

NOTE: This bill has been prepared for the signatures of the appropriate legislative officers and the Governor. To determine whether the Governor has signed the bill or taken other action on it, please consult the legislative status sheet, the legislative history, or the Session Laws.



HOUSE BILL 26-1412

BY REPRESENTATIVE(S) Sirota and Taggart, Brown, Woodrow, Bradley, Keltie;
also SENATOR(S) Bridges and Kirkmeyer, Amabile, Hinrichsen.

CONCERNING AUTHORIZING THE DEPARTMENT OF HEALTH CARE POLICY AND FINANCING TO USE STATISTICAL SAMPLING AND EXTRAPOLATION TO RECOVER OVERPAYMENTS TO PROVIDERS FOR CERTAIN MEDICAID SERVICES, AND, IN CONNECTION THEREWITH, MAKING AND REDUCING AN APPROPRIATION.

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

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

(a) The federal centers for medicare and medicaid services, the office of inspector general in the federal department of health and human services, and other federal agencies regularly employ statistical sampling and extrapolation methodologies to identify and recover improper payments from the Colorado medicaid program administered by the department of health care policy and financing, or HCPF;

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.

(b) Certain medicaid service areas, including nonemergency medical transportation and pediatric behavioral therapy, such as applied behavior analysis services, have been identified as having elevated rates of insufficient documentation, improper billing, or fraud, waste, and abuse, characterized by rapid outsized spending growth not explained or supported by a corresponding increase in the number of individuals served;

(c) Requiring HCPF to individually audit each claim submitted for payment by a provider to determine the appropriate error rate and overpayment recovery imposes an unrealistic and unsustainable administrative burden;

(d) The inability for HCPF to audit every claim submitted by a provider results in under-represented recoupments, recovery delays, and increased risk for federal disallowance, which the state is solely financially responsible for;

(e) Statistical sampling and extrapolation methodologies, when applied consistently with recognized federal standards, provide a reliable and efficient basis for overpayment recovery; and

(f) Using statistical sampling and extrapolation across providers treating medicaid members for services covered under the nonemergent medical transportation benefit and the pediatric behavioral therapy benefit, including applied behavioral analysis, will protect Colorado medicaid funds and the state general fund; deter fraud, waste, and abuse and related practices; and align state practices with established federal methodologies and standards.

SECTION 2. In Colorado Revised Statutes, 25.5-4-301, **add** (3)(a)(VI.5) as follows:

25.5-4-301. Recoveries - overpayments - penalties - interest - adjustments - liens - review or audit procedures - cash fund - rules - definitions - repeal.

(3) (a) A review or audit of a provider is subject to the following procedures:

(VI.5) (A) IF AN AUDIT OF A PROVIDER WHO PROVIDES

NONEMERGENCY MEDICAL TRANSPORTATION SERVICES OR PEDIATRIC BEHAVIORAL THERAPY, INCLUDING APPLIED BEHAVIORAL ANALYSIS, IS INITIATED AFTER JULY 1, 2026, FOR SERVICES PROVIDED FROM JANUARY 1, 2022, THROUGH DECEMBER 31, 2023, THE STATE DEPARTMENT IS AUTHORIZED TO DETERMINE AND RECOVER AN OVERPAYMENT TO A PROVIDER USING A SAMPLING OF RECORDS AND EXTRAPOLATION OF THE RECORDS SO LONG AS THE SAMPLING AND EXTRAPOLATION METHODS EMPLOYED UTILIZE A STATISTICALLY VALID SAMPLE AND ARE DESIGNED AND IMPLEMENTED IN ACCORDANCE WITH NATIONALLY RECOGNIZED, GENERALLY ACCEPTED STATISTICAL PRINCIPLES, STANDARDS, AND METHODS.

(B) IF AN AUDIT CONDUCTED PURSUANT TO SUBSECTION (3)(a)(VI.5)(A) OF THIS SECTION IDENTIFIES A STATISTICALLY SIGNIFICANT PATTERN OF ALLEGED OVERPAYMENTS TO A PROVIDER OF NONEMERGENCY MEDICAL TRANSPORTATION SERVICES OR PEDIATRIC BEHAVIORAL THERAPY, THE AUDITOR IS AUTHORIZED TO USE THE SAME STATISTICAL SAMPLING AND EXTRAPOLATION METHODS TO AUDIT SERVICES PROVIDED BY THE PROVIDER FROM JANUARY 1, 2024, THROUGH DECEMBER 31, 2025. FOR THE PURPOSES OF THIS SUBSECTION (3)(a)(VI.5)(B), "STATISTICALLY SIGNIFICANT PATTERN" MEANS A CLAIMS ERROR RATE IDENTIFIED THROUGH THE AUDIT THAT EXCEEDS TEN PERCENT.

(C) IF AN AUDIT IDENTIFIES AN ALLEGED OVERPAYMENT, THE STATE DEPARTMENT SHALL ISSUE A NOTICE TO THE PROVIDER OF THE ALLEGED OVERPAYMENT WITHIN SIXTY DAYS AFTER THE ALLEGED OVERPAYMENT IS IDENTIFIED. THE NOTICE OF THE ALLEGED OVERPAYMENT MUST INCLUDE THE BASIS OF THE ALLEGED OVERPAYMENT, THE RATIONALE FOR THE ALLEGED OVERPAYMENT, THE METHODOLOGY USED TO CALCULATE THE ALLEGED OVERPAYMENT, AND INFORMATION ON HOW THE STATE DEPARTMENT IDENTIFIED THE ALLEGED OVERPAYMENT, INCLUDING CLAIMS SAMPLES USED, CLAIM-LEVEL FINDINGS, AND OTHER DOCUMENTATION TO ENABLE THE PROVIDER TO FULLY EVALUATE AND REPLICATE THE AUDITOR'S ANALYSIS. PRIOR TO THE STATE DEPARTMENT IMPLEMENTING RECOVERY OF AN OVERPAYMENT, THE PROVIDER HAS THE RIGHT TO AN INFORMAL RECONSIDERATION IN ACCORDANCE WITH SUBSECTION (3)(a)(VII) OF THIS SECTION OR THE RIGHT TO A FORMAL APPEAL IN ACCORDANCE WITH SUBSECTION (3)(a)(VIII) OF THIS SECTION.

(D) IF THE STATE DEPARTMENT ENTERS INTO A CONTRACT FOR THE PURPOSE OF CONDUCTING AN AUDIT PURSUANT TO THIS SUBSECTION

(3)(a)(VI.5), THE CONTRACT MUST NOT BE A CONTINGENCY-BASED CONTRACT BASED ON A PERCENTAGE OF THE AMOUNT OF RECOVERY COLLECTED FROM THE PROVIDER.

(E) AFTER THE STATE DEPARTMENT COMPLETES AN AUDIT OF A PROVIDER PURSUANT TO THIS SUBSECTION (3)(a)(VI.5), THE STATE AUDITOR OR A PERSON AUTHORIZED BY THE STATE AUDITOR SHALL CONDUCT AN EXAMINATION IN ACCORDANCE WITH SECTION 2-3-103 TO DETERMINE WHETHER THE STATE DEPARTMENT USED PROPER STATISTICAL SAMPLING AND EXTRAPOLATION METHODS WHEN DETERMINING WHETHER OVERPAYMENTS WERE MADE TO A PROVIDER. THE STATE AUDITOR SHALL ANNUALLY PRESENT A REPORT OF THE FINDINGS MADE PURSUANT TO THIS SUBSECTION (3)(a)(VI.5)(E) TO THE LEGISLATIVE AUDIT COMMITTEE AND THE JOINT BUDGET COMMITTEE UNTIL THE AUDITS ARE COMPLETE.

SECTION 3. Appropriation - adjustments to 2026 long bill.

(1) Except as provided in subsection (3) of this section, to implement this act, the appropriation made in the annual general appropriation act for the 2026-27 state fiscal year to the department of health care policy and financing for medical and long-term care services for Medicaid-eligible individuals is adjusted as follows:

(a) The general fund appropriation is decreased by \$6,861,775, which amount is subject to the "(M)" notation as defined in the annual general appropriation act for the same fiscal year; and

(b) The cash funds appropriation from recoveries and recoupments is increased by \$13,723,550.

(2) For the 2026-27 state fiscal year, the general assembly anticipates that the federal funds received by the department of health care policy and financing for medical and long-term care services for Medicaid-eligible individuals will decrease by \$6,861,775. The appropriation in subsection (1)(a) of this section is based on the assumption that the department will not receive this amount of federal funds.

(3) Subsection (1)(a) of this section does not require a reduction of an appropriation in the annual general appropriation act for the 2026-27 state fiscal year if:

(a) The amount of the general fund appropriation made in the annual general appropriation act for the 2026-27 state fiscal year to the department of health care policy and financing for medical and long-term care services for Medicaid-eligible individuals is less than the amount of the adjustment required in subsection (1)(a) of this section; or

(b) The annual general appropriation act for the 2026-27 state fiscal year does not include an appropriation to the department of health care policy and financing for medical and long-term care services for Medicaid-eligible individuals.

SECTION 4. Effective date. This act takes effect upon passage; except that section 3 of this act takes effect only if the annual general appropriation act for the 2026-27 state fiscal year becomes law, in which case section 3 of this act takes effect upon the effective date of this act or of the annual general appropriation act for state fiscal year 2026-27, whichever is later.

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

the support and maintenance of the departments of the state and state institutions.

Julie McCluskie
SPEAKER OF THE HOUSE
OF REPRESENTATIVES

James Rashad Coleman, Sr.
PRESIDENT OF
THE SENATE

Vanessa Reilly
CHIEF CLERK OF THE HOUSE
OF REPRESENTATIVES

Esther van Mourik
SECRETARY OF
THE SENATE

APPROVED _____
(Date and Time)

Jared S. Polis
GOVERNOR OF THE STATE OF COLORADO