

## **What Medicaid Home Care Providers Should Know About DSS Audits**

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The Connecticut Department of Social Services (DSS) is actively auditing Medicaid providers, including skilled home health care providers, non-medical providers (homemaker-companion agencies), and DDS providers. DSS audit findings can result in significant financial penalties of \$100,000 to more than \$2 million because of DSS' practice of using extrapolation, which means that a single audit finding will be multiplied based on the assumption that the finding occurred in numerous cases. Providers must be aware of their compliance obligations and conduct routine self-audits before they receive notice of a DSS audit. Once the audit is conducted and preliminary audit findings/penalties are issued, a provider must act quickly to put itself in the best possible position to reduce or eliminate any financial penalties. A thorough factual and legal response could reduce initial penalties significantly in some circumstances. Consulting legal counsel experienced with DSS audits can help home care agencies navigate a complex process and avoid additional significant costs or financial penalties and allow them to focus on providing services to clients and growing their business.

### **I. DSS Audit Process – What to Expect**

Providers can expect a thorough, comprehensive audit process, which typically takes place as follows:

A. DSS typically audits a sample of 100-150 claims submitted for payment during a 2–3-year audit period. DSS reviews, among other things, 1) billing documentation to ensure amounts paid do not exceed hours and services authorized; and 2) service documentation to ensure required signatures and other elements are present to support the services provided and obtained within required timeframes.

B. Providers usually have 30 days to produce documents and other information in response to DSS' audit requests after receiving notice of the audit.

C. After reviewing the documents produced by the provider, DSS will prepare a preliminary written report summarizing the audit findings/penalties. DSS will hold an exit conference with the provider to discuss the findings and any new information offered by the provider.

D. Typically, the exit conference does not result in significant changes to the audit findings. DSS usually issues a final written report within 60 days of the exit conference. Providers may appeal adverse findings through an administrative hearing conducted by a DSS representative, but providers have the best chance of success on appeal if they can show that DSS' finding was wrong or that DSS improperly relied on extrapolation, so it is important to know the service, documentation and other rules governing payment and how to attack extrapolation. Unlike other government agencies, this initial process may not appear legal in nature, but having a legally defensible basis with the needed factual support to

demonstrate such concepts as “harmless error” or “clerical error” are critical to having these initial penalties reduced before having to go to a formal administrative legal appeals hearing. Also, providers must adhere to required timeframes or else they will be deemed to have waived their right to move to the next step in the DSS process.

## **II. Self-Audits Are Critical**

To be prepared for any audit, providers should conduct routine self-audits in key audit areas. DSS has published audit protocols for some provider types, such as home health care, home care and behavioral health providers, to help those providers to understand potential audit issues and self-audit areas: [Audit Protocols \(ct.gov\)](#). However, DSS has not published audit protocols for all provider types, leaving some providers to sift through published regulations and provider bulletins to understand their obligations. Self-audits are critical, but you must understand the key legal areas where you are likely to be vulnerable, even if you provided the services but failed to obtain, for example, the prior signature of a physician and how you will correct that should you actually be audited.

We have worked with our DSS clients in performing an internal audit and addressed the findings and these providers are usually better prepared when DSS actually conducts an audit.

## **III. Conclusion – Preparation is Important**

Providers must understand the Medicaid audit process, be aware of their compliance obligations and conduct self-audits of billing and service documentation. It is also important to know how to respond to extrapolated audit findings to put yourself in the best position to defend against potentially exorbitant financial penalties. Unlike other administrative penalties or findings, DSS may reduce penalties if you are able to legally demonstrate services were provided, the problem was corrected, and what measures are now in place to prevent it from happening again. There are specific legal methodologies we have used with our DSS clients that have been successful in significantly reducing penalties when there is proof the DSS provider acted in good faith and provided the services.

If you have any questions or wish to discuss a DSS audit, please do not hesitate to contact Attorney Phyllis Pari at 203-787-7000 (x14) or [pari@laflegal.com](mailto:pari@laflegal.com), or Attorney John M. Letizia at 203-787-7000 (x35) or [letizia@laflegal.com](mailto:letizia@laflegal.com). We provide initial consults (with limited document review) for up to 2 hours at a time for \$600. HCAOA Connecticut members who retain our firm following an initial consultation will be eligible for a discount. Finally, most of our successful outcomes have been accomplished without our need to even attend a hearing or file an appearance.

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