

CHAPTER 336

HEALTH CARE POLICY AND FINANCING

HOUSE BILL 04-1284

BY REPRESENTATIVE(S) White, Rippey, Boyd, Cloer, Larson, Tochtrop, McFadyen, Miller, Weddig, Johnson R., and Stafford;
also SENATOR(S) Dyer.

AN ACT

CONCERNING AUDIT PROCEDURES RELATED TO PROVIDERS UNDER THE "COLORADO MEDICAL ASSISTANCE ACT".

Be it enacted by the General Assembly of the State of Colorado:

SECTION 1. 26-4-403 (2), Colorado Revised Statutes, is amended BY THE ADDITION OF A NEW PARAGRAPH to read:

26-4-403. Recoveries - overpayments - penalties - interest - adjustments - liens. (2) Any overpayment to a provider, including those of personal needs funds made pursuant to section 26-4-504, shall be recoverable regardless of whether the overpayment is the result of an error by the department of health care policy and financing, a county department of social services, an entity acting on behalf of either department, or by the provider or any agent of the provider as follows:

(f) IF THE STATE DEPARTMENT, EITHER DIRECTLY OR THROUGH A CONTRACTING AGENT, UNDERTAKES A REVIEW OR AN AUDIT OF A PROVIDER TO DETERMINE WHETHER AN OVERPAYMENT HAS BEEN MADE TO THAT PROVIDER, THE REVIEW OR AUDIT SHALL BE SUBJECT TO THE PROCEDURES REQUIRED IN SUBSECTION (2.5) OF THIS SECTION.

SECTION 2. 26-4-403, Colorado Revised Statutes, is amended BY THE ADDITION OF A NEW SUBSECTION to read:

26-4-403. Recoveries - overpayments - penalties - interest - adjustments - liens - review or audit procedures. (2.5) (a) A REVIEW OR AUDIT OF A PROVIDER SHALL BE SUBJECT TO THE FOLLOWING PROCEDURES:

(I) THE REVIEWER OR AUDITOR SHALL CONDUCT A REVIEW OR AUDIT IN ACCORDANCE WITH APPLICABLE STATE AND FEDERAL LAW.

Capital letters indicate new material added to existing statutes; dashes through words indicate deletions from existing statutes and such material not part of act.

(II) THE REVIEWER OR AUDITOR SHALL APPLY UNIFORM STANDARDS AND PROCEDURES TO EACH CLASS OF PROVIDERS SUBJECT TO A REVIEW OR AN AUDIT TO DETERMINE AN OVERPAYMENT.

(III) THE REVIEWER OR AUDITOR SHALL PREPARE FINDINGS FOR THE ENTIRE PERIOD UNDER REVIEW OR AUDIT AND A PROVIDER SHALL BE SUBJECT TO ONLY ONE DEMAND FOR REPAYMENT IN CONNECTION WITH THE REVIEW OR AUDIT.

(IV) THE REVIEWER OR AUDITOR SHALL INITIATE EACH REVIEW OR AUDIT REQUIRING AN INSPECTION OF THE PROVIDER'S RECORDS BY DELIVERING TO THE PROVIDER A WRITTEN REQUEST DESCRIBING IN DETAIL SUCH RECORDS AND OFFERING THE PROVIDER THE OPTION OF PROVIDING EITHER A REPRODUCTION OF SUCH RECORDS OR INSPECTION BY THE REVIEWER OR AUDITOR AT THE PROVIDER'S SITE. IN THE EVENT SUCH RECORDS ARE AVAILABLE FROM A COUNTY DEPARTMENT OF SOCIAL SERVICES OR ANOTHER AGENCY, SUBDIVISION, OR CONTRACTOR OF THE STATE, THE REVIEWER OR AUDITOR SHALL REQUEST SUCH RECORDS FROM SUCH OTHER AGENCIES AS MAY BE APPROPRIATE PRIOR TO MAKING A REQUEST TO THE PROVIDER. THE REVIEWER OR AUDITOR SHALL CONDUCT ON-SITE INSPECTIONS AT REASONABLE TIMES DURING REGULAR BUSINESS HOURS, AND THE REVIEWER OR AUDITOR SHALL MAKE ARRANGEMENTS NECESSARY FOR THE REPRODUCTION OF SUCH RECORDS ON SITE. IF THE PROVIDER CHOOSES TO PROVIDE A REPRODUCTION OF THE RECORDS REQUESTED BY THE REVIEWER OR AUDITOR INSTEAD OF ON-SITE INSPECTION, THE REVIEWER OR AUDITOR SHALL GIVE THE PROVIDER A REASONABLE PERIOD OF TIME TO PROVIDE SUCH RECORDS, TAKING INTO ACCOUNT THE SCOPE OF THE REQUEST, THE TIME FRAME COVERED, AND THE REPRODUCTION ARRANGEMENTS AVAILABLE TO THE PROVIDER.

(V) A PHYSICIAN'S RECORD OR OTHER ORDER FOR HEALTH CARE SERVICES, DRUGS, OR MEDICINAL SUPPLIES IN A FORM TRANSMITTED ELECTRONICALLY SHALL BE SUFFICIENT TO VALIDATE THE PROVIDER'S RECORDS REGARDING THE ORDERING OF THE HEALTH CARE SERVICES, DRUGS, OR MEDICINAL SUPPLIES.

(VI) WHENEVER POSSIBLE, THE REVIEWER OR AUDITOR SHALL BASE A DETERMINATION OF AN OVERPAYMENT TO A PROVIDER UPON A REVIEW OF ACTUAL RECORDS OF THE DEPARTMENT, ITS AGENTS, OR THE PROVIDER. IN THE EVENT SUFFICIENT RECORDS ARE NOT AVAILABLE TO THE REVIEWER OR AUDITOR, AN OVERPAYMENT DETERMINATION MAY BE BASED UPON A SAMPLING OF RECORDS SO LONG AS THE SAMPLING AND ANY EXTRAPOLATION THEREFROM IS REASONABLY VALID FROM A STATISTICAL STANDPOINT AND IS IN ACCORDANCE WITH GENERALLY ACCEPTED AUDITING STANDARDS.

(VII) IF A REVIEWER OR AUDITOR DETERMINES THAT THERE HAS BEEN AN OVERPAYMENT TO THE PROVIDER, THEN, AT THE TIME DEMAND FOR REPAYMENT IS MADE, THE STATE DEPARTMENT SHALL OFFER THE PROVIDER AN INFORMAL RECONSIDERATION OF THE REVIEW OR AUDIT FINDINGS. IN THE EVENT AN INFORMAL RECONSIDERATION IS REQUESTED, THE STATE DEPARTMENT SHALL NOT IMPLEMENT RECOVERY OF THE OVERPAYMENT UNTIL SUCH INFORMAL RECONSIDERATION HAS BEEN COMPLETED.

(VIII) IN ACCORDANCE WITH PARAGRAPH (e) OF SUBSECTION (2) OF THIS SECTION, ANY PROVIDER ADVERSELY AFFECTED BY THE ACTIONS OF THE STATE DEPARTMENT

OR ITS CONTRACTING AGENT IN CONNECTION WITH A REVIEW OR AN AUDIT, INCLUDING WHETHER THE STATE DEPARTMENT OR ITS CONTRACTING AGENT ADHERED TO THE PROVISIONS OF THIS SUBSECTION (2.5) IN MAKING AN OVERPAYMENT DETERMINATION, MAY APPEAL SUCH ACTIONS PURSUANT TO THE PROVISIONS OF SECTION 24-4-105, C.R.S.

(b) THE STATE DEPARTMENT IS AUTHORIZED TO ENGAGE THE SERVICES OF A QUALIFIED AGENT THROUGH A COMPETITIVE CONTRACT ISSUED PURSUANT TO THE STATE'S PROCUREMENT CODE FOR THE PURPOSE OF CONDUCTING A REVIEW OR AUDIT OF A PROVIDER TO ASSIST IN DETERMINING WHETHER THERE HAS BEEN AN OVERPAYMENT TO A PROVIDER AND THE AMOUNT OF THAT OVERPAYMENT. IN ADDITION TO SUCH TERMS AND CONDITIONS AS THE STATE DEPARTMENT MAY DEEM NECESSARY, ANY CONTRACT SHALL BE SUBJECT TO THE REQUIREMENTS FOR CONDUCTING A REVIEW OR AN AUDIT IN ACCORDANCE WITH PARAGRAPH (a) OF THIS SUBSECTION (2.5). THE STATE DEPARTMENT IS FURTHER AUTHORIZED TO ENTER INTO A CONTRACT WITH A QUALIFIED AGENT FOR THE PURPOSE OF CONDUCTING A REVIEW OR AN AUDIT OF A PROVIDER THAT PROVIDES THAT THE COMPENSATION OF THE CONTRACTING AGENT SHALL BE CONTINGENT AND BASED UPON A PERCENTAGE OF THE AMOUNT OF THE RECOVERY COLLECTED FROM THE PROVIDER. A CONTRACT ISSUED BY THE STATE DEPARTMENT FOR THE PURPOSE OF CONDUCTING A REVIEW OR AN AUDIT OF A PROVIDER TO DETERMINE WHETHER THE PROVIDER HAS RECEIVED AN OVERPAYMENT SHALL ALSO BE SUBJECT TO THE FOLLOWING CONDITIONS:

(I) THE COMPENSATION PAID TO THE CONTRACTING AGENT UNDER A CONTINGENCY-BASED CONTRACT SHALL NOT EXCEED EIGHTEEN PERCENT OF THE AMOUNT FINALLY COLLECTED FROM THE PROVIDER OVERPAYMENT, AND THE STATE DEPARTMENT MAY ESTABLISH A LIMIT ON THE AMOUNT OF ANNUAL COMPENSATION THAT MAY BE PAID TO A CONTRACTING AGENT UNDER A CONTINGENCY-BASED CONTRACT AND MAY FURTHER ESTABLISH A LIMIT ON THE AMOUNT THAT MAY BE PAID TO A CONTRACTING AGENT UNDER A CONTINGENCY-BASED CONTRACT FOR RECOVERY FROM ANY ONE PROVIDER.

(II) REIMBURSEMENT OF THE CONTRACTING AGENT'S COSTS IN PERFORMING THE REVIEW OR AUDIT UNDER A CONTINGENCY-BASED CONTRACT SHALL BE DEEMED INCLUDED IN THE PERCENTAGE COMPENSATION DUE THE AGENT UNDER THE CONTRACT.

(III) NO EMPLOYEE OR AGENT OF THE CONTRACTING AGENT INVOLVED IN THE PERFORMANCE OF A CONTINGENCY-BASED CONTRACT SHALL BE COMPENSATED BY THE CONTRACTING AGENT BASED UPON THE AMOUNT RECOVERED UNDER THE CONTRACT.

(IV) THE STATE DEPARTMENT SHALL RETAIN ALL AUTHORITY FOR PROVIDING NOTICE AND OTHERWISE MAKING DEMAND UPON A PROVIDER FOR RECOVERY OF AN OVERPAYMENT, AND THE STATE DEPARTMENT SHALL REVIEW AND APPROVE ANY WRITTEN DEMAND, REQUEST, OR DETERMINATION BY THE CONTRACTING AGENT REGARDING A REVIEW OR AN AUDIT OF A PROVIDER UNDER THIS SUBSECTION (2.5).

(V) IN ANY CONTINGENCY-BASED CONTRACT AUTHORIZED PURSUANT TO THIS PARAGRAPH (b), THE STATE OF COLORADO SHALL NOT BE OBLIGATED TO PAY THE CONTRACTING AGENT FOR AMOUNTS NOT ACTUALLY COLLECTED FROM THE PROVIDER.

SECTION 3. 26-4-103 (13.5), Colorado Revised Statutes, is amended to read:

26-4-103. Definitions. As used in this article, unless the context otherwise requires:

(13.5) (a) "Provider" means any person, public or private institution, agency, or business concern providing medical care, services, or goods authorized under this article and holding, where applicable, a current valid license or certificate to provide such services or to dispense such goods and enrolled under the state medical assistance program. These services must be provided and goods must be dispensed only if performed, referred, or ordered by a doctor of medicine or a doctor of osteopathy. Services of dentists, podiatrists, and optometrists or services provided by a school district under section 26-4-531 need not be referred or ordered by a doctor of medicine or a doctor of osteopathy.

(b) "PROVIDER" INCLUDES A LABORATORY CERTIFIED UNDER THE FEDERAL "CLINICAL LABORATORIES IMPROVEMENT ACT OF 1967", AS AMENDED, 42 U.S.C. SEC. 263a TO PERFORM HIGH COMPLEXITY TESTING.

SECTION 4. No appropriation. The general assembly has determined that this act can be implemented within existing appropriations and therefore, no separate appropriation of state moneys is necessary to carry out the provisions of this act.

SECTION 5. Effective date - applicability. (1) This act shall take effect September 1, 2004.

(2) However, if a referendum petition is filed against this act or an item, section, or part of this act during the 90-day period after final adjournment of the general assembly that is allowed for submitting a referendum petition pursuant to article V, section 1 (3) of the state constitution, then the act, item, section, or part, shall not take effect unless approved by the people at a biennial regular general election and shall take effect on the date specified in subsection (1) or on the date of the official declaration of the vote thereon by proclamation of the governor, whichever is later.

(3) The provisions of this act shall apply to reviews or audits of claims submitted on or after the applicable effective date of this act.

Approved: May 28, 2004