

## CHAPTER 299

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**HEALTH CARE POLICY AND FINANCING**

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**HOUSE BILL 23-1295**

BY REPRESENTATIVE(S) Bird and Bockenfeld, Sirota, Amabile, Bradfield, Bradley, Brown, Hamrick, Ricks, Snyder, Soper, Young, Epps, Joseph, McCluskie;  
also SENATOR(S) Zenzinger and Kirkmeyer, Bridges, Buckner, Cutter, Hansen, Priola.

**AN ACT**

**CONCERNING THE REVIEW OF PAYMENTS MADE BY THE DEPARTMENT OF HEALTH CARE POLICY AND FINANCING TO PROVIDERS, AND, IN CONNECTION THEREWITH, MAKING AN APPROPRIATION.**

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

**SECTION 1. Legislative declaration.** (1) The general assembly finds that:

(a) Medicaid payment reviews and audits ensure the state's resources are safeguarded from fraud, and such reviews and audits must be warranted, effective, and efficient;

(b) Compliance with billing standards and stewardship of medicaid funds is federally required and vital to the state budget, and the department of health care policy and financing and providers should work collaboratively to improve the recovery audit contractor program to the betterment of all impacted by it;

(c) Providers have identified transparency, accountability, process, and efficiency concerns that have led to administrative burden, questionable recoupments, and considerable litigation as a part of these audits, all of which has the potential to discourage provider participation in the medicaid program, threaten access to care for medicaid enrollees, and increase health equity challenges;

(d) Colorado's current recovery audit contractor program differs significantly from the national experience and would benefit from an "education first" approach;

(e) It is the policy of this state to promote payments to medicaid providers that are adequate to ensure access to care and consistent with 42 U.S.C. sec. 1396a (a)(30)(A); and

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*Capital letters or bold & italic numbers indicate new material added to existing law; dashes through words or numbers indicate deletions from existing law and such material is not part of the act.*

(f) An audit of the program will identify opportunities to reduce provider administrative burden, improve support for providers engaged in the recovery audit contractor program process, evaluate the impact of recovery audit contractor program audits on provider participation in the medicaid program, increase medicaid billing education to providers to reduce future findings and recoupments, and seek balance between provider accountability, regulatory burden, and fiscal stewardship.

**SECTION 2.** In Colorado Revised Statutes, 25.5-4-301, **add** (3)(a)(IX), (3.5)(c), and (3.7) as follows:

**25.5-4-301. Recoveries - overpayments - penalties - interest - adjustments - liens - review or audit procedures - repeal.** (3) (a) A review or audit of a provider is subject to the following procedures:

(IX) FOR AUDITS CONDUCTED PURSUANT TO 42 CFR 455.506, AT LEAST QUARTERLY, THE STATE DEPARTMENT SHALL PUBLISH ON ITS WEBSITE AN AUDIT ACTIVITY REPORT DETAILING CURRENT AND RECENTLY COMPLETED AUDITS AND REVIEWS AND SUMMARIES OF THE FINDINGS OF SUCH AUDITS AND REVIEWS, INCLUDING THE NUMBER AND AMOUNTS OF OVERPAYMENTS AND UNDERPAYMENTS FOUND, THE NUMBER AND RESULTS OF APPEALS, THE AMOUNTS COLLECTED, AND THE ERROR RATES IDENTIFIED. AT LEAST QUARTERLY, THE STATE DEPARTMENT SHALL CONDUCT TRAININGS FOR PROVIDERS AND HOLD STAKEHOLDER MEETINGS REGARDING AUDITS AND REVIEWS. IN ADDITION, WHEN THE STATE DEPARTMENT ENTERS INTO CONTRACTS PURSUANT TO THIS SUBSECTION (3)(a), THE STATE DEPARTMENT SHALL PUBLISH ON ITS WEBSITE A COPY OF THE CONTRACT, SCOPE OF WORK, AND INFORMATION REGARDING SUPERVISION OF CONTRACTOR DELIVERABLES.

(3.5)(c) THE STATE DEPARTMENT SHALL CREATE A PROVIDER ADVISORY GROUP FOR RECOVERY AUDITS CONSISTING OF EMPLOYEES OF THE STATE DEPARTMENT AND MEMBERS FROM DIFFERENT PROVIDER GROUPS, INCLUDING PHYSICIANS, HOSPITALS, AND ANY OTHER PROVIDER TYPES DIRECTLY IMPACTED BY AUDITS CONDUCTED PURSUANT TO THIS SECTION, APPOINTED BY THE EXECUTIVE DIRECTOR. THE PROVIDER ADVISORY GROUP SHALL MEET AT LEAST QUARTERLY TO REVIEW QUARTERLY ACTIVITY REPORTS REQUIRED BY SUBSECTION (3)(a)(IX) OF THIS SECTION AND ADVISE THE STATE DEPARTMENT ON ISSUES PROVIDERS EXPERIENCE WITH AUDITS OF THE RECOVERY AUDIT CONTRACTORS PROGRAM.

(3.7) (a) DURING THE 2023-24 STATE FISCAL YEAR, THE OFFICE OF THE STATE AUDITOR SHALL CONDUCT AN INDEPENDENT REVIEW OF THE STATE DEPARTMENT'S RECOVERY AUDIT CONTRACTOR PROGRAM PURSUANT TO 42 CFR 455.506 FOR COMPLIANCE WITH REQUIREMENTS OF THE FEDERAL CENTERS FOR MEDICARE AND MEDICAID SERVICES MEDICAID RECOVERY AUDIT PROGRAM, COMPLIANCE WITH CODING PRACTICE STANDARDS, AND STATE LAW. TO THE EXTENT POSSIBLE, THE AUDIT SHALL EXAMINE AND ISSUE POLICY RECOMMENDATIONS TO THE JOINT BUDGET COMMITTEE OF THE GENERAL ASSEMBLY, THE HEALTH AND HUMAN SERVICES COMMITTEE OF THE SENATE, AND THE PUBLIC AND BEHAVIORAL HEALTH AND HUMAN SERVICES COMMITTEE OF THE HOUSE OF REPRESENTATIVES, OR THEIR SUCCESSOR COMMITTEES, REGARDING:

(I) THE EFFECTIVENESS AND LEVEL OF THE PAYMENT MODEL USED FOR THE STATE DEPARTMENT'S RECOVERY AUDIT CONTRACTOR, INCLUDING THE LEVEL OF PAYMENTS SUFFICIENT TO MAINTAIN A CONTRACTOR, THE SCOPE OF THE CONTRACT AND DELIVERABLES, AND IMPACTS ON PROVIDERS RELATED TO A CONTINGENCY FEE-BASED SYSTEM SIGNIFICANTLY ABOVE THE FEDERAL STANDARD;

(II) THE METHODS AND EFFECTIVENESS OF THE STATE DEPARTMENT'S CURRENT APPROACH TO ADDRESSING PROVIDER CONCERNS REGARDING THE MEDICAID RECOVERY AUDIT CONTRACTOR PROGRAM;

(III) THE DESIGN, EFFECTIVENESS, AND METHODS USED BY OTHER STATES IN MEETING THE FEDERAL STANDARD, INCLUDING:

(A) AN ASSESSMENT OF REQUIREMENTS IMPOSED BY OTHER STATES IN REGARD TO OVERALL RECOVERY AUDIT CONTRACTOR STAFFING AND QUALIFICATIONS OF REVIEWERS TO ENSURE ALIGNMENT OF SPECIALTY AND SUBSPECIALTY EXPERTISE FOR CONDUCTING INITIAL AUDITS AND FINAL DETERMINATIONS;

(B) AN ASSESSMENT OF OTHER STATES' LOOKBACK PERIODS AND THE STATES' RELATIVE FINANCING MECHANISMS;

(C) BEST PRACTICES EMPLOYED BY OTHER STATES OR RECOMMENDED BY COLORADO PROVIDERS TO HELP IMPROVE BILLING PRACTICES AND COMPLIANCE AND TO PROVIDE SUPPORT THROUGHOUT THE RECOVERY AUDIT CONTRACTOR PROCESS; AND

(D) MODELS FROM OTHER STATES USED TO INCENTIVIZE IDENTIFICATION OF UNDERPAYMENTS, ALONG WITH A FEASIBILITY ASSESSMENT FOR THE USE OF SUCH MODELS IN COLORADO.

(IV) IMPLICATIONS FOR PROVIDERS AND THE STATE'S GENERAL FUND OF ADJUSTING THE LOOKBACK PERIOD USED FOR THE RECOVERY AUDIT CONTRACTOR AUDITS. THE OFFICE OF THE STATE AUDITOR SHALL EXAMINE, COMPARE TO OTHER STATES, AND, TO THE EXTENT FEASIBLE, DISAGGREGATED BY DATES OF SERVICE, AUDIT FINDING DATE, AND PROVIDER TYPE:

(A) THE NUMBER, PROPORTION, AND VALUE OF CLAIMS REVIEWED, RELATIVE TO TOTAL POTENTIAL CLAIMS SUBJECT TO THE RECOVERY AUDIT CONTRACTOR PROGRAM;

(B) THE NUMBER AND PROPORTION OF PROVIDERS IMPACTED BY CLAIM REVIEWS AND CONTESTED PAYMENTS;

(C) THE NUMBER, PROPORTION, AND VALUE OF CONTESTED PAYMENTS, INCLUDING UNDERPAYMENTS, OVERPAYMENTS, AND RECOUPMENTS; AND

(D) THE NUMBER, PROPORTION, VALUE, AND RESULT OF CONTESTED PAYMENTS BY DISPOSITION STATUS, INCLUDING THOSE RESOLVED THROUGH INTERVIEW REQUESTS PURSUANT TO SECTION 25.5-4-301(3)(a)(IV.5), INFORMAL RECONSIDERATIONS, AND APPEALS.

(V) PROVIDER ADMINISTRATIVE BURDENS ASSOCIATED WITH THE RECOVERY AUDIT CONTRACTOR PROGRAM;

(VI) THE FEASIBILITY OF INCENTIVES FOR UNDERPAYMENT IDENTIFICATION, INCLUDING MODELS FROM OTHER STATES AND METHODS FOR IDENTIFYING UNDERPAYMENTS;

(VII) THE IMPACT OF AUDITS ON PROVIDER PARTICIPATION AND ACCESS TO CARE, AND OPPORTUNITIES TO INCREASE MEANINGFUL PROVIDER PARTICIPATION AND ACCESS TO CARE; AND

(VIII) AN ASSESSMENT OF THE DUPLICATION OF UTILIZATION MANAGEMENT REVIEWS AND APPROVALS, SUCH AS PRIOR AUTHORIZATION, WITH POST-PAYMENT AND AUDIT REVIEWS.

(b) (I) THE OFFICE OF THE STATE AUDITOR SHALL CONTRACT WITH AN ENTITY THAT REVIEWS STATE PLANS AND AMENDMENTS SUBMITTED TO THE FEDERAL CENTERS FOR MEDICARE AND MEDICAID SERVICES ON BEHALF OF STATES FOR THE ENTITY TO ASSESS FEDERAL FLEXIBILITIES PURSUANT TO 42 CFR 455.516 THAT COLORADO CAN UTILIZE IN ORDER TO IMPROVE THE RECOVERY AUDIT CONTRACTOR PROGRAM AND ASSIST IN PURSUING THOSE FLEXIBILITIES, WHEN ALREADY AUTHORIZED. THE CONTRACTED ENTITY MUST NOT BE A CONTRACTOR UNDER THE RECOVERY AUDIT CONTRACTOR PROGRAM, NOR A COMPETITOR OF SUCH A CONTRACTOR, NOR A PROVIDER OF SIMILAR PROGRAM INTEGRITY PRODUCTS.

(II) THE CONTRACTED ENTITY SHALL CONSIDER THE FOLLOWING ISSUES:

(A) WHAT ARE THE IMPACTS ON PROVIDERS AND MEDICAID BENEFICIARIES OF CONTRACTOR CONTINGENCY FEES AND A LOOKBACK PERIOD THAT EXCEEDS FEDERAL STANDARDS FOR MEDICAID RECOVERY AUDIT CONTRACTOR PROGRAMS?

(B) USING INFORMATION FROM OTHER STATES OR SIMILAR AUDIT PROGRAMS IN THE PUBLIC AND PRIVATE SECTORS, HOW CAN COLORADO OPTIMIZE STAFFING TO BALANCE POTENTIAL OVERPAYMENT CLAIMS AND MEDICAL NECESSITY REVIEWS?

(C) WHAT IS THE LEVEL OF FEDERAL FLEXIBILITY FOR ADJUSTING THE TIMING AND PROCEDURE WHEN ASSESSING WHEN A POTENTIAL OVERPAYMENT IS "IDENTIFIED" OR "DETERMINED", AND HOW COULD MODIFICATIONS TO THAT TIMING OR PROCEDURE IMPROVE THE RECOVERY AUDIT CONTRACTOR PROGRAM?

(D) HOW SHOULD THE STATE EVALUATE THE COST BENEFIT ANALYSIS TO DETERMINE WHETHER THE MEDICAID RECOVERY AUDIT CONTRACTOR PROGRAM IS STRIKING THE RIGHT BALANCE BETWEEN ACCOUNTABILITY AND ACCESS TO CARE?

(E) WHAT ARE OTHER STATES' BEST PRACTICES IN EXERCISING FEDERAL FLEXIBILITIES IN THE RECOVERY AUDIT CONTRACTOR PROGRAM TO IMPROVE PROVIDER EDUCATION, TRAINING, AND ERROR RATES?

(c) THIS SUBSECTION (3.7) IS REPEALED, EFFECTIVE JULY 1, 2025.

**SECTION 3. Appropriation.** For the 2023-24 state fiscal year, \$850,000 is appropriated to the legislative department for use by the office of the state auditor. This appropriation is from the general fund. To implement this act, the office may use this appropriation for an independent review of the department of health care policy and financing's recovery audit contractor program and contract services to improve the recovery audit contractor program.

**SECTION 4. Appropriation.** (1) For the 2023-24 state fiscal year, \$39,287 is appropriated to the department of health care policy and financing for use by the executive director's office. This appropriation is from the general fund. To implement this act, the office may use this appropriation as follows:

(a) \$35,277 for personal services, which amount is based on an assumption that the office will require an additional 0.9 FTE; and

(b) \$4,010 for operating expenses.

(2) For the 2023-24 state fiscal year, the general assembly anticipates that the department of health care policy and financing will receive \$39,286 in federal funds to implement this act, which amount is subject to the "(I)" notation as defined in the annual general appropriation act for the same fiscal year. The appropriation in subsection (1) of this section is based on the assumption that the department will receive this amount of federal funds to be used as follows:

(a) \$35,276 for personal services; and

(b) \$4,010 for operating expenses.

**SECTION 5. Safety clause.** The general assembly hereby finds, determines, and declares that this act is necessary for the immediate preservation of the public peace, health, or safety.

Approved: June 1, 2023