

Our firm represents a number of laboratories, which participate in the Medi-Cal program. We are providing the following comments on their collective behalf regarding the rate setting methodology.

1. In the fall of 2010, the Department of Health Care Services ("DHCS") initiated a "self-audit" of laboratory providers and their rates. We understand that DHCS sent self-audit demands to more than 300 providers, and identified those providers by using its paid claims data showing all providers paid for services designated by laboratory CPT codes. DHCS presumably excluded the laboratories involved in litigation or audits involving rate issues, but sent letter demands to the remaining laboratories.

2. We represented laboratory providers which received the self-audit demands. Notably, the self audit demands did not provide definitions, explanations or guidance for how to comply. As a result, we understand DHCS received a skewed response. It seems that without guidance, and with the threat of a possible overpayment demand, laboratories interpreted the demand in various ways. To our knowledge, the self-audit ended without DHCS action.

3. The self-audit related to Title 22 of the California Code of Regulations, Section 51501(a) ("Section 51501(a)"). Section 51501(a) is the Medi-Cal regulation some interpret as a "lowest price" rule for Medi-Cal. The regulation also is well-known as the subject of significant litigation over its meaning and application to current market conditions. Section 51501(a) does not use the term "payer" but instead, uses the term "purchaser." However, no definition of that term is provided within the regulation or in any guidance from DHCS.

4. We understand that some laboratories may have provided DHCS with an interpretation of their view that the new Welfare & Institutions Code Section 14105.22 suspends enforcement of Section 51501(a). We do not believe DHCS has made public its interpretation of the current status of Section 51501(a), or of the impact and interpretation of the new Welfare & Institutions Code Section 14105.22.

5. Based upon the 2010 self audit experience, and in light of the current confusion in the industry, we recommend that the following be incorporated in any rate setting methodology:

1. DHCS should extend the comment period for laboratory providers until notices can be sent to all stakeholders, including those involved in the self-audit.

2. The laboratory providers involved in the self-audit process will likely be confused as to what different information is being requested now for this rate setting process versus what DHCS requested for the self-audits in the fall of 2010. We believe DHCS should provide clear, written and public guidance of what information DHCS does and does not want. Specific examples would be helpful (e.g. "if you do not bill Medi-Cal for CPT Code XXX, we do not want your rate for that CPT code). Also, definitions or contrasts would be helpful (e.g., "a 'payer' means a private health plan but

does not include an IPA or Federally Qualified Health Center for which you receive a capitated payment" or "we previously have asked for information about rates involving all purchasers but this request is for more limited information").

3. Further, laboratories will understand that DHCS is collecting rate information for the purposes of rate setting. The laboratories will want to understand whether DHCS will use the information for any other purpose. Specifically, a number of laboratories have asked whether DHCS will use the submitted rate information for the purpose of conducting an audit for recovery under Section 51501(a) or otherwise. To this end, we believe DHCS will receive timely and full responses from laboratories if DHCS issues a public statement of its position regarding enforcement of Section 51501(a) in light of the new provisions in Welfare & Institutions Code Section 14105.22 and clearly identifies any limitations on use of the data beyond rate setting.

We appreciate the opportunity to provide this information.

Dawn Brewer, Esq.

law offices of dawn brewer