TITLE 317. OKLAHOMA HEALTH CARE AUTHORITY
CHAPTER 2. GRIEVANCE PROCEDURES AND PROCESS

SUBCHAPTER 1. ADMINISTRATIVE APPEALS

317:2-1-7. Program Integrity Audit Appeals

All appeals related to audits originating from Program Integrity resulting in overpayments are heard by an Administrative Law Judge (ALJ) pursuant to 56 Oklahoma Statutes (O.S.) ~~1~~§ 1011.9 and 63 O.S. § 5051.11.

(1) If the Oklahoma Health Care Authority (OHCA) determines a provider received an overpayment based upon audit findings/report issued pursuant to Oklahoma Administrative Code (OAC) 317:30-3-2.1, the provider may appeal the audit findings/report.

(2) Following receipt of an initial audit review report, as defined in OAC 317:30-3-2.1(a), that a provider received an overpayment, the provider has sixty (60) days to submit documentation supporting its position or addressing any discrepancy in the report for informal reconsideration, as defined OAC 317:30-3-2.1(a). A final report, as defined in OAC 317:30-3-2.1(a), will be issued following this period.

(3) Following issuance of the final report, a provider has thirty (30) days in which to request a formal reconsideration from OHCA. If formal reconsideration, as defined in OAC 317:30-3-2.1, is requested, OHCA will conduct a review and issue a decision.

(4) If a provider elects to appeal the ~~audit findings/report~~OHCA's decision after formal reconsideration to an Administrative Law Judge designated by the Administrator of the Oklahoma Health Care Authority, the provider must file its appeal with the OHCA's Legal Docket Clerk, using Form LD-2. The LD-2 must be received by the OHCA Legal Docket Clerk within thirty (30) calendar days of the date of the ~~initial audit findings/report or within thirty (30) calendar days of the date of the reconsideration audit findings/report~~OHCA decision. The computation of time shall be calculated in accordance with OAC 317:2-1-2(a).

(5)~~(2)~~ The provider must attach a statement to the LD-2 that specifies what findings and/or claims are being appealed, as well as all factual and legal bases for the appeal. The provider shall attach the following to the LD-2 form:

(A) Citations for any statute or rule that the provider contends has been violated;

(B) The provider's name, address, e-mail address, and telephone number;

(C) The name, address, e-mail address, and telephone number of the provider's authorized representative, if any; and

(D) The LD-2 must be signed by the provider or provider's authorized representative.

(i) For purposes of this section, "provider" means the person or entity against whom the overpayment is sought.

(ii) Consistent with Oklahoma rules of practice, an individual provider may appear on his/her own behalf or may be represented by an attorney licensed to practice law within the State of Oklahoma. In the case of an entity, the provider entity must be represented by an attorney licensed to practice within the State of Oklahoma. Attorneys not licensed to practice in Oklahoma must comply with 5 O.S. Art II, Sec. 5, and rules of the Oklahoma Bar Association.

(6)~~(3)~~ A provider or the provider's authorized representative shall immediately report any change in contact information during the course of the appeal to the OHCA Legal Docket Clerk.

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(7)~~(4)~~ The OHCA, on its own initiative or upon written request of a party, may consolidate or join appeals if to do so will expedite the processing of the appeals and not adversely affect the interest of the parties.

(8)~~(5)~~ The provider has the burden of proof to prove that the overpayment determination and the errors identified in the audit findings/report are inaccurate. The provider must prove the relief sought by a preponderance of the evidence standard, as defined by the Oklahoma Supreme Court. In adjudicating an appeal under the preponderance of the evidence standard, the ALJ will examine each piece of evidence for relevance, probative value, and credibility, to determine whether the fact to be proven is proved by the greater weight of the evidence.

(9)~~(6)~~ Within approximately forty-five (45) days of receiving the LD-2, the Legal Docket Clerk will schedule a prehearing conference before an ALJ. This period of time is intended to provide the parties an opportunity to settle the dispute prior to the prehearing. Settlement of audit appeals is encouraged and can begin at any time of the audit appeal process between the provider and OHCA's Legal Division. If a settlement is reached, the terms shall be set out in writing and signed by both parties and/or their authorized representatives. Unless otherwise warranted, an Agreed Order setting out the terms of the settlement shall be presented to the ALJ for approval. In limited situations, a settlement may be agreed to be a confidential settlement by the parties and will not be submitted as an Agreed Order to the ALJ. In the case of confidential settlements, the Appellant shall file a motion to dismiss the appeal with prejudice which informs the ALJ that the matter has been settled and that the audit appeal is moot.

(10)~~(7)~~ Audit appeals which are not settled will commence with a prehearing conference before the assigned ALJ as follows:

(A) The prehearing conference shall be informal, structured by the ALJ, and not open to the public. The ALJ shall record the prehearing conference by digital recording.

(i) Each party shall be notified of the date of the prehearing conference at least thirty (30) calendar days prior to the scheduled prehearing conference.

(ii) Each party shall appear in person or through their authorized representative.

(iii) Witnesses, not including a named party, shall not appear at the prehearing conference. Nor shall any witness testimony be presented at the prehearing conference.

(B) A request for continuance of a prehearing conference can be made up to three (3) business days prior to the scheduled prehearing conference date. A lesser period of time may be permitted for good cause shown. The ALJ shall rule on the request and in no case shall a combination of continuance exceed a total of thirty (30) calendar days except for good cause shown.

(C) Within twenty (20) days prior to the prehearing conference, the Appellant provider shall file a prehearing conference statement with the Legal Docket Clerk and provide a copy to the other party; and within ten (10) days prior to the prehearing conference, the OHCA shall file a prehearing conference statement with the docket clerk and provide a copy to the other party. Each party's prehearing conference statement shall include:

(i) A brief statement of its case, including a list of stipulations and legal and factual issues to be heard;

(ii) A list of any witnesses who have direct knowledge of the facts surrounding the issues of the appeal and who are expected to be called at the hearing. The list shall include a brief statement of the testimony each witness will offer;

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(iii) A list of all exhibits, together with a copy thereof, which each party intends to offer into evidence at the hearing; and

(iv) Any requests for discovery.

(D) At the prehearing conference, the parties shall clarify and isolate the legal and factual issues involved in the audit appeal.

(E) Each party shall be present, on time, and prepared. Failure to do so may result in dismissal of the appeal or other sanctions unless good cause is shown. A prehearing conference shall not be continued if a party fails to be prepared to identify issues, propose witnesses, or provide exhibits, unless the ALJ finds good cause is shown.

(F) Following the prehearing conference, the ALJ shall issue a Scheduling Order setting forth deadlines for parties to complete discovery, submit briefs as directed by the ALJ, submit prehearing motions, and other deadlines as may be needed. The ALJ should attempt to issue the Scheduling Order within two (2) weeks of the prehearing conference. Upon completion of discovery and the submission of any motions or briefs, the ALJ shall issue a Prehearing Order that shall identify all issues to be presented at the hearing; a final list of witnesses to be called by each party; a final list of exhibits to be used by each party; and the hearing date and anticipated duration of the hearing. The Prehearing Order should be filed by the ALJ no later than ten (10) days prior to the hearing.

(11)~~(8)~~ The ALJ shall:

(A) Limit all decisions, rulings, and orders to matters directly related to the contested overpayment determination resulting from the audit findings issued pursuant to OAC 317:30-3-2.1 and procedural matters set forth within OAC 317:2-1-7;

(B) Hear and rule on pending requests or motions as expeditiously as possible. This includes setting filing and responsive deadlines in accordance with Title 12 of the Oklahoma Statutes and the Rules for District Courts of Oklahoma. To preserve judicial efficiency, a reply to a response to a motion shall not be filed by a party without leave of Court to do so and such permission shall not be routinely granted;

(C) Rule on whether witnesses have knowledge of the facts at issue;

(D) Rule on whether discovery requests and other motions and requests are relevant;

(E) Rule on whether to grant a party's request to depose a witness. To preserve judicial efficiency, depositions shall not be routinely permitted and shall only be permitted by order of the ALJ;

(F) Strike or deny witnesses, documents, exhibits, discovery requests, and other requests or motions which are cumulative, not relevant, not material, used as a means of harassment, unduly burdensome, or not timely filed; and

(G) Identify and rule on the specific audit findings being appealed and to be heard at the administrative hearing.

(12)~~(9)~~ As the purpose of the administrative process is to expedite a limited appellate review of the audit findings, the ALJ shall ensure a timely resolution of the appeal. The ALJ shall schedule a hearing within ninety (90) days of the prehearing conference. A party may request a continuance of the hearing by motion, which shall only be permitted if the ALJ finds good cause exists and neither party shall be prejudiced by the continuation.

(13)~~(10)~~ At the hearing:

(A) Each party shall appear in person or through their authorized representative.

(B) All witnesses must appear in person to provide testimony.

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(C) All relevant exhibits provided with and specifically identified in each party's prehearing conference statement or final exhibit list, that have not been objected to or stricken by the ALJ, shall be deemed admissible at the hearing.

(D) Each party shall provide a sufficient number of copies of its own exhibits at the hearing. This is in addition to any other copies of exhibits that were previously produced prior to the hearing unless otherwise ordered by the ALJ.

(E) The hearing will be limited to one (1) day. Each side will be allowed four (4) hours to present its case-in-chief, which is inclusive of any time needed for cross-examination of witnesses by the opposing party. For good cause shown, the ALJ may increase or decrease the time limit for each party to present its case-in-chief, taking into account the time limits of the entire appeal process.

(14)~~(11)~~ The ALJ should attempt to make the final hearing decision within 90 days from the date of the hearing. Any appeal of the final order pursuant to 63 O.S. § 5051.11 must be filed with the District Court of Oklahoma County or in which the provider is located within thirty (30) days.

(A) The following items shall constitute the record on appeal:

(i) all motions and orders filed with the Legal Docket Clerk;

(ii) all exhibits admitted during the hearing; and

(iii) the transcripts of proceedings, if any.

(B) It shall be the duty of the Appellant in any District Court appeal to order a written transcript of proceedings to be used on appeal. The transcript must be ordered within 30 days of the filing of an appeal in the District Court and any costs associated with the preparation of the transcript shall be borne by the Appellant.

(15)~~(12)~~ All orders and settlements are non-precedential decisions.

(16)~~(13)~~ The prehearing conference, the hearing, and any supplementary hearings or conferences shall be digitally recorded and closed to the public.

(17)~~(14)~~ The record of the appeal, confidential settlements, and any audio recordings shall remain confidential.

SUBCHAPTER 3. MEMBER GRIEVANCES AND APPEALS, PROVIDER COMPLAINTS, AND STATE FAIR HEARINGS IN SOONERSELECT

317:2-3-10. Provider complaint system and appeal requests

(a) A participating provider or nonparticipating provider may file a complaint whenever:

(1) The provider is not satisfied with the CE's or DBM's policies and procedures; or

(2) The provider is not satisfied with a decision made by the CE and DBM that does not impact the provision of services to members.

(b) The CE and DBM will establish and operate a provider complaint system. Such system will:

(1) Use written policies and procedures for receiving, tracking, dating, storing, responding to, reviewing, reporting, and resolving provider complaints;

(2) Track receipt and resolution of provider complaints, including requests for reconsideration or appeals;

(3) Demonstrate sufficient ability to receive provider complaints by telephone, in writing, or in person;

(4) Designate staff to receive, process, and resolve provider complaints;
(5) Thoroughly investigate each provider complaint;
(6) Ensure an escalation process for provider complaints;
(7) Furnish the provider timely written notification of resolution or results; and
(8) Maintain a tracking system capable of generating reports to OHCA on provider complaint volume and resolution.

(c) The CE and DBM will operate a reconsideration process whereby providers may request the CE and DBM reconsider a decision the CE and DBM has made or intends to make that is adverse to the provider, including, at minimum, reconsiderations of provider audit findings, reconsiderations of provider agreement termination, and reconsiderations of denied claims.

(1) **Request for reconsideration, denied claims.** The CE and DBM will ask that the provider submits a request for reconsideration of a denied claim within six (6) months after the provider receives notice of the denied claim.

(2) **Requests for informal reconsideration, provider audit findings.** The CE and DBM will ask that the provider submits a request for reconsideration and all documentation of provider audit findings within sixty (60) days after the provider receives the initial audit review/report, as described in OAC 317:30-3-2.1. The reconsideration resolution becomes the final audit report, as defined in OAC 317:30-3-2.1. If the provider does not submit for reconsideration, the initial audit review/report becomes final.

(3)~~(2)~~ **Request for reconsideration, all other reasons**. The CE and DBM will ask that the provider submits a request for reconsideration within fifteen (15) days after the date the provider receives notice of termination of provider agreement, or other actions the CE and DBM permits for reconsideration requests.

(4)~~(3)~~ **Desk review.** The CE and DBM will conduct the reconsideration through a desk review of the request and all related and available documents.

(5)~~(4)~~ **Reconsideration resolution.** The CE and DBM will resolve all requests for reconsideration within the timeframes established by the OHCA. The CE and DBM will send a reconsideration resolution notice to the provider within five (5) calendar days of resolution of the consideration.

(6)~~(5)~~ **Notice of reconsideration resolution**. The CE and DBM will send a reconsideration resolution notice that contains, at a minimum:

(A) The date of the notice;
(B) The action the CE has made or intends to make;
(C) The reasons for the action;
(D) The date the action was made or will be made;
(E) The citation to statute, regulation, policy, or procedure, if any, upon which the action was based;
(F) An explanation of the provider's ability to submit an appeal request or for formal reconsideration of a final audit report to the CE and DBM within thirty (30) calendar days of the date recorded on the notice;
(G) The address and contact information for submitting an appeal or for formal reconsideration of a final audit report;
(H) The procedures by which the provider may request an appeal or for formal reconsideration regarding the CE's or DBM's action;
(I) The specific change in federal or state law, if any, that requires the action;

(J) The provider's ability, as applicable, to submit a state fair hearing request following completion of the provider appeal process, for an administrative hearing before an administrative law judge, or, in cases of an action based on a change in law, the circumstances under which a state fair hearing will be granted; and

(K) Any other information required by state or federal statute or regulation, by contract, or by contract-related manual.

(d) The CE and DBM will operate an appeals process whereby a provider may request an appeal of a reconsideration resolution when the underlying matter is based on the CE or DBM's for-cause or immediate termination of the provider agreement. Appeals of final audit reports after reconsideration for provider audit findings are addressed in OAC 317:2-3-10(e).

(1) **Request for appeal.** The CE and DBM will require the provider to submit a request for appeal in writing within thirty (30) calendar days after the provider receives notice reconsideration resolution.

(2) **Panel review.** The CE and DBM will conduct the appeal through a panel review including a hearing and review of the request, all related and available documents, and all documents created for or used in connection with the request for reconsideration.

(A) The panel will consist of three (3) or five (5) reviewers, who are employees or officers of the CE and DBM.

(B) Panel members will not have been directly involved with the reconsideration desk review and will not be a subordinate of someone involved directly with the reconsideration desk review.

(C) The panel review hearing will provide the provider or an authorized representative of the provider with a reasonable opportunity to be heard in person or by telecommunications.

(D) The review panel will accept and document any exhibit offered prior to the hearing or during the hearing, so long as the exhibit directly relates to the matter of the appeal.

(E) When the appeal is based on a claim denied on the basis of medical necessity, the following requirements apply:

(i) Medical or dental review staff of the CE and DBM will be licensed or credentialed health care clinicians with relevant clinical training or experience; and

(ii) All CEs or DBMs will use medical or dental review staff for such appeals and will not use any automated claim review software or other automated functionality for such appeals.

(3) **Appeal resolution.** The CE and DBM will resolve all appeals within the timeframes established by the OHCA. The CE and DBM will send an appeal resolution notice to the provider within five (5) calendar days of the CE and DBM finalizing the resolution.

(4) **Notice of appeal resolution.** The CE and DBM will send an appeal resolution notice that contains, at a minimum:

(A) The date of the notice;

(B) The date of the appeal resolution; and

(C) For decisions not wholly in the provider's favor:

(i) An explanation of the provider's ability to request and OHCA administrative appeal within thirty (30) calendar days of the date recorded on the notice;

(ii) How to request an OHCA administrative appeal, including the OHCA address and contact information for submitting a request;
(iii) Details on the right to be represented by counsel at the OHCA administrative appeal.

(D) Any other information required by state or federal statute or regulation, by Contract, or by Contract-related manual.

(5) **Documentation.** The CE and DBM will furnish to OHCA documentation including all information specified within the Contract within fifteen (15) calendar days of a provider's request for an OHCA administrative appeal.

(6) **State fair hearing for providers.** There are no state fair hearings provided for providers under a CE or DBM, per OAC 317:2-3-13.

(e) The process for appealing a CE or DBM's provider audit findings after informal reconsideration will be in accordance with 63 O.S. § 5051.11 as set forth in this section. A CE or DBM shall not recoup until final disposition of an audit, including any appeal under OAC 317:2-3-10(e).

(1) **Formal Reconsideration, the CE Appeal.** Within thirty (30) days of the provider's receipt of the final audit report, the provider may file for formal reconsideration with the CE or DBM. The CE or DBM will conduct a review and issue a decision.

(2) **Administrative Law Judge Review, the Administrative Appeal.** Within thirty (30) days of the issuance of the CE or DBM decision after formal reconsideration, the provider may file for an administrative appeal before an administrative law judge ("ALJ") at another state agency designated by the OHCA Administrator, in accordance with 56 O.S. § 5051.11.

(3) **Procedures for Administrative Law Judge Review.** The procedural rules set forth in OAC 317:2-1-7 are applicable, as set forth below:

(A) If the provider elects to appeal the CE or DBM's decision after formal reconsideration to the ALJ, the provider must file its appeal with OHCA's Legal Docket Clerk, using form LD-2. The LD-2 must be received by the OHCA Legal Docket Clerk within thirty (30) days of the date of the CE or DBM decision. The computation of time shall be calculated in accordance with OAC 317:2-1-2(a).

(B) The provider must attach a statement to the LD-2 that specifies what findings and/or claims are being appealed, as well as all factual and legal bases for the appeal. The provider shall attach the following to the LD-2 form:

(i) Citations for any statute or rule that the provider contends has been violated;
(ii) The provider's name, address, e-mail address, and telephone number;
(iii) The name, address, e-mail address, and telephone number of the provider's authorized representative, if any; and
(iv) The LD-2 must be signed by the provider and the provider's authorized representative.

(I) For the purpose of this section, "provider" means the person or entity against whom the overpayment is sought.
(II) Consistent with Oklahoma rules of practice, an individual provider may appear on his/her own behalf or may be represented by an attorney licensed to practice law within the State of Oklahoma. In the case of an entity, the provider entity must be represented by an attorney licensed to practice within the State of Oklahoma. Attorneys not licensed to practice in Oklahoma must

comply with 5 O.S. Art II, Sec. 5, and rules of the Oklahoma Bar Association.

(C) A provider or the provider's authorized representative shall immediately report any change in contact information during the course of the appeal to the OHCA Legal Docket Clerk.

(D) The CE or DBM, on its own initiative or upon written request of a party, may consolidate or join appeals if to do so will expedite the processing of the appeals and not adversely affect the interest of the parties.

(E) The provider has the burden of proof to prove that the overpayment determination and the errors identified in the audit findings/report are inaccurate. The provider must prove the relief sought by a preponderance of the evidence standard, as defined by the Oklahoma Supreme Court. In adjudicating an appeal under the preponderance of the evidence standard, the ALJ will examine each piece of evidence for relevance, probative value, and credibility, to determine whether the fact to be proved is proved by the greater weight of the evidence.

(F) Within approximately forty-five (45) days of receiving the LD-2, the Legal Docket Clerk will schedule a prehearing conference before an ALJ. This period of time is intended to provide the parties an opportunity to settle the dispute prior to the prehearing. Settlement of audit appeals is encouraged and can begin at any time of the audit appeal process between the provider and CE or DBM's Legal Division. If a settlement is reached, the terms shall be set out in writing and signed by both parties and/or their authorized representatives. Unless otherwise warranted, an Agreed Order setting out the terms of the settlement shall be presented to the ALJ for approval. In limited situations, a settlement may be agreed to be a confidential settlement by the parties and will not be submitted as an Agreed Order to the ALJ. In the case of confidential settlements, the Appellant shall file a motion to dismiss the appeal with prejudice which informs the ALJ that the matter has been settled and that the audit appeal is moot.

(G) Audit appeals which are not settled will commence with a prehearing conference before the assigned ALJ as follows:

(i) The prehearing conference shall be informal, structured by the ALJ, and not open to the public. The ALJ shall record the prehearing conference by digital recording

(I) Each party shall be notified of the date of the prehearing conference at least thirty (30) calendar days prior to the scheduled prehearing conference.

(II) Each party shall appear in person or through their authorized representative.

(III) Witnesses, not including any named party, shall not appear at the prehearing conference. Nor shall any witness testimony be presented at the prehearing conference.

(ii) A request for continuance of a prehearing conference can be made up to three (3) business days prior to the scheduled prehearing conference date. A lesser period of time may be permitted for good cause shown. The ALJ shall rule on the request and in no case shall a combination of continuance exceed a total of thirty (30) calendar days except for good cause shown.

(iii) Within twenty (20) days days prior to the prehearing conference, the Appellant provider shall file a prehearing conference statement with the Legal Docket Clerk and provide a copy to the other party; and within ten (10) days prior to the prehearing conference, the CE or DBM shall file a prehearing conference statement with the docket clerk and provide a copy to the other party. Each party's prehearing conference statement shall include:

(I) A brief statement of its case, including a list of stipulations and legal and factual issues to be heard;

(II) A list of any witnesses who have direct knowledge of the facts surrounding the issues of the appeal and who are expected to be called at the hearing. The list shall include a brief statement of the testimony each witness will offer;

(III) A list of all exhibits, together with a copy thereof, which each party intends to offer into evidence at the hearing; and

(IV) any requests for discovery.

(iv) At the prehearing conference, the parties shall clarify and isolate the legal and factual issues involved in the audit appeal.

(v) Each party shall be present, on time, and prepared. Failure to do so may result in dismissal of the appeal or other sanctions unless good cause is shown. A prehearing conference shall not be continued if a party fails to be prepared to identify issues, propose witnesses, or provide exhibits, unless the ALJ finds good cause is shown.

(vi) Following the prehearing conference, the ALJ shall issue a Scheduling Order setting forth deadlines for parties to complete discovery, submit briefs as directed by the ALJ, submit prehearing motions, and other deadlines as may be needed. The ALJ should attempt to issue the Scheduling Order within two (2) weeks of the prehearing conference. Upon completion of discovery and the submission of any motions or briefs, the ALJ shall issue a Prehearing Order that shall identify all issues to be presented at the hearing; a final list of witnesses to be called by each party; a final list of exhibits to be used by each party; and the hearing date and anticipated duration of the hearing. The Prehearing Order should be filed by the ALJ no later than ten (10) days prior to the hearing.

(H) The ALJ shall:

(i) Limit all decisions, rulings, and orders to matters directly related to the contested overpayment determination resulting from the final audit report.

(ii) Hear and rule on pending requests or motions as expeditiously as possible. This includes setting filing and responsive deadlines in accordance with Title 12 of the Oklahoma Statutes and the Rules for District Courts of Oklahoma. To preserve judicial efficiency, a reply to a response to a motion shall not be filed by a party without leave of Court to do so and such permission shall not be routinely granted;

(iii) Rule on whether witnesses have knowledge of the facts at issue;

(iv) Rule on whether discovery requests and other motions and requests are relevant;

(v) Rule on whether to grant a party's request to depose a witness. To preserve judicial efficiency, depositions shall not be routinely permitted and shall only be permitted by order of the ALJ

(vi) Strike or deny witnesses, documents, exhibits, discovery requests, and other requests or motions which are cumulative, not relevant, not material, used as a means of harassment, unduly burdensome, or not timely filed; and

(vii) Identify and rule on the specific audit findings being appealed and to be heard at the administrative hearing.

(I) As the purpose of the administrative process is to expedite a limited appellate review of the audit findings, the ALJ shall ensure a timely resolution of the appeal. The ALJ shall schedule a hearing within ninety (90) days of the prehearing conference. A party may request a continuance of the hearing by motion, which shall only be permitted if the ALJ finds good cause exists and neither party shall be prejudiced by the continuation.

(J) At the hearing:

(i) Each party shall appear in person or through their authorized representative.

(ii) All witnesses must appear in person to provide testimony.

(iii) All relevant exhibits provided with and specifically identified in each party's prehearing conference statement or final exhibit list, that have not been objected to or stricken by the ALJ, shall be deemed admissible at the hearing.

(iv) Each party shall provide a sufficient number of copies of its own exhibits at the hearing. This is in addition to any other copies of exhibits that were previously produced prior to the hearing unless otherwise ordered by the ALJ.

(v) The hearing will be limited to one (1) day. Each side will be allowed four (4) hours to present its case-in-chief, which is inclusive of any time needed for cross-examination of witnesses by the opposing party. For good cause shown, the ALJ may increase or decrease the time limit for each party to present its case-in-chief, taking into account the time limits of the entire appeal process.

(K) The ALJ should attempt to make the final hearing decision within 90 days from the date of the hearing.

(4) **District Court Review:** Any final order of the ALJ pursuant to 63 O.S. § 5051.11 must be filed with the District Court of Oklahoma County or the county in which the provider is located within thirty (30) days.

(A) The following items shall constitute the record on appeal:

(i) all motions and orders filed with the Legal Docket Clerk;

(ii) all exhibits admitted during the hearing; and

(iii) the transcripts of proceedings, if any.

(B) It shall be the duty of the Appellant in any District Court appeal to order a written transcript of the proceedings to be used on appeal. The transcript must be ordered within 30 days of the filing of the appeal in District Court and any costs associated with the preparation of the transcript shall be borne by the Appellant.

(C) A provider aggrieved by the decision of the ALJ may petition the District Court in which the provider is located for judicial review within thirty (30) days of the date of the decision, as provided in 63 O.S. § 5051.11.

(5) All orders and settlements are non-precedential decisions.

(6) The prehearing conference, the hearing, and any supplementary hearings or conferences shall be digitally recorded and closed to the public.
(7) The record of the appeal, confidential settlements, and any audio recordings shall remain confidential.

317:2-3-13. State fair hearing for providers
(a) There are no state fair hearings provided for providers under a CE or DBM. The CE or DBM shall provide the following:
(1) A provider complaint system;
(2) A provider reconsideration system whereby providers may request the CE or DBM to reconsider the decision the CE or DBM has made or intends to make that is adverse to the provider. This shall include, at minimum, reconsiderations for Program Integrity provider audit findings and provider agreement termination.
(3) Provider appeal to the CE or DBM:
(A) The CE or DBM shall implement and operate a system for provider appeals of the CE or DBM's audit findings related to Program Integrity efforts and for cause and immediate provider agreement termination.
(B) The CE or DBM shall operate a process whereby providers may appeal a decision the CE or DBM has made or intends to make that is adverse to the provider.
(b) For decisions not wholly in the provider's favor an OHCA administrative appeal will be provided, per OAC 317:2-3-10(e) ~~(d)(4)(C)~~.

CHAPTER 30. MEDICAL PROVIDERS-FEE FOR SERVICE
SUBCHAPTER 3. GENERAL PROVIDER POLICIES
PART 1. GENERAL SCOPE AND ADMINISTRATION

317:30-3-2.1. Program Integrity Audits/Reviews
(a) This section applies to all contracted providers. The following words and terms, when used in this Section, shall have the following meaning:
(1) **"Contractor/provider"** means any person or organization that has signed a provider agreement with the Oklahoma Health Care Authority (OHCA).
(2) **"Error Rate"** means the percentage of dollars of audited claims found to be billed in error.
(3) **"Final audit report"** means the report issued after the informal reconsideration period ends
(4) **"Formal reconsideration"** means OHCA's review of the final audit report when the provider asks for it within 30 days.
(5) **"Informal reconsideration"** means OHCA's review of any documents the provider sends in during the 60-day period after receipt of the initial report.
(6) **"Initial audit/review report"** means the report with the preliminary audit findings.
~~(3) **"Extrapolation"** means the methodology of estimating an unknown value by projecting, with a calculated precision (i.e., margin of error), the results of a probability sample to the~~

~~universe from which the sample was drawn.~~

(7)~~(4)~~ **"Probability sample"** means the standard statistical methodology in which a sample is selected based on the theory of probability (a mathematical theory used to study the occurrence of random events).

(8)~~(5)~~ **"Sample"** means a statistically valid number of claims obtained from the universe of claims audited/reviewed.

(9)~~(6)~~ **"Universe"** means all paid claims or types of paid claims audited/reviewed during a specified timeframe.

(b) An OHCA audit/review includes an examination of provider records, by either an on-site or desk audit. Claims may be examined for compliance with provider contracts and/or relevant Federal and State laws and regulations, as well as for practices indicative of fraud, waste, and/or abuse of the SoonerCare program, including, but not limited to, inappropriate coding and consistent patterns of overcharging.

(c) An initial audit/review report contains preliminary findings. ~~Within thirty (30) calendar days of the date of~~Upon notice regarding the audit/review report, a provider may elect to:

(1) Remit the identified overpayment to the OHCA;

(2) ~~Request informal reconsideration of the initial audit report~~ Submit reconsideration documentation for an informal reconsideration pursuant to Oklahoma Administrative Code (OAC) 317:30-3-2.1(d);

(3) Request formal reconsideration of the final report pursuant to OAC 317:30-3-2.1(e) or

(4)~~(3)~~ Request a formal appeal of the ~~initial~~final audit report pursuant to OAC 317:30-3-2.1~~(e)~~(f).

(d) If a provider ~~requests~~selects an informal reconsideration, the provider~~, within thirty (30) calendar days of the date of notice of the audit/review report,~~ shall:

(1) Produce any and all written existing documentation that is relevant to, and could reasonably be used to clarify or rebut, the findings identified in the initial report. Documents must be submitted within 60 days of receipt of the initial/preliminary report. Documents submitted for reconsideration shall not be altered or created for purposes of the audit; and

(2) Specifically identify those claims and findings to be reviewed for reconsideration. Any claims or findings not specifically identified by the provider for reconsideration will be deemed to have been waived by the provider for purposes of both the informal reconsideration and the formal appeal, if requested. The reconsideration findings will replace the initial findings and be identified as the final audit report. If the provider does not elect an informal reconsideration, the initial report will be identified as the final report.

(e) If a provider elects a formal reconsideration, the provider shall submit such request within thirty (30) days following the issuance of the final report.

(f)~~(e)~~ A request for an informal reconsideration does not limit a provider's right to a formal appeal as long as any formal appeal of the final audit report is received by the OHCA Legal Docket Clerk within thirty (30) calendar days of the date of notice of the final audit report. However, all claims and findings not specifically identified by the provider upon an informal reconsideration request will be deemed to have been waived by the provider for purposes of a subsequent formal audit appeal. Additionally, the provider must specifically identify each claim to be contested on appeal, and any remaining appealable claim that has not already been waived during the informal reconsideration and is not specifically identified in the initial appeal filing, will be deemed waived on appeal.

(g)~~(f)~~ If the provider does not request either an informal reconsideration or a formal appeal within

the specified timeframe, ~~the initial report will become the final audit report and~~ the provider will be obligated to reimburse OHCA for any identified overpayment in the final audit report, which amount shall be immediately due and payable to OHCA. OHCA may, at its discretion, withhold the overpayment amount from the provider's future payments.

(h)~~(g)~~ When OHCA conducts a probability sample audit, the sample claims are selected on the basis of recognized and generally accepted sampling methods. ~~If an audit reveals an error rate exceeding ten percent (10%), OHCA shall extrapolate the error rate to the universe of the dollar amount of the audited paid claims.~~

~~(1) When using statistical sampling, OHCA uses a sample that is sufficient to ensure a minimum confidence level of ninety-five percent (95%).~~

~~(2) When calculating the amount to be recovered, OHCA ensures that all overpayments and underpayments reflected in the probability sample are totaled and extrapolated to the universe from which the sample was drawn.~~

~~(3) OHCA does not consider non-billed services or supplies when calculating underpayments and overpayments.~~

~~(h) If a probability sample audit reveals an error rate of ten percent (10%) or less, the provider will be required to reimburse OHCA for any overpayments noted during the audit/review.~~

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