

## NEW JERSEY ENFORCES LIMITS ON OVERPAYMENT RECOVERIES

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*The New Jersey Commissioner of Banking and Insurance issues Enforcement Notice requiring Insurer to cease and desist from attempting to recoup overpayments based on improper extrapolations and to reimburse providers for amounts improperly obtained.*

**O**n June 23, 2009, the New Jersey Department of Banking and Insurance (“DOBI”) issued Enforcement Notice E09-39 ordering Oxford Health Insurance, Inc. and Oxford Health Plans (NJ), Inc. (collectively “Oxford”) to cease and desist and remediate violations of the Health Claims Authorization, Processing and Payment Act, N.J.S.A. §17B:30-48 *et seq.* (“HCAPPA”).

The HCAPPA limits the ability of insurance companies, health maintenance organizations, and other defined payors to seek reimbursement on alleged overpayments of claims. Specifically, such payors are prohibited from seeking reimbursement for overpayment of claims later than 18 months after the date the first payment on the claim was made, unless the claims were submitted fraudulently, submitted by health care providers that have a pattern of inappropriate billing, or are subject to coordination of benefits. In addition, HCAPPA prohibits payors from basing reimbursement requests for a particular claim on an extrapolation of other claims except: (i) in judicial or quasi-judicial proceedings including arbitration; (ii) in administrative proceedings; (iii) in instances in which relevant records required to be maintained by the health care provider have been improperly altered or reconstructed, or a significant number of the records are otherwise unavailable; or (iv) in instances in which there is clear evidence of fraud by the health care provider, and the payor has investigated the claim in accordance with its fraud prevention plan and referred the claim to the Office of the Insurance Fraud Prosecutor. N.J.S.A. §§ 26:2J-8.1d(10) and 17B:27-44.2d(10).

In the *Oxford* case, DOBI asserted that Oxford repeatedly made reimbursement requests to numerous medical providers and medical facilities based on extrapolations, and that these requests did not fall under any exception to HCAPPA that would permit such extrapolation. During a telephone conference with DOBI, Oxford claimed that the reimbursement requests were based on evidence of fraud on the part of the providers. When questioned by DOBI, however, Oxford admitted that it had not referred any of the matters to the Insurance Fraud Prosecutor. Shortly after the telephone conference, Oxford did make numerous referrals to the Insurance Fraud Prosecutor of providers Oxford had previously contacted for reimbursement of alleged overpayments.

DOBI viewed those referrals as inappropriate. Prior to making the referrals, DOBI reasoned, Oxford acted inconsistently in numerous respects with its contention that the providers had committed fraud: Oxford did not make the referrals until after it was contacted by DOBI and informed that it was violating HCAPPA; Oxford allowed the targeted providers to remain in its network and provide medical services to its members; Oxford made affirmative efforts to negotiate reduced reimbursement amounts with the providers; Oxford never initiated any actions alleging fraud; and Oxford’s communications with the providers did not mention its purported belief that the providers were engaged in fraud.

As a result of its findings, DOBI ordered Oxford to cease and desist from further reimbursement request activity in violation of HCAPPA. Further, Oxford was ordered to, within 30 days of the Enforcement Notice, “fully remediate” its violations by taking measures that include reimbursing all affected providers for all amounts obtained in violation of HCAPPA plus interest at 12%.

This Enforcement Notice demonstrates DOBI's commitment to enforcing HCAPPA's provisions limiting a payor's right to recoup funds for alleged overpayments. In practice, we have seen insurers in New Jersey requesting reimbursement of overpayments beyond the 18-month limit and based on extrapolations from sample findings, in reliance on alleged patterns of inappropriate billing and referrals to the Insurance Fraud Prosecutor, whether or not such allegations were appropriate. In light of this Enforcement Notice, New Jersey

insurers are on alert that simple allegations of inappropriate billing patterns and/or a referral to the Insurance Fraud Prosecutor may not be enough to qualify for one of HCAPPA's exceptions to the limits on recoupment of overpayments, if their actions are inconsistent with such allegations. Any providers dealing with New Jersey health plans should take the *Oxford* ruling into consideration when presented with a demand for reimbursement of alleged overpayments.

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