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June 10, 2008

PENNSYLVANIA TEST AUDIT PROGRAM **BULLETIN # 98**

TEST AUDIT APPEAL DECISION

Per Bureau Circular No. 1532, the result of an insurance carrier appeal to the Audit Committee is presented to the membership for their information.

The carrier in this appeal came before the Audit Committee to appeal the Bureau's test audit of its insured which operated as a hotel. The appeal centered on the classification of food service employees. The Bureau's test audit assigned these employees to the governing classification, Code 973, Hotels. The carrier believed the assignment of these employees should be to Code 945, Hotel Restaurant.

The carrier distributed copies of a Bureau Manual page describing the scope of Code 973, licensing information of the hotel's food service operation and several pictures of the food service area in the hotel. The carrier indicated that the food service operations of this hotel were analogous to a restaurant, since complementary breakfast and dinner services were provided to hotel guests. Further, the hotel maintained a separate dedicated crew of employees that performed food service work only, including food preparation, unwrapping of food, brewing coffee and setting up the buffet areas. These employees also cleaned the buffet area between breakfast and dinner.

The carrier argued that the Bureau's assignment of Code 973 to these employees was in direct violation of the Code 973 Manual language that stated, "Separate staff exclusively engaged in the hotel's food service or beverage operations shall be classified by Code 945..." The carrier noted that the food service portion of the insured's operation was licensed by the local county health department. Several pictures of the kitchen area were submitted, showing that it contained a warming oven and a microwave used in the preparation of food. The carrier argued that the food service operation in question was not merely an activity incidental to the insured's overall hotel operation but was, in fact, a separate and distinct operation worthy of separate classification.

Committee members questioned the carrier regarding the insured's operations, including the amount of revenue generated from food service and its hours of operation. The carrier acknowledged that a separate charge was not assessed for food but that the cost was included in the hotel room rental price. The insured's food service included a daily continental breakfast with dinner provided four days a week. The carrier was then asked several questions concerning the duties of the food service employees between breakfast and dinner, the certification and/or licensing held by the employees in question to allow for the handling of food

and whether these employees prepare omelets or other meals to order for hotel guests. The carrier reported that the food service employees normally clocked out between the breakfast and dinner shifts. It was reiterated that these employees did not interchange with other hotel operations. The employees attended a one-day class pertaining to safe food service, but no specific certification(s) were known to have been issued as a result of that training. Finally, the Committee was advised that these employees did not prepare omelets or other foods to order.

In support of its position, staff noted that the field-of-business principle was the standard in determining the assignment of classifications. The insured's field-of-business was the operation of a hotel. The food service provided by the insured was a complimentary service that did not generate revenue, at least directly. Further, in response to the Manual entry cited by the carrier, Bureau staff noted that the paragraph preceding the cited entry outlined the scope of Code 973. In particular, that language directed that food service activities, including continental breakfast service, which involve opening boxes of prepared food items or warming of precooked items, were construed to be incidental activities for a hotel and, as such, were assignable to Code 973. Staff contended that Code 945 was assignable only to separate, full-service restaurant operations that were typically open to the general public and generated a separate and distinct revenue stream. The Bureau's position was that the food service provided by this insured was strictly for the use of hotel patrons and did not independently generate revenue.

The Committee questioned staff as to whether a continental breakfast operation would be classified differently if it generated a separate revenue stream. Staff indicated that Code 973 would still be the proper assignment, based on current Manual language directing that a continental breakfast and related operations were included within the scope of Code 973. The Committee also questioned whether the existence of employees that filled beverage services and interacted with patrons would constitute wait staff. Staff answered that the existence of such a staff would not impact the Code 973 assignment to these employees since they were still operating as part of the continental breakfast/limited food service operation as outlined in the Manual.

The Committee, in executive session, concluded that the insured's food service operation did not constitute a separate and distinct operation as required for the application of Code 945. Revenue was not generated as the result of this operation. Further, only hotel patrons were served, and the food service was operated on a relatively limited schedule. Though the insured's food service operation may have been somewhat more elaborate and/or extensive than a normal continental breakfast, it was still an incidental activity in the view of the Committee.

Accordingly, upon motion made and duly seconded, the Committee voted unanimously to sustain the Bureau decision of assigning Code 973 to payroll developed by the insured's food service activities. The carrier's request for Code 945 for this operation was denied.