

Sec. 17-311-53. Desk review and field audits

(a) The per diem rate of payment established pursuant to section 17-311-50 et seq. shall be determined by desk review of the submitted annual report which shall subsequently be verified and authenticated by field audit procedures which are approved by the United States Department of Health and Human Services. Facilities shall generally be audited on a biennial basis. This audit cycle may be changed based upon audit experience. A recomputation of rate, based upon field audit adjustments or otherwise, shall be made retroactive to the applicable period. Such retroactive recomputation replaces the originally determined annual Medicaid per diem rate and shall not be construed to constitute a new annual Medicaid per diem rate so as to require the public hearing mandated by Connecticut General Statutes, section 17-314.

(b) Whenever the Commissioner of Income Maintenance renders a rate decision, whether based upon a field audit or otherwise, which decision results in the facility being indebted to the Department of Income Maintenance for past Medicaid overpayments, the department shall recoup said Medicaid overpayments as soon as possible from the department's monthly Medicaid payments to the facility. If the facility submits a rehearing request in compliance with Connecticut General Statutes, section 17-311 (b), the department shall afford the facility a rehearing as soon as practicable after commencement of recoupment of past Medicaid overpayments. Said rehearing request shall not automatically stay the recoupment, which may be stayed in the discretion of the commissioner.

(c) In a recoupment situation, the Department of Income Maintenance shall determine a recoupment schedule of amounts to be recouped from the facility's monthly Medicaid payments after consideration of the following factors:

- (1) The amount of the indebtedness;
- (2) The objective of completion of total recoupment of past Medicaid overpayments as soon as possible;
- (3) The cash flow of the facility; and
- (4) Any other factors brought to the attention of the department by the facility relative to the provider's ability to function after recoupment.

(d) Whenever a facility has received past Medicaid overpayments, the department may recoup the amount of such Medicaid overpayments from the monthly Medicaid payments to the facility regardless of any intervening change in ownership.

(e) A facility may give the commissioner notice of a proposed change in ownership (to include the names and addresses of the proposed buyers) at least nine (9) months before said change in ownership. The department shall then conduct a field audit of the facility and notify both the facility and the prospective buyers of the existence of any indebtedness to the department resulting from past Medicaid overpayments. Following the conclusion of such field audit the department shall determine the recoupment schedule and commence recoupment in accordance with such schedule unless the department, in its discretion agrees to wait until the consummation of the sale. At the time of the consummation of such sale, the seller shall pay in full to the department the total amount of such indebtedness. Failure of the seller to repay at that time will subject the buyer to recoupment as set forth in subsection (d).

(f) If a facility owes money to the department, the department may offset against such

indebtedness any liability of the department to another provider which is owned or controlled by the same person or persons who owned or controlled the first facility at the time the indebtedness to the department was incurred. In the case of the same person or persons owning or controlling two or more facilities but separately incorporating them, whether the person or persons own or control such corporations shall be an issue of fact. Where common ownership or control is found, this subsection shall apply notwithstanding the form of business organization utilized by such persons, e.g. separate corporations, limited partnerships, etc. Findings of common ownership or control does not necessarily require 51% or more ownership or evidence of actual past exercise of control but rather only requires the potential or ability to directly or indirectly exercise influence or control. When the commissioner renders a decision to act pursuant to this subsection, an aggrieved provider which desires to contest the finding of common ownership or control may, within ten days of such decision by the commissioner, obtain, by written request to the commissioner, and administrative hearing within the department on the issue of whether common ownership or control exists. At such an administrative hearing pursuant to this subsection, the department shall have the burden of proof on said issue. For purposes of this subsection only, when an aggrieved provider submits a timely request for administrative hearing as aforesaid, an automatic stay of offset against payments to the second facility pursuant to this subsection shall enter and remain in effect until the department issues its administrative final decision concluding the aforesaid administrative hearing on the issue of whether common ownership or control exists.

(Effective June 2, 1986)