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Fiscal Note

Drafting Number: LLS 21-0403 **Date:** February 16, 2021
Prime Sponsors: Sen. Bridges; Smallwood **Bill Status:** Senate HHS
Rep. Snyder; McKean **Fiscal Analyst:** Max Nardo | 303-866-4776
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Bill Topic: **NOTIFICATION REQUIREMENTS FOR HCPF AUDIT**

Summary of Fiscal Impact:

<input type="checkbox"/> State Revenue	<input type="checkbox"/> TABOR Refund
<input checked="" type="checkbox"/> State Expenditure	<input type="checkbox"/> Local Government
<input type="checkbox"/> State Transfer	<input type="checkbox"/> Statutory Public Entity

The bill requires that when auditing a Medicaid provider concerning a possible overpayment, the auditor confirms receipt of the written request to perform the audit prior to conducting the audit. It increases state expenditures on an ongoing basis.

Appropriation Summary: For FY 2021-22, the bill requires an appropriation of \$2.1 million to the Department of Health Care Policy and Financing.

Fiscal Note Status: The fiscal note reflects the introduced bill.

Table 1
State Fiscal Impacts Under SB 21-022

		Budget Year FY 2021-22	Out Year FY 2022-23
Revenue		-	-
Expenditures	General Fund	\$2,082,237	\$2,082,237
Transfers		-	-
TABOR Refund		-	-

Summary of Legislation

The Department of Health Care Policy and Financing (HCPF), which administers the state's Medicaid program, has a process for auditing Medicaid providers to ensure correct payment for services rendered. Current law requires the auditor to provide a written notice and records request at least ten business days prior to commencing the audit. The bill requires that the auditor confirm receipt of the written request prior to conducting the audit.

Background

Record request and recovery process. Under state law, any overpayment made by HCPF to a provider may be recovered by the department. When a provider has responded to the initial audit request, HCPF issues a formal records request, to which the provider has 45 days to respond. If there is no response after that time, a Notice of Adverse Action is issued to the provider, and any payment that is deemed an overpayment to the provider is subject to recovery.

State Expenditures

The bill increases state expenditures in HCPF by an estimated \$2.1 million from the General Fund for FY 2021-22 and future years. These costs are shown in Table 2 and described below.

Table 2
Expenditures Under SB 21-022

	FY 2021-22	FY 2022-23
Department of Health Care Policy and Financing		
Loss of Recoveries from Technical Denials	\$309,620	\$309,620
Loss of Recoveries from Adverse Actions	\$1,772,616	\$1,772,616
Total Cost	\$2,082,236	\$2,082,236

Department of Health Care Policy and Financing. The department will experience an increase in workload to confirm receipt of audit requests and to contact providers seeking confirmation. The inability of the department to recover overpayments from providers that fail to confirm the receipt of audit requests is expected to increase General Fund expenditures to make up for the loss.

Loss of overpayment recoveries. The fiscal note assumes that requiring confirmation of a written request will lead to a decrease in the recovery of overpayments from providers who cannot be contacted. The expectation of recovery for overpayments is built into HCPF's budget; any decrease to recovery necessitates a budget increase. Due to a lack of information about how to predict provider behavior in this scenario, there is a high degree of uncertainty with the following estimates; if further budget changes are needed, HCPF will address this through the annual budget process.

The anticipated loss of overpayment recoveries come in two forms:

- *Loss of technical denials.* Technical denials occur when a provider does not contact the department after being notified of an audit request. Under the status quo, the department proceeds with recovery in these scenarios. Because the bill requires confirmation prior to a recovery action, it is assumed that these recoveries will be prohibited. The fiscal note assumes most providers will eventually be contacted by other methods, but an estimated 5.0 percent of audit requests will not be confirmed and the recoveries will not be made. HCPF is expected to recover approximately \$6.2 million from technical denials in FY 2020-21.
- *Loss of recoveries from adverse actions.* HCPF is expected to recover \$35.5 million from adverse actions in FY 2020-21. The bill creates an avenue and incentive for providers to evade recoveries by not confirming receipt of the audit request. The fiscal note assumes 5.0 percent of recoveries will be lost due to the lack of a provider response, resulting in an annual decrease in recoveries of approximately \$1.8 million.

While initial payments to providers are made using a mix of fund sources, the full impact of lost recoveries may be borne by the General Fund. The state is required to refund the federal share of overpayments whether or not the overpayment is recovered from the provider, and payments from the Healthcare Affordability and Sustainability Fee can only be used when federal matching funds are received.

Effective Date

The bill takes effect 90 days following adjournment of the General Assembly sine die, assuming no referendum petition is filed.

State Appropriations

For FY 2021-22, the bill requires an appropriation of \$2,082,236 to HCPF from the General Fund.

State and Local Government Contacts

Health Care Policy and Financing