

**PART IV
AUDITS**

As directed in the MOAs for the Children & Youth and the Adult Dental Programs, the Audit Procedures are hereby posted for your reference:

As per the Preamble of the Children & Youth and Adult Dental Programs:

6.0 CLAIMS INTEGRITY

6.1 Claims submitted to MCP are subject to audit by the Audit Division of MCP using the same policy/procedures employed in the audit of the Surgical Dental Program

6.2 The dentist is responsible for record keeping. In the event of a request for services provided or audit, those services not itemized and described are deemed not to have been provided.

6.3 Government agrees to publish the steps followed in an audit on their website under Provider Information

As per the Medical Care and Hospital Services Act

Definition

- 2 (q) "practitioner" means a person who is
- (i) lawfully entitled to practise medicine or dentistry in the province, or
 - (ii) entitled under the regulations to provide insured services;

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20. In this Part, "practitioner" includes

- (a) a participating practitioner;
- (b) a person who was formerly a participating practitioner under this Act or a participating physician under the *Medical Care Insurance Act, 1999*; and

(c) a person who was formerly a practitioner.

2016 cM-5.01 s20

Audits

21. (1) The minister may appoint auditors under this Act to audit accounts and claims for payment by practitioners and the patterns of practice or billing followed by practitioners including

- (a) accounts and claims without proper documentation;
- (b) accounts and claims for services which are not insured services;
- (c) accounts and claims for insured services which contain billing errors for services provided;
- (d) accounts and claims for insured services which are not medically necessary;
- (e) accounts and claims in violation of this Act or the regulations; and
- (f) patterns of practice or billing that do not follow the average pattern of practice or billing.

(2) An audit may be performed in respect of accounts and claims for payment made and patterns of practice or billing followed by practitioners before this Act came into force.

(3) Audits performed under this Act shall be performed according to generally accepted auditing standards including statistical sampling, estimation, extrapolation or those techniques prescribed by the regulations.

(4) The minister may prepare guidelines and criteria for the guidance of practitioners that may be applied to the patterns of practice or billing followed by practitioners.

2016 cM-5.01 s21

Powers and duties

22. (1) An auditor performing an audit may, at reasonable times and for reasonable purposes of the audit,

- (a) without a warrant, enter and inspect premises where insured services are provided or where documentation required for the purpose of this Act is stored;
- (b) examine documentation and make copies of it;
- (c) interview or question a practitioner and his or her employees on matters that relate to the provision of insured services;
- (d) interview or question persons employed in a hospital, clinic or other premises in which insured services are provided on matters that relate to the provision of insured services; and
- (e) interview or question a person on matters that may be relevant to an audit.

(2) An examination of documentation referred to in paragraph (1)(b) includes an examination of electronic records and an auditor may make a copy of that documentation, including electronic records, in the manner that, in his or her opinion, is necessary, including photocopying, scanning and electronic copying of data.

(3) Notwithstanding paragraph (1)(a), an auditor performing an audit shall not enter a dwelling-house without the consent of the occupant except under the authority of a warrant.

(4) A person shall, on the request of an auditor,

(a) produce documentation and permit examination of it;

(b) provide information required and answer all questions of the auditor relating to the documentation; and

(c) supply copies of or extracts from the documentation.

(5) The minister may set time periods for producing and examining documentation, providing information, answering questions or supplying copies or extracts under subsection (4).

(6) Notwithstanding subsection (5), where the auditor and the person agree, the time periods set by the minister under subsection (5) may be extended.

(7) A person shall not hinder, obstruct or interfere with an auditor doing anything that the auditor is authorized to do under this section or prevent or attempt to prevent the auditor from doing any such thing.

(8) A person shall not knowingly make a false or misleading statement, either orally or in writing, or provide or produce false documentation to an auditor who is carrying out duties and functions under this Act.

(9) An action shall not lie against a person for providing documentation under this section.

(10) Paragraphs (1)(b) to (e) and subsection (4) apply notwithstanding a provision of any other Act.

2016 cM-5.01 s22

Notice to practitioner

23. (1) Upon completion of the audit, the auditor shall notify the practitioner in writing of the findings of the audit and advise the practitioner of the right to alternative dispute resolution, a review of the audit under section 26 or both.

(2) Notice under this section shall be sent by registered mail.

(3) Notice of the findings of an audit sent by registered mail in accordance with subsection (2) shall be considered to be received on the fifth day following the day the notice is sent by registered mail, unless the person to whom it is sent establishes that, acting in good faith, the person did not receive the notice or did not receive it until a later date.

(4) Within 30 days of the auditor notifying the practitioner of the findings of the audit under subsection (1), the minister shall refer the findings of the audit in writing to the medical association or the dental association which shall, where appropriate, make submissions to the minister relating to the findings within 14 days of the referral.

(5) The practitioner may respond to the findings of the audit in writing to the minister no more than 30 days from the receipt of the notice of the findings of the audit under subsection (1).

(6) After reviewing the practitioner's response, the minister may revoke one or more of the findings of the audit and notify the practitioner accordingly.

2016 cM-5.01 s23

Withholding of payments

24. Where an auditor notifies a practitioner of the findings of an audit under subsection 23(1), the minister may withhold from payments which would, apart from findings of the audit to the contrary, be due to be paid to a participating practitioner or professional corporation under section 12 for the provision of insured services, up to the amount which, in the opinion of the minister, constitutes the value of the subject matter raised by the audit, but only until the matter has been finally determined, subject always to the right of permanent retention or withholding for the purpose of compliance with an order made under section 29 or an agreement made under paragraph 25(1)(a).

2016 cM-5.01 s24

Overpayments

25. (1) Where the findings of an audit indicate that there has been an overpayment to the practitioner or the professional corporation, the minister may recover all or part of the amount of the overpayment plus interest under

- (a) an agreement between the minister and the practitioner or the professional corporation; or
- (b) an order of the minister made under section 29.

(2) Where there is an agreement under paragraph (1)(a), the minister shall not make an order under section 29 unless the practitioner or professional corporation does not comply with the agreement.

2016 cM-5.01 s25

Review

26. (1) A practitioner, either personally or through another person acting on his or her behalf with his or her written consent, may request a review by a review board of the findings of an audit performed under this Act.

(2) A request for a review under this section shall be made in writing to the minister no more than 30 days from the receipt of the notice of the findings of the audit provided under subsection 23(1).

(3) A request for review may be included in a response submitted under subsection 23(5).

(4) A review board shall be appointed within 60 days of receipt of the request for a review.

(5) The review board shall conduct a hearing within 60 days of its appointment.

(6) The review board shall make a written report of its findings and recommendations to the minister within 30 days of the completion of the hearing.

(7) Notwithstanding subsections (2), (4), (5) and (6), where the parties to the hearing agree, the time periods referred to in those sections may be extended.

(8) The parties to the hearing are the practitioner, the professional corporation and the minister.

(9) A practitioner shall not request a review of an amount identified as owing under an audit conducted in accordance with this Act by reason only that the amount was determined from a random sample of the practitioner's accounts or claims for payment and by the application of statistical methodology to the account or claim for payment from which the sample was drawn as opposed to a case by case examination of the accounts and claims for payment in respect of which the audit is made.

(10) Only non-identifying personal health information shall be disclosed in written or oral representations to the review board.

2016 cM-5.01 s26

Review board

27. (1) A review board appointed under subsection 26(4) shall consist of the following persons, all of whom shall first be appointed to the panel established under section 28:

(a) one member appointed by the minister;

(b) one member appointed by the practitioner or professional corporation; and

(c) one member appointed jointly by the minister and the practitioner or professional corporation.

(2) Where an appointment to the review board under paragraph (1)(b) is not made within 30 days of the request to review, the minister shall appoint a member to the review board on behalf of the practitioner or professional corporation from the panel established under section 28.

(3) Where the minister and the practitioner or professional corporation are not able to agree on the appointment of a member under paragraph (1)(c), the members appointed under paragraphs (1)(a) and (b) shall appoint the third member of the review board.

(4) Where the members appointed under paragraphs (1)(a) and (b) are not able to agree on the appointment of the third member under subsection (3), the minister or the practitioner or professional corporation may apply to the Trial Division for an order appointing the third member of the review board.

(5) The review board shall determine the procedure for the hearing.

(6) Notwithstanding subsection (5), the procedure adopted for the hearing shall permit the parties to be represented by a solicitor or other person, to lead evidence from witnesses and to produce documents.

(7) For the purpose of this Act, the review board has the powers that are or may be conferred on a commission under the *Public Inquiries Act, 2006*.

2016 cM-5.01 s27

Panel

28. (1) The Lieutenant-Governor in Council shall appoint a panel of not more than 15 persons to act as members of review boards and

- (a) at least 5 of those persons shall be medical practitioners selected from a list of nominees provided by the medical association; and
- (b) at least 2 of those persons shall be dentists selected from a list of nominees provided by the dental association.

(2) The members of the panel shall be appointed for a term of up to 3 years and are eligible for reappointment.

(3) Where the term of a member of the panel expires, he or she continues to be a member until reappointed or replaced.

2016 cM-5.01 s28

Orders

29. (1) The minister may make a written order after reviewing

- (a) the audit findings;
- (b) the submissions made by the medical association or the dental association, where the association made submissions under subsection 23(4);
- (c) the practitioner's response, where the practitioner responded to the audit findings under subsection 23(5);
- (d) the report of the review board, where a hearing is held by a review board appointed under subsection 26(4); and
- (e) the advice of the advisory committee, where the minister referred the matter to a committee under subsection 33(1).

(2) In an order under subsection (1), the minister may do one or more of the following:

- (a) order the practitioner or the professional corporation to pay to the minister, within the time period specified in the order, an amount determined to have been overpaid to the practitioner

or the professional corporation and where the minister makes such an order, he or she shall also order the practitioner or professional corporation to pay interest on the amount of the overpayment;

- (b) where the minister makes an order under paragraph (a), also order that all or part of the amount of the overpayment and interest be deducted from an amount payable to the practitioner or the professional corporation under the medical care insurance plan;
- (c) order the practitioner or the professional corporation to adopt an appropriate pattern of practice or billing, as specified by the minister in the order;
- (d) order the practitioner or professional corporation to pay a penalty totalling an amount not greater than the amount estimated to be the loss sustained by the Crown because of a payment to the practitioner, professional corporation or beneficiary for insured services which relate to the subject of the audit plus 10% of that amount and, for the purpose of this paragraph, the estimated amount shall, subject to proof to the contrary or appeal in accordance with section 32, be considered to be the loss sustained;
- (e) strike the name of the practitioner from the list of participating practitioners under the medical care insurance plan for the time period specified in the order;
- (f) reduce an amount payable to a practitioner or professional corporation under the medical care insurance plan by a percentage for the time period specified in the order; or
- (g) order the practitioner or professional corporation to pay all or part of the costs of either or both of the audit or the review board hearing.

(3) The minister may base an order on any relevant source of information, including a source created on a statistical basis or by a comparison between insured services provided by the practitioner and corresponding insured services provided by other practitioners, but the minister is not required to review a particular insured service the practitioner provided.

(4) Notwithstanding subsection 27(5) or (6), the minister may make an order where the practitioner or professional corporation does not appear at the review board hearing after having been given written notice of the review board hearing.

(5) The minister shall provide a copy of an order made under this section to

- (a) the practitioner or the professional corporation; and
- (b) the medical association or the dental association.

(6) Where the minister makes an order, he or she may advise the appropriate professional regulatory or licensing body that an order has been made respecting the practitioner or the professional corporation.

(7) An order made by the minister may be filed with the Trial Division and, upon filing, is enforceable in the same manner as an order or a judgment of that court.

Interest

30. Interest ordered to be paid to the minister under paragraph 29(2)(a) or agreed to be paid under an agreement under paragraph 25(1)(a) shall be calculated in accordance with the regulations.

Joint and individual liability

31. Where an order is made under section 29 against a professional corporation, a practitioner who provided services which are, or are related to, the subject of the audit in respect of which the order was made, is jointly and individually liable with the professional corporation for the order imposed on the professional corporation.

Appeal

32. (1) A practitioner or professional corporation aggrieved by an order of the minister under section 29 may, within 60 days from the date of the order, appeal against the order to a judge of the Trial Division by filing a notice of appeal with the court, and by serving a copy of the notice of appeal on the minister.

(2) Notwithstanding a rule or practice to the contrary, the notice of appeal shall

(a) set out in detail the allegations of the appellant and the grounds upon which the order is appealed; and

(b) be signed by the appellant or his or her solicitor.

(3) The appellant shall, within 14 days after serving the notice of appeal on the minister under this section, apply to a judge for the appointment of a day for the hearing of the appeal and shall, not less than 30 days before the hearing, serve upon the minister a written notice of the day appointed for the hearing of the appeal.

(4) The minister shall produce to the judge hearing the appeal all papers and documents in his or her possession relevant to the subject matter of the appeal.

(5) The judge shall hear the appeal and the evidence presented by the appellant and the minister in a summary manner and, after reviewing all aspects which the judge, in his or her discretion believes to be appropriate in the interests of justice, equity and fairness, decide the appeal by

(a) upholding, amending or revoking the order; or

(b) making another order or decision which he or she believes to be appropriate in the circumstances.

(6) The judge may order costs for or against the appellant or the Crown and fix the amount.

(7) An appeal may be taken from an order or decision of the judge to the Court of Appeal upon a point of law raised on the hearing of the appeal, and the rules governing appeals to that court from an order or decision of a judge of the Trial Division apply to appeals under this subsection.

(8) The filing of a notice of appeal under this section or the appeal itself shall not affect the order of the minister which shall remain in force pending the outcome of the appeal.

2016 cM-5.01 s32

Advisory committee

33. (1) The minister may, in accordance with the regulations, appoint a committee to review and advise upon matters relating to audits performed under this Act that are referred to it by the minister.

(2) The minister shall, by regulation, prescribe the terms of reference for the committee, the composition of the committee and the duties of the committee.

2016 cM-5.01 s33

Alternative dispute resolution

34. Notwithstanding any other provision of this Part, the minister may employ alternative dispute resolution mechanisms in resolving the matters related to audit reviews and appeals in the manner prescribed by the regulations.