



Pennsylvania Compensation Rating Bureau
The Widener Building • 6th Floor
One South Penn Square • Philadelphia, PA 19107-3577 • (215) 568-2371 • FAX (215) 564-4328

PENNSYLVANIA TEST AUDIT PROGRAM
BULLETIN #26

TEST AUDIT APPEALS

As per Bureau Circular No. 1285, the results of an insurance carrier appeal are presented to the membership for their information.

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The carrier appeal centered around the time frame restrictions established for the Bureau's revised Test Audit Program as announced in Bureau Circular No. 1285 which became effective July 1, 1993. According to Section V-E of the revised program, the Bureau must complete its test audit assignment within six months of policy expiration or rescind it. The test audit performed on the insured was completed on July 27, 1993. The policy period for the insured was January 1, 1992-93. Therefore, the carrier wanted the test audit difference rescinded.

The Bureau responded that Bureau Circular No. 1285 did not become effective until July 1, 1993. At that time policies with April 1993 expiration dates were assigned to the field representatives. The audit in question (with an expiration date of 01/01/93) was assigned prior to the date the revised program came into effect. As the old program had no time frame restrictions, the test audit difference should stand as presented.

The carrier did not dispute any of the test audit differences enumerated in the Bureau's initial difference letter.

At the appeal, the carrier noted that Section V-E of Bureau Circular No. 1285 did not make any reference to an assignment date or issue date as a factor in determining if an audit should be rescinded if completed beyond the six month deadline. The carrier expressed concern over whether the Bureau had the right to assume that test audits assigned prior to the July 1, 1993 effective date would fall under the parameters of the old program. The carrier questioned why the Audit Committee never formally incorporated the Bureau's procedure into the revised program.

In Executive Session, the Audit Committee reviewed the information presented and tabled their decision pending legal research concerning the language and intent of the revised test audit program text.

3/20/94

The legal opinion from the Bureau's Director of Legal Affairs was presented to the members of the Audit Committee along with a mail vote. Excerpts from the research included the following comments:

1. The courts have established procedures for determining the time for implementation of an agreement or a statute. The process begins by an examination of the language of the enabling document.
2. The revised Test Audit Program contains a clear statement of the effective date. There is no need to imply an effective date or to assume a reasonable time for initiating the new procedure. The date is unambiguously stated as July 1, 1993. Pennsylvania common law consistently states that, for determining the applicability of a statute, there is no need to go into statutory construction procedures where the language of a statute is clear and unambiguous. Plain language is given a common meaning by the law of the Commonwealth and the effective date of the Bureau's revised Test Audit Program is stated in plain language.
3. The January 15, 1993 Record of Meeting of the Audit Committee contained the statement that the revised Test Audit Program was intended to have a prospective, not a retroactive, application. The Bureau staff, in reliance on the July 1, 1993 effective date, established a date for making test audit assignments in order to be in compliance with the new procedures. Accordingly, it was decided that policies expiring in the month of April would be "pulled" for purposes of beginning the new procedures. The Bureau would then be bound to begin its test audit procedures with policies selected for test audit having inception dates falling in the calendar month ending two months prior to the current month.

After receiving and tallying all votes, the Audit Committee unanimously voted to sustain the Bureau staff position that the requirement that Bureau test audits be completed within six months of policy expiration, as provided by the July 1, 1993 Test Audit Program revisions, applies only to policies selected for test audit on or after July 1, 1993.