

When the Check's NOT in the Mail: Addressing Reimbursement Issues in a Litigation Context

Davis Wright Tremain LLP Webinar
July 15, 2010

Kathy Drummy
(213) 633-6870
kathydrummy@dwt.com

Mary Haas
(213) 633-6813
maryhaas@dwt.com

Anchorage
Bellevue
Los Angeles

New York
Portland
San Francisco

Seattle
Shanghai
Washington, D.C.



What's Ahead?

- Challenges in obtaining and keeping payment under government payment programs – Medicaid/Medi-Cal and Medicare
- Selection among appeal rights
- Knowing the players
- Appeal mechanics



Current Landscape

Balance More Work, Less Pay?

- **Mandatory Compliance Programs**
 - **NOW**: Mandatory FCA / Whistleblower Policy
 - Exceed \$5 million in Medicaid payments
 - **NOW**: PPACA § 6102: Mandatory Nursing Home Compliance Programs
 - **FUTURE**: PPACA § 6401: DHHS Secretary can require Mandatory Compliance Programs as a condition of participation

The Landscape (cont.)

- **More Audits and Auditors**
 - Prepayment
 - Postpayment

The Landscape (cont.)

- **Provider Enrollment and Re-enrollment Challenges**
- **Changing Billing Systems**
 - Federal claiming timeline under PPACA
 - States and HIPAA compliant systems

Claim Submission Challenges

- **Changing billing systems to be HIPAA compliant**
 - The California Experience: Short-Doyle/Medi-Cal
 - Old systems, new requirements
 - Enki Health and Resource Systems, Inc. vs. County of Los Angeles, State of California, California Department of Mental Health, and Department of Health Services, Case No. BC341409
- **Dual Eligible Challenges**
 - Billing Medicare first
- **CMS “clarifications” regarding Medicaid Certified Public Expenditures (“CPEs”)**

Essentials to Protect Reimbursements

- Know your provider agreement or contract
- Know your appeal rights and options
- Know your timelines
- Know your internal billing systems

CAUTION

**THIS SIGN HAS
SHARP EDGES**

DO NOT TOUCH THE EDGES OF THIS SIGN



ALSO, THE BRIDGE IS OUT AHEAD



Protecting Reimbursements

- **Examine what appeal rights are available**
- **Consider options to protect and preserve your rights**
 - Federal and State Administrative Appeals
 - State Government Claims
 - Federal and State Courts
- **Agency's failure to notify providers of appeal rights**
- **Agency's assertions that there are no equal rights**
 - **Example: Joint Signature Memorandum/Technical Direction letter No. 10041: Physicians and non-physician practitioners cannot appeal the effective date of decision made by the MAC**

Protecting Reimbursements (cont.)

- Examine whether available administrative appeal processes provide relief
 - Cost report adjustments
 - Claim denials
 - Failures in claim submission
 - Lost claims
 - Misclassified/mispaid claims
 - Ghost in the Machine Edits
 - Effective date of provider enrollment or re-enrollment

Challenges in Pursuing Your Rights

- Pursuing a Medicaid claim can involve multiple agencies and agents
 - Example: Short-Doyle/Medi-Cal
 - County Mental Health Plan
 - State DMH and DHCs
 - Federal Medicaid
 - MICs, the new kid in town
 - RACs? Coming to a State near you by 12/31/2010?
 - Medicare billed first for Dual Eligibles?

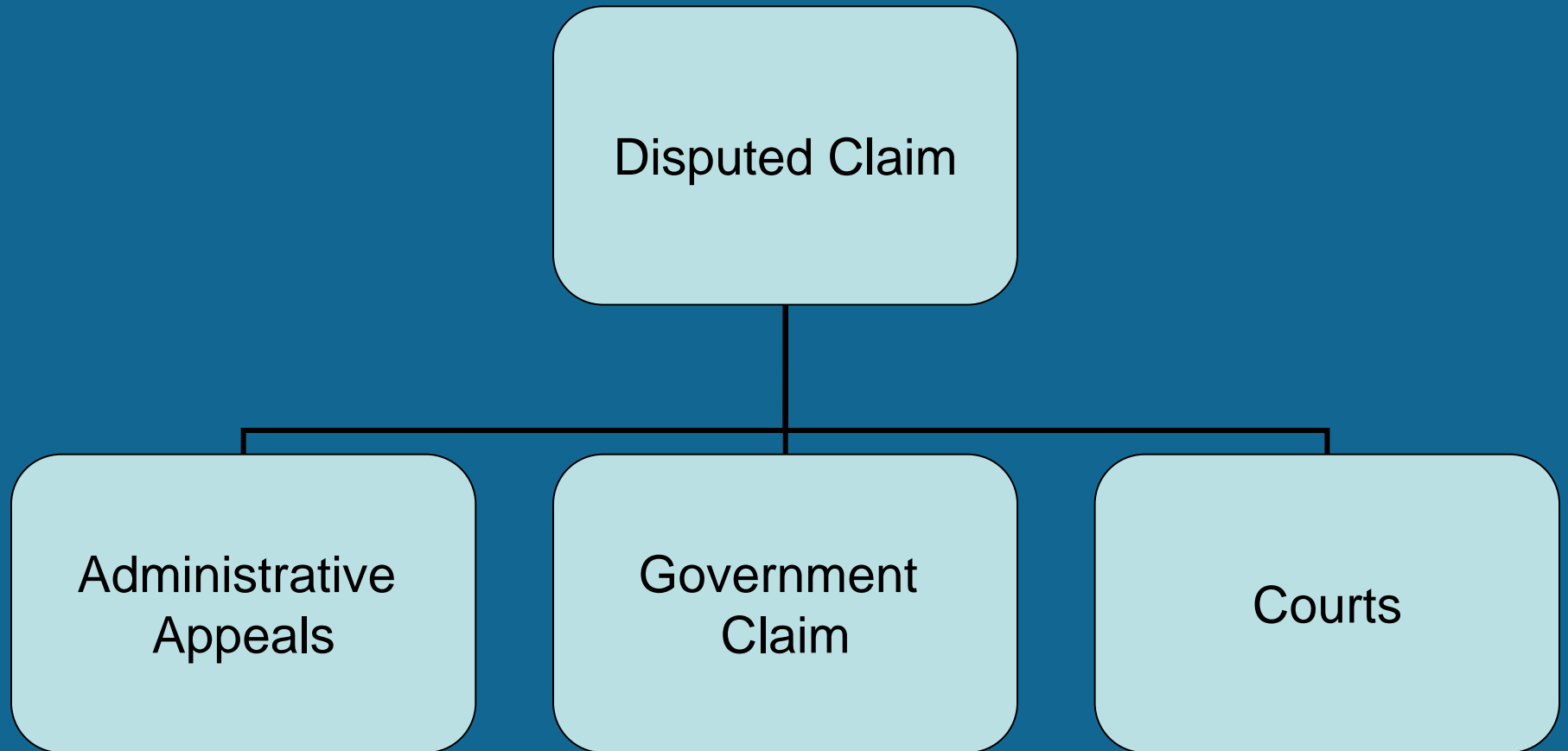
Challenges in Pursuing Your Rights (Cont.)

- Pursuing a Medicare claim can involve a different group of agencies and agents
 - MAC, FI or carrier
 - RACs
 - ZPICs or PSCs
 - CMS and its Regional Offices

Belt and Suspender Approach



Medi-Cal Claim Dispute Options



Administrative Appeals

- Medi-Cal Examples
 - Title 22, CCR § 51016, et seq.
 - Title 22, CCR § 51015
 - Title 9, CCR Chapter 9 (Short-Doyle Audit Appeals)
 - Title 9, CCR Chapter 10 (Medi-Cal Psychiatric Inpatient Hospital Claims Processing)

California Governmental Claim

- To be able to file a lawsuit against the state or a local agency due to the failure to pay a claim, you must first file a “claim” with the impacted agency within one year of when the claim accrues. Cal. Gov’t Code § 911.2(a)
- Once the claim is denied, you must file your lawsuit within 6 months of the denial. Cal. Gov’t Code § 946.6(b).
- These steps are jurisdictional and mandatory

California State Courts

When Medi-Cal claims are involved, there are two methods for obtaining judicial review related to patient claims:

- (a) By writ of mandamus – “compelling the state to act” – if an administrative process was involved; or
- (b) By bringing a lawsuit for breach of contract and related claims, if there was no administrative process involved

Federal Administrative Appeals

- Medicare Examples
 - Claims and Provider Enrollment
 - 5 levels of appeal
 - Cost Report
 - 3 levels of appeal

Federal Courts

- When Medicare claims are involved, any appeal of the denial of claims must be made through the administrative process outlined by the Medicare regulations.
- When that process is concluded, the denied party has the right to file a lawsuit in federal district court either in the party's home district or the DC federal district.
- The lawsuit must be filed within 60 days from the date you receive the notice of final administrative decision.

Practical Steps to Help Your Case

- Know your internal claims processing systems
- Track your claims experience
- System problem
- Individual provider problem
- Document. Document. Document.
- Track due dates
- Save email communications
- Log issues with helpdesk
- Keep helpdesk tickets

Questions?



Kathy Drummy
(213) 633-6870
kathydrummy@dwt.com



Mary Haas
(213) 633-6813
maryhaas@dwt.com
