution is new, it is not underlined.]*