

MINUTES OF THE INSURANCE RECOUPMENT WORKING GROUP
Wednesday, September 4, 2013
Queen Kapiolani Conference Room
King Kalakaua Building
335 Merchant Street, 2nd Floor
Honolulu, HI 96813

Members Present: Gordon I. Ito (Insurance Commissioner and Working Group Chair), Kenneth Fink (Department of Human Services – participation via conference call), L. Martin Johnson (healthcare provider community/health care professional), Gail L. Tice (healthcare provider community/health care professional), Jennifer Diesman (Hawaii Association of Health Plans), Catherine Xiao (Healthcare Association of Hawaii), Christopher D. Flanders (Hawaii Medical Association) and Robert Hirokawa (Hawaii Primary Care Association)

Members Excused: Lorrin Kim (Department of Health)

Others Present: Alyson Estrella (University Health Alliance), Tamera MezNarich, and Ann Le Lievre and Donna K. Ikegami (both from the Hawaii Insurance Division)

I. Call to Order

Pursuant to written notice, this meeting of the Insurance Recoupment Working Group (the "Working Group") was called to order and chaired by Gordon I Ito, Insurance Commissioner, at 10:04 a.m. The meeting was held pursuant to the public notice filed with the Lieutenant Governor's Office on August 23, 2013.

The Working Group is established pursuant to Senate Concurrent Resolution No. 129, S.D. 1, of the Regular Session of 2013 (SCR 129). SCR 129 requested the Insurance Commissioner to convene a working group to study insurance recoupment and to serve as its chair.

Commissioner Ito noted that while the Working Group was convened pursuant to resolution, the Working Group does not fall within the statutory definition of a "board" as defined in the State's Sunshine Law (Chapter 92, Hawaii Revised Statutes). However, in the interest of promoting open government Commissioner Ito said the Working Group is following the Sunshine Law. Discussions among members should occur in open hearing.

II. Discussion Topics and Presentations

Healthcare Provider Prospective

Commissioner Ito noted that the Working Group only heard a psychologist's perspective of insurance recoupment at the Working Group's last meeting. Christopher D. Flanders of the Hawaii Medical Association ("HMA") was given an opportunity to present his perspective as HMA's representative. Dr. Flanders said that four or six months ago, HMA received three calls within a few

weeks from physicians against whom recoupment was being sought. The physicians were questioned about claims that were four to six years old. Dr. Flanders said no specific specialty was targeted and that the calls were from physicians with practices in obstetrics, family medicine, and gerontology.

Dr. Flanders said it is difficult for doctors to defend old billing claims because their books and files are often closed or placed in storage four to six years later. He said there is a need to shorten this time frame to something more reasonable.

Medicaid Recoupment Requirements

Kenneth Fink, Med-Quest Administrator of the Department of Human Services, was given an opportunity to explain how recoupment works at the federal level. As Med-Quest is a state program that is financed by Medicaid, his comments were limited to recoupment under Medicaid. In response to the Working Group's request for information on how Medicare and Medicaid define "recoupment," Dr. Fink emailed the Working Group members the following documents on August 28, 2013:

1. Electronic Code of Federal Regulations, Title 42, Part 433, Subpart F, on Refunding of Federal Share of Medicaid Overpayments to Providers; and
2. Unofficial Hawaii Administrative Rules, Title 17, Subtitle 12, Chapter 1705, on Medical Assistance Recovery.

Dr. Fink said the federal government places no time limit on recoupment recovery. From the time overpayment is discovered, there is a one-year time frame for the Medicaid agency to reimburse the federal government. The Medicaid agency would then be responsible for collecting from the providers. While there is a one-year deadline to reimburse the federal government upon discovery of the overpayment, there is no time limit on when the service was provided.

Dr. Fink said that every three years, if there is any overpayment or underpayment in the cycle, the Medicaid agency must recover overpayments or underpayments. Dr. Fink also noted that there is a new federal recovery audit program and that the Office of Inspector General is responsible for the audits. If an overpayment is discovered in the audit, the overpayment will be recovered.

Discussion ensued regarding the three-year look-back period for Recovery Audit Contractor audits ("RAC Audits"). Dr. Fink said that Medicaid requires the states to have RACs, who work on commission, to complete required audits. He also noted that every three years, if an overpayment is identified in the cycle, they must recover the overpayment.

Document Retention Requirements

It was noted that since there is a seven-year document preservation requirement, it would be difficult for healthcare providers to retrieve documents going beyond the seven-year period.

Jennifer Diesman stated that with regard to the Hawaii Medical Service Association ("HMSA"), the Centers for Medicare and Medicaid Services ("CMS") can go against a claim as long as HMSA has a contract with the federal government. She said that even if the claim has been open up to 20 years, CMS can go after the claim.

Further discussion ensued about at what point is there a reasonable expectation that a healthcare provider would be required to maintain medical records. Ms. Diesman noted that HMSA has an 18-month look-back period for commercial claims with caveats in certain cases, such as claims involving fraud, workers' compensation, and third-party liability. Alyson Estrella of the University Health Alliance ("UHA") stated that UHA has a one-year look-back period with exceptions for cases of fraud, workers' compensation, and third-party liability. Ms. Diesman said she would survey other members of the Hawaii Association of Health Plans with regard to the length of their look-back periods and report her findings to the Working Group.

Recoupment Limits

Discussion ensued with regard to whether carve outs should be allowed for fraud or other reasons. While there was agreement that criminal activity should not be protected by statutorily-established recoupment limits, the Working Group was not able to come to an agreement on how "fraud" should be defined in the context of recoupment. For example, should fraud include unintentional coding or billing errors?

Commissioner Ito noted that the Insurance Division has a Fraud branch that enforces insurance fraud actions. He also noted that under Hawaii law, fraud comes down to intent.

During the discussion, Ms. Diesman noted that most criminal cases are brought by the government and not the health plans. She asked Dr. Fink if the Department of Human Services has analysis or data regarding the degree of recoupment by DHS for fraud in the last three years. Dr. Fink said that fraud is handled by the Attorney General's Medicaid Fraud Control Unit. It was noted that it may be helpful to obtain data on the number of Medicaid overpayments related to fraud to determine the magnitude of the problem.

Preparation for Next Meeting

Commissioner Ito noted that the Working Group is moving toward consensus and reminded the members that under SCR 129 they have been charged with:

1. Assessing the problems of recoupment; and
2. Studying the impacts of limiting the period allowed to initiate any recoupment or offset demand efforts.

Commissioner Ito encouraged the members to submit their comments on the aforementioned points in writing before the Working Group meets again to enable the Working Group to prepare the report requested by the Legislature.

It was noted that quantifying the impact of recoupment practices may be difficult because claims are handled confidentially and information is generally not shared in the healthcare provider community. In addition, it is difficult to gather this kind of data in a highly regulated market. However, several of the members agreed to put something together in writing. Dr. Johnson noted that another adverse impact of recoupment is that people may be less likely to enter the medical profession because of an increasingly regulated market and when they see the lack of equity in the system.

Commissioner Ito stated that he would like to address the following issues at the next meeting:

1. Is the Hawaii Association of Health Plans willing to set limits or parameters with regard to recoupment practices?
2. If so, what limits are they willing to accept?
3. What kind of carve outs are the Working Group members willing to accept (e.g., fraud, third-party liability, etc.)?
4. Within the scope of SCR 129, identify the impacts placing a time limit would have on recoupment.

Commissioner Ito requested Working Group members to submit written statements on the above points before the next scheduled meeting. He also asked the Working Group members to consider, if the Working Group decides to recommend legislation on this issue, whether they would like to recommend a particular state law as a model or whether they would like to make a general recommendation to the Legislature.

III. Submission of Testimony by Interested Parties and Members of the Public

Dr. Johnson presented the Working Group members with copies of the Medical Transcription Billing, Corp. ("MTBC") report on Refund Recoupment Laws and a table summarizing the MTBC Refund Recoupment Laws.

IV. Scheduling of Next Meeting

The next meeting will take place on Wednesday, September 18, 2013, at 3 p.m. at a location to be announced at a later time.

V. Adjournment

The meeting was adjourned at 10:50 a.m.