OMA Ontario Medical Association

Post-Payment Accountability: Frequently Asked Questions

The OMA has compiled the following list of questions and answers to assist members in understanding post-payment accountability and the government's new audit process. If you have questions that are not addressed below, please contact legal.affairs@oma.org.

What is post-payment accountability and why is there a new audit process for physicians?

What is physician post-payment accountability?

OHIP largely functions on the honour system, in part due to the sheer volume of claims submitted. While there are mechanisms in place to allow OHIP to investigate a claim **prior to payment**, most billings are processed and paid automatically. Payment from OHIP does not therefore indicate that a physician's billings conform to the legal requirements, or that a medical service was medically necessary or actually performed. **Post-payment**, the Health Insurance Act (HIA) enables OHIP to conduct an audit process where it is permitted to review claims data, medical records and other relevant information to determine whether billings were appropriate. Based on the audit review, OHIP may take no further action, educate the physician, request for the repayment of funds where the GM of OHIP has formed the opinion that services have been billed incorrectly, and/or refer the matter for an administrative hearing before the Health Services Appeal and Review Board (HSARB). The purpose of post-payment accountability is twofold: to ensure accountability for government funds and to educate physicians on appropriate billing practices.

Why do audits happen and what are the ministry's objectives in auditing physicians?

Audits regularly occur to ensure accountability for government funds and to educate physicians on appropriate billing practices. The purpose of an audit is for OHIP to understand why certain billings were claimed, and if those billings were claimed in accordance with applicable law and policy (i.e. the Schedule of Benefits and Health Insurance Act). For minor billing concerns, the outcome of audits is often to educate physicians and ensure that future billings conform to the legal requirements. For serious billing concerns, there may an educational component, but the primary goal is to recover money that was paid inappropriately in accordance with due process (either by way of voluntary repayment, negotiated settlement, or as a result of an order from HSARB).

Who gets audited?

The new audit process only applies to OHIP billings (e.g., not other forms of payment, like APPs). Any physician who submits OHIP billings on or after May 1, 2021 could be subject to an

audit. OHIP may initiate an audit in different ways. In terms of a breakdown, prior to the December 2019 amendments to the HIA, almost half of the audit files were opened as a result of tips from the public, other health-care providers, or physicians; about one-third were opened based on referrals from other government programs and regulatory colleges; roughly one-fifth were opened based on recurring billing issues that were previously raised with the physician; and a small number of cases get opened as a result of media reports. OHIP does not currently randomly select physicians for audit, although it has the power to do so should that be a priority for OHIP in the future.

What is different under the new audit system?

Post-payment accountability is not a new concept. Prior to these recent changes, physician audit existed in a similar form. However, OHIP's powers were slightly different, and the responsible adjudicative body was also different (for example, the adjudication of physician billing issues that once rested with the Physician Payment Review Board are now with HSARB). Key elements of the new system include:

- greater transparency in the audit process, including how OHIP exercises its discretion in determining what review steps are necessary
- explicit acknowledgement by OHIP of the principles of procedural fairness that underpin the audit process

OHIP may:

- send physician reviewers to collect records from a non-responsive physician
- obtain a court order to assist a physician reviewer with access and/or compel production of records and documents
- obtain an order from HSARB to calculate the amount to be reimbursed for that fee code for a period of time, by assuming the results observed in the random sample are representative of all the claims during the period in question. Note that: (1) HSARB orders are limited to billings within a 24-month period and that commenced no more than five years before the GM's request for a review, and (2) audits under the new system will only occur for billings submitted on or after May 1, 2021
- request a hearing at HSARB to seek an order that the physician reimburse the plan (note: there can be no direct recovery by OHIP without an order from HSARB)
- seek a billing suspension order against the physician at HSARB

Why is this being introduced now?

Several recent auditor general reports highlighted issues with the old audit system under the Physician Payment Review Board. As a result, the ministry moved to update the audit process. In 2019, the government introduced Bill 138, which included changes to the HIA, including physician audit (Schedule 15 of Bill 138). In its initial form, Schedule 15 presented a fundamentally flawed audit process for physicians from the OMA's perspective. As originally drafted, Schedule 15 included various expanded OHIP powers, such as direct recovery of billings based on OHIP's opinion (rather than an order from HSARB); reversing the onus of proof such

that physicians were presumed to have acted inappropriately; the inability of physicians to stay (i.e., pause) repayment pending appeals; the ability to publicize information about a physician under audit; longer limitation periods allowing OHIP to review a greater number of claims; and a requirement to obtain "billing privileges". The OMA secured substantial amendments to Schedule 15, including the removal of all the powers listed above. The new system appropriately balances procedural fairness for physicians with the government's responsibility to account for taxpayer funds.

What was/is the OMA's involvement in the new audit process?

The OMA was consulted by the ministry during the drafting of the new audit process, both in legislation and OHIP's policies and procedures. Throughout consultations, the OMA advocated for a fair and transparent process that would garner trust from the profession. In addition to the significant legislative changes the OMA secured to Schedule 15, as described above, the OMA also worked bilaterally with the ministry to draft the public-facing Summary of the Post Payment Audit Process and the template letters sent to physicians under post-payment audit by OHIP. The OMA's focus during its involvement has been to ensure procedural fairness to physicians, while also preserving the right of OHIP to hold physicians responsible for the accuracy of their billings.

What is the new audit process for physicians?

What does the new audit process look like?

There are three main stages of a post-payment review:

- **Initial action**: the ministry identifies billing concerns largely through tips or complaints received from the public, employees in the health-care system, or other physicians. When a billing concern is identified, OHIP conducts an impartial review of the physician's claims history data to determine whether there is merit to the billing concern. Based on the findings of the preliminary review, the ministry may choose to:
    - take no further action if no billing concern is identified
    - contact the physician to provide billing education to improve claim submission accuracy
    - request that the physician review their own records and correct a payment error if, in the physician's own assessment, a payment error has occurred
    - proceed to a full audit if a potentially substantial billing concern is identified

- **Full audit review**: if a billing concern was identified at the initial action stage, the ministry will contact the physician in writing to inform them of the existence of the review, provide information about the audit process and request medical records and other practice information that the physician may have in their possession. In rare circumstances, an on-site reviewer may visit the physician's office to collect

records/information. Medical records and other relevant information provided by the physician are reviewed by the Provider Audit Unit to confirm that the fee schedule code(s) billed were appropriate. Once the initial review findings are prepared, the ministry informs the physician in writing and the physician is given an opportunity to provide a written response to the ministry's findings. There may be ongoing dialogue between the physician and the ministry to ensure that all relevant information is identified and provided. The general manager of OHIP then forms an opinion on the outcome of the audit, which is provided to the physician in writing. The GM's opinion is a formal step in the audit process and represents the final position based on the GM's review. If the ministry is satisfied with the physician's explanation of billing practice and concludes that the claims reviewed were appropriate for the service(s) rendered, the ministry will notify the physician and take no further action. If the ministry concludes that inappropriate claims were submitted, the ministry may choose to:

  - contact the physician to provide billing education to improve claim submission accuracy and advise the physician that further review of claims may occur
  - seek to resolve the audit outcome through a settlement with the physician
  - refer the matter to the Health Services Appeal and Review Board (HSARB) for a hearing

- **Board hearing**: if a billings dispute cannot be resolved between OHIP and the physician, the GM of OHIP may refer a matter for a hearing before the HSARB (an independent quasi-judicial adjudicative tribunal with jurisdiction to decide billing audit disputes between the GM and physicians). HSARB hearings are governed by its Rules of Practice to ensure procedural fairness. Review panels are composed of one physician and two non-physicians (one of whom must be a lawyer). HSARB replaced the old Physician Payment Review Board and its processes. The physician will be notified of matters referred to HSARB and will have the opportunity to make representations. **Note that physicians are entitled to legal representation at any stage of the audit process and are strongly advised to retain counsel if an audit proceeds to HSARB. Members are encouraged to contact the CMPA for legal assistance.** HSARB will conduct a hearing and make an order pursuant to their regulatory process. **Absent a settlement agreement or voluntarily repayment, the ministry can only recover funds if repayment is ordered by the HSARB**. Repayment orders are limited to billings within a 24-month period and that commenced no more than five years before the GM's request for a review. If either party is unsatisfied with the board's order, that party may appeal the board's decision to the Ontario Superior Court of Justice – Divisional Court.

- OHIP and HSARB can only review and audit physician billings submitted on or after May 1, 2021. All audits commenced prior to the Schedule 15 amendments to the HIA in December 2019 are automatically transferred to the new system.

Not all reviews progress through all stages of the process. Negotiation of a settlement can happen at any point in the process. Confidentiality is maintained through the audit process and the ministry must comply with privacy legislation. Decisions of HSARB are public, as are documents filed and produced by the divisional court. Physicians have the right to be represented by a lawyer at any stage in the process.

Who performs the audit?

The Provider Audit and Adjudications Unit (PAU) of the health services branch in the OHIP division of the Ministry of Health is responsible for, among other things, post-payment review of physician billings. The PAU conducts reviews of selected health services branch-funded programs to ensure accountability for the payment of taxpayer funds allotted to OHIP. This includes payments for physician, dental, optometry services and independent health facilities services. The PAU is staffed with trained individuals who specialize in reviewing OHIP billing claims. The PAU has access to medical consultants who may assist in the review of OHIP claims, and the unit has quality-assurance processes to enhance the quality of post-payment audits.

How do I respond to an audit?

If you are contacted by OHIP regarding an audit, you are required to respond. You will be provided with information in writing from OHIP and will have the opportunity to submit records and information, including by way of a lawyer if you choose to retain one.

How long does the audit process take?

Generally, the entire audit process takes less than 12 months to complete. Note that case specific factors can extend the time needed for any part of the review process. The ministry will be in communication with the physician throughout the process.

Are physician audits public?

Confidentiality is maintained through the audit process and the ministry must comply with privacy legislation. However, decisions of HSARB are public, as are documents filed and produced by the divisional court.

Is the process fair and impartial?

Yes. The OMA worked collaboratively with the ministry in developing the audit process in such a way that ensures procedural fairness while preserving OHIP's right to ensure that government funds are appropriately spent. The audit process is governed by various principles designed to ensure procedural fairness, integrity, transparency and accountability, including:

- impartiality in the selection of physicians for review
- staff who are trained in the process of post-payment audit

- the ability to dispute a general manager's opinion at the HSARB, meaning that unless there is a voluntary settlement between the physician and the GM, payments can only be recovered following an order of that tribunal
- the GM of OHIP to demonstrate at HSARB that an order should be made
- the ability to retain legal representation at any time in the process
- privacy and confidentiality maintained throughout the audit process
- an emphasis on professional and courteous behaviour
- timely communication of all relevant information
- the ability to provide information to the GM throughout the audit process
- the ability to make written or oral submissions at the HSARB
- the ability to submit a complaint about ministry conduct during audits without fear of reprisal

What resources exist to assist physicians responding to an OHIP audit?

What resources can I access if I have to respond to an audit?

- **Summary of the post-payment physician review process**: Read the ministry's public-facing summary of the audit process
- **CMPA**: Members can contact the CMPA to obtain assistance and advice about billing matters at 1-800-267-6522 (in Ottawa area: 613-725-2000). The CMPA also has online materials on the topic of audit, including Billing Investigations and Responding to a billing audit: How good records can help
- **Relevant legislation**:
  - Health Insurance Act
  - Regulation 552
- **Health Services Appeal and Review Board**:
  - HSARB website
  - Rules of Procedure
- **Post-Payment Review Process:** Learn more about the OMA's resources for members detailing the audit process
- **OHIP:** OHIP's website with resources for physicians, including audit ("payment accountability") can be found here
- **Physician Health Program:** An audit can be a stressful process. Please know that the OMA's Physician Health Program is available, confidentially at 1-800-851-6606 or php@oma.org
- **Schedule of Benefits** (PDF)
- **OMA Legal:** Members can contact OMA Legal at legal.affairs@oma.org. Please note that the OMA cannot provide individual legal advice or representation to members but can provide further information and assistance to members under audit